IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-522-2011**
	:	
vs.	**:**	
	:	**Petition for Habeas Corpus**
MELVIN REEVES,	**:**	
Defendant	**:**	

OPINION AND ORDER

Defendant is charged by Information filed on May 13, 2011 with Aggravated Assault, Endangering the Welfare of Children (as parent), two counts of Recklessly Endangering another Person, and two counts of Simple Assault.

On May 25, 2011, Defendant filed a Petition for Habeas Corpus requesting the Court to dismiss all of the charges for a lack of prima facie showing. The hearing was held before the Court on July 26, 2011. At the hearing, the parties stipulated to the admission of a transcript of the preliminary hearing held on April 11, 2011.

In support of the charges against the Defendant, the Commonwealth first called Corporal Carl Finnerty of the South Williamsport Police Department. On January 2, 2011, he was dispatched to an alleged domestic disturbance. Upon arriving at the scene, he spoke with an adult female by the name of Vanessa Roddy, who was standing outside with her eleven (11) year old son, Carlos.

According to Corporal Finnerty, Vanessa was upset and excited. She explained that she was assaulted by her boyfriend who she identified as the Defendant. More specifically, she explained that the Defendant "choked her and that while he was choking her, she began to pass out." (PHT, P. 5). She further explained that while she was being

choked by the Defendant, she was holding their five (5) month old baby boy in her arms but as she passed out, the baby fell to the floor. (PHT, P. 5).

Corporal Finnerty and Officer Thompson, also of the South Williamsport Police Department, entered Ms. Roddy's apartment and found among other things, a knife that appeared to have blood on it, a bloody shirt in the trash can, and some bloody, soaked towels in the bathroom sink all of which were consistent with portions of the incident as explained by Ms. Roddy.

In the interim, Ms. Roddy was transported to the hospital by ambulance. Corporal Finnerty interviewed her in the emergency room. Corporal Finnerty intended on getting "more detail" with respect to the alleged incident.

Ms. Roddy again explained what happened noting that the Defendant choked her by placing both of his hands around her throat, dragging her across the bedroom and slamming her into a bedroom wall. (PHT, pp. 7-8). When she dropped her baby while she was being choked, the baby landed on his head. She then fell to the floor and the Defendant began to choke her a second time. (PHT, P. 9).

Not soon thereafter, the Defendant went toward Ms. Roddy "with a fist." (PHT, P. 9). Believing that she was going to be choked a third time, she grabbed a knife and stabbed the Defendant "to prevent any further injury." (PHT, P. 9). The Defendant eventually took the baby and fled the apartment. (PHT, P. 10).

On cross-examination, Corporal Finnerty testified that when he first spoke to

Ms. Roddy outside of the apartment in “the parking lot”, she was excited, upset and had been crying. (PHT, P. 11). In terms of whether there was any indication that Ms. Roddy was injured, Corporal Finnerty noted that she had a “raspy voice” and was “complaining of neck pain.” (PHT, P. 13).

It appeared that Corporal Finnerty first interviewed Ms. Roddy approximately ten (10) minutes after 9:00 p.m. and interviewed her at the hospital “around midnight.” (PHT, pp. 11, 13).

The Commonwealth next called Stephanie Andres to testify. On January 2, 2011, she was employed as a 911 telecommunicator.

Ms. Roddy had placed a 911 call and spoke with Ms. Andres. The call lasted approximately five (5) minutes. Ms. Roddy had indicated that the Defendant had choked her, taken their five (5) month old child, she was concerned for the welfare of her child and that she was injured and needed emergency medical services. (PHT, pp. 16-18).

Defendant contends that there are insufficient facts to prove prima facie that he committed any act upon the alleged victim or their child for which he would be criminally culpable. More specifically, Defendant contends that all of the testimony presented at the preliminary hearing was hearsay and accordingly insufficient to establish a prima facie case.

In order to satisfy its burden of establishing a prima facie case, the Commonwealth “must produce legally competent evidence,…which demonstrates the existence of each of the material elements of the crime charged and legally competent evidence to demonstrate the existence of facts which connect the accused to the crime

charged." Commonwealth ex rel. Buchanan v. Verbonitz, 525 Pa. 413, 416-417, 581 A.2d 172, 174 (1990)(citations omitted).

Hearsay evidence alone may not be the basis for establishing a prima facie case in a preliminary hearing. Commonwealth v. Tyler, 402 Pa. Super. 429, 433-434, 587 A.2d 326, 328 (1991), appeal quashed, 533 Pa. 39, 617 A.2d 1263 (1992), citing Commonwealth ex rel. Buchanan v. Verbonitz, supra. Nonetheless, hearsay evidence may be admitted in a preliminary hearing. Tyler, 587 A.2d at 328.

The purpose of a preliminary hearing is to avoid the incarceration or trial of a Defendant unless there is sufficient evidence to establish a crime was committed and the probability the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa. 359, 466 A.2d 991 (1983).

Ms. Roddy's statements to the 911 telecommunicator, Stephanie Andres, and to Corporal Finnerty when he first arrived on the scene are clearly excited utterances and thus not excluded by the hearsay rule.

The burden to establish that a hearsay statement is admissible under an exception falls fully on the proponent. Commonwealth v. Smith, 545 Pa. 487, 492, 681 A.2d 1288, 1290 (1996). The Commonwealth has met this burden by proving that the statements that Ms. Roddy made to the 911 telecommunicator and to Corporal Finnerty related to a startling event or condition and were made while Ms. Roddy was under the stress of the excitement caused by the event. Pa. R.E. 803 (2).

The principle underlying this exception is based upon the premise that "an

individual who has recently suffered an overpowering emotional and shocking experience is likely to be truthful." Commonwealth v. Cheeks, 423 Pa. 67, 70, 223 A.2d 291, 293 (1966).

Ms. Roddy personally experienced the startling event, made reference to some phase of the event or occurrence which she perceived and was still under the stress of the startling event. Accordingly, the statements are admissible and constitute competent evidence. See, for example, Commonwealth v. Sherwood, 603 Pa. 92, 112-113, 982 A.2d 483, 495-496 (Pa. 2009); Commonwealth v. Gray, 867 A.2d 560, 570-571 (Pa. Super. 2004), appeal denied, 583 Pa. 694, 897 A.2d 781 (2005); Commonwealth v. Ehrsam, 355 Pa. Super. 40, 54-55, 512 A2d 1199, 1206 (1986), appeal denied, 515 Pa. 573; 527 A.2d 535 (1987), cert. denied, 493 U.S. 932 (1989); Commonwealth v. Von Smith, 303 Pa. Super. 534, 537-538, 450 A.2d 55, 56-57 (1982).

Clearly, there was sufficient evidence to establish a prima facie case of all of the charges against the Defendant. In addition to the statements made to Corporal Finnerty at the scene and to the 911 telecommunicator (excited utterances), there were the personal observations of Corporal Finnerty with respect to Ms. Roddy's raspy voice and complaints of neck pain, the discovery of the knife with blood apparently on it, bloody t-shirt and bloody towels, the flight of the Defendant with the baby, and the hearsay statement made at the hospital hours later.

Incidentally, the Court is not unaware of the requirement that independent evidence exist regarding the occurrence of a startling event. More specifically, where there is no independent evidence that a startling event has occurred, an alleged excited utterance

cannot be admitted as an exception to the hearsay rule. Commonwealth v. Keys, 814 A.2d 1256, 1259 (Pa. Super. 2003), citing Commonwealth v. Barnes, 310 Pa. Super. 480, 456 A.2d 1037, 1040 (Pa. Super. 1983). In this matter, however, independent evidence does exist in the nature of a knife with blood apparently on it, a blood-soaked t-shirt, blood-soaked towels, a complaining party and her child on the street, a call to a 911 operator, and the alleged assailant fleeing along with an infant son.

The Pennsylvania Constitution requires that a criminal defendant be permitted to confront and cross-examine the witnesses against him at a preliminary hearing. See Pa. Const. Art. 1 § 9; Verbonitz, supra. at 418-419; 581 A.2d at 174-175; Commonwealth v. Hanawalt, 615 A.2d 432 (Pa. Super. 1992).

The Commonwealth bears the burden of proving that the statements at issue are admissible under the Confrontation Clause. Commonwealth v. Abrue, 11 A.3d 484, 493 (Pa. Super. 2010). The first inquiry concerns whether the statements at issue are testimonial or non-testimonial. Michigan v. Bryant, 131 S.Ct. 1143 (2011). Admission of an out-of-court testimonial statement may violate the Confrontation Clause where a non-testimonial statement would not. A statement is testimonial if its primary purpose is to establish or prove past events potentially relevant to later criminal prosecution. Id. at 1154, quoting Davis v. Washington, 547 U.S. 813, 826, 126 S.Ct. 2266 (2006). A statement is non-testimonial if it is made with the primary purpose of enabling police to meet an ongoing emergency. Davis, supra; see also Abrue, supra. at 491. In Bryant, supra, the Supreme Court further explained that an ongoing emergency, although an important factor, is only one factor

in determining the primary purpose of police interrogation. 131 S.Ct. at 1160. The informality of the interrogation and other circumstances in which an encounter occurs, as well as the statements of both the declarant and the investigators provide objective evidence of the primary purpose of the interrogation. Id.

Reviewing the evidence in light of these precedents, the Court find the statements made to Corporal Finnerty and the 911 telecommunicator were non-testimonial. They were made during an ongoing emergency and the primary purpose of the questioning was not to establish or prove past events. The victim was calling 911 not only to seek medical attention for herself but also to seek help for her infant son, whom the Defendant took from the residence when he fled. The 911 operator and the police were not only responding to victim's call as it pertained to her injuries, but they were also trying to gather sufficient information to issue an Amber Alert with respect to the child.

The statements also were made in an informal setting. The victim called 911 from her residence, which was the scene of the alleged crime. She spoke to the police at her residence and at the hospital.

In light of the totality of the circumstances surrounding the encounter, the Court finds the admission of the alleged victim's statements in this case does not violate the Confrontation Clause. Accordingly, Defendant's confrontation clause argument also fails.

O R D E R

AND NOW, this ____ day of August 2011 following a hearing and argument, Defendant's Petition for Habeas Corpus is **DENIED.**

By The Court,

_____
Marc F. Lovecchio, Judge

cc: DA
PD (KG)
Gary Weber, Esquire (Lycoming Reporter)
Work file