

**IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**KYLE A. MYERS,  
Defendant**

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**No. 402-2012  
CRIMINAL**

**OPINION AND ORDER**

The Defendant filed a Petition for Habeas Corpus on April 17, 2012. By agreement of both parties, the Court will decide the Petition based on the transcripts of the Preliminary Hearing held in this matter on March 6, 2012 before Magisterial District Judge James G. Carn.

***Background***

At the Preliminary Hearing, Donald Gentner (Gentner) testified and the following facts are based on his testimony. On October 18, 2011, Gentner was at the Buttorff's store parking lot when he was informed by Matthew Beehler (Beehler) that he was going to fight Daniel Harold (Harold).<sup>1</sup> Gentner then went to the residence of Kyle Myers (Defendant), picked him up, and then returned to the parking lot at Buttorff's. Beehler requested that everyone travel to South Reach Road to meet his mother, Lisa Beehler (Lisa), and Harold. Gentner, in his pick-up truck, followed Beehler and at least two other vehicles. Defendant was a passenger in Gentner's vehicle. While driving south on Reach Road a pick-up truck approached them and pulled over. Beehler's vehicle and the others also pulled over. The driver of the approaching pick-up truck was Lisa and the passenger was Harold. Beehler exited his vehicle and began talking to Lisa in her vehicle. The other individuals who followed Beehler surrounded the vehicle while Harold

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<sup>1</sup> Harold is the boyfriend of Beehler's sister Naomi.

was still inside. Gentner and the Defendant were among the individuals that stood by the passenger side door of the pick-up truck when Beehler asked Harold to exit the vehicle. When Harold did not obey, Beehler opened the door and removed him forcibly from the vehicle, pushing him to the ground and assisted Lisa in tying him up. Beehler walked Harold, who at this point did not resist, to the trunk of his vehicle and asked him to get into the trunk. Harold sat on the edge of the trunk and Beehler swung his legs into the trunk and closed the lid. Throughout the entire time the Defendant and the other members of the group were surrounding both the vehicle and Harold.

Beehler proceeded to get into his vehicle and drive away. The Defendant and other individuals got into Gentner's pick-up truck and followed Beehler; Gentner does not indicate whether Beehler gave directions or instructions to the group, but at times it can be inferred from the circumstances that he did instruct the group on where to go. While heading up Route 44, Beehler pulled over and the other vehicles followed. Gentner was uncertain as to whether the Defendant remained in the vehicle. Beehler was discussing where he was going. Beehler told Gentner and Anthony Weaver that he was going to English Center. Everyone got back into their vehicles, with the Defendant getting back into Gentner's vehicle. A third vehicle that was present did not follow, but two other vehicles, including Gentner's, followed Beehler.<sup>2</sup> The vehicles were driving north on Little Pine when Gentner noticed the trunk of Beehler's vehicle was open and Gentner began trying to get Beehler to stop his vehicle. Beehler pulled over and Harold got out of the trunk and began running away from the road. People began to chase after Harold, including the Defendant. Around this time Dustin Hoffman (Hoffman), the landowner,

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<sup>2</sup> Mikel Green also testified at the preliminary hearing. He stated that when he arrived at Reach Road there was a truck circled by a group of people. At some point, he did not follow Beehler and drove his vehicle into town.

arrived and starting talking to people on the road to get them to leave his property. Gentner and Andrew Morgan (Morgan) spotted Harold hiding in the woods so Morgan dragged Harold out of a swampy area into a field. Harold then voluntarily walked towards Beehler. Subsequently, Beehler hit Harold in the face/head area and told him to take off running.

Gentner stated he was concerned that Hoffman would shoot Harold because he had indicated that he was going to shoot people if they did not leave his property. Gentner talked to Beehler and everyone got back into their vehicles and drove down the road onto a lower field. Many of the individuals present starting searching for Harold using their cell phones as lights. As people were going to the woods to search for Harold, Hoffman began firing a gun. Gentner stayed by the vehicles and did not know where the Defendant was as this time. Hoffman arrived at the field carrying a gun and Gentner began calling for everyone to get back to the vehicles. After a short period of time, everyone got back to the vehicles and left the premises.

Harold also testified at the preliminary hearing. Harold stated that when Lisa pulled her truck over it was soon surrounded by men that Harold had never seen before. He was unaware of the circumstances and did not know anything about fighting Beehler. He was unable to get out of the vehicle due to the men lined up at the passenger side door and said his only option was to sit in the truck. Harold stated that the individuals were standing right up against the vehicle. While sitting in the truck Harold was hit on the arms and knees with a small sledge hammer by Lisa, who was outside of the vehicle at this time. Harold says an unknown individual dragged him out of the vehicle so that Beehler could place him in a choke hold. Beehler then threw Harold to the ground and Harold was then tied up by unknown persons. During this time the crowd still surrounded the truck and Harold; shortly afterward he was thrown into the trunk of a vehicle. As the vehicle was driving, Harold said he was able to untie himself and pulled an

emergency release button for the trunk lid. He testified he escaped from the trunk and ran into a wooded area. Harold stated that he was running from the vehicles that followed behind Beehler's, which he said was a truck and a car.<sup>3</sup> Harold was ultimately found and dragged out of a swampy area. Beehler then proceeded to punch Harold in the face three (3) or four (4) times. Beehler then pointed towards the fields and told him to run that way. Everyone else then went back to their vehicles. Harold crossed a swamp and was walking up a hill away from Beehler when he heard three (3) or four (4) gunshots. Harold stopped and watched the vehicles go over to a field. Harold saw the occupants get out and appear to be searching for him. After a few minutes the vehicles went back onto the road.

The Defendant was charged by the Williamsport Bureau of Police with Kidnapping, a felony one, Criminal Conspiracy, a felony one, Aggravated Assault, a felony one, Terroristic Threats, a misdemeanor 1, Unlawful Restraint, a misdemeanor 1, False Imprisonment, a misdemeanor 2, and Simple Assault, a misdemeanor 2.

### ***Discussion***

In his Petition for Habeas Corpus, the Defendant, through his attorney, contends that the Commonwealth failed to present a *prima facie* case for any of the charges against the Defendant. The principal function of a preliminary hearing is to protect an individual's right against an unlawful arrest and detention. Commonwealth v. Mullen, 333 A.2d 755 (Pa. 1975). A preliminary hearing is not a trial and the Commonwealth only bears the burden of establishing at least a *prima facie* case that a crime has been committed. Commonwealth v. Prado, 393 A.2d 8 (1979).

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<sup>3</sup> Harold only saw four (4) men searching for him. He was unable to identify them.

A prima facie case exists 'when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused committed the offense. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury.'

Commonwealth v. Weigle, 997 A.2d 306, 311 (Pa. 2010) (citing Commonwealth v. Karetny, 880 A.2d 505, 513 (Pa. 2005)). The Commonwealth need not establish guilt beyond a reasonable doubt.

The Defendant generally contends that the Defendant was a mere spectator and did not commit any of the crimes of which he was charged. It is well established that mere presence at the scene of a crime and flight does not establish guilt on its own. Commonwealth v. Goodman, 350 A.2d 810, 811-812 (Pa. 1976) ("appellant innocently happened upon the scene and fled out of fear"). "Evidence of something more than presence at or near the scene of a crime is required to justify the conclusion that someone committed or participated in a crime." Commonwealth v. Stores, 463 A.2d 1108, 1112 (Pa. Super. 1983) (finding mere presence when individual were only found present in a store when rings were stolen). Here, the Court finds that the Defendant was not merely present at the scene of the crime. The Defendant traveled to the location of where he knew a crime was going to take place and did not merely stumble upon it. The Defendant was among many individuals that surrounded the truck that Harold was in, which prevented him from getting out without being apprehended. Further, when Harold escaped from Beehler's vehicle the Defendant proceeded to chase and search for Harold. The actions by the Defendant indicate that he was assisting the crime and not merely a spectator.

Defendant also contends that he and others thought they were simply watching a fight between two individuals. The Court finds this argument without merit. Gentner testified that when Harold was first approached by Beehler he refused to exit his vehicle. After exiting

Beehler's vehicle Harold was then tied up, forced into the trunk, driven around town, and then chased through the woods by the Defendant and his followers. The Court finds the facts to indicate that Harold was not in a fight mutually entered into with Beehler but rather ambushed and placed in great fear. Therefore, the Court is satisfied that the Defendant was not merely present at the scene but an active participant in the events which took place that evening.

***Whether sufficient evidence proven to establish the following charges:***

***Kidnapping***

A person commits the offense of Kidnapping under 18 Pa.C.S. § 2901(a)(3) if he “unlawfully removes another a substantial distance under the circumstances from the place where he is found, or if he unlawfully confines another for a substantial period in a place of isolation . . . [t]o inflict bodily injury on or to terrorize the victim or another.” “A removal or confinement is unlawful within the meaning of subsection (a) if it is accomplished by force, *threat* or deception.” 18 Pa.C.S. § 2901(b)(1) (emphasis added); see also Commonwealth v. Benjamin, 2012 Pa. Dist. & Cnty. Dec. LEXIS 34 (Pa. County Ct. 2012) (finding that a victim was intimidated into getting into a vehicle was sufficient for the offense of Kidnapping).

Here, there is testimony indication that the Defendant contributed to the intimidation and/or threatening of Harold, which caused Harold to place himself into Beehler's trunk. As stated by Gentner, Harold was told to put himself in the trunk and followed these directions by walking to the vehicle without resistance and sitting on the trunk. The Court finds that Harold would not have done this if there were not a large group of men surrounding him reducing or

eliminating his chances that he could flee from the scene.<sup>4</sup> Further, the presence of the Defendant and the other individuals was meant to terrorize Harold. This is shown by the fact that the Defendant and the group stood right up against Harold's passenger side door and were not merely observing from a distance.

Finally, substantial distance is where it "isolates the victim and exposes him or her to increased risk of harm." Commonwealth v. Campbell, 509 A.2d 394 (Pa. Super. 1986). By the Defendant assisting Beehler in placing Harold in the trunk of his car, he increased the risk of harm to Harold. The facts indicate that Beehler wanted to transport Harold to a location that was secluded in order to inflict harm. The fact that Beehler was not able to follow through with his plan is irrelevant for the purpose of this statute. Therefore, this Court finds that the Commonwealth established a *prima facie* case for Kidnapping.

### ***Criminal Conspiracy***

A person commits the offense of Criminal Conspiracy "if with the intent of promoting or facilitating its commission he: (1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime." "[A]lthough the existence of an agreement is an essential element of conspiracy, it is generally difficult to prove an explicit or formal agreement. Therefore such an agreement may be established inferentially by circumstantial evidence, i.e. the relations, conduct or circumstances of the parties or overt acts on the part of co-conspirators." Commonwealth v. Spotz, 716 A.2d 580, 592 (Pa. 1998).

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<sup>4</sup> Harold's future actions of fleeing Beehler's trunk indicate he was willing to flee from the situation. This also bolsters the Court's finding that the group circling Harold intimidated him into getting into the trunk.

In this case, there is no explicit or formal agreement expressed, based upon the preliminary hearing testimony. The actions, however, by the Defendant and the group make it possible to infer that there was one. Beehler talked to the group, including the Defendant, prior to meeting Lisa and Harold. After that moment, the Defendant and many other individuals followed Beehler and assisted in his criminal activity. The group surrounded Harold, followed Beehler while he transported Harold in his trunk, chased Harold as he tried to escape, and then searched for Harold after he was told to run. Further, when Beehler initially pulled over on the road, with Harold in this trunk, he discussed where he was going to take Harold with the group, according to Gentner. The Court finds sufficient evidence to establish *prima facie* for the charge of Criminal Conspiracy.

### ***Aggravated Assault***

A person commits the offense of Aggravated Assault under 18 Pa.C.S. §2702(a)(1) if that person “attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life.” 18 Pa.C.S. §2301 defines serious bodily injury as “bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” When no serious bodily injury results from the accused's actions, the Commonwealth must prove that the accused attempted to cause another to suffer such injuries. See Commonwealth v. Lopez, 654 A.2d 1150 (Pa. Super. 1995). Attempt, in the context of an assault, is established when the accused intentionally acts in a manner which constitutes a substantial or significant step toward perpetrating serious bodily injury upon another. Id. (citing Commonwealth v. Carter, 478 A.2d 1286, 1289 (Pa. 1984)).



First, the Defendant did not have bodily injury or was injured in a way which created a substantial risk of death. Harold was hit with a small sledge hammer on the arms and knees by Lisa and punched in the face by Beehler, but there were no broken bones or serious injuries. Thus, this Court must determine if the Commonwealth has established a *prima facie* case that Defendant's acts are considered a significant step towards causing serious bodily injury. The actions of the Defendant include intimidating Harold into Beehler's trunk and chasing Harold after he escaped. All of these actions were done with the intent of taking Harold to English Center, a secluded area. What exactly was planned to happen at English Center has not been disclosed, however, the actions indicate that the Defendant and group wanted to conceal Harold from the public, that they did not want Harold to escape, and that they planned to harm Harold when they reached the secluded area. The Court finds that these circumstances infer that the Defendant and the group had intent to cause serious bodily injury. At the preliminary hearing, the Commonwealth need not prove the charge beyond a reasonable doubt but only show probable cause that the Defendant committed the crime. Therefore, the Commonwealth has established a *prima facie* case against the Defendant on the charge of Aggravated Assault.

### ***Terroristic Threats***

A person commits the offense of Terroristic Threats under 18 Pa.C.S. § 2706(a) if the “person communicates, either directly or indirectly, a threat to: (1) commit any crime of violence with intent to terrorize another.” In order to obtain a conviction, the Commonwealth must prove that: 1) the defendant made a threat to commit a crime of violence; and 2) such threat was communicated with the intent of terrorizing another or with reckless disregard for the risk of causing terror. Commonwealth v. Campbell, 625 A.2d 1215 (Pa. Super. 1993). “It

certainly is not necessary to make an explicit or overt assertion of the nature of the crime threatened if all of the surrounding circumstances clearly demonstrate a threat to commit a crime of some violence as in the nature of murder or assault.” Commonwealth v. Wintz, 1988 Pa. Dist. & Cnty. Dec. LEXIS 67 (Pa. C.P. 1988) (citing Commonwealth v. Ferrer, 423 A.2d 423 (Pa. Super. 1980). “[T]he harm sought to be prevented by the statute is the psychological distress that follows from an invasion of another’s sense of personal security.” Commonwealth v. Tizer, 684 A.2d 597, 600 (Pa. Super. 1966). Many courts in Pennsylvania have found that physical threats alone without an accompanying verbal threat satisfies the requirements of the under the statute. See In re Maloney, 636 A.2d 671 (Pa. Super. 1994) (determining that pointing a gun and stating “get the f\*\*\* out of here” is sufficient to establish a *prima facie* case); Commonwealth v. Wintz, 1988 Pa. Dist. & Cnty. Dec. LEXIS 67 (Pa. C.P. 1988) (finding that pointing a shotgun at occupants of a passing vehicle supports a conviction for terroristic threat); Commonwealth v. White, 335 A.2d 436 (Pa. Super. 1975) (establishing terroristic threats when a defendant grabbed a girl, took her to an abandoned house, said “he was going to grab her” and proceeded to pull her skirt up before being interrupted).

Here, Harold stated that he was surrounded while seated in the truck and that people had entrapped him by standing immediately next to the passenger and driver side doors. Gentner testified that the Defendant was one of the individuals that were surrounding the vehicle. In addition, the Defendant also chased Harold through the woods after he escaped from Beehler’s trunk. This Court finds sufficient evidence to establish Defendant’s actions constitute a threat to commit a physical assault of Harold. A verbal threat is not needed for a conviction of Terrorist Threats; thus the Commonwealth has established a *prima facie* case against the Defendant for the offense of Terroristic Threats.

### ***Unlawful Restraint and False Imprisonment***

A person commits the offense of Unlawful Restraint under 18 Pa.C.S. § 2902(a)(1) “if he knowingly: (1) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury.” A person commits the offense of False Imprisonment under 18 Pa.C.S. § 2903 “if he knowingly restrains another unlawfully so as to interfere substantially with his liberty.” The charges of Unlawful Restraint and False Imprisonment merge into Kidnapping for sentencing purposes. Commonwealth v. Belgrave, 391 A.2d 662 (Pa. Super. 1978). In addition to the reasons listed under the charge of Kidnapping, a *prima facie* case against the Defendant for Unlawful Restraint and False Imprisonment is established by the Commonwealth when the Defendant and the group of people he was with acted together in impeding Harold from exiting the truck to escape and by chasing after him through the woods. This Court finds *prima facie* has been sufficiently established by the Commonwealth on the lesser included offenses of Unlawful Restraint and False Imprisonment.

### ***Simple Assault***

A person commits the offense of 18 Pa.C.S. §2701(a)(3) Simple Assault if they attempt by physical menace to put another in fear of imminent serious bodily injury. “The elements which must be proven are intentionally placing another in fear of imminent serious bodily injury through the use of menacing or frightening activity.” Commonwealth v. Reynolds, 835 A.2d 720 (Pa. Super. 2003); see also Commonwealth v. Little, 614 A.2d 1146 (Pa. Super. 1992). Intent can be proven by circumstantial evidence and may be inferred from the defendant's conduct under the attendant circumstances. Id. at 721. Chasing a victim adds weight that the assailant

had the requisite intent to place his victim in fear of immediate serious bodily harm.

Commonwealth v. Hall, 371 A.2d 898, 899 (Pa. Super. 1977).

As reviewed in the analysis of evidence presented by the Commonwealth on the charge of Aggravated Assault, this Court believes that the Defendant did have the intent to cause serious bodily harm. Since the crime of Simple Assault only requires that the Defendant attempt to place Harold in fear of imminent serious bodily harm, the conduct of the Defendant circling Harold while he was in the vehicle or chasing Harold through a field and swamp could have caused a reasonable person to fear imminent serious bodily injury. Therefore, this Court believes that the Commonwealth has established a *prima facie* case for the offense of Simple Assault by physical menace.

**ORDER**

AND NOW, this \_\_\_\_\_ day of September, 2012, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc. DA (KO)  
Chris Lovecchio, Esquire  
PD (WM)