

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-979-2010
:
v. :
:
DAWN BALL, : Petition for Writ of Habeas Corpus
Defendant :

OPINION AND ORDER

Before the Court is Defendant’s Petition for Writ of Habeas Corpus filed on March 13th, 2012. The relevant facts follow.

Mauricia George, the victim in this case, is a Corrections Officer at SCI Muncy where the Defendant is an inmate. On December 7th, 2009, CO George was on duty at SCI Muncy. She was delivering meal trays to inmates. The Defendant did not have a tray. CO George then began collecting the lunch trays from each cell.

On the date in question, the Defendant was allegedly housed in cell five. As CO George collected the tray from cell four, she walked past the Defendant’s cell to retrieve the tray from cell six. As CO George was walking by, the Defendant allegedly threw an unknown substance onto CO George through a gap in the cell’s door. CO George testified that the liquid smelled like urine and shampoo.

As the liquid made contact with CO George, it went into her mouth, nose, and eye. The liquid was on her face and also “soaked” her right sleeve. CO George testified that the Defendant was on a tirade. The Defendant threatened the CO, called her derogatory terms, and cursed at her.

After the liquid made contact with CO George, she was in shock. Another Officer escorted CO George to the eye wash station. Then, CO George went to the infirmary at SCI Muncy. Her eye was flushed again, she filled out appropriate paperwork, and then she was

advised to go to the hospital. CO George drove herself to Muncy Valley Hospital. While at the hospital, CO George's eye was flushed for a third time. Immediate tests were run, all of which returned negative. The hospital provided CO George with care instructions. The treating physician prescribed prophylactic medication for CO George in order to prevent contraction of an infectious disease. CO George was discharged from the hospital the same day. Medical records from Muncy Valley Hospital were submitted to the Court to confirm the victim's hospital treatment.

As a result of the incident, CO George had to take two days off from work. She testified that the burning and irritation in her eye lasted for over a week.

The Defendant was charged with one count each of Aggravated Harassment by Prisoner, a felony three offense; Simple Assault, a misdemeanor two offense; and Harassment, a summary offense. The charges were filed by Information on July 16th, 2010.

A preliminary hearing was held on June 17th, 2010. The Magisterial District Judge held each of the charges for Court. A copy of the preliminary hearing transcript has been prepared and submitted to the Court as Defense Exhibit A.

The Defendant filed a Petition for Writ of Habeas Corpus on March 13th, 2012. A hearing and argument on the Petition was held June 28th, 2012. At the hearing, the Defendant argued that the Commonwealth failed to establish a prima facie case of Simple Assault and Harassment.

When reviewing a Petition for Writ of Habeas Corpus, the Court must view the evidence and all reasonable inferences to be drawn from the evidence in the light most favorable to the Commonwealth. *See Commonwealth v. Santos*, 876 A.2d 360, 363 (Pa. 2005). A Writ of Habeas Corpus must be denied if the Commonwealth shows:

sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury.... The standard clearly does not require that the Commonwealth prove the accused's guilt beyond a reasonable doubt at this stage.

Commonwealth v. Landis, 2012 PA Super 132, 2012 Pa. Super. LEXIS 1060, at *28 (Pa. Super. 2012)(en banc)(citing Commonwealth v. Winger, 957 A.2d 325, 328 (Pa. Super. 2008)).

When considering the testimony of a victim during a habeas proceeding, credibility cannot be considered because it is reserved for trial. Liciaga v. Court of Common Pleas Lehigh County, 566 A.2d 246, 248 (Pa. 1989)(preliminary hearing magistrate not empowered to make credibility determinations regarding witnesses); Commonwealth v. Williams, 911 A.2d 548, 551-52 (Pa. Super. 2006)(weight and credibility of evidence are not an issue at preliminary hearing or habeas proceedings).

One of the charges at issue in this case is Simple Assault, which is set forth at 18 Pa. C.S. § 2701(a)(1) as follows:

A person is guilty of assault if he (1) attempts to cause or intentionally, knowingly, or recklessly causes bodily injury to another.

Bodily injury is defined as the "impairment of physical condition or substantial pain." 18 Pa. C.S. § 2301.

The Defendant argues that the Commonwealth failed to present adequate evidence to establish either that the Defendant caused bodily injury to CO George or attempted to cause bodily injury to CO George by allegedly throwing liquid at her on December 7th, 2009.

The Court finds the evidence is sufficient to establish a prima facie case for the charge of Simple Assault.

CO George suffered from an impairment of her physical condition or substantial pain. She testified that her eye was irritated for a week following the incident. Furthermore,

when the liquid made contact with CO George, she explained that the burning sensation happened immediately.

There may be a question as to whether CO George's pain constitutes "substantial pain" as required by the statute, but that is an issue to be resolved by the jury.

This issue goes to the degree of suffering rather than whether suffering occurred.

The Defendant further argues that because the liquid's contents were not verified, the Commonwealth cannot demonstrate that the liquid was capable of causing bodily injury by its very nature. The Court does not accept this argument as a ground for dismissing the Defendant's Simple Assault charge. CO George had to wash her eye at least three times due to the burning sensation caused by the liquid. She testified that the irritation lasted for a week. There is sufficient evidence that whatever the liquid may have been, it was capable of causing bodily injury.

The second charge at issue in this case is Harassment, which is set forth at 18 Pa. C.S. § 2709(A)(1) as follows:

A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person: (1) strikes, shoves, kicks, or otherwise subjects the other person to physical contact, or attempts or threatens to do the same.

The Defendant argued that no testimony was presented at the preliminary hearing or hearing for this Petition to show that any physical contact occurred between the Defendant and CO George on December 7th, 2009.

The Commonwealth argued that throwing a liquid at an individual is an extension of the actor's body. As a result, the act of throwing a liquid is sufficient to constitute physical contact.

The Court finds that sufficient evidence was presented to establish a prima facie case for the charge of Harassment.

Even if the act of throwing a liquid is not an extension of the actor thereby constituting physical contact, there is still sufficient evidence of a prima facie case of Harassment. Therefore, the Court does not need to determine at this time whether throwing liquid constitutes physical contact under the Harassment statute.

The statute encompasses conduct where the person “attempts or threatens” to strike, shove, kick or otherwise subject a person to physical contact. 18 Pa. C.S. § 2709(A)(1). CO George testified that the Defendant threatened to kill her. The Defendant said that she was going to stalk the CO when the Defendant was released from prison. Additionally, the Defendant threatened to physically harm CO George.

ORDER

AND NOW, this ___ day of July, 2012, the Court DENIES the Defendant’s Petition for Writ of Habeas Corpus.

By the Court,

Judge Marc F. Lovecchio

cc: Martin Wade, Esquire (ADA)
Jeffrey Rowe, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Angeline Allen, Intern
Work file