

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

**WILLIAM HELLENTHAL,
Defendant**

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**No. CR-257-2013
CRIMINAL**

OPINION AND ORDER

The Defendant filed a Petition for Habeas Corpus on February 25, 2013. By agreement of both parties, the Court will decide the Petition based on the transcripts of the Preliminary Hearing held in this matter on February 8, 2013 before Magisterial District Judge Jon Kemp.

Background

At the Preliminary Hearing, Jean Hellenthal (Hellenthal) testified and the following facts are based on her testimony. Prior to the incident in question, in November of 2012, Hellenthal received a Protection From Abuse (PFA) Order against William Hellenthal (Defendant). N.T., February 8, 2013, p. 5. The PFA Order stated that Hellenthal had sole possession of the residence and that the Defendant did not have permission to be at the residence. Id.

On December 20, 2012, at approximately 8:00 PM, Hellenthal was at the residence with David Barto (Barto) when the Defendant entered through a back door. Id. at 6. The Defendant pointed a gun at the chest of Barto and said “I’m going to kill you, or something to that effect.” Id. Barto jumped sideways out of the chair while Hellenthal screamed “No,” which caused the Defendant to turn towards Hellenthal. Id. at 7. Barto ran around a corner and while doing so the Defendant hit Hellenthal in the face and caused her to lose consciousness. Id. When Hellenthal woke up, she was standing and looking into the sewing room, but she could not remember how

she got there. Id. at 16-17. Hellenthal saw the Defendant and Barto fighting and called police. Id. Hellenthal observed a bullet hole through the door of the sewing room, which was approximately three (3) feet off the floor. Id. at 19. Hellenthal stated that as she watched “[Barto] be on top, taking [the Defendant] down, [the Defendant] be on top getting [Barto] down.” Id. at 8-9.

I see a big struggle between David and Bill where it keeps turning around. Bill’s on top of Dave, has Dave down, and Dave being very wiry is able to turn around, get on top of Bill and get Bill down, and the only time that he would get him - - he could stay for a while was when he had Bill on his - - like on his stomach, but then Bill - - Bill has been a very, very good wrestle in the past. He’s very good at this, and he would get turned and get back on top of Dave, so it kept going back and forth, back and forth. At one point then Dave picked up a piece of the firewood that had scattered all over in the struggle, because the wood stove is right outside that door and we have a pile of firewood stacked there, and Dave had a piece of that firewood. He kept hitting Bill on the back of the head. Every time he got up he’d say, stay down, stay down. I’m not telling you again. Stay down. He kept getting back up. And then I knew one of ‘em - - in my mind I knew of ‘em was going to be dead.

Id. at 20. Police on the phone with Hellenthal told her to get help so she left and went to a neighbor’s house but he was not there. Id. Before Hellenthal was about to run to a local bar, police arrived at the residence. Id. When police entered the house, the Defendant stopped and said, “Oh, I can’t breathe very well. Can you move me?” Id. As a result of the incident, Hellenthal suffered a broken nose, other injuries to her face, and a broken rib. Id. at 10. During the incident Hellenthal testified that she feared for her safety. Id.

Barto also testified at the Preliminary Hearing. On December 20, 2012, Barto was at Hellenthal’s residence watching TV when the Defendant entered the back door with a shotgun pointing towards him. Id. at 26.

He entered the room and said he was going to kill me, and then Jeanie jumped up off where she was [sitting], got in front of him to give me time to go into another room, called the sewing room. In there I put my foot in front of the door. First, though, I heard a shot go off in the kitchen, and then I got in that room, blocked the door, shut it with my

foot up the side of the door. Then he fired [a round] through the door into the sewing room and then he beat his way into the sewing room, but he stuck the gun in through the door first and then I wrestled that out of his hand. And then we started wrestling. I got him down and held him down.

Id. at 27. The sewing room was approximately 12-by14 feet. Id. at 28. The shot fired by the Defendant was approximately two and a half (2 ½) feet off the floor. Id. at 38. After firing the shot, the Defendant tried to push the door open with his body. Id. at 38. Once the Defendant wedged the gun between the door, Barto grabbed it while letting the Defendant enter the room. Id. at 39. Barto took the gun and threw it on the floor and they began to fight. Id. Barto eventually straddled the Defendant as he laid stomach down on the ground. Id. Barto had obtained a piece of firewood and would hit the Defendant on the back of the head every time he tried to get up. Id. While Barto had the Defendant restrained he told him “stay down mother f***er” and “I’m going to kill you.” Id. at 42. As a result of the altercation Barto sustained a cut on his chin and on his ear. Id. at 32. During the incident Barto testified that he feared for his safety. Id.

Trooper Angela Bieber (Bieber) of the Pennsylvania State Police testified that an Ithaca 16 gauge shotgun was recovered from the property. Id. at 44. There were two (2) spent casings, one was on the floor of the dining room and the other was in the chamber of the shotgun. Id. A small red sledge hammer was found in the dining room. Id. Finally, there were several pieces of rope found in the sewing room, dining room, outside the Defendant’s truck, and within the back of his truck. Id. at 44-45. The Defendant, who was found with \$4,000 and a passport, told Bieber that he was planning a vacation. Id. at 46-47.

The Defendant was charged with one count of Criminal Attempt,¹ a felony of the first degree; two counts of Aggravated Assault,² felonies of the second degree; one count of Aggravated Assault,³ a felony of the first degree; and numerous other offenses. In the Defendant's Petition for Habeas Corpus, he alleges that the Commonwealth has failed to establish a *prima facie* case for both count 1 Attempted Murder and count 4 Aggravated Assault as charged under section 2702(a)(1).

Discussion

a. Attempted Homicide

In the Petition for Habeas Corpus, defense counsel contends that the Commonwealth failed to present a *prima facie* case for the charge of Criminal Attempt/Homicide. 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).

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.

¹ 18 Pa.C.S. § 901(a).

² 18 Pa.C.S.A. § 2702(a)(4).

³ 18 Pa.C.S.A. § 2702(a)(1).

The Court is not to weigh the evidence of the credibility of the witnesses, but merely determine if evidence exists for each element of the crime. In Landis, the Superior Court reviewed the evidence that the trial court used in evaluating a habeas corpus motion when the defendant fired a shot at the bottom of the stairwell as police were fleeing at the stop of the stairwell. Commonwealth v. Landis, 48 A.3d 432 (Pa. Super. 2012).

In making this determination, the trial court placed great emphasis on the fact Appellee's bullet landed at the bottom of the stairwell, as opposed to at the top of the stairwell, closer to the retreating police officers. However, we conclude that, in so determining, the trial court improperly weighed the evidence and failed to properly view the evidence in the light most favorable to the Commonwealth, as is required under the appropriate standard of review. We emphasize that it is inappropriate for the trial court to make credibility determinations in deciding whether the Commonwealth established a *prima facie* case, and the charge must be bound over for trial if evidence of the existence of each element of the offense is presented. Simply put, it is for the jury to decide the weight to be given to the location of the bullet and the reasons Appellee did not succeed in actually shooting a police officer.

Id. (citations omitted). Based upon Landis, this Court will strictly determine if there is evidence for each element of the offense.

“A person commits an attempt when, with the intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime.” 18 Pa.C.S.A. § 901(a). For the charge of Attempted Homicide, “the Commonwealth must establish that the accused took a substantial step towards committing homicide, with the specific intent to kill.” Commonwealth v. Packard, 767 A.2d 1068, 1071 (Pa. Super 2001). Malice is not an element of attempted murder. Commonwealth v. Geathers, 847 A.2d 730, 736 (Pa. Super. 2004). Such specific intent may reasonably be inferred from the accused's use of a deadly weapon on a vital part of the victim's body.⁴ Commonwealth v. Hobson, 604 A.2d 717 (Pa. Super. 1992). A “deadly weapon” is defined as “[a]ny firearm, whether loaded or unloaded, or any device

⁴ Further, “[a] specific intent to kill can be inferred from the circumstances surrounding an unlawful killing.” Commonwealth v. Sattazahn, 631 A.2d 597, 602 (Pa. Super. 1993).

designed as a weapon and capable of producing death or serious bodily injury, or any other device or instrumentality which, in the manner in which it is used or intended to be used, is calculated or likely to produce death or serious bodily injury.” 18 Pa.C.S. § 2301.⁵

In Donton, a defendant told his son that he was going to kill his separated wife, who lived in another county ninety (90) miles away, loaded a gun, and left the residence. Commonwealth v. Donton, 654 A.2d 580, 583 (Pa. Super. 1995). The son called police after reading letters left by the defendant indicating he was going to kill his wife. Id. Police informed the wife to turn off all lights in the house and they waited for the defendant. Police witnessed the defendant drive by the residence twice at a slow rate of speed. Id. The police stopped the defendant’s vehicle and a loaded rifle was located next to him. Id. After a jury trial, the defendant was found guilty of Attempted Murder and other related crimes. Id. The Pennsylvania Superior Court affirmed the conviction stating that “Appellant’s admissions to his son, and those in his letters, explained his intentions to use the weapon on that night.” Id. at 585.

In this case, the Defendant’s actions sufficiently establish a substantial step towards committing the offense of Attempted Homicide. First, the Defendant disregarded a PFA Order and illegally entered the residence of his estranged wife. The Defendant immediately pointed a shotgun into the chest of Barto and said that he was going to kill him. After Barto escaped to the sewing room, the Defendant assaulted Hellenthal, fired two (2) shots with the shotgun, and used his body to open the door to get to Barto. After Barto obtained possession of the shotgun, he engaged in a physical fight with the Defendant.

⁵ “Serious bodily injury” is defined 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.” 19 Pa.C.S. § 2301.

The primary issue raised by the Defendant is that the Commonwealth had not shown the Defendant had a specific intent to kill. The Defendant fired his shotgun twice, one being fired directly at the door Barto was holding closed. Defense counsel argued that the shot was fired two and a half (2 ½) to three (3) feet from the floor and there was no intent to kill. Applying Landis supra, the trier of fact at trial is to determine why the shot was fired where Barto was and weigh this evidence. Based on the record, the Defendant stated that he was going to kill Barto and then actively pursued him. In pursuit of Barto, the Defendant pointed his shotgun into the chest of Barto, fired two (2) shots, pushed open a door, and engaged in a fight. In determining whether the Commonwealth has met its burden and viewing the evidence in the light most favorable to the Commonwealth, the Court finds that the Commonwealth has established a *prima facie* case for the charge of Attempted Homicide.

b. Aggravated Assault

The Defendant alleges that the Commonwealth did not present a *prima facie* case for the charge of Aggravated assault under 18 Pa.C.S. § 2702(a)(1). Under this subsection, a person is guilty of aggravated assault if he “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. § 2702(a)(1). “Serious bodily injury” means “[b]odily 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.” 18 Pa.C.S. § 2301.

“An attempt under § 2702(a)(1) requires a showing of some act, albeit not one causing serious bodily injury, accompanied by an intent to inflict serious bodily injury.” Commonwealth

v. Matthew, 909 A.2d 1254 (Pa. 2006). A totality of the circumstances test is to be used on a case-by-case bases to determine whether there was intent to inflict serious bodily injury. In Alexander, the Supreme Court provided an incomplete list of factors for the courts to consider: 1) evidence of a significant difference in size or strength between the defendant and the victim; 2) any restraint on the defendant preventing him from escalating the attack; 3) the defendant's use of a weapon or other implement to aid his attack; and 4) his statements before, during, or after the attack which might indicate his intent to inflict injury. Commonwealth v. Alexander, 383 A.2d 887, 889 (Pa. 1978).

In Matthew, the defendant lost control of his vehicle and crashed. Matthew, 909 A.2d at 1255. A passerby stopped his vehicle and pulled the defendant from the burning car. Id. When the defendant woke up he pushed the passerby and asked if he was a "f***ing cop?" id. The passerby said he was only there to help him and the defendant placed a loaded gun against the passerby's throat. Id. The defendant removed the gun and began rummaging through his burning vehicle. Id. While going through the vehicle the defendant would periodically point his gun towards the passerby. Id. When a second passerby stopped, the defendant yelled at the first passerby that he was going to kill him and that he was dead before he immediately fled. Id.

The Supreme Court of Pennsylvania found that there was not sufficient evidence for a conviction of attempted aggravated assault under 18 Pa.C.S. § 2702(a)(1). Id. at 1261. The Supreme Court thought that the actions of the defendant were to cause fear in his victim and not to inflict serious bodily injury. Id. It was insufficient that the defendant pressed a gun to the victims throat while asking if the victim was police and then threaten to kill the victim several minutes later before running away. Id.

Here, the court is not determining whether there was sufficient evidence for a conviction but whether the Commonwealth has established a *prima facie* case. The facts in this case are also distinguishable from Matthew, because the Defendant actually fired his gun twice and engaged Barto and Hellenthal physically. It is clear to the Court from this behavior that the Defendant did not merely want to cause fear in Barto and Hellenthal. Based upon the Defendant's statements and actions, the Court finds that the Commonwealth has met its burden and established sufficient evidence for each element of the crime.

ORDER

AND NOW, this _____ day of May, 2013, 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 (AB)
William Miele, Esq.