

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

COMMONWEALTH	:	
	:	
vs.	:	No. CR-1479-2013
	:	
DEMETRI D. CARROLL,	:	
Defendant	:	
* * * * *	:	* * * * *
COMMONWEALTH	:	
	:	
vs.	:	No. CR-1482-2013
	:	
DERRICK MOYER,	:	Opinion & Order re: Petitions for Habeas Corpus
Defendant	:	

**OPINION AND ORDER**

Defendants are charged with numerous crimes arising out of an incident that allegedly occurred on July 4, 2013. Among other crimes, Defendants are charged with Attempted Criminal Homicide and Conspiracy to Commit Homicide.

Defendants filed separate Petitions for Habeas Corpus contending that there was insufficient evidence to support the Attempted Homicide or Conspiracy Counts.

Argument on the respective Petitions was held before the Court on April 9, 2014. The Commonwealth submitted a transcript of the preliminary hearing held on September 5, 2013 before MDJ James Carn as Commonwealth's Exhibit 1.

The proper means to attack the sufficiency of the evidence presented at a preliminary hearing is through the filing of a petition for a writ of habeas corpus. Commonwealth v. Landis, 48 A.2d 432, 444 (Pa. Super. 2013). At a habeas corpus proceeding, the issue is whether the Commonwealth has presented sufficient evidence

to prove a prima facie case against the defendant. See Commonwealth v. Williams, 911 A.2d 548, 550 (Pa. Super. 2006); Commonwealth v. Carbo, 822 A.2d 60, 75-76 (Pa. Super. 2003).

“A prima facie case consists of evidence, read in a light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime.” Commonwealth v. Packard, 767 A.2d 1068, 1070-71 (Pa. Super. 2001)(citations omitted). “Stated another way, a prima facie case in support of an accused’s guilt consists of evidence that, if accepted as true, would warrant submission of the case to the jury.” Id. at 1071.

When reviewing a petition for habeas corpus, the court must view the evidence and all reasonable inferences to be drawn from the evidence in a light most favorable to the Commonwealth. Commonwealth v. Santos, 583 Pa. 96, 101, 876 A.2d 360, 363 (2005). A prima facie case “does not require that the Commonwealth prove the [defendant’s] guilt beyond a reasonable doubt at this stage.” Commonwealth v. Patrick, 933 A.2d 1043, 1045 (Pa. Super. 2007) (en banc)(citations omitted).

For a defendant to be found guilty of Attempted Homicide, the Commonwealth must establish that the defendant took a substantial step toward committing homicide with specific intent to kill. Commonwealth v. Packard, 767 A.2d 1068, 1071 (Pa. Super. 2001). Specific intent to kill can be inferred from the circumstances surrounding the incident. “Because a person generally intends the consequences of his act, a specific intent to kill may be inferred from the fact that the

accused used a deadly weapon to inflict injury to a vital part of the victim's body."

Commonwealth v. Sattazahn, 631 A.2d 597, 602 (Pa. Super. 1993)(citations omitted).

Defendants argue that the evidence is insufficient to sustain the specific intent to kill element. A review of the preliminary hearing testimony is warranted.

The victim in this matter was a young man named Devante Middleton. On the night in question, he had been in the area of the YMCA parking lot and saw a group of about 10 people. He walked up to the group. He had been talking to the group of people about a fight for approximately a minute when he heard shots. He started running. While he knew that the shots did not come from the group, he could not testify specifically where they came from. He was shot in his torso with the bullet eventually lodging in his lung.

As a result of being shot, he was first taken to the Williamsport Hospital and subsequently to Geisinger where he remained as a patient for approximately three weeks.

Prior to the shooting, Defendant Carroll got into a physical altercation with Tashi Clay. Following the altercation, Defendant Carroll was angry. Defendant Carroll then "went up to somebody." According to Mr. Clay "they were huddled together." Mr. Clay became concerned because he previously had heard that Mr. Carroll was in possession of a gun. He saw Defendant Carroll and another individual moving their arms back and forth and as a result, he ran. While he was running, he heard gunshots.

Raymond Kontz, a Criminal Investigator with the Williamsport Bureau of Police testified as well on behalf of the Commonwealth. Following the incident, he interviewed Defendant Moyer.

Defendant Moyer indicated that after the fight, he and Defendant Carroll walked a short distance into the parking lot at which point, Defendant Carroll asked Defendant Moyer for the handgun. Defendant Moyer retrieved the handgun and gave it to Defendant Carroll, who turned and fired at least three shots “towards the crowd of people.” Defendant Carroll then handed the gun back to Defendant Moyer, who fired two rounds. According to Defendant Moyer, he fired them in the direction “but more at a downward angle.” A few days later, both the defendants came in to speak with Agent Kontz. Defendant Carroll admitted that he did in fact have the gun, he shot it towards the crowd and he admitted to putting a message on Defendant’s Moyer’s Facebook account intended to be ascribed to Defendant Carroll in which Defendant Carroll admitted that he was the “guy that shot the bull.”

Both of the defendants admitted that they shot “towards the crowd.”

On cross-examination, Agent Kontz clarified that Defendant Carroll indicated that he had shot in a downward “kind of” angle “in the direction of the crowd.”

Further, at the time of the shootings, the defendants were approximately 30 to 50 yards from the victim. According to Defendant Moyer, Defendant Carroll shot at least three times. A bullet was found “chest high” in a door that was in the same direction that the victim was running.

Defendants argue that there was no evidence linking them to the victim, such as any contact between them which would indicate any type of animus or reason to shoot the victim. Defendants also argue that shooting towards the crowd is substantially different than shooting into the crowd.

For prima facie purposes, taking the evidence in a light most favorable to the Commonwealth, the evidence shows that there was a fight between one of the defendants and another individual. Immediately following that fight, the defendants got together, Defendant Carroll asked for the gun, Defendant Moyer pulled out the gun and handed it to him and Defendant Carroll fired toward the crowd in which the victim was present. Shortly thereafter, Defendant Carroll gave the gun back to Defendant Moyer and then Defendant Moyer also fired toward the crowd.

While the victim was running, at least two bullets were fired in his direction - one that hit him in his torso, as well as another one that hit a door "chest high."

While it is certainly not clear which bullet actually hit the victim, for prima facie purposes, there is sufficient evidence to conclude that each defendant took a substantial step toward committing homicide with a specific intent to kill. The specific intent in this case can be inferred from the circumstances surrounding the incident, which included the fact that following a fight, they got together, took out a weapon, pointed it toward the crowd where the fight had occurred, and then fired the weapon. Further, the specific intent can be inferred by virtue of the fact that a deadly weapon

was used upon a vital part of the victim's body. See Commonwealth v. Butler, 288 A.2d 800, 802 (Pa. 1972); Commonwealth v. Gibson, 688 A.2d 1152 (Pa. 1997). Moreover, the defendants can be found guilty as coconspirators, regardless of who actually inflicted the wound. Gibson, supra.

With respect to the charge of Conspiracy to Commit Murder, a person is guilty of a conspiracy to commit a crime 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...." 18 Pa. C.S.A. § 903 (a) (1). "Although 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 the co-conspirators." Commonwealth v. Spotts, 716 A.2d 580, 592 (Pa. 1998) (citations omitted).

The Court finds more than sufficient evidence to support a prima facie case for the offense of Criminal Conspiracy to Commit Murder. Both of the defendants were present at the scene, each of the defendants fired more than one shot toward the crowd, and each defendant handed the gun to the other before the other fired toward the crowd.

By way of a final note, while creative, the Court cannot accept the defendants' argument there is a substantive difference between shooting into a crowd

versus toward a crowd. Clearly, shooting “toward” a crowd means that one is shooting in the direction of the crowd. While “into” can mean becoming enclosed or surrounded by something else, it also is used in common parlance to suggest that something makes physical contact with something else.

The distinction the defendants are attempting to make, though, is inconsequential. The evidence presented at the preliminary hearing was not limited to the defendants’ statements. Although the defendants only admitted shooting “toward the crowd”, the evidence shows that the victim was part of the crowd and he was struck by one of the bullets shot by the defendants. Thus, the evidence shows that the defendants shot into the crowd, as well as toward the crowd. Moreover, regardless of the prepositional phrase used to describe the defendants’ actions, there is more than sufficient evidence to demonstrate specific intent to kill.

**ORDER**

**AND NOW**, this \_\_\_\_ day of April 2014, following a hearing, review of the preliminary hearing transcript, argument by counsel and review of their respective briefs, the Court **DENIES** Defendants’ Petitions for Habeas Corpus.

By The Court,

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Marc F. Lovecchio, Judge

cc: DA (NI)  
PD (KG)  
Jerry Lynch, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work File