

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

Commonwealth

Docket No. CR-488-2014

vs.

Habeas

Tyrone Dunn

OPINION AND ORDER

By Information filed on April 10, 2014, Defendant is charged with Terroristic Threats as a result of allegedly making threatening statements against the family of Pennsylvania State Police Trooper Adam Kirk (PSP Kirk).

A preliminary hearing was held before Magisterial District Judge Gary Whiteman on March 24, 2014. At hearing, Pennsylvania State Constable Adam Ross (PSC Ross) testified. PSC Ross has served as a Pennsylvania State Constable for three years.

PSC Ross testified that on March 10, 2014 he transported Defendant to and from another preliminary hearing before MJD Whiteman for charges from a separate case.¹ PSC Ross testified that after the hearing, while he and Defendant were inside the transport vehicle preparing to leave, Defendant was “animated and very upset” with PSP Kirk. Prelim. Hr’g. Tr. Transcript 4:2-3. As a result, Defendant made insulting statements about PSP Kirk. PSC Ross explained that Defendant’s initial statements were tolerable and in fact typical of an agitated Defendant. However, PSC Ross noted that he became alarmed when Defendant made the following statement about PSP Kirk: “[F]uck the hole you come out of, your mother is gonna die.” Hr’g. Tr. 4:4-5.

¹ These charges arose after Defendant allegedly fled from law enforcement officers who attempted to serve a warrant upon Defendant for a separate criminal matter. PSP Kirk participated in the pursuit of Defendant and was present at the March 10, 2014 hearing to testify as the affiant to those charges.

At the conclusion of the March 24, 2014 preliminary hearing, the Terroristic Threats charge was bound over for trial.

On May 14, 2014 Defendant filed a Petition for Writ of Habeas Corpus. In the Petition, Defendant alleges that the Commonwealth has failed to show a *prima facie* case of Terroristic Threats based on the information contained in the Affidavit of probable cause and from the evidence presented at the preliminary hearing. Specifically, Defendant alleges that his statements were spur-of-the-moment statements that neither evinced the intent to terrorize nor a reckless disregard for causing terror, that are required to warrant a Terroristic Threat charge. 18 Pa. C. S. A. § 2706. Moreover, Defendant avers that because his statements were not legitimate threats but rather statements made in a moment of anger, they did not create the stress or terror that 18 Pa. C .S. A. § 2706 seeks to prevent.

A hearing on Defendant's Petition for Habeas Corpus was held on June 26, 2014. At the hearing, PSP Kirk testified. PSP Kirk has been employed by the Pennsylvania State Police for 8 years. PSP Kirk explained that on March 10, 2014, after the Defendant waived his preliminary hearing, PSC Ross and PSC Allen escorted Defendant to the transport vehicle. Shortly thereafter, PSP Kirk decided to follow as the constables escorted Defendant out of the building because he believed that Defendant might try to flee. By the time PSP Kirk exited the back door of the building, Defendant was already inside the transport vehicle, approximately 100 feet from where PSP Kirk was standing. After determining that everything was under control, PSP Kirk went back inside the courthouse.

A few minutes later, PSC Ross re-entered the courthouse to notify PSP Kirk that Defendant had threatened PSP Kirk's mother right before PSP Kirk had exited the back door of the courthouse. Although PSP Kirk admitted that he did not personally hear Defendant say anything, PSP Kirk testified that he took Defendant's comment seriously because Defendant seemed extremely angry and because PSC Ross felt it was serious enough to relay to him. Further, PSP Kirk noted that although different defendants had previously threatened him, he had never before dealt with a threat against his family.

The proper means to attack the sufficiency of the Commonwealth's evidence pretrial is through the filing of a Writ of Habeas Corpus. Commonwealth v. Marti, 779 A.2d 1177, 1178 n.1 (Pa. Super. 2001). At a habeas corpus hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a prima facie case against the Defendant. Commonwealth v. Williams, 911 A.2d 548 (Pa. Super. 2006).

"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 (Pa. Super. 2001). "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.

A Petition for Habeas Corpus, however, must specifically allege facts, which if true, would entitle the Defendant to an award of such a Writ. Commonwealth v. Lawson, 650 A.2d 876, 879 (Pa. Super. 1994). The purpose of a Habeas Corpus proceeding is not merely to review the prior preliminary hearing but rather to determine the legality of the

existing restraint on the defendant's liberty. *Id.*, citing Commonwealth v. Morman, 541 A.2d 356 (Pa. Super. 1988).

A person violates 18 Pa. C. S. A. § 2706, Terroristic Threats, if that person “communicates, either directly or indirectly, a threat to (1) commit any crime of violence with intent to terrorize another; (2) cause evacuation of a building, place of assembly or facility of public transportation; or (3) otherwise cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.” 18 Pa. C. S. A. § 2706.

Direct communication between the defendant and the victim is not required to establish the crime of terroristic threats. See Commonwealth v. Kelley, 664 A.2d 123, 127 (Pa. Super. 1995); In re L.A., 853 A.2d 388, 392 (Pa. Super. 2004). Also, the Pennsylvania Superior Court has distinguished between threats that evince a clear purpose to terrorize and spur-of-the-moment threats resulting from anger. *See, e.g.*, Commonwealth v. Anneski, 525 A.2d 373 (Pa. Super. 1987)(intent to terrorize lacking where exchanged threats were made during a heated argument between neighbors); Commonwealth v. Kidd, 442 A.2d 826, 827 (Pa. Super. 1982)(intent to terrorize lacking where an inebriated, agitated, angry defendant threatened police who took him to the hospital for treatment after defendant was arrested for public drunkenness and fell out of the police car). However, although § 2706 “is not intended to penalize mere spur-of-the-moment threats which result from anger,” 18 Pa. C. S. A. § 2706, Official Comment—1972, “[b]eing angry does not render a person incapable of forming the intent to terrorize.” Commonwealth v. Walker, 836 A.2d 999, 1001 (Pa. Super. 2003). *See also*

Commonwealth v. Tizer, 684 A.2d 597 (where defendant was convicted of Terroristic Threats based on an angry five-minute confrontation).

While Defendant avers that his threat against PSP Kirk's mother was a spur-of-the-moment, reactionary comment, it is important to note that Defendant has presented no evidence to show that PSP Kirk was present when Defendant made his comment. To the contrary, the testimony of both PSP Kirk and PSC Ross establish that the Defendant made the threatening comment about PSP Kirk before PSP Kirk exited the back door of the building. Although direct communication between Defendant and PSP Kirk is not required to establish the crime of Terroristic Threats, the fact that Defendant made his comment outside of PSP Kirk's presence significantly lessens the probability that Defendants comment was the kind of spur-of-the-moment reaction that typically occurs during a confrontation. Because Defendant essentially asks the court to assume facts not in evidence as support for the contention that Defendant's comment was in reaction to PSP Kirk, the court is unable to agree that Defendant's comment is outside the scope of § 2706.

Additionally, PSP Kirk did not threaten, instigate, or provoke Defendant. PSP Kirk was justified in his decision to follow the constables as they escorted Defendant out of the building, given PSP Kirk's obligation to protect the community, Defendant's prior history of fleeing, and PSP Kirk's prior dealings with cuffed defendants who still attempted to flee. Moreover, the only verbal exchange that occurred between PSP Kirk and Defendant occurred after PSP Kirk had already been notified about Defendants comment. While PSP Kirk described this exchange as quite heated, PSP Kirk adamantly asserts that at no time did he threaten or antagonize Defendant.

In essence, Defendant has shown no evidence to support the averment that his comment was reactionary, was prompted by anger, and is outside the scope of § 2706. Given the tempestuous rapport between Defendant and PSP Kirk, Defendant's threatening comment against PSP Kirk's family, albeit indirect, could plausibly be interpreted by a jury as evincing an intent to terrorize PSP Kirk. This is particularly the case where, as here, the Defendant was well-aware that PSC Ross would almost certainly relay the comment to PSP Kirk.

For the foregoing reasons, the Court finds that the Commonwealth has established a prima facie case to establish the crime of Terroristic Threats. Accordingly, Defendant's Petition for Habeas Corpus shall be denied.

Order

AND now, this 14th day of July 2014, following a hearing and argument, Defendant's Petition for Habeas Corpus is denied.

Marc Lovecchio, Judge

cc: PD (KG)
DA
Court Administrator
Elizabeth Gula, Intern
Gary Weber, Esquire