

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-151-2014**
 v. :
 :
 DANTE WASHINGTON, : **CRIMINAL DIVISION**
 Defendant :

OPINION AND ORDER

On June 27, 2014, the Defendant filed a Petition for Habeas Corpus. The Defendant and the Commonwealth agreed that the Petition would be decided based on the preliminary hearing transcript without further hearing.

I. Background

During the preliminary hearing, Eugene Phillips (Phillips) testified to the following:

On May 15, 2014, Phillips was operating a cab. Phillips was called to 677 Campbell Street, Williamsport, Pennsylvania. Around 6:20 A.M., the Defendant exited 679 Campbell Street and got into the back seat on the passenger side of the cab. The Defendant was wearing sunglasses and had a hood over his head. Phillips and the Defendant said good morning to each other. The Defendant said that he wanted to go to 417 Hawthorne Street, Williamsport, Pennsylvania. Phillips proceeded in the direction of 417 Hawthorne Street. While en route to 417 Hawthorne Street, Phillips asked the Defendant if 417 Hawthorne was the correct address. The Defendant said it was correct. When Phillips arrived at 417 Hawthorne Street, the Defendant said that he wanted to be dropped off in the back of the building. Therefore, Phillips drove into the alley behind 417 Hawthorne Street.

Phillips told the Defendant that his fare was \$4.60. The Defendant handed Phillips a twenty-dollar bill. Phillips did not have change for the bill, so he gave it back and told the Defendant that they needed to get bills of a smaller denomination. With the Defendant still inside the cab, Phillips proceeded to a nearby convenience store to get the smaller bills. Phillips asked the Defendant to go into the store and get smaller bills. The Defendant said no, so Phillips went into the store and got smaller bills. With the Defendant still in the back of the cab, Phillips went back to 417 Hawthorne Street.

When Phillips arrived in the alley behind 417 Hawthorne Street, the Defendant gave him the twenty-dollar bill. Phillips gave the Defendant fifteen dollars. Phillips then removed a bag of change from slot of the driver's door. He gave the Defendant forty cents and went to fill out his log. The Defendant then said, "I want it all." When Phillips turned to look at the Defendant, he saw a gun pointed at him between the driver's seat and the passenger seat. The gun was less than six inches from Phillips' body. Before

Phillips had the opportunity to get money, the Defendant shot Phillips once. The bullet hit Phillips in the bicep, went into one side of his chest, and then exited his body on the other side of his chest.

With the Defendant still in the cab, Phillips drove out of the alley towards Elmira Street. While Phillips was driving towards Elmira Street, the Defendant said, “What are you doing?” Phillips replied. “We’re getting out of here.” The Defendant then said, “Oh, no we’re not.”

Once Phillips reached Elmira Street, he stopped because Elmira Street was closed, and he did not know the area. The Defendant then said, “I want all your money.” Phillips reached into his pocket and pulled out money. The Defendant then said, “I want that bag too,” so Phillips got the bag of change from the slot in the door. The Defendant went through another bag that had been in between the driver seat and the front passenger seat, but he did not take anything from that bag. The Defendant then told Phillips to put the car in park, so Phillips did. The Defendant then got out of the cab. Phillips did not know which side of the car the Defendant exited, but once out, the Defendant went to the driver’s side window. The Defendant then told Phillips to turn off the radio, so Phillips did. The Defendant took two or three steps away from the cab. At that point, Phillips put the car into drive and drove away.

Phillips drove to a nearby hospital. The bullet lacerated Phillips’ liver, spleen, diaphragm, and stomach. Phillips has undergone numerous surgeries and received extensive medical treatment since the incident.

The Defendant was charged with Attempted Murder.¹ In his motion, the Defendant argues that the preliminary hearing failed to show a prima facie case of attempted homicide because no evidence was presented that the passenger in the cab intended to kill Phillips.

II. Discussion

“A prima facie case consists of evidence produced by the Commonwealth which sufficiently establishes that a crime has been committed and that the accused is probably the perpetrator of that crime. In other words, the prima facie case in support of [the defendant’s] guilt consists of evidence presented by the Commonwealth that, ‘if accepted as true, would warrant the trial judge to allow the case to go to the jury.’ Each element of the criminal offense charged must be supported by the Commonwealth’s evidence.” Commonwealth v. Lopez, 654 A.2d 1150, 1153 (Pa. Super. 1995) (citations omitted).

¹ 18 Pa.C.S. § 901(a) and 18 Pa.C.S. § 2502(a).

In Commonwealth v. Jackson,² the Superior Court of Pennsylvania discussed the elements of attempted murder:

A person may be convicted of attempted murder if he takes a substantial step toward the commission of a killing, with the specific intent in mind to commit such an act. . . . The mens rea required for first-degree murder, specific intent to kill, may be established solely from circumstantial evidence.

Jackson, 955 A.2d at 444 (internal quotations and citations omitted).

“[A] presumption of fact is but a prima facie inference which can be rebutted by testimony to the contrary. The presumption from the use of a deadly weapon on a vital part of the body arises from the fact that it is common knowledge that such a use is likely to cause death and therefore a jury may infer that the intent of the person using such a weapon in such a manner was to kill. This presumption may be overcome by the assailant himself denying such intent, or by any other appropriate evidence.” Commonwealth v. Kluska, 3 A.2d 398, 401 (Pa. 1939).

“Specific intent to kill may be inferred from the use of a deadly weapon on a vital part of the victim’s body.” Commonwealth v. Uderra, 706 A.2d 334, 338 (Pa. 1998) (citing Commonwealth v. O’Searo, 352 A.2d 30 (Pa. 1976)). “The firing of a bullet in the general area in which vital organs are located can in and of itself be sufficient to prove specific intent to kill. . . .” Commonwealth v. Padgett, 348 A.2d 87, 88 (Pa. 1975).

The Commonwealth presented evidence that the Defendant shot Phillips in the bicep. It also presented evidence that the bullet entered Phillips’ chest after it hit his bicep. This Court finds that Phillips’ bicep is in the general area of vital organs. This finding is supported by the evidence that the bullet entered Phillips’ chest after it hit his bicep. Because the Commonwealth presented evidence that the Defendant shot Phillips in the general area of vital organs, it has

² 955 A.2d 441(Pa. Super. 2008).

established a presumption of specific intent to kill. “[A] presumption of fact is but a prima facie inference which can be rebutted by testimony to the contrary.” Kluska, 3 A.2d 398 (Pa. 1939).

III. Conclusion

Since the Commonwealth presented evidence that the Defendant shot Phillips in the general area of vital organs, it has made a prima facie showing of specific intent to kill.

ORDER

AND NOW, this _____ day of September, 2014, based upon 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