

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**WILLIAM MILLER,
Defendant**

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:

No. CR 819-2014

CRIMINAL

ORDER

AND NOW, this 8th day of **August, 2014**, upon defendant's motion for habeas corpus to dismiss the charges of simple assault, criminal mischief and harassment, defendant's motion is GRANTED in part and DENIED in part.

Procedural History

On April 16, 2014, Pennsylvania State Police Trooper Justin Bieber filed a criminal complaint against defendant charging him with 6 offenses stemming from an incident on April 2, 2014. A preliminary hearing was held on May 14, 2014 before Magisterial District Judge Jerry C. Lepley. The first three offenses were dismissed, but the charge of simple assault (M2), under 18 Pa.C.S.A. § 2701 (a)(3), Criminal Mischief – Damage Property (M3), under 18 Pa.C.S.A. § 3304(a)(5) and Harassment – Subject Other to Physical Contact (S), under 18 Pa.C.S.A. § 18 2709 (a)(1) were held for court. On June 24, 2014, Defendant filed a motion for writ of habeas corpus averring that the evidence presented at the preliminary hearing was not sufficient to prove any essential elements of the above referenced charges. This matter came before the Undersigned during motions Court at which time counsel stipulated to use of the transcript of the preliminary hearing for the court's decision in this matter. The transcript was submitted by the Commonwealth as Commonwealth's Exhibit 1.

Evidence Presented at Preliminary Hearing

At the preliminary hearing, the Commonwealth presented one witness, Mr. Robert Nicholas. Mr. Nicholas testified that on April 2, 2014 he was present at 218 Front Street in Linden, Woodward Township, taking care of his parents. Mr. Nicholas's father is in his 90s and his mother is in her 80s and Mr. Nicholas needs help with them. Defendant dates Mr. Nicholas's sister. Defendant is welcome at the residence and helps with the parents. Defendant came to the house in the evening of April 2, 2014. Mr. Nicholas, who had been drinking, was frustrated at the time defendant showed up at the house. When defendant arrived at the house, Mr. Nicholas started saying inappropriate things to defendant about defendant and defendant's family. Mr. Nicholas told defendant to leave the residence. Defendant went out the front door and Mr. Nicholas went upstairs. When Mr. Nicholas came back down stairs, defendant was standing there. Mr. Nicholas asked defendant to leave again and they argued again. Then Mr. Nicholas kicked defendant in the leg and defendant "tackled" Nicholas "into the chair" and his "glasses flew."

Mr. Nicholas testified that defendant "didn't punch me or anything, just grabbed me around the body and put me in the chair that was setting there." When asked what part of defendant's body made contact with his, Mr. Nicholas testified that "[i]t was just the arms around my body, like that." When they got up from the chair, Mr. Nicholas kicked defendant again. Then they both went out the front door, argued some more and then Mr. Nicholas went towards the post office to his sister. Mr. Nicholas' left eye was bruised and swollen up a little bit from when his glasses came off. Mr. Nicholas testified that the bruised eye and swelling probably happened during the tackle, when they went into the chair and his "glasses got all bent, broke and the lens popped out." Mr. Nicholas testified that he was wearing these same glasses at the preliminary hearing; he bent them back and put the lens back in them and got them the best

he could. There was not testimony as to the value of the glasses or the pecuniary loss from damage to the glasses.

Legal Standards

“The purpose of a preliminary hearing is to avoid the incarceration or trial of a defendant unless there is sufficient evidence to establish a crime was committed and the probability the defendant could be connected with the crime.” Commonwealth v. Landis, 48 3d 432, 444 (Pa. Super. 2012)(citations omitted) When determining whether to grant a petition for habeas corpus for insufficiency of the evidence presented at a preliminary hearing, the Superior Court has discussed the burden required by the Commonwealth in Commonwealth v. Landis, 48 3d 432, 444 (Pa. Super. 2012) as follows.

[T]he Commonwealth must show 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. When deciding whether a prima facie case was established, we must view the evidence in the light most favorable to the Commonwealth, and we are to consider all reasonable inferences based on that evidence which could support a guilty verdict. The standard clearly does not require that the Commonwealth prove the accused's guilt beyond a reasonable doubt at this stage. Commonwealth v. Winger, 2008 PA Super 211, 957 A.2d 325, 328 (Pa. Super. 2008) (quotations and citations omitted) (bold in original). Rather, the prima facie case merely requires evidence of the existence of each element of the crime charged. See Commonwealth v. Patrick, 2007 PA Super 289, 933 A.2d 1043 (Pa. Super. 2007) (en banc). The weight and credibility of the evidence is not a factor at this stage. See id. Commonwealth v. Landis, 48 3d 432, 444 (Pa. Super. 2012).

With respect to the charge of simple assault under 18 Pa.C.S. § 2701(a)(3), the statute provides the following.

§ 2701. Simple assault.

(a) Offense defined. --Except as provided under section 2702 (relating to aggravated assault), a person is guilty of assault if he:

* * *

(3) attempts by physical menace to put another in fear of imminent serious bodily injury;

(b) Grading. --Simple assault is a misdemeanor of the second degree unless committed:

- (1) in a fight or scuffle entered into by mutual consent, in which case it is a misdemeanor of the third degree; 18 Pa.C.S. § 2701

Simple assault under this provision requires both specific intent and placing another in fear of **imminent serious bodily injury**.

“To prove simple assault by physical menace to put another in fear of imminent serious bodily injury under 18 Pa. Cons. Stat. Ann. § 2701(a)(3), **the Commonwealth must prove that defendant intentionally placed another in fear of imminent serious bodily injury through the use of menacing or frightening activity**; intent can be proven by circumstantial evidence and may be inferred from the defendant's conduct under the attendant circumstances.” Commonwealth v. Fry, 341 Pa. Super. 333, 491 A.2d 843 (Pa. Super. 1985)(further citations omitted)(emphasis added).

Serious bodily injury is defined as “[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.A. § 2301.

In Fry, *supra*, the Court concluded that there was no evidence that serious bodily injury was imminent or that there was intent to put the child in fear of it when appellant put his arms around the child. Id. at 337. The Court acknowledge that appellant’s demeanor and telling the child to “shut up” may have cause the child fear, but concluded that the specific intent was not met. In Fry, the Court noted cases where the evidence of bodily injury was not met. Fry, *supra*, *citing*, “Commonwealth v. Alexander, 477 Pa. 190, 383 A.2d 887 (1978) (blow to nose not serious bodily injury); In the Interest of J.L., *supra* (pushing two year old child away with elbow insufficient to show intent to cause bodily injury); Commonwealth v. Ostolaza, 267 Pa.Super. 451, 406 A.2d 1128 (1979) (physically wrestling wallet from victim insufficient to show intent to put victim in fear of serious bodily injury).” Commonwealth v. Fry, 341 Pa. Super. 333, 336-338 (Pa. Super. 1985).

With respect to the offense of criminal mischief under 18 Pa.C.S. § 3304 (a)(5), the statute provides the following.

Criminal mischief.

(a) Offense defined. --A person is guilty of criminal mischief if he:

* * *

(5) intentionally damages real or personal property of another;

* * *

(b) Grading. --Criminal mischief is a misdemeanor of the third degree if he intentionally or recklessly causes pecuniary loss in excess of \$ 500 ... [.] Otherwise criminal mischief is a summary offense.

With respect to harassment under 18 Pa.C.S. § 2709(a)(1), the statute provides as follows.

Harassment.

(a) Offense defined. --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[.]

Discussion

In the present case, the Court concludes that the evidence at the preliminary hearing was insufficient to sustain the elements of simple assault as charged under 18 Pa.C.S. § § 2701(a)(3). There was no evidence that the defendant had specific intent, caused or threatened to cause serious bodily injury, i.e., an 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.A. § 2301. After being kicked in the leg, defendant “tackled” Mr. Nicholas into a chair, at which time Mr. Nicholas’s glasses flew off his face, resulting in swelling and bruising to Mr. Nicholas’s face. The Court finds this injury did not constitute substantial bodily injury; it did not create a substantial risk of death, cause serious permanent

disfigurement or a protracted loss or impairment of a bodily function. Moreover, the Defendant did not form the specific intent to cause serious bodily injury; defendant immediately responded to a kick in the leg by wrapping his arms around the kicker. Mr. Nicholas described this as a tackle into a chair. The only body contact by the defendant was defendant's arms around Mr. Nicholas's body. Furthermore, there was no evidence that Mr. Nicholas was afraid of serious bodily injury. Mr. Nicholas did not testify that he was in fear of serious bodily injury. Mr. Nicholas testified that he did not feel like defendant was going to kill or threaten to kill him; rather he felt that defendant was upset about what Mr. Nicholas did and said to the defendant.

As to count 2, the Court concludes that the Commonwealth provided sufficient evidence of criminal mischief under 18 Pa.C.S. § 3304(b)(5). "A person is guilty of criminal mischief if he ... intentionally damages real or personal property of another. In the present case, defendant tackled Mr. Nicholas, causing damage to Mr. Nicholas's eyeglasses which Mr. Nicholas was wearing at the time. The Court believes this is sufficient prima facie evidence of intentional damage to the personal property of another, as one who tackles someone wearing glasses intends the natural consequences of that act. However, the Court notes that there is insufficient evidence to support the grading for the criminal mischief 18 Pa.C.S. § 3304(a)(5) as a **misdemeanor of the third degree**. There was no evidence as to the pecuniary loss suffered. The only evidence of property damage was to a pair of eyeglasses that Mr. Nicholas bent back to wearable shape. The lens was put back into the frame after popping out. Mr. Nicholas was able to wear and use the glasses. There was no evidence as to the cost of the damage to the eyeglasses, and certainly not that the pecuniary loss exceeded \$500. *See*, 18 Pa.C.S. § 3304(b).

Lastly, under count 3, the Court concludes that there was sufficient prima facie evidence of all of the elements of harassment under 18 Pa.C.S. § 2709(a)(1). "A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person: strikes,

shoves, kicks or otherwise subjects the other person to physical contact, or attempts or threatens to do the same.” In the instant case, Mr. Nicholas testified that the defendant “tackled” Mr. Nicholas into a chair in a manner which caused Mr. Nicholas’s glasses to fly off and caused bruising to his face. The Court concludes that the evidence presented at the preliminary hearing is sufficient prima facie evidence of the intent to harass, annoy or alarm as well as evidence that defendant subjected another person to physical contact.

Accordingly, the Court enters the following Order.

ORDER

AND NOW, this 8th day of **August, 2014**, for the reasons stated above, defendant’s Petition for Writ of Habeas Corpus is hereby GRANTED in part and DENIED in part. The charge of Simple Assault is hereby DISMISSED. The remaining charges of criminal mischief – damage to property and harassment are held for court.

BY THE COURT,

August 8, 2014
Date

Richard A. Gray, J.

cc: DA (MK)
Christian Lovecchio, Esq.
Lycoming County Prison
LCP (Intake)
Sheriff