

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1551-2017
:
vs. :
:
: **Petition for Habeas Corpus**
SHAWN RHINEHART, : **RE: Counts 6 and 7**
Defendant

OPINION AND ORDER

This has been a particularly complicated and lengthy litigation. Over a year ago, on September 29, 2017, the defendant was charged by Information with aggravated assault by vehicle while DUI, driving a commercial/school vehicle under the influence and various traffic summaries. Many months later, the Commonwealth dismissed Count 1 and Count 2. On May 18, 2018, the court permitted the Commonwealth to amend the Information to add Count 6, aggravated assault by vehicle, a felony of the third degree, and Count 7, recklessly endangering another person, a misdemeanor of the second degree.

On May 29, 2018, the defendant filed a Petition for Habeas Corpus requesting that the amended charges be dismissed for failure of the Commonwealth to present a prima facie case.

Argument on the defendant's motion was held before the court on July 20, 2018. The parties agreed that the court could consider the testimony from the two preliminary hearings held on August 2, 2017 and September 13, 2017. Furthermore, at the July 20, 2018 hearing, the Commonwealth presented the testimony of George Dengler, the alleged victim. Finally, the parties submitted written briefs in support of their respective positions.

The evidence, viewed in a light most favorable to the Commonwealth,

demonstrates that on June 30, 2017, Mr. Dengler was driving his vehicle on Route 44 Northbound near Jersey Shore, Lycoming County, PA.

Route 44 is a two-lane highway. Mr. Dengler was driving his 2014 GMC Sierra Pickup truck traveling toward Jersey Shore Borough. As he was approaching a curve in the roadway, “just before Muthler Lane”, his vehicle was struck by a vehicle being driven by the defendant.

The defendant was driving a triaxle dump truck which had crossed over into the northbound lane and well over the double yellow line. The triaxle collided head on with the pickup truck in the northbound lane. The triaxle continued off of the roadway and into an adjacent field. The roadway was checked for any skid marks prior to the point of impact but there were none.

Mr. Dengler saw the triaxle coming into the turn and then “all of the sudden” it was in Mr. Dengler’s lane of traffic. The incident was “pretty quick.”

As a result of the accident, Mr. Dengler sustained serious bodily injury as stipulated to by the parties, including 12 cracked ribs and a cracked sternum, a fractured right leg, trauma to his left eye, bruises and cuts throughout his body and permanent disability with respect to walking and vision.

In terms of the point of impact, Mr. Dengler testified that the right side of the triaxle hit Mr. Dengler’s truck “head on.”

John Buttorff, Jr. was a witness to the accident. He was directly behind Mr. Dengler’s pickup truck. He noted that the “dump truck was clearly well over the yellow lines and crashed head on into the pickup truck.” A second witness, Robert Wheeland, was two cars back from the pickup truck. He too observed that the dump truck was “clearly over the

yellow line and crashed into the pickup truck.”

Mr. Buttorff was heading toward the Jersey Shore Hospital going north. He was following Mr. Dengler and came around the turn. The dump truck was coming south and it “bounced a couple times and it just shot straight right into” Mr. Dengler’s truck. The dump truck was halfway around the curb and all of the sudden it just shot right at Mr. Dengler.

While the roads were damp, the weather conditions were fine. There were no skid marks. According to Mr. Buttorff “it happened so quick. They didn’t have time to even put breaks [sic] on.” The defendant was going around the curve and “all of the sudden just went straight into the truck.”

As indicated previously, the facts developed during the preliminary hearing and a hearing on the defendant’s Petition for Writ of Habeas Corpus must be viewed in the light most favorable to the Commonwealth. *Commonwealth v. Lees*, 135 A.3d 185, 188 (Pa. Super. 2016).

A pretrial petition for writ of habeas corpus is similar in purpose to a preliminary hearing. *Commonwealth v. Owen*, 580 A.2d 412, 413 (Pa. Super. 1990). 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. Hilliard*, 172 A.3d, 5, 9 (Pa. Super. 2017). “A prima facie case consists of evidence, read in a light most favorable to the Commonwealth that sufficiently establishes both the commission of the crime and that the accused is probably the perpetrator of the crime.” *Commonwealth v. Cordoma*, 902 A.2d 1280, 1285 (Pa. Super. 2006). “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 a jury.” *Id.*

Under Pennsylvania law, any person who recklessly or with gross negligence causes serious bodily injury to another person while engaged in a the violation of any law of this Commonwealth applying to the operation or use of a vehicle is guilty of aggravated assault by vehicle. 18 Pa. C.S. §3732.1.

As well, a person commits the crime of recklessly endangering another person if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury. 18 Pa. C.S. §2705.

Under Pennsylvania law, a person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. 18 Pa. C.S. §302(b)(3).

It appears that the legislature has been silent with respect to a definition of gross negligence. The appellate courts, however, have held that the concept of gross negligence is encompassed within the concept of recklessness; they are fundamentally equivalent. *Commonwealth v. Huggins*, 575 Pa. 395, 836 A.2d 862, 868 (2003).

Clearly, at this stage of the proceeding, the Commonwealth has established a prima facie case that the defendant violated provisions of the Vehicle Code related to driving on roadways laned for traffic, at the very least. 75 Pa. C.S. §3309(1)(“A vehicle shall be driven as nearly as practicable within a single lane and shall not be moved from the lane until the driver has first ascertained that the movement can be made with safety.”). Indeed, a very

strong argument can be made that the defendant also committed the traffic violation of careless driving. 75 Pa. C.S. §37149(a) (“Any person who drives a vehicle in careless disregard for the safety of persons or property is guilty of careless driving....”). Yet, the Commonwealth need not prove the defendant’s guilt beyond a reasonable doubt at this stage. As well, the weight and the credibility of the evidence is not a factor. *Commonwealth v. Hilliard*, 172 A.3d 5, 10 (Pa. Super. 2017).

In support of its position that it has established a prima facie case with respect to aggravated assault, the Commonwealth relies on a series of cases in which culpability was found because the vehicle was in the wrong lane without any reason.

Such is the case here. The facts are clear. The defendant was driving a triaxle dump truck and without any reason whatsoever traveled completely out of his lane of traffic and into oncoming traffic in the opposing lane, apparently at a straight shot. The dump truck driven by the defendant hit the victim’s vehicle in the front end and continued traveling straight into a field before stopping. There were no skid marks whatsoever. From this evidence, a jury could reasonably infer that the defendant did not apply the brakes on the dump truck or take any other evasive actions to avoid striking the victim’s vehicle.

There was no apparent reason for the accident but for the defendant’s motor vehicle violations. Viewed in a light most favorable to the Commonwealth, the defendant drove a triaxle dump truck into the opposing lane of traffic and directly into the victim’s vehicle without taking any efforts to avoid the collision. Such conduct demonstrates a conscious disregard of a substantial and unjustifiable risk that the victim would be killed or seriously injured which, for prima facie purposes, satisfies the mens rea required for aggravated assault by vehicle and recklessly endangering another. Accordingly, the court

will dismiss the defendant's Petition for Habeas Corpus.

ORDER

AND NOW, this ____day of November 2018, following a hearing, argument and the submission of Briefs, the court **DENIES** the defendant's Petition for Habeas Corpus with respect to Counts 6 and 7.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
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Work File
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