IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	**:**	**CR-551-2020**
v.	**:**	
	:	
JORDAN ARTLEY,	**:**	**HABEAS**
Defendant	**:**	

OPINION AND ORDER

Jordan Artley (Defendant) filed an Omnibus Pretrial Motion petitioning for Writ of Habeas Corpus, seeking additional discovery, and reserving the right to file additional motions on August 6, 2020.[1] A hearing on the motion took place on September 10, 2020. At that hearing both Defendant and the Commonwealth agreed to rely upon the testimony provided at the preliminary hearing. Additionally, the Commonwealth requested to file an amended information, which Defendant did not object to. The request to file an amended information was granted by the Court, which effectively dismissed counts two through four, six through eight, and ten through twelve. Following the amended information, two issues remain to be addressed in this Opinion and Order: (1) whether the Commonwealth provided sufficient evidence to establish Criminal Attempt to Commit Murder (Attempted Murder) of Kwary Alford (Alford) and (2) whether the Commonwealth provided sufficient evidence to establish three counts of Recklessly Endangering Another Person for the individuals who were not shot in the alleged shooting.

Preliminary Hearing Testimony

J.D., an individual the age of 17, and Agent Brittany Alexander (Alexander) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. Their testimony established the following. On April 25, 2020 at approximately 4:00 p.m., J.D. was at

[1] The request for additional discovery was addressed at the time of the hearing and has been satisfied.

Defendant's house to purchase marijuana. P.H. 5/21/20, at 4-5. After J.D. purchased marijuana from Defendant, Defendant asked J.D. to take him to the post office to drop off a package. *Id.* at 5-6. J.D. in his white jeep drove Defendant, who was in the passenger seat, and Defendant's sister, who was in the rear passenger's side seat, to the post office, but it was closed. *Id.* at 6-7, 9-10. During the ride back from the post office, J.D. heard three or four gunshots from inside his vehicle and when he looked over to Defendant, he had a black revolver in his hand. *Id.* at 13-14. Defendant then stated that if J.D. said anything, he and his family were next. *Id.* at 15. J.D. was then directed to Defendant's sister's house where Defendant removed J.D.'s spare tire and light bar from the roof of the vehicle. *Id.* at 17-18. J.D. then dropped Defendant back off at his house. *Id.* at 19. At the time, Defendant was wearing a red and blue hooded sweatshirt. *Id.* J.D. did not see where Defendant was aiming when he fired. *Id.* at 28.

At approximately 5-5:15 p.m. on April 25. 2020, Alexander was called notifying her that there had been a shooting with one victim. *Id.* at 32. Upon arriving at the scene, Alexander was notified that Alford had been shot in the buttocks and was at UPMC. *Id.* at 33. While speaking with Alford, Alexander learned that he had been walking with three other people when he heard several shots and then realized he had been shot in the buttocks. *Id.* at 35-36. Alford was unaware of who shot at him. *Id.* at 36. A residential camera recovered footage of four individuals running East on 7th Street and a white jeep with a roof accessory going by. *Id.* at 37. Alexander reviewed a number of businesses cameras in the area of 7th Street and Hepburn and found a white jeep exiting the post office and four individuals walking in the nearby area. *Id.* at 38. Alexander some time later was contacted by the attorney for J.D. stating that he wished to speak with her. *Id.* at 39. J.D.'s statements to her were mostly consistent with how he testified at the preliminary hearing (as indicated in the paragraph above). *Id.* at 40. One

eyewitness Jeffrey Sweely did not see the shooter, but heard the shots and saw a white lifted jeep with an accessory on the roof. *Id.* at 41. Another eyewitness, Julia Campagna, turned onto Hepburn St. and witnessed a vehicle she could not describe with a firearm sticking out of the passenger side window fire three to five shots. *Id.* After she passed the vehicle, she witnessed an individual was down on the ground. *Id.* at 42. The other three individuals that were traveling with Alford when he was shot were Seneca Mitchell, M.P., and S.N.[2] *Id.* at 43. Rick Probst, who is also an eyewitness, heard three to five shots ring out and observed a white jeep. *Id.* at 44.

Two casings were recovered from Cemetery Road, where J.D. indicated to Alexander that Defendant had tossed them out. *Id.* at 46-47. The casings came from a .38 Special. *Id.* at 51. The light bar was also recovered from Defendant's sister's house. *Id.* at 47. Defendant's sister indicated that J.D., her and a "JL" left Defendant's house to mail something at the post office and that "JL" was the shooter. *Id.* at 48. Defendant's sister claims Defendant was never in the vehicle. *Id.* at 49. When Alexander spoke with Defendant, he gave a similar recollection of events as his sister. *Id.*

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. *Id.* Furthermore, the evidence need only be

[2] Both M.P. and S.N. are juveniles whose names are indicated in both the preliminary hearing transcript and information.

such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and also may submit additional proof. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. *Commonwealth v. Wojdak*, 466 A.2d 991, 997 (Pa. 1983); *see also Commonwealth v. Kohlie*, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, "inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case." *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003).

Attempted Murder

The Commonwealth has charged Defendant with one count of Attempted Murder. To satisfy this charge the Commonwealth is required to prove that, "with intent to commit [Murder], [Defendant did] any act which constitute[d] a substantial step toward the commission of [Murder]." 18 Pa. C.S. § 901(a). Specifically, the Commonwealth must show Defendant possessed the "specific intent to kill and took a substantial step towards that goal." *Commonwealth v. Blakeney*, 946 A.2d 645, 652 (Pa. 2008). Both the *mens rea* and *actus reus* elements must be present to satisfy Attempted Murder. *Commonwealth v. Predmore*, 199 A.3d 925, 929 (Pa. Super. 2018) (*en banc*). The *mens rea* element may only be satisfied if a defendant possesses the specific intent to commit Murder of the First Degree. *See Commonwealth v. Griffin*, 456 A.2d 171, 177 (Pa. Super. 1983) (Second Degree and Third Degree Murder by definition do not satisfy the *mens rea* requirement because the crimes do not

require the intent to kill). Such specific intent may reasonably be inferred from an accused's use of a deadly weapon on a vital part of the victim's body. *Commonwealth v. Hobson,* 604 A.2d 717, 720 (Pa. Super. 1992). "The *actus reus* element of the offense is the commission of one or more acts which collectively constitute a substantial step toward the commission of a killing." *Predmore*, 199 A.3d at 929.

Pennsylvania courts have found a number of different factual circumstances which satisfy the specific intent requirement of Attempted Murder. *See Blakeney*, 946 A.2d at 652 (stabbing an individual in the chest and choking her until she was unconscious constituted Attempted Murder); In re *R.D.*, 44 A.3d 657, 679 (Pa. Super. 2012) (luring the victim into secluded area and striking her in the head with a hammer demonstrated specific intent to kill); *Commonwealth v. Packard*, 767 A.2d 1068, 1071-72 (Pa. Super. 2002) (using a vehicle to strike an elderly woman satisfied a *prima facie* showing of Attempted Murder). The Pennsylvania Superior Court has found that a defendant need not physically see their intended victim, and have gone as far to uphold an Attempted Murder conviction when an individual did not commit any physical act against the victim. *See Commonwealth v. Cannavo*, 199 A.3d 1282, 1292 (Pa. Super. 2018) (a defendant firing through his door at a group of people abdomen high satisfied Attempted Murder); *Commonwealth v. Donton*, 654 A.2d 580, 585 (Pa. Super. 1995) (the defendant telling his son he was going to kill his wife, leaving behind a note expressing such, driving ninety miles to her house, and possessing a loaded rifle while driving by her house constituted enough to satisfy both the *mens rea* and *actus reus* components of Attempted Murder).

First it is well founded that if an individual "intending to kill, shot into a crowd, the resulting crime would be first degree murder even if he had never before seen his eventual

homicidal victim." *Commonwealth ex. rel. McCant v. Rundle*, 211 A.2d 460, 461 (Pa. 1965). Lastly, this Court finds the discussion presented in *Commonwealth v. Palmer* to be persuasive to our holding. In *Palmer*, the Court discussed a "kill zone theory" adopted in California and multiple other states. 192 A.3d 85, 96-99 (Pa. Super. 2018). Under that theory an individual could be held responsible for Attempted Murder without having a particular individual in mind. *Id.* at 98. The analogy used was if an individual shoots up two houses side by side, which were fully occupied, the individual could be charged for the Attempted Murder for any of the individuals in either house because he was still intending the outcome to murder someone, although no one specific. *Id.* at 96. The Pennsylvania Superior Court used the theory to find that an individual had the specific intent to commit serious bodily injury when he fired into a group of people multiple times. *Id.* at 99. The Superior Court also expressed its frustration with the trial court for acquitting the defendant of Attempted Murder because it did "not discern any difference between an intent to kill and an intent to inflict serious bodily injury under th[o]se facts." *Id.* at fn. 7.

Based on the above, this Court finds the Commonwealth satisfied its burden that Defendant acted with a specific intent to kill. Defendant fired a deadly weapon out of a vehicle three to five times at a group of four individuals. Not only did Defendant fire into the group, he struck Alford and the bullet "travelled through the rectum, puncturing it and was resting on the right side near the scrotum." P.H. 5/21/20, at 35. This required Alford to get surgery to get the bullet removed. This is a sufficient wound to establish a specific intent to kill. *See Commonwealth v. Tucker*, 143 A.3d 955, 964-65 (Pa. Super. 2016) (shooting into a group of individuals, although only striking the victim in the leg, satisfied the specific intent to kill element). Even if Defendant did not specifically intend to kill Alford, this Court finds based on

the "kill zone theory" it is clear Defendant attempted to kill one of the four individual walking or anyone of them. *See also Cannavo*, 199 A.3d at 1292 ("We have no hesitation in finding the evidence sufficient to support the elements of attempted murder of the first degree. By firing his weapon toward a group of people, he took a substantial step toward the commission of the crime.").

Recklessly Endangering Another Person

A defendant Recklessly Endangers 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. In *Commonwealth v. Brockington*, the Pennsylvania Superior Court found that sufficient evidence was established for Recklessly Endangering Another Person when the defendant walked outside and fired his gun into the air for a "warning shot." 230 A.3d 1209, 1215-16 (Pa. Super. 2020). The Court found in the Philadelphia neighborhood where the defendant was residing it was "hardly inconceivable that the falling bullet fired from [the defendant]'s gun would have struck" someone outside. *Id.* at 1216. Clearly if firing a weapon into the air satisfies a *prima facie* showing for Recklessly Endangering Another Person, then firing a weapon at four individuals walking together, and striking one, satisfies the criminal statute as well. Therefore, Defendant's request to dismiss counts sixteen through eighteen is denied.

Conclusion

This Court finds the Commonwealth had presented enough evidence at the preliminary hearing to establish a *prima facie* case for the charges of Attempted Murder of Alford and

Recklessly Endangering Another Person as it relates to S.N., M.P., and Seneca Mitchell.[3]

Therefore, Defendant's Petition for Writ of Habeas Corpus is denied.

ORDER

AND NOW, this 11th day of September, 2020, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus in his Omnibus Pretrial Motion is hereby **DENIED**.

BY THE COURT,

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Nancy L. Butts, P.J.

cc: DA (MS)
Robert Hoffa, Esq.

NLB/kp

[3] Although Defendant mentions a number of charges in his Omnibus Pretrial Motion, it is clear from the motion itself after the Commonwealth's amended information, that these were the only charges still at issue.