

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1670-2020**
 v. :
 :
 FRANCIS HAGEMEYER, JR., : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Francis Hagemeyer (Defendant) was charged on December 7, 2020 with Aggravated Assault¹, Discharge of a Firearm into Occupied Structure², Burglary³, Criminal Trespass⁴, Terroristic Threats⁵, two (2) counts of Simple Assault⁶, Recklessly Endangering Another Person⁷, Criminal Mischief—Damage Property⁸, Disorderly Conduct⁹, and Harassment¹⁰. The charges arise from a commotion caused by Defendant in the early morning hours. Defendant filed this Omnibus Pretrial Motion on February 3, 2021. This Court held a hearing on the motion on March 1, 2021. In his Omnibus motion, Defendant argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing and some of the charges should be dismissed.

Background and Testimony

Trooper Troy Hansen (Hansen) of the Pennsylvania State Police testified on behalf of the Commonwealth at the preliminary hearing. On December 5, 2020, Hansen was dispatched to 107 Holly Street in Lycoming County for a disturbance caused by an individual identified as

¹ 18 Pa.C.S. § 2702(a)(4).

² 18 Pa.C.S. § 2707.1(a).

³ 18 Pa.C.S. § 3502(a)(1). This charge was dismissed at the preliminary hearing.

⁴ 18 Pa.C.S. § 3503(a)(1). This charge was dismissed at the preliminary hearing.

⁵ 18 Pa.C.S. 2706(a)(1).

⁶ 18 Pa.C.S. § 2701(a)(1), (a)(3).

⁷ 18 Pa.C.S. § 2705.

⁸ 18 Pa.C.S. § 3304(a)(5).

⁹ 18 Pa.C.S. § 5503(a)(2).

¹⁰ 18 Pa.C.S. § 2709(a)(3).

Defendant for screaming in the street in the early hours of the morning for approximately two (2) hours. N.T. 12/16/2020, at 2-3. Police were forewarned that Defendant had a crossbow and was aiming it at an occupied residence. Id. at 3. Hansen arrived on scene and saw Defendant on Chelsey Street, which runs parallel to Holly Street. Id. at 3, 7. A crossbow was in the grass to Defendant's left within his vicinity and Defendant was immediately taken into custody. Id. at 3, 7. While on scene, Hansen made contact with Jennifer Mazza (Mazza), an occupant of 203 Holly Street. Id. at 4. Mazza reported to Hansen that Defendant was "banging the crossbow against her mailbox...tried to push through to get into the outdoor porch and had fired the crossbow at the residence." Id. at 4-5. Mazza and her two (2) children were inside the home at the time this occurred. Id. at 5. Hansen testified that Defendant did not have permission to go onto Mazza's property, including the enclosed outdoor porch. Id. Other reports indicated that Defendant "was making verbal threats asking occupants of this residence at 203 Holly Street and 107 Holly Street to come outside so he could kill them and just screaming and making threats in general." Id. Hansen then stated that, after Defendant was placed in his vehicle, Defendant was *Mirandized* and admitted to firing two (2) arrows in the direction of 203 Holly Street. Id. at 6. Hansen said that a mailbox suffered damage as a result of Defendant's actions. Id. Police were not able to recover any arrows at the scene. Id. at 9.

At the hearing on this motion, Mazza, Theresa Delong (Delong), and James Gray (Gray) testified on behalf of the Commonwealth. Mazza, Gray, and Delong all testified that around three (3) or four (4) in the morning, they were startled awake by someone screaming. Mazza looked out her window and saw a man screaming at her house for her husband to come outside and fight like a man. The man stepped onto her property and Mazza heard bangs on her house and mailbox. The man came back onto her property and punched wooden barriers down.

Then, Mazza heard banging at the back of her house where her enclosed porch was. She also heard a man screaming, "It's Butchy." Gray told his wife that "Butchy" was screaming again. Gray confirmed that Butchy is a nickname for Defendant and Gray could see Defendant very clearly on the street because of the light from a nearby street lamp. Delong was not able to identify the man at that time but saw him come onto her property at one point. Mazza testified that she heard Defendant continuously screaming that he wanted to hurt her family and kill Mazza, her husband, and her children. Gray saw Defendant walk down to the creek and heard him banging rocks together. He saw Defendant breaking stuff at Mazza's house and watched him circle that house a few times. Gray and Delong both heard Defendant yelling insults and threats and hitting mailboxes. Gray's wife heard Defendant say he was going to get a crossbow. Gray saw Defendant leaving his uncle's house with a crossbow in his hands. Once the police came, Defendant threw the crossbow so they could not see him with it. Defendant lives diagonally across from Mazza and she was able to identify Defendant on the Zoom call for this hearing. Defense counsel presented the Information in this case filed on December 30, 2020 following the dismissal of two (2) charges at the preliminary hearing, marked as Petitioner's Exhibit B. All counts discussed will be based off this exhibit.

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

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 may also submit additional proof. Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” Commonwealth v. DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d 108, 120 (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).

Discharge of a Firearm into an Occupied Structure

First, Defendant challenges the sufficiency of the Commonwealth’s evidence on Count 4: Discharge of a Firearm into an Occupied Structure. This offense occurs when an individual, “knowingly, intentionally or recklessly discharges a firearm from any location into an occupied structure.” 18 Pa.C.S. § 2707.1(a). The statute further defines a firearm as, “any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosion or the frame or receiver of any such weapon.” 18 Pa.C.S. § 2707.1(d). Defendant believes that a crossbow does not fit into the definition of a firearm. Namely, Defendant argues that a crossbow does not operate using an explosion and does not expel a projectile through its frame

or receiver. Instead, Defendant states, a crossbow discharges a projectile by a string or cable and a pulley system that operates independently of the frame. In particular, Defendant argues that a crossbow string is activated by human interaction, and discharged through a trigger that releases an independent string that launches the bolt. Defendant also argues that crossbows and archery are treated differently than guns for other purposes under the law. For these reasons, Defendant contends that the Commonwealth failed to establish their *prima facie* burden and Count 4 should be dismissed. The Commonwealth's position is that a crossbow does fit the definition of a firearm because the string or pulley system that launches the bolts is part of the frame of the crossbow.

This Court agrees with Defendant on this issue. The law commonly differentiates between guns and crossbows, particularly in hunting laws and regulations. Though this specific issue seems to be one of first impression with the Court, it would appear that the Pennsylvania legislature wanted the courts to treat guns and crossbows differently because of its consistent distinction between the two. The Court agrees with Defendant that the string or pulley system of a crossbow is separate and apart from the frame itself. There is no question that a crossbow may be used as a dangerous weapon, however we agree that the mechanisms to fire a crossbow do not fit into the definition of firearm. Furthermore, the Commonwealth does not cite to any case law that would support their proposition that a crossbow does fit within Section 2707. Therefore, the Defendant's argument prevails on this issue and this charge against Defendant shall be dismissed.

Terroristic Threats and Disorderly Conduct

Secondly, Defendant challenges the Commonwealth's evidence on Counts 5, 6, and 7: Terroristic Threats. "A person commits the crime of terroristic threats if the person

communicates, either directly or indirectly, a threat to commit any crime of violence with intent to terrorize another.” 18 Pa.C.S. § 2706(a)(1). Additionally, Defendant contests the Commonwealth’s *prima facie* case on Count 18: Disorderly Conduct—Makes Unreasonable Noise. This offense occurs when “with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he makes unreasonable noise.” 18 Pa.C.S. § 5503(a)(2). Defendant argues that Hansen was the sole person to provide testimony about Defendant allegedly threatening to kill residents of Holly Street based on what others told him. Defendant also argues that Hansen only arrived on scene after the conclusion of the alleged crimes and therefore was not there to hear Defendant make such threats. Defendant states that the multiple witnesses who were present at the time of the incident should have testified. Their failure to testify results in the charges being held over exclusively on Hansen’s hearsay which is prohibited by Commonwealth v. McClelland, 233 A.3d 717 (Pa. Super. 2020).

The Commonwealth believes they have provided sufficient evidence for a *prima facie* case on these charges. If the Commonwealth had not presented any witnesses at the hearing on March 1st, this Court would have had to agree with Defendant on this issue. However, since the preliminary hearing, the Commonwealth has presented three (3) eyewitnesses from the morning in question. Each witness was woken up at the same time early in the morning as a result of a man shouting. Gray was able to see Defendant “clear as day” due to the light from a streetlamp illuminating Defendant. All of the witnesses heard the threats on the day in question and testified as such. Since the Commonwealth has substantiated Hansen’s hearsay testimony, the Court agrees with the Commonwealth that enough evidence has been presented to satisfy the *prima facie* burden for these counts. Therefore, the Defendant’s argument fails and counts 5, 6, 7, and 18 shall not be dismissed.

Conclusion

The Court finds that the Commonwealth did present enough evidence at the preliminary hearing to establish a *prima facie* case for counts 5, 6, 7, and 18 against Defendant. However, the Court also finds that the Commonwealth did not present enough evidence at the preliminary hearing to establish a *prima facie* case for count 4. Therefore, Defendant's Petition for Writ of Habeas Corpus is denied in part and granted in part.

ORDER

AND NOW, this 13th day of July, 2021, 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 **GRANTED IN PART AND DENIED IN PART** and Count 4: Discharge of a Firearm into an Occupied Structure is hereby **DISMISSED**

By the Court,

Nancy L. Butts, President Judge

cc: DA (EW)
PD (TC)
Law Clerk (JMH)