

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA	:	No. CR-430-2021
vs.	:	
	:	
	:	
	:	
	:	
TIMOTHY MADDOX,	:	
Defendant	:	Petition for Writ of Habeas Corpus

OPINION AND ORDER

Before the court is Defendant’s petition for habeas corpus filed on April 30, 2021. By Information filed on April 23, 2021, Defendant is charged with Terroristic Threats, Robbery, and Attempted Theft.

A pretrial habeas corpus motion is the proper means for testing whether the Commonwealth has sufficient evidence to establish a *prima facie* case. *Commonwealth v. Starry*, 196 A.3d 649, 655 (Pa. Super. 2018), *appeal granted*, 204 A.3d 369 (Pa. 2019).

“To demonstrate that a *prima facie* case exists, the Commonwealth must produce evidence of every material element of the charged offenses as well as the Defendant’s complicity therein.” *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016)(en banc). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and also may submit additional proof. *Id.*

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 that crime. The Commonwealth need not prove Defendant’s guilt beyond a reasonable doubt. Rather, the 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 jury. In determining the presence or absence of a

prima facie case, inferences easily drawn from the evidence of record that would support a verdict of guilty are to be given effect, but suspicion and conjecture are not evidence and are unacceptable as such.

Commonwealth v. Hendricks, 927 A.2d 289, 291 (Pa. Super. 2007)(emphasis original) (citations and internal quotation marks omitted).

A hearing and argument on the Defendant's motion were held before the court on June 23, 2021. The Commonwealth introduced the transcript of the preliminary hearing held on April 5, 2021 before MDJ Gary Whitman. The Commonwealth also introduced the note written by Defendant and delivered at the time and place of the alleged incident. No other evidence was introduced.

The Commonwealth amended Count 2, Robbery – Demand Money from a Financial Institution, 18 §3701 §§ (a)(1)(vi), a felony of the second degree to Criminal Attempt - Robbery- Demand Money from a Financial Institution, 18 §901 §§ (a); 18 §3701 §§ (a)(1)(vi), a Felony of the second degree.

Defendant submits that the Commonwealth has failed to establish a *prima facie* case with respect to all three (3) of the counts against him. Each count will be discussed individually.

The charges arise out of an incident that occurred on August 15, 2020 at the site of the M&T Bank branch in Montoursville, PA. A bank employee testified that on this date the Defendant, while on foot, inserted a note into the bank's drive-up exterior transmission tube which was then delivered automatically to the drive-up teller inside the bank. Among other instructions, the note inserted by the Defendant into the transmission tube specifically requested that the bank employee put \$500,000 in two (2) separate envelopes and bring the money outside to the Defendant without alerting other employees or the police. The teller immediately requested the doors to the bank be

locked and the police were then called to the scene where the Defendant was identified by the teller and arrested.

With respect to Count 1, Terroristic Threats Cause Serious Public Inconvenience, 18 §2706 §§ (a)(3), a Felony in the third degree, Defendant alleges that the Commonwealth has failed to prove a *prima facie* case. The Defendant maintains that in order to establish a *prima facie* case for Terroristic Threats, it is required that the perpetrator communicate threats either directly or indirectly to an alleged victim. The Defendant contends that the handwritten note he allegedly passed through the drive-thru transmission tube to the bank employee did not communicate a threat, either directly or indirectly. Further, in his written communication sent to the bank employee, because there was no sanction for failure to comply with his request, his communication could not be deemed a threat. The Defendant also contends that there was no indirect threat that could be gleaned from the situation because the Defendant did not brandish a weapon, he only handed the bank employee his written request. Additionally, and because of a bank employee's statement, the Defendant contends that the charge of Terroristic Threats is graded incorrectly as a felony of the third degree and if the charge is not dismissed for lack of a *prima facie* case, the charge should be amended to a Misdemeanor-1. Finally, the Defendant contends that after calling the police, the bank employees resumed their duties at the teller window and there was no diversion from normal or customary operations.

A person commits a crime of terroristic threats if the person communicates, either directly or indirectly, a threat to . . . otherwise cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing terror or inconvenience." 18 §2706 §§ (a)(3). As the Superior Court recently noted in *Commonwealth v. Campbell*,

“The purpose of [Section 2706] is to impose criminal liability on persons who make threats which seriously impair personal security” 18 Pa.C.S.A. § 2706 cmt. When determining whether a statement constitutes a terroristic threat, we must look at the statement in light of all of the surrounding circumstances.” *See Commonwealth v. Anneski*, 362 Pa. Super. 580, 525 A.2d 373, 376 (1987).”

2021 PA Super 122 (Pa. Super. June 15, 2021).

According to the testimony, the Defendant presented at the outside of the teller window of the M&T Bank branch in Montoursville, PA and was observed wearing a sweat shirt with a “hoodie” pulled over his head, a mask, and sunglasses. The teller observed the Defendant pacing back and forth before inserting the aforementioned note into the bank’s delivery tube. The tube mechanism is designed for use by customers who wish to conduct bank business while driving their automobiles rather than entering the bank on foot.

The note delivered by the Defendant to the victim contained instructional, vocative commands including, “Don’t call the police, no eye contact with me or your co-workers,” as well as, “. . . stay quiet and move quickly to the vault . . . with two yellow envelopes and fill them with \$500,000.” A reasonable person in the context of a bank setting would interpret these commands as a threat to illegally take money from the bank. Additionally, the use of the exclamatory statement, “You will have 10 mins. (sic) to do so!” further establishes that this was not the reasonable nor justifiable request of a typical bank customer.

The elements to be proven for terroristic threats do not require a direct threat, nor the brandishing of a weapon. *Commonwealth v. Reynolds*, 835 A.2d 720 (Pa. Super.2003) (ability to carry out threat not required). The threat may be indirect. *Commonwealth v. Beasley*, 138 A.3d 39 (Pa. Super. 2016), appeal denied 161 A.3d 791 (Pa. 2017). Here the indirect threat was the note and the inferences under the circumstances. These circumstances caused sufficient concern on the part of the teller such that she immediately secured the bank doors to prevent entry by the Defendant.

For *prima facie* purpose, the evidence is sufficient to demonstrate that the Defendant communicated a threat to commit a crime of violence.

The Defendant acted with reckless disregard of the risk of causing terror or inconvenience. The evidence is sufficient to establish *prima facie* that the Defendant intended to terrorize the teller.

Although the Defendant claims there was never an obvious “brandishing” of a weapon by the Defendant, based on the specific commands in the note and the attending circumstances, Defendant’s intent was clear. While not determinative, a reasonable person in a similar circumstance would certainly infer that the Defendant had a weapon on his person during the incident, whether concealed or otherwise.

Therefore, the court finds the Commonwealth has established the required elements of a *prima facie* case for **Terroristic Threats – Serious Public Inconvenience**.

With respect to Count 2, Criminal Attempt - Robbery- Demand Money from a Financial Institution, 18 §901 §§ (a); 18 §3701 §§ (a)(1)(vi), a Felony of the second degree, the Defendant contends the Commonwealth failed to establish a *prima facie* case because 1) the Commonwealth failed to satisfy the preliminary burden of showing the Defendant took a substantial step towards the completion of a Robbery, 2) the Defendant was not in the course of committing a theft, and 3) the Defendant did not threaten any force, however slight.

With respect to the Defendant’s first two arguments, Criminal Attempt is an inchoate crime which requires the Commonwealth to establish that the Defendant, with the intent to commit a specific crime, commits any act which constitutes a substantial step towards the commission of that crime. 18 Pa. C.S.A. § 901. The court, as previously reasoned, and based on the totality of the circumstances, finds that the Defendant’s act of transmitting his written demand for \$500,000

establishes that the Defendant took a substantial step toward the underlying crime of unlawfully taking money from the bank. The note contained a request for \$500,000 in “untraceable” one hundred-dollar bills. The note specifically instructed the teller, “. . . don’t draw attention to me, don’t call the police, no eye contact . . . stay quiet and move quickly to the vault . . .” When the specific demands are viewed in the context of the Defendant’s attire, to include a mask, sunglasses, and a hoodie drawn over his head, it can be reasonably concluded that the Defendant intended to unlawfully remove money from the bank.

Further, the Defendant maintains that the Commonwealth failed to establish a *prima facie* case for attempted Robbery because there was no “show of force however slight.” A show of force is one of six (6) potential elements of Robbery, but is not necessary by itself to establish the commission of a Robbery and force is not required under subsection (a)(vi) of the robbery statute. The Commonwealth has met its burden of *prima facie* for Attempted Robbery. 18 §3701 §§ (a)(1)(vi).

Regarding Count 3, Criminal Attempt – Theft by Unlawful Taking – Movable Property, a felony of the first degree, 18 §901 §§ (a); 18 §3921 §§ (a), the Defendant claims the Commonwealth failed to satisfy the *prima facie* burden of showing the Defendant took a substantial step towards the completion of a Theft by Unlawful Taking.

“An attempted theft is committed when a person, with intent to commit a theft, does any act which constitutes a substantial step toward commission of the theft. 18 Pa. C.S.A. § [901(a)]. A person commits a theft if he or she “unlawfully takes ... movable property of another with intent to deprive him thereof.”

18 Pa. C.S.A. § 3921(a). *Commonwealth v. Ennis*, 574 A.2d 1116, 1119 (Pa. Super.1990).

Com. v. Smith, 2980 EDA 2013, 2015 WL 7454351, at *2 (Pa. Super. Mar. 5, 2015)

Again, the Court finds that the handwritten note which was transmitted directly to the bank teller during banking hours, and when viewed in light of all other testimony, constitutes sufficient *prima facie* evidence of a substantial step.

ORDER

AND NOW, this 13th day of July 2021, following a hearing and arguments in this matter, Defendant's Petition for Habeas Corpus with respect to all three counts is **DENIED**.

By The Court,

Marc. F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)
Tyler Scott Calkins, Esquire
Gary Weber, Esquire
Judge Lovecchio