

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1138-2020
v.	:	
	:	
LORENZO SCOTT,	:	OMNIBUS MOTION
Defendant	:	

**OPINION AND ORDER**

Lorenzo Scott (Defendant) was charged on June 25, 2020 with Aggravated Assault<sup>1</sup> and Attempted Rape<sup>2</sup>. The charges arise following an encounter between Defendant and a nurse at the Lycoming County Prison. Defendant filed this Omnibus Pretrial Motion on December 28, 2020. This Court held a hearing on the motion on February 2, 2021. In his Omnibus motion, Defendant first argues that he was subjected to a custodial interrogation without being properly *Mirandized* and without giving a valid waiver of his *Miranda* rights and, as a result, any statements he made to police should be suppressed<sup>3</sup>. Secondly, Defendant asserts that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing for Count 2 and therefore, the charge of Attempted Rape should be dismissed.

**Background and Testimony**

At the preliminary hearing, Detective Stephen Sorage (Sorage) of the Lycoming County District Attorney's Office testified on behalf of the Commonwealth. Sorage had been made aware of an incident that had occurred between Defendant and S.L., a nurse on staff at the Lycoming County Prison (LCP). N.T. 9/3/2020, at 3. A video was able to capture footage of

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<sup>1</sup> 18 Pa.C.S. § 2702(a)(3).

<sup>2</sup> 18 Pa.C.S. § 901(a); Intended 18 Pa.C.S. § 3121(1).

<sup>3</sup> An agreement was reached between the parties at the omnibus pretrial hearing that Defense will forego their challenge to the statements as listed in the motion. The sole issue that Defense wished to pursue is the habeas corpus motion.

the incident but did not include audio. Id. at 10. On June 23, 2020, Defendant was committed to LCP for a matter unrelated to this case. Id. at 3. During the intake process, S.L., a nurse at LCP, was weighing Defendant. Id. at 3-4. The video shows Defendant strike S.L. “across the face with his left hand” and raise his arm “to apparently strike her a second time.” Id. at 4. Though Defendant is somewhat obscured in the video footage following the first slap, his body language is clear and S.L. testified in her report that Defendant hit her twice. Id. During the incident, Defendant said to S.L., “It ain’t no crime slapping a bitch. It ain’t no crime raping a bitch. You can’t charge me. No problem smacking a bitch into doing what you want.” Id. at 5. Shortly after Defendant hit S.L., correctional officers entered the intake room and restrained Defendant. Id. at 14. The parties have stipulated to video footage of Defendant shortly following the altercation wherein he is seen masturbating while in a holding cell.

The following day, Sorage conducted an interview with Defendant to discuss the incident. Id. at 6. Sorage testified that, while attempting to *Mirandize* him, Defendant kept rambling about how the incident was not rape and that “rape is all about credibility.” Id. at 6, 11. Sorage stated that he thought Defendant was talking about his federal charges, not the incident with S.L., so Sorage told him “this isn’t about rape, this is about...inappropriate contact with a staff member...slapping her.” Id. Sorage was able to finish reading Defendant his *Miranda* rights. Id. at 10. During this interview, Defendant told Sorage that S.L. had “put her titties up against me and that means she wanted to fuck me.” Id. Defendant apparently told Sorage that after slapping S.L., he was going to have sex with her. 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 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).

Counsel requested a briefing schedule on the habeas motion and the final brief was due March 5, 2021. In the case *sub judice*, Defendant is charged with attempting to commit Rape by Forcible Compulsion. This offense occurs when, “the person engages in sexual intercourse with a complainant by forcible compulsion.” 18 Pa.C.S. § 3121(a)(1). However, an individual commits an attempt when, “with intent to commit a specific crime, he does any act which

constitutes a substantial step toward the commission of that crime. 18 Pa.C.S. § 901. Defendant and the Commonwealth both cite to the Pennsylvania Standard Criminal Jury Instructions that state “[a]n act is a ‘substantial step’ if it is a major step toward commission of the crime and also strongly corroborates the jury’s belief that the person, at the time he or she did the act, had a firm intent to commit that crime.” Pa. SSJI (Crim) § 12.901(A). In his brief, Defendant challenges the sufficiency of the Commonwealth’s evidence on the Attempted Rape charge. Defendant argues that the Commonwealth failed to establish the *prima facie* burden on Attempted Rape for a number of reasons. Firstly, Defendant believes that his actions in striking the nurse, taken together with his statements to the victim and police as well as his actions after being restrained do not support a finding of either element for attempted rape by forcible compulsion. Namely, the Commonwealth failed to demonstrate that Defendant took a substantial step towards the commission of that crime and failed to show that Defendant had the specific intent to commit the underlying offense.

Defendant argues that the Commonwealth failed to show that he possessed the specific intent to commit Rape by Forcible Compulsion. In this case, Defendant asserts that the statements he made to the victim and to Sorage were incoherent and, at best, only articulated a desire to have sexual intercourse with S.L. and were not enough to show he had the specific intent to rape her. Defendant also argues the video of him masturbating in the security cell supports the idea that he was thinking about have sex with her, but is also insufficient, even taken together with his statements and the attack on S.L., to support a finding that Defendant had the specific intent to commit rape. Alternatively, the Commonwealth argues that the evidence presented at the preliminary hearing is sufficient to support their allegation that Defendant had the specific intent necessary. The Commonwealth asserts that Defendant’s

words along with his actions toward S.L. clearly show that Defendant intended to have sexual intercourse with S.L. and that the physical assault of the victim “belonged to the same course of action as having intercourse with her.” Commonwealth Brief 3/5/2021, at 4. Moreover, the Commonwealth states that there is no evidence that Defendant believed the victim’s consent was relevant to whether he would have sex with her, nor is there any evidence showing that Defendant believed that any sexual relations he had with S.L. would be consensual. The Commonwealth believes that, because (1) Defendant physically assaulted S.L. twice, (2) started to back her up into a corner to prevent her escape, (3) talked about rape and using force to get a woman to do what he wanted during the encounter, (4) masturbated immediately after the incident, and (5) talked to police about how he intended to have sex with S.L. without mention of her consent, is sufficient to allow a jury to determine that Defendant had the specific intent for the charge in question.

The Court agrees with the Commonwealth on this issue. It is apparent from the evidence presented by the Commonwealth that from the moment Defendant began hitting the victim he intended to rape her. The language Defendant used with the victim made it abundantly clear that Defendant intended to have sexual intercourse with S.L. regardless of her consent. Defendant told her during the attack “It ain’t no crime slapping a bitch. It ain’t no crime raping a bitch...No problem smacking a bitch into doing what you want.” Not once did Defendant articulate that he wished that S.L. would have sexual relations with him or did he state that he simply wanted to have sex with her. Then, Defendant added to his prior words and actions by obsessively talking about rape during his interview with police without being prompted by law enforcement. He said unequivocally “he slapped her upside the head and he was gonna fuck her.” Defendant’s choice of words along with his actions toward S.L. shows his

unambiguous intent to rape her. By slapping the victim, Defendant was clearly trying to incapacitate her so she would not be able to resist so he could follow through on his specific intention to rape her. Therefore, the Commonwealth has established that the Defendant had the specific intent at the time of the altercation to commit rape and has provided sufficient evidence to establish their *prima facie* burden.

Furthermore, Defendant argues that the two slaps Defendant inflicted on the victim are insufficient to constitute a substantial step toward the commission of rape. Defendant asserts that, even if he had the intent to commit rape, the slaps were not enough to constitute a substantial step. Defendant relies on several cases that held a substantial step occurred when the defendant was able to accomplish more than what happened in this case. See Commonwealth v. Moody, 441 A.2d 371 (Pa. Super. 1982) (held defendant took a substantial step towards the commission of rape when he forced a child into basement and onto a chair while he fondled her genitalia then started to unzip his pants); Commonwealth v. Vanderlin, 580 A.2d 820 (Pa. Super. 1990) (defendant convicted of attempted rape after he choked the victim, took off several items of victim's clothing including her underwear, put his fingers inside her vagina, fondled her breasts, and threatened to kill and rape her if she didn't pleasure him); Commonwealth v. Bullock, 393 A.2d 921 (Pa. Super. 1978) (court held defendant took a substantial step toward rape when he tore victim's shirt, pulled down her bra, and attempted to remove her pants).

In this case, Defendant argues that he never attempted to remove his clothing or S.L.'s clothing. As a result, Defendant believes that a common sense approach of the conduct he exhibited on the day in question is more appropriately covered by the remaining charge of Aggravated Assault. Defendant believes the video of the incident shows how limited Defendant

was during the attack because the total encounter was a few seconds and he was immediately tackled to the ground after he slapped the victim. The Commonwealth's position is that Defendant's use of force against S.L. by striking her twice in the face is the natural first step to forcing someone to have intercourse against his or her will. The Commonwealth argues that striking someone twice in quick succession could easily render the victim debilitated, frightened, or otherwise unable to fight back. Additionally, striking the victim is consistent with making any attempt of removing a victim's clothing easier for the attacker. Looking only to Defendant's conduct at the time of the incident, the Court agrees with the Commonwealth's position for the following reasons. In this case, Defendant struck S.L. across the face twice in quick succession in order to subdue her to his desire to have unsensual sexual relations with her. Exerting physical violence in order to commit rape is how many, if not all, of the cases Defendant cited began. Simply because Defendant did not have the opportunity to continue his assault on S.L. in order to grope her private parts or remove any clothing in order to complete the offense does not mean he did not fulfill the elements of attempted rape. Defendant also talked about rape during his attack on S.L., saying, among other things, "It ain't no crime raping a bitch...No problem smacking a bitch into doing what you want." Though many of the cases on this subject discuss the removal of the victim's clothing, the defendant's clothing, or both as a substantial step, no Pennsylvania court has mandated clothing removal as an additional element to attempted rape. For example, in Commonwealth v. Martin, the court determined that defendant took a substantial step towards committing rape when he "grabbed the victim, threatened to kill her, and declared his intentions to have sexual intercourse with her... [and] dragged her toward a laundry room." Commonwealth v. Martin, 452 A.2d 1066, 1068 (Pa. Super. 1982). "The substantial step test broadens the scope of attempt liability by

concentrating on the acts the defendant has done and does not any longer focus on the acts remaining to be done before actual commission of the crime.” Commonwealth v. Gilliam, 417 A.2d 1203, 1205 (Pa. Super. 1980). Therefore, this Court finds that Defendant took the requisite substantial step toward the commission of attempted rape when he slapped the nurse twice and made statements to her about rape and using physical violence to subdue the will of others to his own. Defendant’s statements after the incident further confirm the Courts finding that Defendant satisfied this element of attempted rape. Defendant repeatedly emphasized the topic of rape and equated his violence with progress towards raping the nurse in his conversation with police the following day. Since the test for substantial step requires us to examine what Defendant did instead of what was left for him to do to complete the offense, this Court finds that Defendant did take a substantial step towards the commission of attempted rape.

### **Conclusion**

The Court finds that the Commonwealth has presented sufficient evidence to establish a *prima facie* case for Count 2, Attempted Rape against Defendant. Therefore, Defendant’s Petition for Writ of Habeas Corpus is denied.



**ORDER**

**AND NOW**, this 1st day of June, 2021, based upon the foregoing Opinion, it is  
**ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus contained  
in his Omnibus Pretrial Motion is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA  
Matthew Welickovitch, Esq.  
Law Clerk (JMH)