

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

vs.

BRYCE ZIMMERMAN,
Defendant

: No. CR-716-2021

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: Petition for Writ of Habeas Corpus

OPINION AND ORDER

As recently as October 4, 2021, our Superior Court reiterated the standard for establishing a *prima facie* case. Specifically, to establish a *prima facie* case, the Commonwealth must produce evidence of every material element of the offense that would be sufficient, if presented at trial, and accepted as true, for the judge to permit the case to be decided by a jury. *Commonwealth v. Fretts*, 2021 PA Super 198, 2021 WL 4515362, *3 (Pa. Super. 2021), citing *Commonwealth v. Montgomery*, 234 A.3d 523, 533 (Pa. 2020).

The evidence must be read in a light most favorable to the Commonwealth and inferences reasonably drawn from the evidence of record which would support a verdict of guilty must be given effect. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2011).

In this case, Defendant filed a petition for habeas corpus asking that the court dismiss Count 1, aggravated assault based upon an alleged lack of *prima facie* evidence.

The proper means to attack the sufficiency of the Commonwealth's *prima facie* evidence pretrial is through the filing of a petition for habeas corpus. *Marti*, 779 A.2d at 1179 n.1.

At the hearing in this matter on October 13, 2021, the Commonwealth introduced a transcript of the preliminary hearing before MDJ Christian Frey on May 24, 2021. To meet its burden of proving a *prima facie* case, the Commonwealth may utilize the evidence presented at the preliminary hearing. *Commonwealth v. Lambert*, 244 A.3d 38, 42 (Pa. Super. 2020).

Count 1 of the Information filed on June 16, 2021 charges Defendant with aggravated assault in violation of 18 Pa. C.S.A. § 2702(a)(1). A person is guilty of this crime if he attempts to cause serious bodily injury to another. 18 Pa. C.S.A. § 2702(a)(1).

The Commonwealth contends that Defendant attempted to cause serious bodily injury to the alleged victim. For aggravated assault purposes, an attempt to cause serious bodily injury to another is found where the accused, with the required specific intent, acts in a manner which constitutes a substantial step toward perpetrating a serious bodily injury upon another. *Commonwealth v. Martuscelli*, 54 A.3d 940, 948 (Pa. Super. 2012).

Defendant does not argue that a substantial step was not taken in this matter; rather, Defendant argues that the Commonwealth's evidence fails to establish for *prima facie* purposes specific intent. Of course, the Commonwealth can establish specific intent from the circumstances surrounding the incident. *Commonwealth v. Galindes*, 786 A.2d 1004, 1012 (Pa. Super. 2001), *appeal denied*, 803 A.2d 733 (Pa. 2002).

A person acts intentionally with respect to a material element of an offense when, if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result. 18 Pa. C.S.A.

§302(b)(1)(i). Further, if the element involves the attendant circumstances, he must be aware of the existence of such circumstances or he believes or hopes that they exist. 18 Pa. C.S.A.

§302(b)(1)(ii). As a general principle, this means that a person has formed a particular decision to proceed on a certain course, which violates a particular law.

Utilizing these definitions, in order to meet its *prima facie* burden in this case, the Commonwealth would need to prove that it was Defendant's conscious object to cause serious bodily injury to the alleged victim. The court cannot find under the circumstances that the Commonwealth has met this burden.

The alleged victim in this matter, Bernie Jurjowski testified that on May 26, 2021, he was inspecting one of his rental units at 403 Howard Street in Williamsport and as he was leaving the basement and going to his truck to get some tools, Defendant started yelling at him out of a second floor window regarding whether Mr. Jurjowski had a right to be on the premises. Some words were exchanged. Mr. Jurjowski proceeded to his truck and while walking back to the building he noticed that Defendant had come outside and was pointing a rifle at him.

Mr. Jurjowski was just leaving his truck while Defendant was standing on the porch approximately ten feet away.

While standing on the porch Defendant pointed a rifle at Mr. Jurjowski's chest. Defendant then "aimed down" and fired one shot into the ground about two or three feet in front of Mr. Jurjowski. After he fired the shot, he pointed back at Mr. Jurjowski's chest and stated something to the effect that it was his only warning.

When being interviewed later by the police, Defendant said that he thought he was in the right by shooting at Mr. Jurjowski because he thought he was charging him.

This evidence does not establish even for *prima facie* purposes that Defendant intended to cause serious bodily injury to Mr. Jurjowski. To the contrary, the evidence establishes that Defendant did not intend to cause bodily injury to Mr. Jurjowski but instead attempted to menace, frighten and/or scare Mr. Jurjowski.

While the Commonwealth has provided the court with numerous cases, those cases are inapplicable. This is not a situation where, for example, there is even circumstantial evidence to prove that Defendant intended to inflict serious bodily injury upon another individual. While a gun is a lethal weapon and while pointing it toward a person speaks volumes as to one's intention, no shots were ever fired at the alleged victim. There were no statements made by Defendant before, during or after the incident which might indicate an intent to inflict injury. There was no evidence whatsoever relating to Defendant preventing the alleged victim from leaving or escalating any incident. At no time whatsoever did Defendant make any threats to the alleged victim as to hurting him or seriously injuring him.

ORDER

AND NOW, this 21st day of October 2021, following a hearing and argument, Defendant's Petition for Habeas Corpus is **GRANTED**. Count 1, aggravated assault is DISMISSED.

By The Court,

Marc. F. Lovecchio, Judge

cc: Taylor Beucler, Esquire (ADA)
Howard Gold, Esquire (APD)
Gary Weber, Esquire
Judge Lovecchio