

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

<b>COMMONWEALTH</b>	<b>: No. CR-1020-2023</b>
	<b>:</b>
<b>vs.</b>	<b>:</b>
	<b>: Opinion and Order re</b>
<b>KADEEM MONTEZ MIDDLETON,</b>	<b>: Defendant's Motion to Dismiss/</b>
<b>Defendant</b>	<b>: Habeas Corpus</b>

**OPINION AND ORDER**

This matter came before the court on October 30, 2023 for a hearing and argument on the Motion to Dismiss filed on behalf of Kadeem Montez Middleton (hereinafter “Defendant”). The court notes that there is no issue with the timeliness of the motion as the parties agreed to an extension for filing due to when discovery was requested and provided. At the time of the hearing and argument, the Commonwealth introduced an audio recording of the preliminary hearing as Commonwealth’s Exhibit #1 and then it rested.

At the preliminary hearing, the Commonwealth called two witnesses, Officer Tanner Troutman, and Officer Jaime Desanto of the Williamsport Bureau of Police.

Officer Troutman testified that he was dispatched to 1149 Market Street for a report of a domestic disturbance between a black male and a white female and that there was an active physical disturbance between the two of them. He was advised that the black male had grabbed the white female by the hair and threw her onto the ground. He and Officer [Andrew] Stevens approached the front of the residence and heard a commotion in the back yard. They went to the rear of the residence and observed Defendant in an active verbal disturbance with the white female who was on the porch. The female had a “pretty decent sized” laceration on her knee, which was bleeding. Officer Troutman advised Defendant that he was being detained until they determined what was going on. Defendant was very

verbally aggressive with the female at that point. Officer Troutman reached out to put Defendant's hands behind his back. Defendant initially put his hands behind his back but then he "tensed up" causing Officer Troutman to struggle with putting handcuffs on him. Defendant was still making comments and harassing the white female. Defendant then took a step away from Officer Troutman and toward Officer Stevens, which pulled Defendant's arm away from Officer Troutman. At that point Officer Troutman put his arms around Defendant's waist and put him on the ground, but Defendant "continued to resist." The officers told Defendant to "be cool" and to "calm down." It seemed like Defendant was trying to get his arms away from being handcuffed so Officer Stevens stunned Defendant with his [Stevens'] taser. At that point, Officer Troutman was able to get handcuffs on Defendant and he complied from that point forward. Defendant did not explain why he tensed up or why he would not stop.

Officer Jaime Desanto testified that she also was dispatched to a call on Market Street for a domestic disturbance between a black male and a white female. She responded and spoke with the white female, Tabitha Older. Officer DeSanto observed that Ms. Older's knee had blood "all over it" and the blood was dripping down Ms. Older's leg. As Officer Desanto got closer, she saw that there were several lacerations with gravel in them on Ms. Older's knee. Ms. Older was visibly upset and stress out about the situation. She was worried about her baby and herself and upset with Defendant. She told Officer Desanto that she and Defendant were walking down Market Street when they got into a verbal argument. Defendant grabbed her by the hair and threw her on the ground. She fell in a gravel area at the corner of Market Street and Oakland Avenue and that is how she received the injury to her knee. Officer Desanto admitted on cross-examination that she did not see any altercation

between Ms. Older and Defendant. She also acknowledged that Ms. Older initially made a statement regarding Defendant's conduct toward their three-month-old daughter, but she took back that statement and, therefore, Ms. Older was not fully honest on that day.

## **DISCUSSION**

At the preliminary hearing stage, 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).

Defendant is charged with resisting arrest, a misdemeanor of the second degree; simple assault, a misdemeanor of the second degree; disorderly conduct, a misdemeanor of the third degree; and harassment, a summary offense.

Defense counsel argued that the Commonwealth did not present a *prima facie* case for any of the charges because: (1) the Commonwealth failed to call Ms. Older as a witness and all the evidence of the assault was hearsay; (2) Defendant put his hands behind his back as soon as the police approached and he only tensed up due to shoulder pain; therefore, he was not resisting arrest; and (3) there were no witnesses to the altercation and no evidence that a struggle actually occurred such that the Commonwealth did not prove the crime of disorderly conduct.

The prosecutor argued that the victim’s statements were excited utterances, which is a recognized exception to the hearsay rule; therefore, a *prima case* was presented for simple assault and disorderly conduct. The prosecutor also argued that evidence was presented that it took two officers and a taser to place Defendant into handcuffs such that the evidence was sufficient to establish a *prima facie* case for resisting arrest.

In Count 1, Defendant is charged with resisting arrest in violation of 18 Pa. C.S.A. §5104, which states:

A person commits a misdemeanor of the second degree if, with the intent of preventing a public servant from effecting a lawful arrest or discharging any duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

According to the testimony of Officer Troutman, Defendant not only tensed up but also pulled and stepped away from him so he could not be handcuffed, which resulted in Officer Troutman putting his arms around Defendant's waist and putting him to the ground. Defendant still would not submit to being handcuffed and was tased by Officer Stevens. The court finds that this evidence is sufficient to establish a *prima facie* case that Defendant resisted arrest.

In Count 2, Defendant is charged with simple assault in violation of 18 Pa. C.S.A. §2701(a)(1) which states that a person is guilty of assault if he attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another. Bodily injury means impairment of physical condition or substantial pain. 18 Pa. C.S.A. §2301.

In Count 3, Defendant is charged with summary harassment in violation of 18 Pa. C.S.A. §2709(a)(1), which states that a person commits the crime of harassment when, with intent to harass, annoy or alarm the other person, he strikes, shoves, kicks or otherwise subjects the person to physical contact, or attempts or threatens to do the same.

In Count 4, Defendant is charged with disorderly conduct in violation of 18 Pa. C.S.A. §5503(a)(1), which states that a person is guilty of disorderly conduct if, with the intent to cause public inconvenience, annoyance or alarm, he engages in fighting or threatening, or in violent or tumultuous behavior.

All three of these counts hinge on whether Ms. Older's statements to Officer Desanto are hearsay or not. The Pennsylvania Rules of Evidence provide exceptions to the hearsay rule, one of which is an excited utterance. An excited utterance is a "statement relating to a startling event or condition, made while the declarant was under the stress of the excitement that it caused." Pa. R. E. 803(2). As the comment to the Rule notes, the "crucial question,

regardless of the time lapse is whether, at the time the statement is made, the nervous excitement continues to dominate while the reflective processes remain in abeyance.” Pa. R. E. 803(2), cmt (*quoting Commonwealth v. Gore*, 396 A.2d 1302, 1305 (Pa. Super. 1978)).

According to Officer Desanto’s testimony, Ms. Older was visibly upset when she spoke to her. She was worried about herself and upset with Defendant. Officer Desanto observed that Ms. Older’s knee was bleeding and the blood was running down her leg. From this evidence, a jury could infer that the assault had just occurred. Despite the fact that at some point Ms. Older’s reflective processes kicked in and she retracted her statement about Defendant’s actions toward their child, she never retracted her statement about Defendant’s assault of her and she made that statement while she was still visibly upset and while the stress of the excitement. Therefore, the court finds based on the record before it that Ms. Older’s statement was an excited utterance; therefore, it is not hearsay.

The court finds that the combination of the officers’ observations and the statement of Ms. Older are sufficient to prove a *prima facie* case for simple assault, disorderly conduct, and harassment.

## **CONCLUSION**

A preliminary hearing is not a trial. The Commonwealth’s burden at the preliminary hearing stage is only a *prima facie* case, not beyond a reasonable doubt. The court finds that the Commonwealth has presented *prima facie* evidence of all the charges. Whether the evidence is sufficient to convince a jury beyond a reasonable without testimony from Ms. Older is a question for trial.

**ORDER**

**AND NOW**, this 30<sup>th</sup> day of October 2023, the court DENIES Defendant's  
Petition for Habeas Corpus.

By The Court,

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Nancy L. Butts, President Judge