

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 99-11,651

VS :

MICHAEL LONGSTRETH :

OPINION AND ORDER

Before the Court is the Defendant's Petition for Habeas Corpus. The Defendant has been charged with two counts of robbery and related offenses. A preliminary hearing was held January 20, 2000 before District Magistrate Jerry Lepley, after which all charges were bound over for trial. The Defendant filed a Habeas motion on February 3, 2000, alleging that the Commonwealth did not present sufficient testimony to establish the charge of robbery, a felony of the first degree. At the time set for the hearing on March 24, 2000, the parties agreed to submit the motion based on the transcript of the preliminary hearing. After a review of the transcript, the Court finds the following facts with regard to the charge of robbery:

On Friday, January 16, 1998, Debra Welliver was employed as a bank teller at the Core States Bank in the Lycoming Mall. On that date at approximately 10:43 a.m., a gentleman approached her teller window and handed her a note requesting that she take out her large denominations and count them out. (N.T. 1/20/00, p.3). She stated that she initially started counting twenty-dollar bills. Moments later, the assailant stated in a moderate tone, "larger, " so she put the twenty-dollar bills back, and retrieved larger denominations. The teller next to Ms. Welliver, Ms. Persun, was doing data entry when the assailant approached the teller window. Moments later, Ms. Persun started to leave her window but as she opened the door to her booth, the assailant told her in a slightly higher tone to stay where she was. Ms. Persun stopped

in the doorway. Ms. Welliver stated that she could sense that Ms. Persun was scared. (Id. p.6).

Ms. Welliver stated that the assailant had a scarf on his face and a brimmed hat, so that all she could see was his eyes. When he reached across the counter to take the money, however, the scarf slipped down revealing a reddish brown mustache. (Id. p.4). Ms. Welliver stated that while the assailant stood at the counter, he had his left hand in his pocket, so she “did not know whether he had a gun or not, so [she] just gave him what he was asking for.” (Id., p5). The assailant then left the bank. The incident lasted approximately 45 seconds. Ms. Welliver testified that she picked up the phone to dial the office number to report what had happened, but that she “was just so scared that [she] couldn’t even remember how to dial that office number.” (Id., p. 7). Based upon an accounting of the drawer after the incident, it is believed that the assailant received \$2,050.00. Ms. Welliver testified that she believed that the Defendant was the assailant.

The issue before the Court is whether the Commonwealth established a prima facie case of robbery, a felony of the first degree. To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). Under 18 Pa.C.S.A. § 3701 a person is guilty of robbery, a felony of the first degree if, in the course of committing a theft, he threatens another with or intentionally puts her in fear of immediate serious bodily injury. Instantly, the Court finds sufficient evidence to establish a prima facie case that in the course of committing a theft of money from the

Core States Bank, the Defendant intentionally put Ms. Welliver in fear of immediate serious bodily injury. The Defendant, masked and with his hand in his pocket as if to hide a weapon, handed over a note to start counting bills. When one of the tellers moved, the Defendant told her to stay where she was. Additionally, Ms. Welliver testified that she was so fearful that she could not even remember how to dial the bank's office to report the robbery. The Court therefore denies the Defendant's motion to dismiss the charge of robbery, a felony of the first degree.

ORDER

AND NOW, this _____ day of April, 2000, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA
William Miele, Esquire, PD
DA
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire