

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 00-10,782

VS :

DAVID WILLIAMS, JR. :

OPINION AND ORDER

Before the Court is Defendant's Petition for Habeas Corpus. Defendant has been charged with two counts of aggravated assault, two counts of simple assault, resisting arrest, and disorderly conduct as a result of an incident that occurred on April 6, 2000. At the close of the Preliminary Hearing, held April 28, 2000 before District Magistrate Allen Page, all charges with the exception of one count of aggravated assault and one count of simple assault were held for Court. Defendant now argues that the Commonwealth failed to establish a prima facie case of the remaining charges of aggravated assault and simple assault against Agent Shoemaker, as they failed to prove that the Defendant intentionally kicked his foot toward the agent. After a review of the testimony from the preliminary hearing, the Court finds the following facts relevant to the Habeas.

Agent Shoemaker and Agent Whiteman were directed by the supervisor, Ms. Yahn, to go to the residence of the Defendant, who was under the supervision of the Adult Probation Office. As they approached the front of the Defendant's residence, the Defendant exited the rear of the residence. (N.T. 4/28/00, p. 4). Both agents chased after the Defendant as he fled the residence. Within three to five minutes, they had the Defendant handcuffed and in custody. (Id., p.5). Agent Whiteman testified that the Defendant was loud, upset, aggressive and agitated when he was taken into custody.

As the agents attempted to put the Defendant into their car, the Defendant spit in Agent Whiteman's face. The agents then leaned the Defendant over the hood of the car while Agent Shoemaker stood directly behind him. Agent Whiteman testified that at some point the Defendant reached his leg back and attempted to kick Agent Shoemaker. Agent Shoemaker blocked the kick. They then put shackles on the Defendant, and put him in the vehicle. Agent Whiteman testified that once in the car, the Defendant spit on him a second time, attempted to kick the rear door once, and attempted to kick the rear window once. (Id., p. 8). Shortly thereafter the city police arrived and transported the Defendant in their vehicle.

The Defense argues that the evidence presented does not establish a prima facie case of the charges of aggravated assault and simple assault against Agent Shoemaker. To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability that the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). In order to establish a prima facie case of simple assault under 18 Pa. C.S.A. §2701, the Commonwealth must show that the Defendant attempted to cause or intentionally, knowingly or recklessly causes bodily injury to another. Bodily injury is defined by 18 Pa.C.S.A. ' 2301 as impairment of physical condition or substantial pain.® The Commonwealth need not establish that the victim actually suffered bodily injury; rather, it is sufficient to support a conviction if the Commonwealth establishes an attempt to inflict bodily injury. The intent may be shown by circumstances which reasonably suggest that a defendant intended to cause injury. Commonwealth v. Richardson, 431 Pa. Super. 496, 636 A.2d 1195 (1994), *citing*

Commonwealth v. Polston, 420 Pa. Super. 233, 616 A.2d 669 (1992), *alloc.den.*, 534 Pa. 638, 626 A.2d 1157 (1993). Instantly, the Commonwealth established that the Defendant, knowing that Agent Shoemaker was directly behind him, swung his leg back in an attempt to kick Agent Shoemaker. Additionally, the Defendant continued to struggle with the agents as they shackled him and put him in the car. The Court would find that this evidence established a prima facie case of the charge of simple assault. See *also* Commonwealth v. Seward, Lycoming County 98-10,736, (Superior Court affirmed conviction of simple assault and aggravated assault of Lycoming County Probation Officer where Defendant, knowing that the probation officer was directly behind him, swung his arm around at head level, striking the officer in the face.)

The Defendant next alleges that there was insufficient evidence to establish a prima facie case of aggravated assault. To establish a prima facie case under 18 Pa.C.S.A. § 2702(a)(3) the Commonwealth must show that the Defendant attempted to cause or intentionally or knowingly causes bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c), in the performance of duty. County Adult Probation or Parole Officers are enumerated in subsection (c) of the statute. The Court has previously found that the Commonwealth established a prima facie case of the elements of attempting to, or intentionally or knowingly causing bodily injury to Agent Shoemaker. Further, Agent Shoemaker was in the performance of his duties when the offense occurred. The Court therefore finds that the Commonwealth established a prima facie case of aggravated assault as well.

ORDER

AND NOW, this \_\_\_\_\_day of August 2000, based on the foregoing  
Opinion, it is ORDERED AND DIRECTED that the Defendant's Habeas Motion is  
DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA  
Nicole Spring, Esquire  
Diane Turner, Esquire  
Honorable Nancy L. Butts  
Judges  
Law Clerk  
Gary Weber, Esquire