

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 01-10,502  
VS :  
TERESA ANN ELDER :

**OPINION AND ORDER**

Before the Court is Defendant's Petition for Writ of Habeas Corpus. The Defendant has been charged with simple assault, terroristic threats and harassment as a result of an incident that occurred on October 14, 2000. A preliminary hearing was held on March 16, 2001 before District Magistrate, C. Roger McRae, after which, all charges were bound over. Defendant now argues that the Commonwealth's evidence was insufficient to establish a prima facie case of the charges. The parties agreed to submit the motion on the transcript of the preliminary hearing. The Court has reviewed the preliminary hearing transcript and finds the following facts relevant to the motion.

On October 14, 2000, Sharon Myers was at the home of Mae Foltz and Harry Vining, babysitting their three year old daughter, Monica Vining,<sup>1</sup> and four other children. The Defendant, who had been living at the Foltz/Vining residence, was also at home. While Ms. Myers was attempting to change Monica, she thrashed around and tried to bite her. The Defendant intervened to assist with changing the diaper. (N.T. 3/16/01, p.4) After changing Monica, the Defendant stood her up to pull her pants on. Monica continued to thrash to get away from the Defendant. Ms. Myers testified that the Defendant grabbed Monica's wrist after it appeared that she tried to bite her. (Id., p.

7, 13) Ms. Myers testified that the Defendant had one hand on Monica's shoulder and one hand around her wrist. She testified that the Defendant was "trying to hold her from turning away from her because she was trying to talk to her and tell her to calm down and Monica just turned and didn't want to even listen to her." (Id., p. 18) At some point, Monica turned abruptly, and jerked away. Ms. Myers immediately heard Monica's arm snap. (Ibid.)

Ms. Myers testified that the Defendant told her that if she told anyone about the incident, she would beat her up. Ms. Myers called Monica's parents, who took Monica to the hospital for treatment. Ms. Myers did not tell anyone the truth about the incident until sometime in December, when she learned that the Defendant had told people that she was the one who injured Monica. (Id., p. 5)

Thomas Connelly, M.D., and orthopedic surgeon, testified that he was the treating physician for Monica on October 14, 2000. He testified that she has a humerus fracture, minimally displaced. He testified that Monica had to be sedated, and three emergency room nurses held her down during the procedure to cast the fracture. (Id., p. 29) Dr. Connelly testified that normally it would require substantial force to sustain such an injury, but testified that "someone with her medical condition, there are two reasons that I wasn't too worried about that. Number one reason is that she is uncontrollable, she flails about. Number two reason is that someone that is on epileptic medicine, their bones are a little bit weaker than other peoples bones because normally the medicine they use to treat epilepsy competes with Vitamin D so it sort of weakens the bones of that person." (Id., p. 30) Dr. Connelly testified that at the time of the incident he

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<sup>1</sup> Monica suffers from autism and epilepsy, which are characterized by episodes of aggressive behavior, including thrashing.

believed that it was merely an accident, and he did not suspect child abuse. (Id., p. 36)

The issue before the Court is whether the Commonwealth established a prima facie case of simple assault, and terroristic threats. 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. § 2701(a)(1), a person is guilty of simple assault if she intentionally, knowingly, or recklessly caused bodily injury to another. In the instant case, the Court finds the fact that the Defendant was not responsible for the child, the fact that the Defendant abruptly intervened where she was not needed, and the fact that she held the child's arm so tightly that it broke when the child turned away from her, establishes a prima facie case that the Defendant recklessly caused bodily injury to the child. The Court therefore DENIES Defendant's Motion to Dismiss this charge.

Under 18 Pa.C.S. § 2706, a person is guilty of terroristic threats if she, with the intent to terrorize the victim, threatened to commit a crime of violence. In the instant case, the Commonwealth has alleged that the Defendant, with the intent to terrorize Sharon Myers, threatened to beat her up if she told how the child's arm was broken. The Defense argues that the statement was made in a moment of hysteria brought on by the sound of the child's bone breaking, and did not seriously impair personal security or public inconvenience as the statute requires. The Court agrees.

The Superior Court has held that where a defendant's statements are the product of an angry and agitated emotional state of mind, the defendant does not possess the

requisite intent for conviction under Section 2706. See Sullivan, 269 Pa.Super. 279, 409 A.2d 888 (1979)(Defendant called State Police to his home to investigate his claim that Sheriff of the County had allegedly assaulted his father. Frustrated in the delay of response, Defendant called the barracks again and said “If you don’t want to send anybody down here, I have a .30-30 rifle and I’ll come up there and blow that son of a bitch’s head off.”) See *also* Commonwealth v. Anneski, 362 Pa.Super. 580, 525 A.2d 373 (1987), appeal denied, 516 Pa. 621, 532 A.2d 19 (1987) (Defendant told neighbor during confrontation that if neighbor ‘tried to run over her kids anymore at the bus stop’, she would bring a gun and use it.)

The Courts have found these two cases stand for the proposition that “statements which are ‘spur of the moment,’ that is the product of a heated exchange between parties made out of hysteria or anger that do not trigger foreseeable immediate or future danger, are not to be criminalized by 18 Pa.C.S.A. § 2706.” In the Interest of B.R. a Minor, 732 A.2d 633, 638 (Pa.Super. 1999). The Court would find that the statement made in the instant case, was “spur of the moment”, made in a moment of hysteria, and therefore does not possess the requisite intent required under the statute. The Court therefore GRANTS Defendant’s Motion to Dismiss this charge.

**ORDER**

AND, NOW, THIS \_\_\_\_\_ day of October 2001, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is DENIED with regard to the charge of Simple Assault, and GRANTED with regard to the charge of Terroristic Threats.

By The Court,

Nancy L. Butts, Judge

cc. CA  
Donald Martino, Esquire  
Roan Confer, Esquire  
Honorable Nancy L. Butts  
Judges  
Law Clerk  
Gary Weber, Esquire