

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. 01-11,345  
VS :  
ANTHONY EMMANUEL STEVENS :

**OPINION AND ORDER**

Before the Court is Defendant's Petition for Writ of Habeas Corpus. The Defendant has been charged with robbery, kidnapping, unlawful restraint, terroristic threats, simple assault, theft, and related charges as a result of an incident that occurred on July 29, 2001. A preliminary hearing was held on August 3, 2001 before District Magistrate, Allen P. Page, 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 of kidnapping, unlawful restraint, and robbery. 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.

Shank Valentine testified that on July 29, 2001, between 1:00 and 2:00 a.m., he picked up the Defendant near the Radisson Hotel entrance. Valentine testified that a mutual friend, Robin Shifflet, had asked him to pick the Defendant up and drive him to her residence on Locust Street. (N.T. 8/3/01, p. 12) Upon getting into the car, the Defendant pulled out a .45 automatic gun from his shirt, and accused Valentine of being a snitch. (Id., p. 4) Valentine denied the Defendant's accusations. Valentine testified that the Defendant threatened to shoot his "D' cap off, you know what I mean, that he

was going to shoot me.” (Id., p. 5) The Defendant then ordered Valentine to empty his pockets, and take off his shirt and shoes. The Defendant took a cell phone and \$40.00 from Valentine’s belongings. (Id., p. 5)

After a few moments, the Defendant put the gun back into his shirt, and directed that Valentine drive him to Ms. Shifflet’s address.<sup>1</sup> The Defendant got out of the vehicle at that address, and while waving his gun, asked Ms. Shifflet whether Valentine was a snitch. Ms. Shifflet denied the Defendant’s accusations. (Id., p. 6) Valentine testified that he tried to calm the Defendant down, because he did not want to draw more attention to the situation. He then offered to take the Defendant back to the hotel where he had picked him up. Upon dropping the Defendant off, Valentine asked for his cell phone back, but the Defendant refused. (Id., p. 7)

The issue before the Court is whether the Commonwealth established a prima facie case of kidnapping, unlawful restraint, and robbery. 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. § 2901(a)(2) a person is guilty of kidnapping if he unlawfully removes another a substantial distance under the circumstances from the place where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, to facilitate commission of any felony or flight thereafter. In the instant case, the Court finds that there was no evidence presented by the Commonwealth that the victim was removed a substantial distance from where he was found, or that he was confined for a substantial

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<sup>1</sup> Valentine testified that the trip to Ms. Shifflet’s address lasted approximately five (5) minutes. At no time during the trip did the Defendant directly point the gun at Valentine.

period in a place of isolation. The Court therefore finds that the evidence was insufficient to establish a prima facie case of the charge of kidnapping.

Under 18 Pa.C.S. § 2902(a)(1) a person commits the offense of unlawful restraint if he knowingly restrains another unlawfully in circumstances exposing him to risk of serious bodily injury. Mere apparent ability to inflict harm is not enough to support a conviction of unlawful restraint. Actual danger of harm must be shown. Commonwealth v. Trowbridge, 261 Pa.Super. 109, 395 A.2d 1337 (1978). The court in Trowbridge held that the Commonwealth must prove that a gun was actually loaded, or that the surrounding circumstances were inherently dangerous in order to sufficiently show an actual danger of serious bodily injury. See also Commonwealth v. Schilling, 431 A.2d 1088, 288 Pa.Super. 359, Super.1981. In the instant case, the Court finds that the Commonwealth has not shown that the gun used by the Defendant was actually loaded, or that the surrounding circumstances were inherently dangerous. The Court therefore finds that a prima facie case has not been established.

Under 18 Pa.C.S. § 3701(a)(1)(ii), a person is guilty of robbery if he, in the course of committing a theft, threatens another with or intentionally puts him in fear of immediate serious bodily injury. The Commonwealth produced evidence that the Defendant, while holding out a gun, demanded that Valentine remove his shirt and shoes, and empty his pockets. The Defendant then took a cell phone and \$40.00 from Valentine's belongings. Valentine testified that the Defendant threatened to shoot him, and that he was afraid. The Court finds this evidence sufficient to establish a prima facie case of robbery.

**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 GRANTED with respect to the charges of kidnapping and unlawful restraint, and DENIED with respect to the charge of robbery.

By The Court,

Nancy L. Butts, Judge

cc. CA  
Edward J. Rymsza, Esquire  
Robert Ferrell, Esquire  
Honorable Nancy L. Butts  
Judges  
Law Clerk  
Gary Weber, Esquire