

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

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-12,140
	:
	:
vs.	: CRIMINAL DIVISION
	: Pre-Trial Motion
ALEXANDER R. BOBOTAS,	:
Defendant	:

OPINION AND ORDER

Defendant has been charged with two (2) counts of aggravated assault, three (3) counts of simple assault, resisting arrest, obstructing the administration of justice, two (2) counts of disorderly conduct and two (2) counts of harassment, as a result of an incident on October 19, 2001, wherein Defendant allegedly fought with a South Williamsport police officer who came to Defendant’s residence in the process of investigating a hit and run accident involving Defendant’s girlfriend, who also resided at the residence with Defendant. In the instant pre-trial motion, Defendant seeks to dismiss all charges, to suppress all evidence, and also asks for a Writ of Habeas Corpus. Argument on the motion was heard April 8, 2002, at which time briefs were directed. Defendant filed his brief on April 18, 2002, the Commonwealth filed a response on May 6, 2002, and Defendant mailed a letter to the Court, dated May 7, 2002, in response to the Commonwealth’s brief.

In both the motion to dismiss and the motion to suppress, Defendant contends either or both remedies are appropriate based upon the officer’s alleged violation of the Statewide Municipal Police Jurisdiction Act. 42 Pa. C.S. Section 8953. The Court does not agree with Defendant that the Act was violated.

The officer involved, Officer Mark Giza, of the South Williamsport Police Department, indicated in his testimony that he was investigating a hit and run accident, wherein unattended property

was damaged, in his jurisdiction, South Williamsport, that he was given information indicating that Defendant's girlfriend was involved in the hit and run accident, and went to Defendant's girlfriend's residence, also Defendant's residence, in Armstrong Township, as part of that investigation. The Statewide Municipal Police Jurisdiction Act provides for such a situation in Section (a)(4), by allowing an officer to enter the other jurisdiction "for the purpose of conducting official duties which arise from official matters within his primary jurisdiction", where "the officer has obtained the prior consent of the chief law enforcement officer of the organized law enforcement agency which provides primary police services to a political subdivision which is beyond that officer's primary jurisdiction. 42 Pa. C.S. Section 8953 (a)(4). It appears Armstrong Township is served by the state police and is without its own municipal police department. In Commonwealth v Sestina, 546 A.2d 109 (Pa. Super. 1988), the Court noted that in a declaration published in the Pennsylvania Bulletin on February 19, 1983 (Volume 13, No. 8), the state police commissioner granted the requisite consent in accordance with Section 8953 (a)(4) on behalf of the commanding officers of the local state police barracks throughout the state. Sestina also involved officers investigating a hit and run accident which occurred in one jurisdiction, but the perpetrator had gone to his residence, in another jurisdiction. The Court found the officer's actions in pursuing the investigation into the other jurisdiction appropriate under subsection (a)(4). The Court therefore rejects Defendant's contention that all charges must be dismissed and/or all evidence must be suppressed because Officer Giza "was acting outside of his jurisdiction at the time he came upon the Defendant's property."

The Petition for Writ of Habeas Corpus contends the evidence was insufficient to support the charges. At the preliminary hearing, the Commonwealth presented the testimony of Officer Mark Giza, with the South Williamsport Police Department. According to Officer Giza, on October 19, 2001, at approximately 10:00 p.m., he was investigating a hit and run accident involving Defendant's girlfriend. The officer pulled up to Defendant's residence and approached the house and as he did so, Defendant's girlfriend came out onto the porch. The officer told her why he was there and asked her to accompany him back to the scene of the accident and she agreed to go but had to go back into the house to get her shoes. The officer followed her back into the house and saw Defendant sleeping on

the couch. Defendant woke up and asked the officer why he was there. When the officer told Defendant why he was there, Defendant began yelling at his girlfriend. She then came back with her shoes on and she and the officer went outside and walked to the police vehicle. As Officer Giza was opening the door, Defendant, who apparently had followed them out, indicated that he wanted to go along. The officer told him that he would not allow him to go along and Defendant then said that his girlfriend would not go either and grabbed her arm and pulled her back. Officer Giza told Defendant that he was interfering with official business and told him to back off. Defendant asked Officer Giza if his girlfriend was under arrest and Officer Giza said no. Defendant then said that his girlfriend would not be going with him so Officer Giza said, "fine, she is under arrest", and then broke Defendant's grip from her arm. Defendant grabbed his girlfriend's arm again and according to Officer Giza, kept "getting more agitated and appeared to be losing control." Officer Giza asked Defendant to back off and as he did so he got out his pepper spray. Defendant kept advancing so Officer Giza tried to spray him with the pepper spray but the can didn't work. Defendant began laughing and kept advancing toward the officer. The officer put his can away, broke Defendant's grip from his girlfriend's arm, told Defendant to go back into the house and he did so. Officer Giza turned his attention to Defendant's girlfriend who now said she did not want to go with him, and he then advised her that she was under arrest and had to go with him. Officer Giza testified he heard the front door of the house open and heard Defendant say, "get him" and when he looked toward the house, he saw two Doberman pinchers coming out of the door toward him. One dog ran to the side of the yard but the other came growling and snarling and charging toward him. The dog was in a leaping position as the officer withdrew his gun from its holster and pointed the gun at the dog. The officer told Defendant to put his dogs back in the house or he would shoot them. Defendant came out of the house and just laughed at the officer. The officer testified that he believed he was in serious danger from the dogs but that he did not want to shoot them. According to Officer Giza, Defendant continued to laugh at him and taunt him, and told him to go ahead and shoot the dogs. The other dogs started to come over and Officer Giza said to Defendant, "I am going to shoot your dog now", and Defendant then called the dogs off and put them back inside. Officer Giza put his gun away and then tried to get Defendant's girlfriend

into the car but she was resisting his attempts. Defendant then came back, grabbed his girlfriend's arm and pulled her away again. Officer Giza broke Defendant's grip and took him to the ground. He tried to cuff him but Defendant got back up. The two went back to the ground again and fought on the ground for approximately six minutes. According to Officer Giza, Defendant was wrestling with him, swinging his arms with clenched fists and kicking at him. Officer Giza finally got Defendant into a sitting position on the ground, gripping him around his upper torso, when back-up officers showed up. Defendant started to fight again at that point but Officer Giza managed to get him handcuffed and into the vehicle. When the state police arrived, they took him out of the vehicle to search him but he began fighting again, kicking and spitting at the officers. He was then returned to the police vehicle.

First, Defendant contends the evidence was insufficient to support the charge of aggravated assault, 18 Pa. C.S. Section 2702 (a)(3). That particular version of aggravated assault prohibits a person from attempting to cause or intentionally or knowingly causing bodily injury to, among others, a police officer, in the performance of duty. Defendant contends the evidence was insufficient to show that Defendant either attempted to cause or intentionally or knowingly caused bodily injury to Officer Giza. He also contends the evidence was insufficient to establish that Officer Giza was a "police officer" or that he was acting "in the performance of duty" at the time in question. With respect to evidence of Defendant's attempt to cause or causing bodily injury to Officer Giza, the Court believes that the testimony showing that Defendant swung his arms with closed fists at Officer Giza and that he kicked Officer Giza, is sufficient to show an attempt to cause or causation of bodily injury. With respect to the contention Officer Giza was not a police officer acting in the performance of duty, Defendant argues that Officer Giza was not authorized to act as a police officer in Armstrong Township and therefore could not have been acting in the performance of duty at the time in question. The Court rejects this argument based on the discussion above, wherein it is concluded that Officer Giza's actions in entering Armstrong Township were in accordance with the provisions of the Municipal Police Jurisdiction Act.

Next, Defendant contends the evidence was insufficient to establish a prima facie case of aggravated assault with a deadly weapon, contending insufficient evidence to establish the dogs were

“deadly weapons”. “Deadly weapon” is defined by the Crimes Code, in relevant part, as any instrumentality which, in the manner in which is used or intended to be used, is calculated or likely to produce death or serious bodily injury. 18 Pa. C.S. Section 2301. The Court believes the Commonwealth has presented sufficient evidence to establish a prima facie case of assault with a deadly weapon inasmuch as Doberman pinchers do have a reputation for being capable of causing serious bodily injury, and the Commonwealth presented evidence that Defendant let the dogs out of the house, instructing them to attack the officer, thus showing Defendant’s intention to use them to produce serious bodily injury.

Next, Defendant contends the evidence was insufficient to support the charge of simple assault. The Court does not agree, for the same reason the evidence was found sufficient to support the charge of aggravated assault on a police officer. The evidence was sufficient to show that Defendant attempted to cause or intentionally, knowingly, or recklessly caused bodily injury to Officer Giza.

Next, Defendant contends the evidence was insufficient to support the charge of simple assault by physical menace. Defendant acknowledges Officer Giza’s testimony that he was in fear of the dog, but argues that there is no proof that Defendant could cause the dogs to act in a particular manner. The Court does not agree. Defendant instructed the dogs to attack Officer Giza and at least one of the dogs acted as though he were getting ready to do so. The Court finds the evidence sufficient to support the count of simple assault by physical menace.

Next, Defendant contends the evidence was insufficient to support the charge of resisting arrest. Specifically, Defendant argues that to support such a charge, the underlying arrest must be lawful, and since Officer Giza was outside of his jurisdiction at the time he arrested Defendant, the arrest was unlawful and therefore Defendant cannot be charged with resisting arrest. As noted above, Defendant was properly in Armstrong Township under Section 8953 (a)(4), inasmuch as he was conducting official duties which arose from an official matter within his primary jurisdiction. The arrest itself was lawful under subsection (a)(5), which provides that where an officer is on official business and views an offense, and makes a reasonable effort to identify himself as a police officer, and which

offense is a felony, misdemeanor, breach of the peace or other act which presents an immediate clear and present danger to persons or property, an arrest is proper. 42 Pa. C.S. Section 8953 (a)(5). When Defendant opened the door and instructed the dogs to attack Officer Giza, the officer observed the offense of aggravated assault with a deadly weapon and simple assault by physical menace. When Defendant continued to interfere with the officer's attempt to return Defendant's girlfriend to the scene of the accident, the officer observed the offense of obstructing the administration of justice. The officer was therefore justified in arresting Defendant even though he was outside of his primary jurisdiction. A charge of resisting arrest is therefore permissible. Although Defendant also argues the charge is not supported because the officer did not have probable cause to believe that Defendant had committed any offense when he arrested him, as just indicated, the officer directly observed at least three offenses.

Next, Defendant contends the evidence was insufficient to support the count of obstructing the administration of justice. The Court relies on the discussion above respecting Officer Giza's proper entrance into Armstrong Township and therefore his lawful attempt to continue his investigation, with which Defendant was interfering.

Next, Defendant contends the evidence was insufficient to support the charges of disorderly conduct. Both charges require a showing that the perpetrator acted with intent to cause public inconvenience, annoyance or alarm, or recklessly created a risk thereof. The evidence introduced at the preliminary hearing showed that Defendant's residence was in an area which was described by Officer Giza as "kind of desolate", that any neighbors were far away and could not be seen from Defendant's residence. The Court therefore agrees with Defendant that there was no public inconvenience, annoyance or alarm possible. These charges will therefore be dismissed.

Finally, Defendant contends the evidence was insufficient to support the count of simple assault, wherein the back-up officers are named as victims. The Court does not agree, as the testimony at the preliminary hearing indicated that Defendant kicked at the officers as they tried to search him. He therefore did attempt to cause bodily injury to them.

As the Court has found the evidence sufficient to support all but the charges of disorderly

conduct, the Petition for Writ of Habeas Corpus will be denied except with respect to those charges.

ORDER

AND NOW, this            day of May, 2002, for the foregoing reasons, Defendant's pre-trial motion is hereby granted in part and denied in part. Counts 7 and 8 of the information filed January 18, 2002 are hereby dismissed.

By the Court,

Dudley N. Anderson, Judge

cc:    DA  
      Peter Campana, Esq.  
      Gary Weber, Esq.  
      Hon. Dudley N. Anderson