

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CR-888-2020</b>
	:	
<b>vs.</b>	:	
	:	<b>CRIMINAL DIVISION</b>
<b>ALAN GARTH COHICK,</b>	:	
<b>Defendant</b>	:	

**OPINION**

**I. Introduction**

Following an incident that occurred on April 22, 2020, Defendant, Alan Cohick, was charged with Terroristic Threats pursuant to 18 Pa.C.S.A. § 2706(a)(1), Simple Assault pursuant to 18 Pa.C.S.A. § 2701(a)(3), Harassment pursuant to 18 Pa.C.S.A. § 3921(a), and Theft by Unlawful Taking or Disposition pursuant to 18 Pa.C.S.A. § 2709(a)(1). A preliminary hearing was held on July 15, 2020 at which time the alleged victim, Jeffrey Moore, and Trooper Earnest Joseph Capobianco, Jr. testified. All charges were bound over. Defendant filed a Motion for Writ of Habeas Corpus on October 15, 2020 seeking to dismiss all charges brought against him. After several continuances, a hearing was held on April 14, 2021.

**II. Factual Background**

At the preliminary hearing, Mr. Moore testified that on April 22, 2020, the Defendant “forced” his way into Mr. Moore’s home, which he rents from the Defendant. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 2.* Defendant had a key to enter the house; however, Mr. Moore did not invite the Defendant to his home and did not

let him in. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 3-4 and 6.* Mr. Moore explained that he had a three foot, double wedge axe propped underneath his doorknob, acting as a door lock, and that the Defendant “forced his way in, enough to kick the axe out . . . .” *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 2, 5, and 8.* Mr. Moore initially became aware of Defendant’s attempt to enter the house when he heard Defendant kicking the door. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 5.* However, there was no damage to the door. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 2.*

At some point after entering the residence, the Defendant picked up the axe and held it up in the air for approximately 20 seconds. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 2, 3, and 7.* This act caused Mr. Moore’s teenage son to scream and hide in his room. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 7.* After Mr. Moore called 911, the Defendant eventually left the house, placed the axe owned by Mr. Moore in his truck without Mr. Moore’s permission, came back to the house to attempt entry a second time but failed because Mr. Moore was holding the door shut. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 2, 8 and 9.* Thereafter, the Defendant left the property entirely. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 2.*

Mr. Moore testified that the Defendant did not say anything during this incident except that he wanted to talk to Mr. Moore and, after he realized Mr. Moore had called 911, that he was about to call 911 as well. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 3 and 6.* Mr. Moore also testified that he was scared and that he felt he

was being attacked. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 3.*

The investigating Trooper, Trooper Capobianco, explained that the axe was essentially being used as a deadbolt for the door, such that one end of the axe was underneath the door handle and the other was wedged under a nail in the floor. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 10.* He also stated that the screw had been knocked out of the floor when he was at the residence during his investigation. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 10.* Defendant admitted to the Trooper that he had possession of the axe and the Trooper found the axe in the bed of Defendant's truck. *See July 15, 2020 Preliminary Hearing Transcript at unnumbered page 10.*

At the time of the habeas corpus hearing, only Mr. Moore testified. In addition to his testimony at the preliminary hearing, Mr. Moore testified that he was upstairs sleeping when his son woke him due to the banging on the door. Defendant was one third of the way inside the door when Mr. Moore got to the bottom of the steps. He was in fear for his son and told him to go to his room. Mr. Moore stated that the screw holding the axe in place "busted," causing the axe to fall at which time Defendant entered the house and picked up the axe. Defendant was holding the axe up to his chin and "like he was going to use it." Mr. Moore also testified that he told Defendant to "get out."

### **III. Discussion**

When a Defendant chooses to test whether the Commonwealth has sufficient evidence to establish a *prima facie* case that he or she has committed a crime, the proper

means is a motion for habeas corpus. *Com. v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016), citing *Com. v. Carroll*, 936 A.2d 1148, 1152 (Pa. Super. 2007). “To demonstrate that a *prima facie* case exists, the Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant's complicity therein” and may do so by utilizing evidence presented at the preliminary hearing as well as submitting additional proof. *Id.*

It is well settled that the preliminary hearing is not a trial and the Commonwealth need not establish Defendant's guilt beyond a reasonable doubt at that stage. *Com. v. McBride*, 595 A.2d 589, 591 (Pa. 1991). Rather, the Commonwealth bears the burden of establishing a *prima facie* case “that a crime has been committed and that the accused is probably the one who committed it.” *Id.*; Pa.R.Crim.P. 141(d). Additionally, the weight and credibility of the evidence are not factors for the Court to consider. *Com. v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001); *see also Com. v. Huggins*, 836 A.2d 862, 866 (Pa. 2003) (holding that “[t]he evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury”). “Inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” *Com. v. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990).

Here, Defendant was charged with Simple Assault, Theft by Unlawful Taking or Disposition, Harassment, and Terroristic Threats. The Court finds that the Commonwealth has established a *prima facie* case for all charges except Terroristic Threats and therefore, our analysis will begin there. Pursuant to Section 2706, a person commits the crime of

terroristic threats “if the person communicates, either directly or indirectly, a threat to: (1) commit any crime of violence with intent to terrorize another . . . .” 18 Pa.C.S.A. § 2706(a)(1). The statute states that “‘communicates’ means conveys in person or by written or electronic means, including telephone, electronic mail, Internet, facsimile, telex and similar transmissions.” 18 Pa.C.S.A. § 2706(e). Mr. Moore was clear that the only thing Defendant said during the incident was that he wanted to talk to Mr. Moore and that he was about to call 911 as well. There was no evidence of any other type of communication presented. As Defendant’s statements made to Mr. Moore during the time of the incident do not communicate any crime, the Commonwealth has failed to establish a *prima facie* case of Terroristic Threats. Defendant’s motion is granted and the charge of Terroristic Threats is dismissed.

A person commits Simple Assault if he “attempts by physical menace to put another in fear of imminent serious bodily injury . . . .” 18 Pa.C.S.A. § 2701(a)(3). Thus, the Commonwealth must establish the following elements: (1) that the defendant attempted to put Mr. Moore in fear of imminent serious bodily injury, and took a substantial step toward that end, (2) that the defendant used physical menace to do this, and (3) that it was the defendant's conscious object or purpose to cause fear of serious bodily injury. *Com. v. Little*, 614 A.2d 1146, 1151 (Pa. Super. 1992).

Mr. Moore testified that the Defendant was banging and kicking at the door with enough force to bust a screw out of the floor and un-wedge an axe that was acting as a door lock. He also stated that the Defendant held up the axe, which was three feet in length with a double wedge, as if he was going to use it. Defendant’s actions placed Mr. Moore in enough

fear that he told his son to go to his room and felt the need to call the police. Mr. Moore also testified that he told Defendant to get out.

It is clear that the Defendant, through the use of physical menace such as holding up the axe and banging on the door hard enough to get inside, attempted to put Mr. Moore in fear of serious bodily injury. It is reasonable to infer that if a person is holding up an axe like he is going to use it, then that person is trying to scare another. Additionally, it is common knowledge that striking a person with an axe would cause serious bodily injury and it is also reasonable to infer that the Defendant had to know this. Therefore, the Commonwealth has established a *prima facie* case for Simple Assault and Defendant's motion is denied regarding that charge.

"A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with intent to deprive him thereof." 18 Pa.C.S.A. § 3921(a). Here, Mr. Moore testified that Defendant took his axe without Mr. Moore's permission and put it in the back of his truck. Additionally, Trooper Capobianco testified that the Defendant admitted he had possession of the axe and that he found the axe in Defendant's truck. Defendant took control of the axe by taking it out of Mr. Moore's home, placing it in his truck, and leaving with it. It is reasonable to infer that Defendant intended to deprive Mr. Moore of the axe when he took it and did not give it back, knowing that Mr. Moore was using it to lock his door. Therefore, the Commonwealth has established a *prima facie* case for Theft by Unlawful Taking and Defendant's motion is denied regarding that charge.

"A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person: (1) strikes, shoves, kicks or otherwise subjects the other person to

physical contact, or attempts or threatens to do the same . . . .” 18 Pa.C.S.A. § 2709(a)(1). Similar to the Simple Assault analysis above, it is reasonable to infer that Defendant intended to harass, annoy, or alarm Mr. Moore by repeatedly banging on the door, forcibly entering his home without permission, and holding up an axe as if to use it. Further, while there was no evidence presented that Defendant actually came into contact with Mr. Moore, it is conceivable that his actions constituted an attempt or threat to subject Mr. Moore to physical contact. Therefore, the Commonwealth has established a *prima facie* case for Harassment and Defendant’s motion is denied regarding that charge.

#### **IV. Conclusion**

Defendant’s Motion for Habeas Corpus is granted with regard to Terroristic Threats and that charge is therefore dismissed. The Motion is denied with respect to all other charges.

**ORDER**

**AND NOW**, this 21<sup>st</sup> day of April, 2021, for the reasons set forth above, it is **ORDERED AND DIRECTED** that Defendant's Motion for Writ of Habeas Corpus is hereby **GRANTED** with respect to the charge for Terroristic Threats which his hereby **DISMISSED**. The Motion is **DENIED** with respect to Simple Assault, Theft by Unlawful Taking or Disposition, and Harassment.

By the Court,

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Ryan M. Tira, Judge

RMT/ads

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