

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-870-2023
:
vs. : Opinion and Order re
: Petition for Habeas Corpus/
EDWARD NICHOLAS, : Omnibus Pre-Trial Motion
Defendant :
:

OPINION AND ORDER

Before this Court is Edward Nicholas' (Defendant) Omnibus Motion in the nature of a Habeas Corpus Motion. For the reasons set forth below the Court finds that sufficient evidence has been presented and shall deny the Defendant's Habeas Corpus motion.

At the hearing, the Commonwealth submitted a recording of the Defendant's preliminary hearing on July 11, 2023 as Commonwealth's Exhibit #1. The Commonwealth asserted that it established a *prima facie* case for all of the charges. Defendant has alleged that the lone witness presented by the Commonwealth did not testify to the sufficient facts to establish the elements of the crime.

Background

On June 26, 2023, Defendant was charged by the Williamsport Bureau of Police with the charges of Robbery, a felony of the first degree, Kidnapping, a felony of the first degree, Simple Assault, a misdemeanor of the second degree. At the preliminary hearing, the Commonwealth orally amended two additional charges Robbery, a felony of the third degree and Theft by Unlawful Taking, a misdemeanor of the first degree. These charges were filed from an incident that was alleged to have occurred on June 21, 2023 at the Sunoco Gas Station, 1431 High Street, Williamsport, PA. At the preliminary hearing, Defense Counsel conceded the Theft charge.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. *Id.* Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. *Commonwealth v. Dantzer*, 135 A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” *Commonwealth v. DiStefano*, 782 A.2d 574, 582 (Pa. Super. 2001); *see also Commonwealth v. Jones*, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. *Commonwealth v. Wojdak*, 466 A.2d 991, 997 (Pa. 1983); *see also Commonwealth v. Kohlie*, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “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.” *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003).

Did the Commonwealth present prima facie evidence of Robbery

Defendant is charged with two counts of Robbery, 18 Pa. C.S. §3701(a)(1)(ii) and 3701(a)(1)(v). “A person is guilty of robbery, if in the course of committing a theft, he threatens another with or puts him in fear of immediate serious bodily injury.” 18 Pa. C.S. §3701(a)(1)(ii). A person is guilty of robbery if, in the course of committing a theft, he physically takes or removes property from the person of another by force however slight. 18 Pa. C.S. §3701(a)(1)(v).

The evidence presented at the preliminary hearing showed that on June 20, 2023 Complainant, Jacob Beackley (Beackley), had been residing at an apartment at 661 Rose Street, and due to damages caused by an upstairs neighbor had to be relocated to another apartment within 661 Rose Street. The unit selected had been previously occupied by Defendant but because of its condition, Beackley was told by the landlord it was thought to have been vacated. Beackley described that he heard someone trying to remove the air conditioner unit from the apartment, he pulled aside the curtain, and saw Defendant and another dark-skinned person attempting to remove the unit.

Beackley testified that Defendant was incredibly angry because he didn’t know why he was in the Defendant’s apartment. Beackley said that the apartment was in “deplorable” condition and thought that it had been abandoned. Defendant told Beackley that he wanted \$625.00 from him representing rent for the month of June. Beackley said that he could not pay him that money as he had already paid rent for the month. Defendant told Beackley that he was lucky that he “didn’t beat him the fuck up.” Defendant also wanted to come into the apartment to see if some of his items were still in the apartment.

After an undefined period of time, Defendant and his companion proceeded to escort

Beackley to the nearest ATM about one-tenth of a mile away. They took a route to the Sunoco that used the alleys and not public areas. The three walked to the ATM at the Sunoco station on the 1400 block of High Street. Beackley told him that maybe he could give him \$100.00. Defendant told him that he needed \$300 or \$360. It was at this point that Beackley saw the blade in Defendant's pocket held in his fist. Beackley first withdrew \$200 and when Defendant said that it wasn't enough, authorized an additional \$100 be withdrawn and the Defendant took it from the machine himself.

When Beackley told Defendant that he needed to go to work, Defendant told him no and that he would "escort him back" to the apartment. They proceeded to go back to the Rose Street apartment. Once back at the apartment, Defendant expressed his satisfaction at receiving the \$300 and the Defendant and his companion left.

Beackley testified that he felt in fear for his life when he saw the knife and that he was "in shock." Since his premature child and its mother were in the apartment, he was so concerned for their safety that he decided to move them out and back up to a location in Cogan Station.

It is clear from the testimony that Beackley felt that he had no choice but to give him the money because he felt threatened by the Defendant with the knife and with the fact that Defendant threatened to beat him up. Since Defendant conceded the theft of the money, the question remains whether the Commonwealth's testimony establishes that Beackley was placed in fear of immediate serious bodily injury.

Beackley stated directly that when he was with Defendant and his companion that he felt in fear for his life and in shock when he saw the knife. Therefore, the Court finds that the Commonwealth has met its *prima facie* burden on this charge of robbery.

As to the robbery-force however slight charge, the Commonwealth needs to show a level of force to meet the requirement of the statute.

[A]ny amount of force applied to a person while committing a theft brings establishes the required elements under § 3701(1)(a)(v). This force, of course, may be either actual or constructive. Actual force is applied to the body; constructive force is the use of threatening words or gestures and operates on the mind.

Commonwealth v. Brown, 506 Pa. 169, 176, 484 A.2d 738, 741 (1984).

Beackley testified that with his 21-day old premature child and its mother in the apartment, he was worried what the Defendant would do. Testimony revealed that Defendant pushed his way into the apartment to see if his belongings were still there. Beakley described that Defendant was ‘very irate’ about him moving into Defendant’s apartment. He also told Beackley that he was lucky that the Defendant didn’t “beat him up.” Just from the words and physical behavior Beackley was placed in fear by the actions and behaviors of the Defendant along with the comment about beating him up because he didn’t know what the Defendant might do. The Court finds that this evidence is sufficient to establish that Commonwealth has established *prima facie* on this charge.

Did the Commonwealth present prima facie evidence on the charge of kidnapping

Defendant is charged with one count of Kidnapping. 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, with any of the following intentions: To hold for ransom or reward, or as a shield or hostage.

For purposes of the kidnapping statute, a substantial distance is not limited to a defined linear distance or a certain time period. *See Commonwealth v. Hughes*, 264 Pa. Super. 118, 399 A.2d 694, 696 (1979).

The determination of whether the victim was moved a substantial distance is evaluated “under the circumstances” of the incident. *See Commonwealth v. Chester*, 526 Pa. 578, 587 A.2d 1367, 1382 (1991), *cert. denied*, 502 U.S. 959, 112 S.Ct. 422, 116 L.Ed.2d 442 (1991). Further, “the guilt of an abductor cannot depend upon the fortuity of the distance he has transported his victim nor the length of time elapsed....” *Hughes*, 399 A.2d at 696.

Commonwealth v. Malloy, 579 Pa. 425, 446, 856 A.2d 767, 779 (2004).

“There is nothing in the robbery statute “... that the captors must convey their ransom demand to a third party.” All that is required is that “[t]he victim was *being held* by the defendant for ransom....” 42 Pa.C.S.A. § 9711(d)(3). An overt act toward execution of that purpose is sufficient to sustain the jury's conclusion that the victim was held for ransom.

Testimony presented at the preliminary hearing by the Commonwealth was that Beackley was taken by Defendant and his dark-skinned companion to get some money from the ATM at the High Street Sunoco station about one tenth of a mile away. Defendant was not going to be satisfied until he received some money from Beackley. Beackley testified that he “was escorted” on foot down back alleyways. Once Defendant received his money at the ATM, Beackley was not permitted to leave and was escorted back to his residence by Defendant. When they were back at the Rose Street address, Defendant finally told Beackley that he was satisfied with the money, and the Defendant and his friend left.

Although no one else was requested to satisfy the Defendant’s demand for money, it was clear that Beackley was being held so that Defendant could get his money. Despite the fact that Beackley was being moved to a location that was not isolated in the traditional sense, he was not free to move about or go to work until Defendant was satisfied with receiving the money he requested. Therefore, the Court is satisfied that the Commonwealth has met its burden of *prima facie* for this charge.

Did the Commonwealth present prima facie evidence on the charge of simple assault

Defendant is charged with Simple Assault by physical menace. In Pennsylvania, a person is guilty of 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).

The evidence presented at the preliminary hearing was that Beackley described how irate Defendant was when he came to his house. Between the comments that he made while he was talking to Beackley at the apartment about being lucky that he didn't beat him up to seeing the knife in Defendant's pocket, Beackley said that he was in fear for his life and had no words to explain how he was feeling because he was in shock. The Court finds that the evidence presented was sufficient to establish a *prima facie* case.

Conclusion

The Commonwealth presented prima facie evidence for all of the charges. Accordingly, the Court will deny Defendant's Petition for Habeas Corpus contained in his Omnibus Pre-Trial Motion.

ORDER

AND NOW, this 4th day of June, 2024, the court DENIES Defendant's Petition for Habeas Corpus contained in his Omnibus Pre-Trial Motion.

By The Court,

Nancy L. Butts, President Judge

NLB/

cc: DA (Martin Wade)
Tyler S. Calkins, Esquire
Gary Weber, Esquire
Jerri Rook