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

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| **COMMONWEALTH** | **: No. CR-1272-2023** |
| | **:** |
| **vs.** | **:** |
| | **: Opinion and Order re Defendant's** |
| **NATHAN ADDISON RILEY,** | **: Petition for Writ of Habeas Corpus/** |
| **Defendant** | **: Motion to Dismiss** |

## OPINION AND ORDER

This matter came before the court on February 5, 2024 for a hearing and argument on Defendant's Petition for Writ of Habeas Corpus ("Habeas"). Defendant is charged with Aggravated Assault (putting a designated person in fear of imminent serious bodily injury);[1] simple assault (putting another in fear of imminent serious bodily injury);[2] terroristic threats;[3] possession of a weapon;[4] and disorderly conduct (creating a hazardous/physically offensive condition).[5] In his Habeas, Defendant seeks dismissal of all of the counts except possession of a weapon.

At the hearing and argument on the Habeas, the Commonwealth introduced a photograph of a residence as Commonwealth Exhibit #1, the transcript of the preliminary hearing transcript as Commonwealth Exhibit #2, and two prison phones calls of Defendant as Exhibits #3 and #4.[6] The Commonwealth called two witnesses at the preliminary hearing – Children and Youth Services (CYS) caseworker Kelsey Hecknauer and Williamsport Bureau

[1] 18 Pa. C.S. §2702(a)(6).
[2] 18 Pa. C.S. §2701(a)(3).
[3] 18 Pa. C.S. §2706(a)(1).
[4] 18 Pa. C.S. §907(b).
[5] 18 Pa. C.S. §5503(a)(4).
[6] These calls were submitted on a single disc.

of Police (WBP) Agent Benjamin Hitesman.

Ms. Hecknauer testified that she is employed at Lycoming County Children and Youth as an assessment caseworker. An assessment worker goes out on cases that come in and they have 30 to 60 days to assess a case. On September 27, 2023, she made an unannounced visit to 427 Louisa Street to contact the family that lived there. She knocked on the door and heard kids in the house. She did not call ahead because she needs to see what is going on in the home. She testified that she can't leave when she hears kids in the house, especially if she doesn't know if there is an adult in the house. After about 30 minutes a black male answered the door and told her to get the F out there. He opened the door very, very little and was peeking out, yelling at her through the door. He wondered why she was knocking on the door so aggressively and she told him that she couldn't leave when she heard kids in the house and all he needed to do is answer the door. He told her to "f'ing" leave again. Due to his aggressiveness, Ms. Hecknauer's supervisor was on her way. Ms. Hecknauer went back to her car, which was directly across the street, to await her supervisor's arrival. As she was sitting in her car, a white male dressed in red came out of the house very aggressively with a gun in his right hand. It was down by his hip but in his hand. He intentionally made eye contact with her, staring at her. She sped off because of the gun in his hand. She couldn't hear anything because her windows were up. He came out of the house and went to the top step of porch. She was on the phone with her supervisor who asked if she was sure it was a gun in his hand. Ms. Hecknauer said, "yes, it is a gun in his hand." Her supervisor told her to leave and she sped off. The gun was black. Ms. Hecknauer identified Defendant as the individual who came out of the house with the gun.

Agent Hitesman testified that the police received a call about the incident. Officer

Corter and Officer Carrita went to the front door and he went to the rear of the residence. Officers Corter and Carrita knocked on the front door multiple times, but no one came out. Officer Corter went towards his vehicle and the back door opened. The individual described by Ms. Hecknauer started to come out of the door. He cracked the door open, and Agent Hitesman told him to come out with his hands up. Defendant was wearing a red baseball hat, a red Dale Earnhardt, Jr. jacket and sunglasses. He came out of the house, complied with Agent Hitesman's commands, and was placed under arrest. He was searched incident to arrest and a black BB gun was tucked in his front waistband. The BB gun was all black. This incident occurred in the afternoon.

While incarcerated at the Lycoming County Prison, Defendant made telephone calls in which he talked about what happened during the incident. The Commonwealth submitted two calls in opposition to Defendant's habeas corpus petition. In the first call made on September 29, 2023 at approximately 10:30 a.m., Defendant told the person with whom he was speaking that he was at Charlie's house and "this bitch" came over from Children and Youth and "threatened" Charlie. Apparently, she had a problem with Charlie before and she got out of hand and he went out and said if you come back here and threaten her again, there's gonna be a problem. She left and came back with the cops and said that he threatened her with my BB gun. He was charged with aggravated assault, simple assault, terroristic threats, possessing a gun -which is a f****in' BB gun- and disorderly conduct. He didn't even know they (the police) were there for him. He thought they were there for Tyree because Tyree had said some f****in' shit to her, too and he didn't even know. They (the police) were tryin' to get him to talk while they were there. They kept askin' where's Tyree. He told them, "I don't know where the f*** Tyree is and what makes you think I would tell

you shit." When he got to the station, he was surprised they didn't charge me because he tried to "bolt" (escape). He said, "I got out of the cuffs and I bolted and they locked the f***in' door before I could get out. My hands still hurt from that shit. I put water on my hand and I slipped right out of the cuffs. I wasn't playin'. They are not about to take me away from my loved ones." He also mentioned that another female friend told him he'd get in trouble for carry that (the BB gun) around.

In the second call, Defendant said things like:

(1) I had it out with the lady.

(2) All I did is say if she came back and she threatened Charlie again then there's gonna be a f***in' problem.

(3) I was mad as f*** and fuming.

(4) I told workers outside, if she comes back you gotta let me know. I said my name is Nate. If you see her come back in that white vehicle, you let me know and I walked back into the house.

(5) I was showin' Charlie the gun and how it works. I had it in my hand; it was pointed at the ground, though. It wasn't pointed at anybody. I kept it on me because I didn't want anybody else in the house getting their hands on it. I kept it in a safety thing. Like where else was I supposed to f***in' put it.

(6) She's trying to tell me I had it in my waistband and I pulled it out when I ripped the door open. Bullshit! Bullshit! That don't even f***in' sound like me.

(7) If I wanted to shoot, I would. I don't play with that shit.

(8) I literally tried to bolt out of the police station. My hands still hurt.

(9) I don't even know the name of that bitch. She had a problem with her before. The

only reason I went out there was because Charlie said the lady threatened her and I lost my cool.

**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 also may submit additional proof. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (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).

Defendant is charged with aggravated assault in violation of 18 Pa. C.S. §2702(a)(6), which states:

> A person is guilty of aggravated assault if he: . . . (6) attempts by

> physical menace to put any of the persons enumerated in subsection (c), while in the performance of duty, in fear of imminent serious bodily injury.

An employee or agent of a county children and youth social service agency is a person enumerated in subsection (c). 18 Pa. C.S. §2702(c)(35).

Ms. Hecknauer is an employee of Children and Youth Services, who was at the Louisa Street residence to conduct an assessment. Therefore, she was an enumerated person while in the performance of duty.

After she left the porch of the residence and went across the street to await the arrival of her supervisor, Defendant came out of the residence with a gun in his hand, walked across the porch and stared her down. Ms. Hecknauer did not know that the black gun in Defendant's hand was a BB gun. Her windows were up so she did not hear what Defendant was saying. She sped away instead of waiting for her supervisor.

From Defendant's phone calls, it is clear that he was angry and "lost his cool." As evidence from what he said to others, he didn't want Ms. Hecknauer there, and he didn't want her coming back. When he exited the residence, he had the BB gun in his hand and he stared directly at Ms. Hecknauer. Although he did not point it at Ms. Hecknauer and she could not hear what he said or was saying, one could infer from all of the facts and circumstances that Defendant was trying to chase Ms. Hecknauer away. He succeeded. She sped away in fear that he was going to try to shoot her. A jury could reasonably infer consciousness of guilt from Defendant's attempt to leave the rear of the residence when Officer Corter, who was in front of the residence, went back towards his police vehicle and Defendant's attempt to "bolt" from the police station.

When someone sees an angry, aggressive individual with what appears to be a black

gun in his hand, that someone is typically put in fear of being shot and suffering death or serious bodily injury.

At this stage of the proceedings, the court cannot make credibility determinations and it must view the evidence and all reasonable inferences from the evidence in favor of the Commonwealth. From the totality of the circumstances, a jury could reasonably infer that Defendant by physical menace attempted to put Ms. Hecknauer in fear of imminent serious bodily injury when he aggressively and angrily came out of the residence with what looked like a black gun in his hand. The fact that she sped away in response tends to show that he was successful in putting her in fear of serious bodily injury and scaring her away.

In the petition for habeas corpus, defense counsel cited several cases for the proposition that pointing a weapon at someone is insufficient to establish aggravated assault.[7] Therefore, counsel argued that merely possessing a gun at one's side without pointing it also would be insufficient. These cases, however, involved violations of 18 Pa. C.S. §2702(a)(1), which requires the person to attempt to cause or to cause serious bodily injury. Therefore, these cases are distinguishable. Here, Defendant is charged with attempting by physical menace to put Ms. Hecknauer **in fear** of imminent serious bodily injury in violation of 18 Pa. C.S. §2702(a)(6). While Defendant did not attempt to actually cause serious bodily injury to

[7] The defense counsel relied on *Commonwealth v. Alford*, 880 A.2d 660 (Pa. Super. 2005) where there was insufficient evidence to establish aggravated assault, and compared this case favorably with *Alford*. Defense counsel also cited cases with factual circumstances where the appellate courts affirmed convictions for aggravated assault and noted how those factual circumstances were more egregious than those in this case, such as *Commonwealth v. Matthew*, 909 A.2d 1254 (Pa. 2006)(defendant held a loaded weapon up to the victim's throat and said, "You're f***ing dead. I'm going to f***ing kill you."); *Commonwealth v. Fortune*, 68 A.3d 980 (Pa. Super. 2013)(the defendant pointed a gun at the victim and said he was going to "blow her head off");and *Commonwealth v. Gruff*, 822 A.2d 773 (Pa. Super. 2003)(while touching a bayonet to the victim's throat, the defendant said "I just ought to kill you."). These cases all involved the sufficiency of evidence for a conviction of an offense under 2702(a)(1); in other words, proof beyond a reasonable doubt for a different type of aggravated assault. None of them involved a *prima facie* showing nor a violation of (a)(6), as opposed to (a)(1).

Ms. Hecknauer, his actions put her in fear of imminent serious bodily injury.

The court would rely on *Commonwealth v. (Lamar) Williams*, 847 EDA 2021, 279 A.3d 1282, 2022 WL 1657221 (Pa. Super., May 25, 2022)(nonprecedential) for its persuasive value. In *Williams*, the defendant placed an unknown hard object against the victim and demanded money. The defendant was found guilty of robbery and related offenses, and he claimed on appeal that the evidence was insufficient to uphold his robbery conviction. Like Defendant, he relied on *Alford* to claim that the evidence was insufficient to show that, in the course of committing a theft, he threatened or attempted to put the victim in fear of imminent serious bodily injury required for a conviction of robbery in violation of 18 Pa. C.S. 3701(a)(1)(ii). The Superior Court found that because robbery only required the intent to place another **in fear of** imminent serious bodily injury, *Alford* was not controlling. *Id*. at *4 (emphasis original). Here, like *Williams*, the Commonwealth was only required to show that Defendant attempted by physical menace to put Ms. Hecknauer in fear of imminent serious bodily injury.

A fact-finder is free to conclude that an accused intends the natural and probable consequences of his actions. *See Commonwealth v. Rosado*, 684 A.2d 605, 608 (Pa. Super. 1996). The natural and probable consequence of a defendant aggressively and angrily exiting a residence while in possession of a weapon, even a BB gun, is that he will cause people to fear that he will use the weapon to shoot them, particularly the person or persons with whom he is angry. In Defendant's own words, he "lost his cool" and "was mad as f*** and fuming."

Based on the totality of the circumstances presented in the preliminary hearing transcript and Defendant's phone calls, the court finds that the Commonwealth presented

sufficient evidence to establish a *prima facie* case for aggravated assault by putting an enumerated person in fear of imminent serious bodily injury.

In Count 2, Defendant is charged with simple assault in violation of 18 Pa.C.S. §2701(a)(3), which states that "a person is guilty of assault if he: . . . (3) attempts by physical menace to put another in fear of imminent serious bodily injury." This offense is a lesser-included offense of Count 1, Aggravated Assault. The only difference is that for Count 2, Simple Assault, the victim can be any person. Therefore, for the same reasons as aggravated assault, the court finds that the Commonwealth has presented sufficient evidence to establish a prima facie case of simple assault.

The court would also rely on *Commonwealth v. Little*, 614 A.3d 1146 (Pa. Super. 1992). In *Little*, deputy sheriffs went to the defendant's residence to perform a writ of execution in mortgage foreclosure and to serve the owners with a notice of sale. The defendant came out the residence cradling a shotgun in her arm, yelling obscenities at them and behaving in a belligerent and hostile manner. The deputies called for state police back-up, but ultimately abandoned their task and left for fear that the defendant was going to use the weapon. The defendant was charged with and convicted of simple assault by physical menace. The defendant appealed and contended that the evidence was insufficient to support the conviction. The Superior Court rejected the defendant's contentions. Although the defendant never pointed the weapon at the deputy sheriffs, her overall demeanor and actions were designed to, and did in fact, put the deputies in fear of imminent serious bodily injury. *Id*. at 1148 & n.2.

Other than the fact that the defendant in *Little* entered and exited the residence multiple times carrying the shotgun, rather than just once, *Little* is similar to the case at bar.

Ms. Hecknauer called her supervisor. This was Ms. Hecknauer's version of calling for back-up. The supervisor asked if she was sure Defendant had a gun and Ms. Hecknauer said "yes, it is a gun in his hand." Defendant looked around and locked eyes with Ms. Hecknauer. It was her impression that Defendant was looking for her. Ms. Hecknauer did not know that the black gun was a BB gun. As in *Little,* although Defendant never pointed the BB gun at Ms. Hecknauer, Defendant's actions were designed to scare Ms. Hecknauer away by placing her in fear of being shot.

In Count 3, Defendant is charged with terroristic threats. "A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to commit any crime of violence with intent to terrorize another." 18 Pa.C.S.A. § 2706(a)(1). The purpose of this statute is to impose criminal liability on those who make threats which seriously impair personal security or public convenience. 18 Pa. C.S. §2706, comment. The harm to be prevented is the psychological distress that follows from an invasion of another's sense of personal security. *Commonwealth v. Martinez*, 153 A.3d 1025, 1029 (Pa. Super. 2016)(quoting *In re B.R.*, 732 A.2d 633, 636 (Pa. Super. 1999)).

Although Ms. Hecknauer did not hear Defendant's statement that there was going to be a "f***ing" problem, she received the message nonetheless based on Defendant's conduct - the way Defendant aggressively and angrily exited the residence, walked across the porch and stared directly at her while holding a gun (that turned out to be a BB gun) in his hand.

Based on the totality of the circumstances viewed in the light most favorable to the Commonwealth, the court finds that the Commonwealth established a *prima facie* case that Defendant committed the crime of terroristic threats.

Defendant has not requested habeas corpus relief with respect to Count 4,

possession of a weapon.

In Count 5, Defendant is charged with disorderly conduct in violation of 18 Pa. C.S. §5503(a)(4), which states:

> A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:
> * * *
> (4) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

A hazardous condition is one that "involves danger or risk" or the "possibility of injuries resulting from public disorders." *Commonwealth v. Coniker*, 290 A.3d 725, 735-36 (Pa. Super. 2023).

The court finds that the Commonwealth has presented a *prima facie* case that Defendant committed disorderly conduct by creating a hazardous condition. From the totality of the circumstances, including Defendant's phone calls, one could conclude that Defendant recklessly created a risk of public inconvenience, annoyance or alarm by carrying a BB gun in his hand at his hip when he exited the residence with the purpose of confronting Ms. Hecknauer. What would have happened if he had come out of the residence while Ms. Hecknauer was still on the porch?

Defendant carrying the BB gun also created a hazardous condition. The BB gun created a danger or risk of injuries to Ms. Hecknauer and others, not only from the potential for Defendant to fire the weapon but also from the potential for the BB gun to accidentally discharge during the course of any disagreement or confrontation or any attempt to disarm Defendant.

It is unclear why Defendant even became involved in this matter. It does not appear that Ms. Hecknauer was at the residence to see him or that any of children at the residence

that she was there to check on were his. Instead, it appears that Ms. Hecknauer was there to see "Charlie" and her children. From the phone calls, it doesn't even seem like Defendant resided at the Louisa Street residence.[8] Ms. Hecknauer left the porch and returned to her vehicle after the black male yelled at her to leave. Ms. Hecknauer was not armed and she was just trying to do her job. There was no apparent reason for Defendant to go out on the porch with his BB gun. Therefore, the evidence shows that the act served no legitimate purpose of the actor.

**Conclusion**

Although the Commonwealth could have made a better record at the preliminary hearing or at the hearing on Defendant's petition, which could have required fewer inferences in this case,[9] the court finds that the Commonwealth presented enough evidence to establish a *prima facie* case for aggravated assault, simple assault, terrorist threats and disorderly conduct. The fact finder is not required to make those inferences and whether the fact finder choses to do so in light of the fact that Defendant never raised the gun and never pointed it at anyone is a question for trial if the parties cannot reach an amicable resolution of this case.

**ORDER**

**AND NOW**, this 20th day of August 2024, the court DENIES Defendant's Petition for Writ of Habeas Corpus/Motion to Dismiss.

By the Court,

[8] The court also would take judicial notice that the address listed on the criminal complaint for Defendant is on Hepburn Street, not Louisa Street.

[9] For example, the prosecutor could have asked Ms. Hecknauer what concerns, if any, she had when she saw Defendant exit the residence with a gun in his hand and stare at her or ask her why she drove away before her supervisor or the police arrived to try to get the witness to expressly state that she was concerned that Defendant would use the gun or that she felt that she was in danger of death or serious bodily injury.

_____
Nancy L. Butts, President Judge

cc: Jessica Feese, Esquire (ADA)
Alyssa Fenoy, Esquire (APD)
Jerri Rook

NLB/laf