

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 vs. : No. 133-CR-2012  
 :  
 CARLOS AGUIRRE, :  
 Defendant :

Cynthia Dyrda-Hatton, Esquire  
Assistant District Attorney  
Brian B. Gazo, Esquire  
Counsel for the Commonwealth  
Counsel for the Defendant

Matika, J. - May 30, 2012

MEMORANDUM OPINION

Before the Court is Defendant's "Motion to Quash/Habeas Corpus" pertaining to the charges of Aggravated Assault (One Count) and Endangering the Welfare of Children (Two Counts). For the reasons stated in this Opinion, we grant this Motion in part and deny it in part.

FACTUAL AND PROCEDURAL BACKGROUND

On or about December 29, 2011, the Defendant, Carlos Aguirre, was charged with Aggravated Assault [18 Pa.C.S.A. §2702(a)(1)], Simple Assault [18 Pa.C.S.A. §2701(a)(1)] and Harassment [18 Pa.C.S.A. §2709(a)(1)]. A preliminary hearing was scheduled and held on February 1, 2012. At that time, the

Commonwealth amended the Complaint to add two (2) counts of Endangering Welfare of Children [18 Pa.C.S.A. §4304(a)(1)].

At this preliminary hearing, the victim, Arlene Aguirre, testified that she had been in Hazleton getting shoes for her two (2) young children. Upon leaving Hazleton, she had a text conversation with her husband, the Defendant, about her returning home to Lansford, Carbon County, PA with the children. The victim testified that the Defendant suggested she "not bring the kids home". When she pressed him for a reason why she shouldn't bring them home, and asked him if he was going to do anything stupid, he didn't answer back.

The victim further testified that when she and the children did in fact get home, the Defendant was there with a beer in his hand. The victim testified that her husband was intoxicated. After both the victim and the Defendant proceeded to the upstairs bedroom, the Defendant began to accuse the victim of infidelity, and then, according to the victim, the Defendant began punching her in the face. He eventually threw her to the ground and was "kicking, punching and stomping on every part of her body" while calling her names such as "whore", "bitch", "liar" and "slut". At one point the victim testified that the Defendant dragged her into the bathroom and began to shave her head. While in the bathroom, the Defendant put his hands around her throat and began to choke her. The victim was able to break

free and ran outside, however, she fell to the ground and was dragged back toward the house by the Defendant. The victim was able to grab a chair and throw it at the Defendant to break free for good. She then ran to the neighbor's house to call the police.

While she waited for the police, the Defendant was outside by his vehicle. He then returned into the house, where after a few minutes, he exited the home again, got in his vehicle and drove off. Victim testified that the two young children were still in the house this entire time. Once the police arrived, the victim returned to the house to retrieve her children.

The victim also testified that as a result of the assault by the Defendant, she suffered multiple scrapes and bruises about her face, legs, hip and ribs, in addition to a swollen lip and right eye necessitating a trip to the hospital. She also testified that, as a result of being punched in the mouth she suffered damage to her front right tooth that eventually resulted in a diagnosis of the necessity for a root canal.

After the Commonwealth presented its evidence at the preliminary hearing, Magistrate District Judge Kosciolk bound all charges over to the Court of Common Pleas. We are now called upon to review the record to determine the sufficiency of the evidence supporting the Aggravated Assault and Endangering Welfare of Children charges.

## DISCUSSION

Defendant has requested that we dismiss both the Aggravated Assault and Endangering Welfare of Children charges due to a lack of evidence being presented at the preliminary hearing, as well as that evidence presented at the hearing held before this Court on April 23, 2012<sup>1</sup>.

"The basic principles of law with respect to the purpose of a preliminary hearing is well established, the principal function of which is to protect an accused's rights against an unlawful arrest and detention. At this stage of the process, the burden of showing that a prima facie case has been established, i.e., that a crime has been committed and the accused is probably the one who committed it, falls squarely on the Commonwealth. In order to meet that burden the Commonwealth is required to present evidence with regard to each of the material elements of the charge and to establish probable cause to believe the accused committed the crime".

Commonwealth v. McBride, 528 Pa. 153. (1991) (Citations omitted).

In passing judgment on a Writ of Habeas Corpus and a challenge to the prima facie case, we are required to view all evidence in the light most favorable to the Commonwealth. Commonwealth v. Packard, 767 A2d 1068, 1070 (Pa.Super. 2001).

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<sup>1</sup> At the hearing on the Motion to Quash/Habeas Corpus, the parties stipulated to allowing the transcript of the preliminary hearing to stand as the primary evidentiary basis to support the Commonwealth's case. In addition, however, the Commonwealth presented additional evidence and testimony to support the prima facie cases on these charges. In a Habeas Corpus proceeding, the Commonwealth has the opportunity to present additional evidence to establish that the Defendant committed the elements of the offenses charged. Commonwealth v. Karlson, 674 A2d 249 (Pa.Super. 1996).

AGGRAVATED ASSAULT - 18 Pa.C.S.A. §2702(a)(1)

§2702(a)(1)5121 provides in relevant part that:

"A person is guilty of Aggravated Assault if he: (1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life."

18 Pa.C.S.A. §2702(a)(1)

Serious bodily injury is defined as:

"Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ."

18 Pa.C.S.A. §2301.

The question before the Court is, did the Commonwealth present a prima facie case against the Defendant as to whether or not his conduct caused serious bodily injury or his actions were such that, taken as a whole, he attempted to cause serious bodily injury?

"A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime."

18 Pa.C.S.A. §901(a).

An attempt requires a showing of some act, albeit not one causing serious bodily injury, accompanied by an intent to inflict serious bodily injury. Commonwealth v. Alexander, 383

A2d 887, 889 (1978). A person acts intentionally with respect to a material element of an offense when it is his conscious object to engage in conduct of that nature or to cause such a result. 18 Pa.C.S.A. §302(b)(1)(i).

Aggravated assault does not require proof that serious bodily injury was inflicted, but only that an attempt was made to cause such injury. Commonwealth v. Rosado, 684 A2d 605. 608 (Pa.Super. 1996). Where the victim does not sustain serious bodily injury, the Commonwealth must prove that the Defendant acted with specific intent to cause serious bodily injury. Commonwealth v. Dailey, 828 A2d 356, 359 (Pa.Super. 2003).

The Alexander court created a "totality of the circumstances test" to ascertain whether a Defendant possessed the requisite intent to inflict serious bodily injury. Alexander made clear that "Simple Assault combined with other surrounding circumstances may, in a proper case, be sufficient to support a finding that an assailant attempted to inflict serious bodily injury, thereby constituting Aggravated Assault." Commonwealth v. Matthew, 589 A2d 487, 492 (Pa.Super. 2006).

The circumstances as testified to by the victim provide sufficient evidence to establish a prima facie case of Aggravated Assault, i.e. an attempt to inflict serious bodily injury. The victim's recitation of the conversations between herself and the Defendant (don't bring the kids home, calling

the victim various unpleasant names and accusing her of infidelity) coupled with how, where and for how long the Defendant punched, kicked and stomped all over various body parts of the victim, (face, back, legs, hips, to name a few) and the Defendant's choking and dragging the victim presents a sufficient basis to prove the requisite and necessary intent to inflict serious bodily injury. Consequently, it further establishes a prima facie case on the charge of Aggravated Assault.

ENDANGERING WELFARE OF CHILDREN - 18 Pa.S.C.A. §4304(A)(1)

The Defendant has challenged the sufficiency of the prima facie case against him on the two (2) charges of Endangering Welfare of Children<sup>2</sup>. This crime is defined as:

A parent, guardian, or other person supervising the welfare of a child under 18 years of age commits a misdemeanor of the first degree if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.

18 Pa.C.S.A. §4304. Additionally, the term "knowingly" is defined as follows:

(2) A person acts knowingly with respect to a material element of an offense when:

(i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and

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<sup>2</sup> One count for each child, Mackensie and Logan.

(ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

18 Pa.C.S.A. §302(b)(2)

In the case at bar, the victim testified that upon returning home and before the assault occurred, she sent Mackensie downstairs to watch TV and turned on the Wii for Logan in his bedroom. The victim also testified that Mackensie was present to see the Defendant shave the victim's head. There were no further references by the victim as to what these children were doing or where they were during this incident or afterward when the assault was over, except to say they were in the house the entire time and until she went back over when the police arrived.

In Commonwealth v. Cardwell, 515 A2d 311 (Pa.Super. 1986), allocator denied, 527 A2d 535 (1987), the Court established a three prong standard for testing the sufficiency of evidence of the intent element under §4304:

"We hold that evidence is sufficient to prove the intent element of the offense of Endangering the Welfare of a Child when the accused is 1) aware of his or her duty to protect the child; 2) is aware that the child is in circumstances that threaten the child's physical or psychological welfare; and 3) has either failed to act or has taken actions so lame or meager that such actions cannot reasonably be expected to be effective to protect the child's physical or psychological welfare.

Cardwell, 515 A2d 311 @ 315.



In Commonwealth v. Miller, 600 A2d 988 (Pa.Super. 1992), the Court determined that the Defendant mother did not knowingly endanger the welfare of her child, where she mistakenly believed the child's father when he told her that the neighbor was watching the child, when in fact she wasn't. The child died in a fire while unattended. The Court, in footnote 3, suggested that the trial court did not find criminal conduct based on leaving the child alone to go downstairs to a first floor restaurant for juice for the child while the child was sleeping alone in the bedroom with a space heater on. Rather criminal culpability was established as the result of her failure to follow up on the babysitting arrangements. Further, in dicta, the Court believed that if the only thing the defendant did was to go for the juice, it would have been highly unlikely that the defendant would have found herself before the Court at all. Miller @ 992, Footnote 3. The Defendant here, like in Miller, left the children in the home while the victim was across the street. He did not knowingly violate a duty of care that would endanger them.

As previously stated, the evidence viewed in the light most favorable to the Commonwealth places the children in the home and out of harm's way. Further, the time frame between the father leaving the area and the police arriving (and the victim

getting back into the home) was apparently minimal. If anything, the defendant may have exercised a lack of parental judgment on the date in question. However, it did not rise to the level of criminal culpability. Accordingly, a prima facie case has not been sustained by the Commonwealth to either Endangering the Welfare of Children charges.

#### CONCLUSION

In accordance with the foregoing, the Defendant's Motion to Quash/Habeas Corpus with regard to the Aggravated Assault charge is DENIED. The Defendant's Motion to Quash/Habeas Corpus with regard to the two (2) Counts of Endangering the Welfare of Children are GRANTED, and these charges are dismissed.

BY THE COURT:

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Joseph J. Matika, Judge