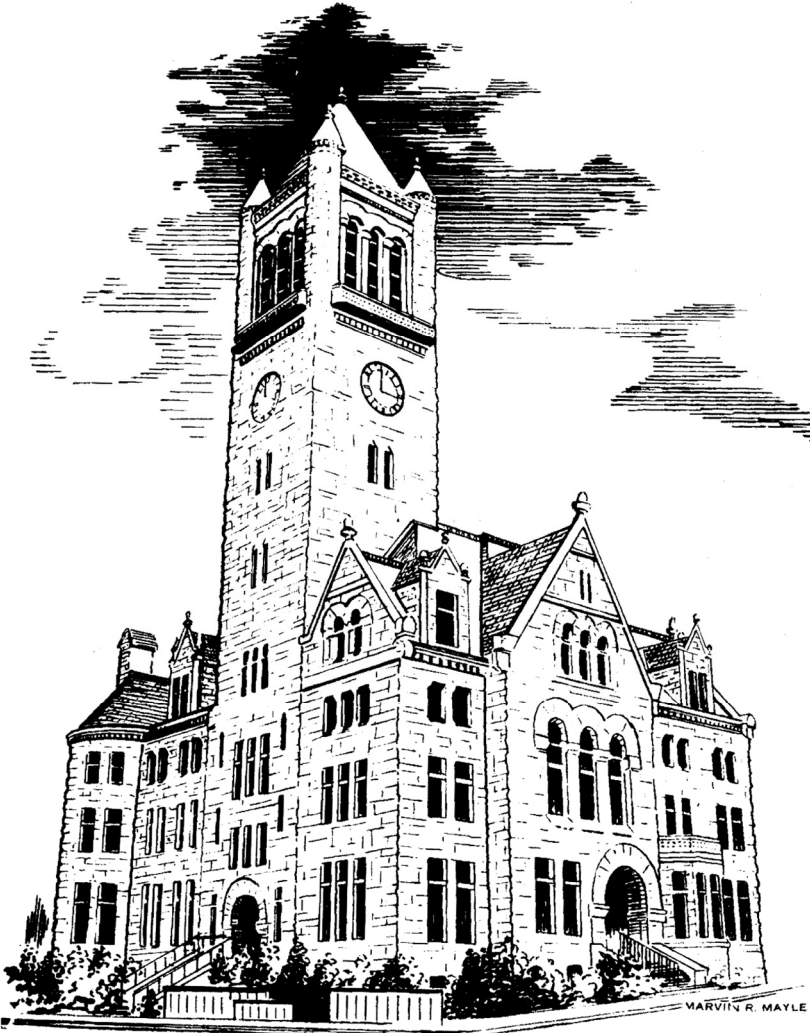


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ESTATE NOTICES

Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

Third Publication

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Attorney: Webster & Webster

LEGAL NOTICES

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION
No. 1784 of 2022 G.D.

IN RE: CHANGE OF NAME OF
SABRINA DAWN BAKER to
BRIAR WADE MCKEE

PETITION FOR NAME CHANGE

NOTICE is hereby given that a hearing on the above Petition for Change of Name will be held on October 26, 2022, at 11:00 a.m. before the Honorable Steve P. Leskinen, in Courtroom No. 1 at the Fayette County Courthouse, Uniontown, Pennsylvania, for the following name change: SABRINA DAWN BAKER to BRIAR WADE MCKEE.

ALL interested parties may appear and show cause if any they have, why the prayer of said Petition should not be granted.

KIMBERLY D. KOVACH, ESQUIRE
KOVACH LAW OFFICE
9 COURT STREET, SECOND FLOOR
UNIONTOWN, PA 15401

IN THE COURT OF COMMON PLEAS OF
FAYETTE COUNTY, PENNSYLVANIA
CIVIL ACTION
ACTION TO QUIET TITLE
No: 1817 of2022, G.D.

BJ PROPERTIES, INC.,
Plaintiff,
v.

LOUIS ZISKIND, a single man, his heirs and,
assigns, ESTHER ZISKIND MARKOWITZ, a/
k/a ESTHER MARKOVITZ, her heirs and
assigns, RUTH STEINER, a single woman, her
heirs and assigns, HELEN SPOOL and JAMES
SPOOL, husband and wife, their heirs and
assigns, JARED SPOOL, his heirs and assigns,
and TRACY GRATHWOHL, her heirs and
assigns,
Defendants.

**Notice Required by Section 5527.1
of the Judicial Code**

To the above-named defendants, their heirs and
assigns:

The plaintiff in the above-captioned matter has
filed an action to quiet title pursuant to Section
5527.1 of the Judicial Code, 42 Pa.C.S. §
5527.1, seeking to acquire title by adverse
possession of real property described as follows:

11 DeGregopry Circle
Republic, Pa 15442
TAX ID NO.: 30-24-0116.
As recorded in the Fayette County,
Pennsylvania, Recorder of Deed's Office in
Record Book Volume 3153, Page 487

ALL that certain Lot situation in the
Village of Republic, Redstone Township,
Fayette County, Pennsylvania, known and
designated as Lot No. 5 in the "DeGregori
Circle" Plan of Lots as recorded in Plan Book
Volume 8, page 80, and more particularly
bounded and described as follows:

BEGINNING at a point in the South side
of DeGregori Circle, corner of Lot No. 6 of the
aforesaid Plan of Lots; thence along the
Westerly side of Lot No. 6 South 22 degrees 59
minutes East, 67.70 feet to land now or formerly
of Hilda DeGregori DeSanna and other devisees
of Domenico DeGregori, deceased; thence along
same South 68 degrees 01 minutes West, 119.08
feet to a point, corner of an unnumbered lot upon
which is erected DeGregori Hall, and which lot
is now or formerly owned by Domenico

TaVemiti, et al., trustees of Loggia Pietro Micca
No. 556 Sons of Italy; thence along the easterly
side of said Sons of Italy Lot, North 4 degrees
20 minutes East, 56.09 feet to the Easterly line
of a public road; thence along said easterly side
of said public road, North 33 degrees 37 minutes
West, 68.15 feet to a point in the said southern
side of DeGregori Circle; thence along said
southerly side of side DeGregori Circle; along a
curve having a radius of 55.20 feet, a distance of
43.50 feet to the place of beginning.
UPON which is erected a two story frame
dwelling

TOGETHER with such rights and
SUBJECT to any exceptions, restrictions,
reservations and conditions as exist by virtue of
prior recorded instruments, deeds or
conveyances.

You have been sued in court. If you wish to
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claims set forth against you. You are warned that
if you fail to do so the case may proceed without
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by the court without further notice for any
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NOTICE

Notice is hereby given that the Certificate of Organization has been approved and filed with the Department of State of the Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania, on September 29, 2022, for a limited liability company known as Rip Rentals LLC.

Said limited liability company has been organized under the provisions of the Business Corporation Law of 1988 of the Commonwealth of Pennsylvania.

The purpose or purposes of the limited liability company is/are: rental properties and any other lawful purpose related thereto for which the corporation may be organized under the Business Corporation Law.

DAVIS & DAVIS

BY: Gary J. Frankhouser, Esquire
107 East Main Street
Uniontown, PA 15401

WARMAN ABSTRACT & RESEARCH LLC

JOHN F. WARMAN

518 Madison Drive

Smithfield, PA 15478

724-322-6529

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JUDICIAL OPINION

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA, VS. KEITH KALBAUGH, Defendant. No. 149 of 2022 Honorable Linda R. Cordaro

OPINION

Linda R. Cordaro, J.

September 26, 2022

SUMMARY

Currently before the Court is Defendant's Omnibus Pretrial Motion for habeas corpus on charges of aggravated assault, simple assault, and unlawful restraint of a minor. After a hearing on September 2, 2022, and a review of the preliminary hearing transcript and photographs admitted into evidence as well as consideration of legal authority submitted by counsel for the Defendant and the Commonwealth, Defendant's Motion is granted for the following reasons.

BACKGROUND

In the early morning of January 10, 2022, Donald Stashick, a paramedic with Fayette County emergency medical services, responded to a call of an emergency at the Defendant's residence. On arriving, Mr. Stashick and his partner found a woman in the front seat of a vehicle in the driveway, with the Defendant nearby. The woman held a small child in a blanket, and Mr. Stashick saw the child (A.A.K.) had a "grayish" color. The paramedics took the child into the ambulance and began monitoring her heart rate, which was below the normal rate for a child of about two years old. Mr. Stashick noticed the child was "ice cold" and that she appeared malnourished, to the point that her arm was so small that they had to place a blood pressure cuff on her leg instead.

The paramedics took A.A.K. to West Virginia University Medical Center in Uniontown, Pennsylvania. Registered nurse Gary Weyandt corroborated that A.A.K. was a "gray/purple" color, to the point that, in his experience, often indicated the person was deceased. The medical team began compressions and ventilation, and Mr. Weyandt observed that the child's hygiene was poor, she was very cold to the touch, and that a check of her pupils indicated a lack of brain activity. The child also had red marks on her thighs, genitals, and buttocks, with numerous scabbing pock marks. Mr. Weyandt stated that this condition was severe enough that it could not have occurred by merely wearing a wet diaper for a day or two, but would have taken weeks to develop to that degree.

Trooper Wyatt Tidholm received a call that a year and a half old child had been taken to the hospital, and he went directly to the emergency room to respond. He observed the child's condition, and spoke to other troopers that had also responded to the call. He gathered contact information for the parents and asked that the troopers contact Fayette County CYS. Other troopers had been called for a welfare check on another child, three-year-old A.T.K., at the residence.

A search warrant for the Defendant's residence was obtained and, as Trooper Tidholm approached the house, he saw the door was covered in garbage bags, trash, and debris. The Forensic Services Unit took photographs of the interior of the house, including the playpen where the younger child (A.A.K.) was reportedly kept and the bedroom where the older child (A.T.K.) was reportedly kept. Four individuals lived in the house: the Defendant, his mother, and the two children. The children's mother, Haley Arnold, lived elsewhere but would visit two to three times a week. The house smelled of cat and dog feces and trash and debris were piled and scattered in the kitchen and the hallway. There was garbage, debris, plates of old food, and feces in the Defendant's bedroom. In A.T.K.'s bedroom, there was a mattress on the floor with no sheets or pillow and more trash and debris heaped up against the wall and scattered across the floor. The living room where A.A.K.'s playpen was located was in a similarly filthy condition, and Trooper Tidholm testified that the bottom of the playpen itself was filthy and a cloud of insects flew out of it when he approached.

The Defendant was brought to the Uniontown police station to be interviewed. After receiving his Miranda reading, he disclosed that he believed the younger child had been seen by a doctor about four times since birth, with the most recent time being eight months to a year prior. He further stated that the younger child stayed primarily in the playpen, where she also slept. She would usually wear just a diaper because he could only provide clean clothes occasionally since there was no washer or dryer in the residence.

Medical records admitted into evidence at the OPT hearing indicated that after an examination on January 10, 2022, the older child, A.T.K., did not have the same serious health problems that the A.A.K. did. For example, preliminary hearing testimony indicated that A.A.K. suffered dehydration, injury to her kidneys, cardiac arrest, and possible brain injury, and she showed signs of malnutrition and neglect. However, notes from A.T.K.'s medical records entered into evidence indicate that she had some healing bruises, and she reported some abdominal and "bone" pain, but also that she had a normal appearance and weight, a normal heart rate and rhythm, and normal baseline mental status. The children's maternal grandfather took physical custody of A.T.K. after January 21, 2022.

Defendant was charged with two counts each of aggravated assault, aggravated assault of a victim less than 13, aggravated assault of a victim less than 6, unlawful restraint of a minor, simple assault, endangering the welfare of a child, and recklessly endangering another person.

DISCUSSION

Defendant has filed a petition for writ of habeas corpus for the following charges:

- Count 2 - Aggravated Assault - 18 Pa.C.S.A. § 2702(a)(1)
- Count 4 - Aggravated Assault, Victim Less than 13 - 18 Pa.C.S.A. § 2702(a)(9)
- Count 6 - Aggravated Assault, Victim Less than 6 - 18 Pa.C.S.A. § 2702(a)(8)
- Count 7 - Unlawful Restraint of Minor- 18 Pa.C.S.A. § 2902(c)(1)
- Count 8 - Unlawful Restraint of Minor - 18 Pa.C.S.A. § 2902(c)(1)
- Count 12 - Simple Assault - 18 Pa.C.S.A. § 2701(a)(1)

Count 7 is with respect to the younger child, A.A.K., whereas all other counts are with respect to the older child, A.T.K..

A petition for a writ of habeas corpus is the proper means for testing a pretrial finding that the Commonwealth has sufficient evidence to establish a prima facie case against a defendant. *Commonwealth v. Scott*, 578 A.2d 933, 936-37 (Pa. Super. Ct. 1990). The question of the sufficiency of evidence is one of law. *Commonwealth v. Huggins*, 836 A.2d 862, 865 (Pa. 2003)). In order to establish a prima facie case, the Commonwealth must present evidence as to each material element of the crimes charged and sufficient probable cause that the accused is the person who

committed the offenses. *Commonwealth v. McBride*, 595 A.2d 589,591 (Pa. 1991) (citations omitted).

With respect to the aggravated assault charges at Counts 2, 4, and 6, the Commonwealth's argument is that the Defendant attempted to cause (or did cause) serious bodily injury to A.T.K. because she was found in deplorable living conditions with no care, no hygiene provided, and without medical care. Under 18 Pa.C.S.A. § 2701(a), both attempted aggravated assault and aggravated assault causing injury are crimes. However, "[a]n attempt under § 2702(a)(1) requires a showing of some act, albeit not one causing serious bodily injury, accompanied by an intent to inflict serious bodily injury." *Commonwealth v. Matthew*, 909 A.2d 1254, 1257 (Pa. 2006). There must be a "substantial step toward the commission of that crime." *Id.* An "attempt, then, is distinguishable under the statute because it requires a specific intent shown by action. In contrast, intentionally, knowingly, or recklessly causing actual injury does not require specific intent. *Commonwealth v. Bracey*, 831 A.2d 678,687 (Pa. Super. Ct. 2003). Therefore, to support these charge as to A.T.K., the Commonwealth must show either that the Defendant had a specific intent to cause serious bodily injury to A.T.K. and took a substantial step toward doing so, or it must show that the Defendant's conduct caused actual serious bodily injury to A.T.K..

In support of its position, the Commonwealth has offered *Commonwealth v. Thomas*, in which the Pennsylvania Superior Court affirmed the conviction of a defendant for aggravated assault when there was "more than sufficient evidence to show [the defendant mother] starved [the child], failed to obtain any medical assistance for him until forced to by CYS, and forced [the child] to live in filthy and inhumane conditions ... " 867 A.2d 594,600 (Pa. Super. Ct. 2005). In *Thomas*, as in the instant case, witnesses testified as to the filthy and deplorable conditions in which the victim child was forced to live. However, *Thomas* also included evidence that supported both specific intent and actual serious bodily harm.

For example, in *Thomas*, witness testimony described how the child's parents kept him hidden away. Friends testified that they barely saw the child, and some testified that they did not even know the defendant mother had a son or that there was a boy living in the house. *Id.* at 598. In addition, the defendant parents cut contact with the maternal grandparents after the maternal grandmother tried to convince them to take the child to a doctor. *Id.* Testimony also described a stark difference between the way the defendant mother treated her other four children (all girls) and the way the victim child was treated, including: the victim child was kept isolated and not permitted to play with the other children even as the others did as they pleased; while the other children had many toys in their room, the victim child had nothing; and the girls were seen going out with their parents but the victim child was not. *Id.* at 598-99.

In addition to the evidence supporting specific intent, the victim child in *Thomas* ultimately succumbed to malnourishment, having been neglected and starved to death. Therefore, the evidence also supports that the defendant mother in *Thomas* "intentionally, knowingly, or recklessly" caused actual serious bodily injury.

In contrast, the evidence presented in the instant case does not support that A.T.K. suffered serious bodily injury. There is testimony to support that the younger child did experience serious bodily injury, but not the older child. Therefore, without evidence of actual serious bodily injury, in order to support the charge as to A.T.K., the Commonwealth must show the Defendant attempted aggravated assault and so had the specific intent to cause harm.

Based on testimony and photographic evidence, the deplorable conditions of the residence extended to more than just A.T.K.'s bedroom (and A.A.K.'s playpen). Testimonial evidence indicates that the filthy conditions were not limited to only to areas in which A.T.K. spent her time. Trooper Tidholm testified at the preliminary hearing that the door of the residence itself was "completely covered in garbage bags and various trash and debris." N.T., 1/26/22, at 41. He also stated that the house had the odor of cat and dog feces, and the kitchen was piled with garbage

and debris. *Id.* at 45, 56. At the OPT hearing, Trooper Tidholm also testified that the Defendant's own bedroom had garbage, debris, plates with old food, and feces in it. All of the residents of the house, including the Defendant himself, existed in deplorable and filthy conditions. This contradicts the allegation that the Defendant had specific intent to cause serious bodily injury to A.T.K..

The Commonwealth has not presented sufficient evidence of specific intent to cause serious bodily injury to A.T.K. or that actual serious bodily injury was caused to A.T.K.. Therefore, there is no *prima facie* case for Counts 2, 4, and 6.

The crime of simple assault under 18 Pa.C.S.A. § 2701(a)(1) is defined in the same terms: as either injury attempted or intentionally, knowingly or recklessly caused. The lack of support for the element of intent in attempted assault has been discussed, and, although medical records for A.T.K. indicate some bruising and that she reported abdominal and bone pain, they also indicate that as of January 10, 2022, she was physically well, with normal general exam results, no acute distress, and no need for lab testing at the time. Therefore, there is no *prima facie* case for Count 12.

As to Counts 7 and 8 for unlawful restraint, the statute indicates that a parent of a victim commits the crime of unlawful restraint when he "knowingly restrains another unlawfully in circumstances exposing him to risk of serious bodily injury." 18 Pa.C.S.A. § 2902(c)(1). {1} As to Count 7, with regard to A.A.K., the charge is that the Defendant restrained her to a playpen containing feces, decaying food, and other unsanitary conditions from which she could not escape. As to Count 8, with regard to A.T.K., the charge is that the Defendant restrained her to a bedroom containing deplorable living conditions from which she could not escape.

Section 2902 is included under the "Kidnapping" section of the Pennsylvania Criminal Code (Chapter 29) and is located after the section defining kidnapping (18 Pa.C.S.A. § 2901) and before the section defining false imprisonment (18 Pa.C.S.A. § 2903). The case law related to § 2902 involves facts in which "restraint" involves physical violence, threats of violence, and assault. See, e.g., *Commonwealth v. Melvin*, 572 A.2d 773 (Pa. Super. Ct. 1990) (finding sufficient proof of dangerous circumstances to constitute unlawful restraint when the defendant forced victims to drive a car at gunpoint); *Commonwealth v. McBall*, 463 A. 2d 472 (Pa. Super. Ct. 1983) (finding denial of the defendant's demurrer to a charge of unlawful restraint was proper because the victim was exposed to serious injury when the defendant, who was six inches taller and 125 pounds heavier, grabbed her by the neck, held her down, repeatedly threatened to kill her, and raped her).

There is no indication that the Defendant did not have the legal right to have custody of the children in the home. Furthermore, at the time, A.T.K. was three (3) years old and A.A.K. was twenty (20) months old, and it is often reasonable to restrict very young children's access and movement within a home. Therefore, the "unlawful" component here is not that the Defendant had the children in his home, nor that he kept them in a bedroom or playpen. Instead, the "unlawfulness" is implied to be due to the conditions surrounding the children while their access and movement were restricted, not because of it. {2}

As discussed, several rooms in the house were extremely unsanitary, including the kitchen and the Defendant's bedroom. There is no evidence that restricting A.T.K. and A.A.K. to the bedroom and playpen, respectively, was the act that exposed them to a risk of serious bodily injury when the same deplorable conditions existed elsewhere in the house. The circumstances here do not support a charge of unlawful restraint, and there is no *prima facie* case at Counts 7 and 8.

{1} The language here Section 212.2 of the Model Penal Code, which describes felonious restraint

{2} Otherwise, parents should be on the alert to a risk of criminal charges for keeping a child in a playpen or disciplining a child by confining them to their room.

CONCLUSION

With respect to A.T.K., the Commonwealth has not presented evidence sufficient for a prima facie case at Counts 2, 4, 6, 8, and 12. With respect to A.A.K., the Commonwealth has not presented evidence sufficient for a prima facie case at Count 7. Therefore, the charges at these counts are DISMISSED.

ORDER

AND NOW, this 26th day of September, 2022, in consideration of Defendant's Omnibus Pretrial Motion and after a hearing on the matter and consideration of exhibits and the legal authority submitted by counsel for the Defendant and for the Commonwealth, it is ORDERED and DIRECTED that the motion is GRANTED.

The charges at Counts 2, 4, 6, 7, 8, and 12 of the Information are DISMISSED.

BY THE COURT:
Linda R. Cordaro, Judge

ATTEST:
Clerk of Courts

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