

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellant

v.

BRIAN PAUL SLEBODA,

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1315 MDA 2012

Appeal from the Order of July 9, 2012,
in the Court of Common Pleas of Lackawanna County,
Criminal Division at No. CP-35-CR-0002571-2011

BEFORE: FORD ELLIOTT, P.J.E., WECHT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

FILED JUNE 07, 2013

The Commonwealth appeals from the order granting Brian Sleboda's pretrial petition for a writ of *habeas corpus*. We vacate the order and remand for proceedings consistent herewith.

The record of the preliminary hearing reveals the following facts. Responding to a report of a child locked in a basement, police went to the home of Brian Sleboda and Lori Gardner. When Officer Jason Knoch arrived at the scene, he found a child kneeling down at the rear of the home, apparently close to an exit leading from the basement. The child was shaking and crying. He was wearing only a shirt and a diaper. When Knoch asked the child what was wrong, the child indicated he was hungry. Knoch

* Retired Senior Judge assigned to the Superior Court.

suggested that the child enter the home so that he could put on pants, but the child stated that the door was locked and he could not "get upstairs." N.T., 10/24/11, at 77. At some point, the child's mother, Gardner, arrived.

Officer Melissa Forsette was also at the scene. After she told Gardner that there was a report of a child locked in a basement wearing only a diaper, Gardner responded, "[W]ell, he poops his pants." *Id.* at 83. At the preliminary hearing, Forsette would recount a number of statements the child made to her. For example, the child explained to Forsette that, after he had come home from school on the day in question, he had gotten into trouble for a reason or reasons of which he was unaware. The child then indicated that Sleboda, who was the child's stepfather, and Gardner put a diaper on him and put him in the basement. The child further explained that Sleboda put the child in a coffin that was in the basement. Police saw that the coffin was leaning against a wall and that one of the hinges on its door was broken. The child indicated he had been able to break out of the coffin. After he did so, he went to the back door of the basement and, with some difficulty, unlocked it. The child called out to neighbors to tell them he had been locked in the basement.

The child also explained to Forsette that, on several prior occasions, he had been locked in the basement and had to sleep there. He went on to indicate that he had been placed there six times. He stated that he knew the total was six because the next time would be seven and he was about to turn that age.

The child further claimed that Gardner would smack him in the face for “sneaking snacks.” *Id.* at 90. He indicated that Sleboda was the one who normally put him in the basement but that Gardner was present when Sleboda would do so and that she was aware of the child being placed in the basement. The child told Forsette that, on one occasion when he was put in the coffin by Sleboda, Gardner duct-taped his hands.

According to police, there were exposed wires in the basement and ceiling beams therein had been charred by fire. The basement was dark, dingy and smelling of mold. The basement toilet did not work. Testimony also indicated the toilet appeared to have raw sewage overflowing from it. There was some evidence indicating an infestation of some type.¹ The property was condemned following the incident in question, apparently on the same date as the instant call to police. The condition of the basement was the basis for the condemnation of the property.

There were two chairs in the basement, at least one of which was near the coffin. Also in the basement were a heavy chain, a picture of a man wearing black and white face paint, and Halloween items, including some

¹ The Commonwealth claims the nonworking toilet was “swarming with flies and ticks.” Commonwealth’s Brief at 12. However, the Commonwealth has provided us with no record citation supporting this specific description of the toilet. Therefore, we will not rely on that description. ***Commonwealth v. Rush***, 959 A.2d 945, 949 (Pa. Super. 2008) (indicating this Court relies only on facts of record); Pa.R.A.P. 2119(c) (indicating the appellant must provide record citations).

type of devil, pumpkin heads and a vampire. The child told the police that, when he slept in the basement, he would normally sleep in one of the chairs. He indicated he was afraid of the picture and other items, particularly because the basement was apparently dark when he was placed therein. He also stated that Gardner and Sleboda would sometimes shake the chain to make him think there were ghosts in the basement with him. The child stated that he thought Gardner and Sleboda placed him in the basement at times because he was afraid of ghosts.

Testimony from the child indicated that, on the day in question, he was first told to sit in one of the chairs, not the top step as Gardner claimed in a statement she gave to police. He indicated Gardner checked on him after he was in the basement. At that time, he was in one of the chairs and, according to him, he was "okay." N.T., 10/24/11, at 62. Gardner then left the home. Thereafter, the child apparently ascended from the basement but was told by Sleboda to return to the basement and get into the coffin. The basement door was thereafter locked.

Gardner told police that, on the particular day in question, the child was being punished because he had let his younger brother, who was one year old, out of a playpen and/or because the child had lied about having done so. Gardner claimed that she then put the complaining child on the top step of the basement and closed the basement door. She indicated she did not lock the door. She also explained that she had placed him in a diaper to embarrass him in front of his one-year-old brother. Gardner further

indicated that placing the child in the basement was a type of last-resort punishment. When police questioned Gardner about the child's assertion that she had once taped him, Gardner claimed that she had taped his fingers in a playful manner because he was curious about tape she was using to secure packages.

Following the aforesaid events, Sleboda was charged with endangering the welfare of a child ("EWOC") and unlawful restraint.² The charges were held for court after a preliminary hearing, and the Commonwealth later filed a criminal information. Thereafter, Sleboda filed a petition for a writ of *habeas corpus*. The *habeas* court denied the petition with respect to the EWOC charge but granted it with respect to the charge of unlawful restraint.³ Certifying that the court's order terminated or substantially handicapped the prosecution, **see** Pa.R.A.P. 311(d), the Commonwealth filed this timely appeal in which it contends the court erred in granting *habeas* relief.

The relevant portion of the unlawful restraint statute under which Sleboda was charged indicates it is an offense if a person knowingly restrains another person unlawfully in circumstances exposing him to risk of serious bodily injury ("SBI"). 18 Pa.C.S.A. § 2902(a)(1). SBI is bodily injury that creates a substantial risk of death or which causes serious,

² Gardner faced the same charges.

³ Gardner also petitioned for *habeas* relief. The court granted her petition as to both charges. The Commonwealth's appeal in her case is pending at No. 1316 MDA 2012.

permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. **Id.** § 2301.

This Court will not disturb an order granting pretrial *habeas corpus* unless the lower court abused its discretion. **Commonwealth v. Landis** 48 A.3d 432, 444 (Pa. Super. 2012). An abuse of discretion is not a mere error in judgment but, rather, involves bias, ill will, partiality, prejudice, misapplication of law, or manifest unreasonableness. **Commonwealth v. Winger**, 957 A.2d 325, 328 (Pa. Super. 2008). Proper judicial discretion involves conformity with the law based on the facts of record. **Id.**

In the course of determining whether the court abused its discretion in granting *habeas*, we decide whether a *prima facie* case was established by the Commonwealth. **Landis**, 48 A.3d at 444. When doing so, we must view the evidence in the light most favorable to the Commonwealth, and we are to consider all reasonable inferences from that evidence which could support a guilty verdict. **Id.** Our standard does not require the Commonwealth to prove the accused's guilt beyond a reasonable doubt at the *habeas* stage. **Id.** Rather, a *prima facie* showing merely requires evidence of each element of the crime charged. **Id.** Thus, the Commonwealth must show sufficient probable cause that the defendant committed the offense(s), and the evidence should be such that, if presented at trial, the trial court would be warranted in allowing the case to go to the jury. **Id.** Any weight and credibility issues are not factors on *habeas* review. **Id.**

When granting *habeas* relief, the court concluded the evidence did not establish that the child was exposed to the risk of SBI. In this regard, the court reasoned there was no evidence that the exposed wires posed any greater danger to the child than an electrical outlet or extension cord. The court also reasoned that the conditions of the toilet, while a threat to the child's well-being, did not pose a risk of SBI. On these grounds, the court granted *habeas* relief on the unlawful restraint count. For the reasons that follow, we find the court erred.

There was evidence that Sleboda took part in placing the child in a dingy, arguably moldy basement with exposed wires, an overflowing toilet, and some type of infestation. When such evidence is viewed most favorably to the Commonwealth, it could reasonably support the inference that the child was subject to overall conditions which were inherently dangerous to a six-year-old child. ***See Commonwealth v. Melvin***, 572 A.2d 773, 775 (Pa. Super. 1990) (indicating actual danger of SBI can be shown by surrounding circumstances being inherently dangerous). In this vein, a jury could reason that the aforesaid conditions to which the child was allegedly subjected included, *inter alia*, the risk of electrocution, thereby creating a substantial risk of death or serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ. We understand there was conflicting evidence about what risk the wires posed. However, the legal standard at the *habeas* stage requires that the evidence be viewed most favorably to the Commonwealth. Under that standard, the evidence could support the inference that there were wires which were exposed such

that the child was at risk of electrocution. As such, the court's grant of *habeas* relief cannot stand.

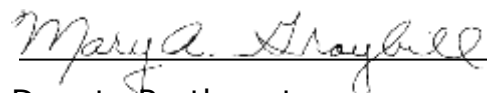
Additionally, a factfinder could conclude that the remaining unhealthy conditions of the basement (*e.g.*, the condition of the toilet) could pose a risk of SBI to a six-year-old child. The trial court erred legally in finding otherwise at the *habeas* stage.

Based on our foregoing discussion, we vacate the order granting *habeas* relief and remand this case for proceedings consistent herewith.

Order vacated. Case remanded for proceedings consistent herewith.
Jurisdiction relinquished.

Judge Wecht files a Dissenting Memorandum.

Judgment Entered.


Deputy Prothonotary

Date: 6/7/2013