

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 02-10,799
VS	:
JOHN NITTINGER	:

OPINION AND ORDER

Before the Court is Defendant's Petition for Writ of Habeas Corpus. The Defendant has been charged with Hindering Apprehension or Prosecution and Obstructing the Administration of Law or Other Law Enforcement as the result of an incident that occurred on July 29, 2001. A preliminary hearing was held on May 5, 2002, before District Magistrate, Allen Page, after which, both charges were bound over. Defendant now argues that the Commonwealth's evidence was insufficient to establish a prima facie case of the charges. The parties agreed to submit the motion on the transcript of the preliminary hearing. The Court has reviewed the preliminary hearing transcript and finds the following facts relevant to the motion.

Corporal Ungard testified that in late July, 2001, he went to the residence of Joanne Marchese in an effort to locate her grandson, Anthony Marchese. A bench warrant had been issued for Anthony Marchese when he failed to appear for a court proceeding relating to robbery charges in Centre County. (N.T. 5/5/02, p. 9) With the consent of Joanne Marchese, Corporal Ungard conducted a search of the Marchese residence, but Anthony Marchese was not found. (Id., p. 25) While at the residence he also spoke with Defendant Nittinger, Joanne Marchese's brother, who was also living at the residence at that time. Ungard testified that he informed both Joanne Marchese and

Nittinger that if Anthony Marchese returned to their residence, they should immediately notify the police.

Approximately one day following his visit at the Marchese residence, at approximately 10:30 p.m., Ungard received a call that emergency rescue vehicles had responded to the Marchese residence. (Id., p. 13) Ungard immediately responded to the scene. Rescue vehicles surrounded the house with floodlights. Ungard testified that a confidential source informed them via telephone that Anthony Marchese was in the residence at that time. (Ibid.) Anthony Marchese eventually surrendered himself on the roof of the residence. Nittinger was the only other person inside the residence. (Id., p. 15) Nittinger opened the door approximately 3-4 minutes after police attempted to breach the door. (Id., p. 34)

Corporal Kontz testified that he was at the front of the residence when Nittinger came out of the residence. They informed Nittinger that they had information that Anthony Marchese was in the residence. Kontz testified that Nittinger initially stated that he did not know what was going on. Moments later, Nittinger admitted that Marchese on the telephone in an upstairs bedroom. (Id., p. 35) Nittinger was then taken into custody, and placed in one of the patrol units. After Anthony Marchese was taken into custody, he requested an ambulance for an injury to his foot. Marchese admitted that he had injured his foot when he jumped off the roof of the residence the previous day when Corporal Ungard had searched the residence.

The issue before the Court is whether the Commonwealth established a prima facie case of hindering apprehension or prosecution and obstructing administration of law. To successfully establish a prima facie case, the Commonwealth must present

sufficient evidence that a crime was committed and the probability the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). Under 18 Pa.C.S. § 5105(a)(1) a person commits the offense of hindering apprehension if, with intent to hinder the apprehension, prosecution, conviction or punishment of another he harbors or conceals them. Instantly, the Court finds the evidence presented that the Defendant knew Mr. Marchese was wanted by law enforcement, and the fact that he knew Marchese was in the residence is sufficient to establish a prima facie case of the charge of hindering apprehension. The Court therefore DENIES Defendant's Motion to Dismiss this charge.

18 Pa.C.S. § 5101, provides that a person is guilty of the offense of obstructing the administration of law if he intentionally obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference, breach of official duty, or any other unlawful act. Instantly, the Court finds that the Defendant's conduct of intentionally harboring and concealing Mr. Marchese from law enforcement personnel establishes a prima facie case of this charge. The Court therefore DENIES Defendant's Motion to Dismiss this charge.

ORDER

AND, NOW, this _____ day of July 2002, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is DENIED.

By The Court,

Nancy L. Butts, Judge

cc. G. Scott Gardner, Esquire
Roan Confer, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire