

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

COMMONWEALTH OF PENNSYLVANIA	: NO. 02-10,937
	:
	:
vs.	: CRIMINAL DIVISION
	: Petition for Writ of Habeas Corpus
ANGELO LOUIS ROTEGLIANO,	:
Defendant	:

OPINION AND ORDER

Before the Court is Defendant’s Petition for Writ of Habeas Corpus, filed June 20, 2002. At the time of argument on July 30, 2002, Counsel agreed the Petition could be disposed of based upon the transcript of the preliminary hearing, which was provided to the Court at that time.

Defendant has been charged with harassment (engaged in a course of conduct), stalking (intent to cause emotional distress) and loitering and prowling at nighttime. In the Petition for Habeas Corpus, Defendant contends the evidence presented at the preliminary hearing was insufficient to establish a prima facie case of any of the charges. The Court does not agree.

In order to establish the charge of harassment, the Commonwealth must show that Defendant, with intent to harass, annoy or alarm another person, engaged in a course of conduct or repeatedly committed acts, which served no legitimate purpose. 18 Pa. C.S. Section 2709 (a) (3). In order to support the charge of stalking, the Commonwealth must show that Defendant engaged in a course of conduct or repeatedly committed acts towards another person, including following the person without proper authority, under circumstances which demonstrated intent to cause substantial emotional distress to that person. 18 Pa. C.S. Section 2709 (b)(2). In order to support the charge of loitering and prowling at nighttime, the Commonwealth must show that Defendant, at nighttime, maliciously loitered and/or prowled around a dwelling house or place used wholly or in part for living or dwelling

purposes, belonging to or occupied by another. 18 Pa. C.S. Section 5506. The Court finds the evidence presented at the preliminary hearing was insufficient to show an intent to cause substantial emotional distress to support the charge of stalking, and that it was insufficient to show loitering and/or prowling around a dwelling house, to support the charge of loitering and prowling. The evidence was sufficient, however, to show a course of conduct with no legitimate purpose, undertaken with an intent to annoy or alarm, thus supporting the charge of harassment.

The Commonwealth's evidence established that on April 4, 2002, at night, the victim was sitting in his truck in his driveway, letting it warm up when he noticed a vehicle moving slowly then saw the vehicle turn in his driveway. The victim turned on his truck lights at which time, the vehicle stopped, backed out of the driveway and proceeded down the road. The victim got out of his truck, got into a pickup truck and drove after the vehicle, eventually pulling it over and identifying Defendant as the driver. The victim also testified that he had had several prior incidents with Defendant, that on several occasions he had called the police department and that the police department had told Defendant to stay away. The victim also testified that he was not aware of any reason why Defendant would have been at his house. The Commonwealth also presented testimony from a police officer that the police department had been at the victim's residence numerous times and it mostly involved Defendant. The Court finds this evidence sufficient to establish a prima facie case of a continuing course of conduct which serves no legitimate purpose. Further, the requisite mens rea, intent to annoy or alarm, can be inferred from the evidence that Defendant had been told by the police to stay away from the victim's residence.

The Court finds the evidence insufficient, however, to show that Defendant intended to cause substantial emotional distress to the victim. The Court notes that "emotional distress" is defined by Section 2709 of the Crimes Code as "a state of great physical or mental strain." 18 Pa.C.S. Section 2709(f). While it appears the victim was annoyed and felt "harassed" by Defendant's actions, as would have been any reasonable person, the Court is unable to find any evidence that the victim or any reasonable person in his situation, would have felt "great physical or mental strain" as a result of Defendant's conduct.

Finally, the Court believes the evidence insufficient to show that Defendant maliciously loitered

and/or prowled around a dwelling house, where the evidence is simply that he pulled into the beginning of the driveway, quickly thereafter backed out and continued up the road.

Considering the lack of evidence to establish a prima facie case on the charges of stalking and loitering and prowling, the Court will dismiss those charges.

ORDER

AND NOW, this 7<sup>th</sup> day of August, 2002, for the foregoing reasons, the Petition for Writ of Habeas Corpus is hereby granted in part and denied in part. Counts 2 and 3 of the Information filed June 13, 2002, are hereby dismissed.

By the Court,

Dudley N. Anderson, Judge

cc: DA  
PD  
Gary Weber, Esq.  
Hon. Dudley N. Anderson