

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 02-10,368

V :

ESLEY WILLIAMS :

OPINION AND ORDER

Before the Court is the Defendant's Petition for Habeas Corpus. The Defendant has been charged with two counts of hindering apprehension or prosecution¹ as a result of an incident that occurred November 29, 2001. A Preliminary Hearing was held on March 1, 2002 before District Justice Allen P. Page, after which both counts were held for Court. The Defendant now argues that the Commonwealth failed to establish a prima facie case of the charges.

The Commonwealth presented the testimony of John Nixon, a Lycoming County Juvenile Probation Officer. Nixon testified that on November 29, 2001, while consulting with his client Ashley Divine, he learned that she had been in contact with another client Tahmir Smith. Nixon knew that a bench warrant had been issued for Smith's arrest. (N.T. 3/1/02, p. 3) From Divine, Nixon learned where Smith had been staying. At approximately 4:00 p.m. on that date, Nixon learned that Smith was in front of Divine's house. (*Id.*, p. 4) Nixon and Juvenile Probation Officer Tim Campbell responded to the Divine home. Upon reaching the residence, Divine alerted Nixon that Smith was in a blue car that was pulling away from her residence. Nixon ran a block and a half down the street and jumped in front of the car to stop it.

¹ One count under 18 Pa.C.S.A. § 5105(a)(1), and one count under 18 Pa.C.S.A. § 5105(a)(5).

Nixon identified the driver as Gwen Weaver. The Defendant was in the back seat, and in the middle of the back seat was Smith. She was ducking behind the Defendant, and he was trying to hide her. (Id., p. 5) Nixon asked the Defendant if it was Smith behind him, but he denied that it was her. Nixon then "spoke to the driver, and asked that's Tahmir Smith, get her out of the car, but [the Defendant] kept denying it was her. Finally after a couple of minutes, Tahmir spoke back to me." (Id., pp. 5-6) At that time, Nixon explained to the occupants of the vehicle that he had a bench warrant for Smith, and that he was not moving until they let her out of the car. Nixon showed the warrant to the individuals in the car, but the Defendant refused to cooperate. (Id., p. 6)

Nixon testified that the Defendant "just sat there giving me or calling me obscenities and verbally saying that they weren't going to cooperate, that she wasn't coming out of the car, I wasn't taking her, but physically no, they didn't budge." (Ibid.) The Defendant and other occupants in the car locked the car doors. After approximately fifteen minutes of trying to deal with the individuals, the police were summoned. Four to five police cruisers showed, along with the sheriff's department. The occupants cooperated at that time. (Id., p. 12)

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.A. § 5105, a person commits an offense of hindering apprehension "if, with intent to hinder the apprehension, prosecution, conviction or

punishment of another for crime or violation of the terms of probation, parole, intermediate punishment or Accelerated Rehabilitative Disposition, he:

(1) harbors or conceals the other;

... (or)

(5) provides false information to a law enforcement officer." (emphasis added)

The Defendant alleges that a prima facie case under section 5105 (a)(5) has not been established. In support of this argument, Defendant argues that a Juvenile Probation Officer is not a "law enforcement officer" as was intended in this statute. The General Assembly, in clarifying the proper approach to be used in the determination of legislative intent, stipulated that:

(a) The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.

(b) When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

(c) When the words of the statute are not explicit, the intention of the General Assembly may be ascertained by considering, among other matters:

- (1) The occasion and necessity for the statute.
- (2) The circumstances under which it was enacted.
- (3) The mischief to be remedied.
- (4) The object to be attained.
- (5) The former law, if any, including other statutes upon the same or similar subjects.
- (6) The consequences of a particular interpretation.
- (7) The contemporaneous legislative history.
- (8) Legislative and administrative interpretations of such statute.

1 Pa.C.S.A. § 1921.

Commonwealth v. Campbell, 2000 PaSuper 251, 758 A.2d 1231, (2000)

We are to give the words of a statute their plain and ordinary meaning. Campbell, supra, citing Commonwealth v. Neckerauer, 421 Pa.Super. 255, 617 A.2d 1281 (1992). Furthermore, we may not add provisions that the General Assembly has omitted unless the phrase is necessary to the construction of the statute. Campbell, supra, citing Commonwealth v. Reeb, 406 Pa.Super. 28, 593 A.2d 853, 856 (1991). See Commonwealth v. Rieck Investment Corp., 419 Pa. 52, 213 A.2d 277, 282 (1965) ("it is not for the courts to add, by interpretation, to a statute, a requirement which the legislature did not see fit to include")

Applying these principles to the instant case, the Court finds that the statute in this case is clear and free of ambiguity. The statute protects *all* law enforcement officers in their attempts to apprehend those attempting to elude them. The Court would find that a Juvenile Probation Officer, whose duties include picking up juvenile clients and violators, falls within the realm of a law enforcement officer. It is not for the courts to add the requirement that only certain officers would be included. Additionally, the Court cannot believe that the legislature intended to protect only *police* officers in their attempts to find those evading apprehension. The Court therefore rejects Defendant's argument and finds that the Commonwealth has established a *prima facie* case of this section of the statute.

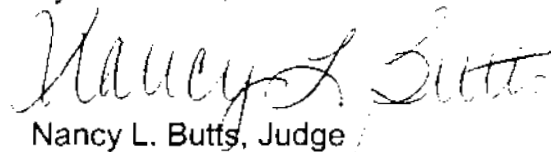
Alternatively, Defendant alleges that the actions of the Defendant do not establish a *prima facie* case under section 5105 (a)(1), since there was no evidence that he harbored or concealed the juvenile. Defendant argues that they were in the public, there was no clandestine behavior by the Defendant, and Nixon knew where the juvenile was located before speaking to the Defendant. The Court disagrees. The

Court finds the evidence that the Defendant moved his body to conceal the juvenile behind him in the car seat so that she could not be identified sufficient to establish a prima facie case under this section. See Com. v. Miqdalia Conception, 441 Pa.Super. 539, 657 A.2d 1298 (1995.) (Defendant physically blocked the door of her apartment to prevent the police from discovering fugitive hiding in her shower.)

ORDER

AND NOW, this 7th day of May, 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: CA
PD
DA
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire