IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1327 - 2006
	:	
vs.	:	CRIMINAL DIVISION
	:	
MICHAEL J. NICHOLS,	:	
Defendant	:	Petition for a Writ of Habeas Corpus

OPINION AND ORDER

Before the Court is Defendant's Petition for a Writ of Habeas Corpus, contained within Defendant's Omnibus Pre-Trial Motion, filed November 9, 2006. Argument on the petition was heard December 8, 2006. Counsel rely on the evidence offered at the preliminary hearing for purposes of the instant petition.

Defendant was charged with Hindering Apprehension or Prosecution in connection with an incident on May 3, 2006, whereby police made contact with Defendant in an effort to arrest a third person. He now claims the evidence is insufficient to support the charge, for several reasons: (1)Defendant eventually allowed police to enter his home, (2)he did not actively provide false information but merely responded to questions, and (3)since at the time of the giving of the false information the police did not have in hand the arrest warrant for the person they were seeking, there was no apprehension to hinder. Defendant also contends the Commonwealth cannot show the element of intent. These will be addressed seriatim.

Section 5105 provides, in pertinent part, as follows:

> **(a) Offense defined.—**A person commits an offense if, with intent to hinder the apprehension, …, of another for crime …, he:
> **…**
> (5) provides false information to a law enforcement officer.

18 Pa.C.S. Section 5105(a). At the preliminary hearing the Commonwealth presented the testimony of Officer Dennis Gill of the Jersey Shore Police Department. According to Officer Gill, he knew on May 3, 2006, that there existed an arrest warrant for one Rhonda Nearhoof, and while on duty that evening he saw Ms. Nearhoof near an apartment building. Officer Gill testified that when Ms. Nearhoof saw him, she ran

around to the front of the building and he followed her around, only to find no one there but the curtain on the door moving, as though someone had just entered. According to Officer Gill, he knocked on the door and Defendant answered. Officer Gill asked Defendant "where Rhonda was" and Defendant said "Rhonda who?" N.T. July 19, 2006, at p. 5. When Officer Gill replied "Rhonda Nearhoof" Defendant said "he didn't know Rhonda Nearhoof." Id. According to Officer Gill, Defendant also at that time stated that he "did not know where she was at", Id. at p. 9, and Defendant knew "from the beginning that there was a warrant." Id. at p. 10. At some point before an actual copy of the warrant was produced,[1] Defendant allowed entry in to the home and Ms. Nearhoof was found in the bathroom.

With respect to the first issue, that Defendant allowed police to enter his home even though he initially denied knowing Ms. Nearhoof and her location, the Court finds this fact of no moment. If Defendant is raising the defense of renunciation, such fails for the simple fact that the defense of renunciation is a defense to only the crimes of criminal attempt, criminal conspiracy and criminal solicitation. Commonwealth v. Hubert, 440 A.2d 630 (Pa. Super. 1982). If Defendant is seeking to have the Court weigh this fact in considering the evidence of intent, the fact that Defendant later allowed police to enter his home does not sufficiently explain why Defendant lied to police in the first instance, and thus does not negate a prima facie showing of the element of intent.

With respect to the second issue, Defendant contends he did not "provide" false information to police because he merely answered their questions, that the statute requires a more active role. While there is case law to support such a position, See, *e.g.* Commonwealth v. Neckeraurer, 617 A.2d 1281 (Pa. Super 1992), and Commonwealth v. Gettemy, 591 A.2d 320 (Pa. Super. 1991), at that time the statute referred to one who "volunteers" false information. The appellate Courts held that the term "volunteer" meant that an accused must take initiative in giving false information, that merely answering questions was not enough. Apparently in response to this interpretation, the

[1] Officer Gill testified that Defendant asked for the warrant upon being told of its existence. Id. at p. 9.

legislature amended the statute in 1996 to substitute the word "provides" for the "word "volunteers". Obviously, the intent was to include those persons who merely answer questions. Indeed, the word "provides" is plain enough, and clearly includes the conduct in the instant case.

With respect to the issue of whether there was, without a warrant in hand, an apprehension to hinder, the Court cannot logically conclude the legislature meant to distinguish between apprehensions accompanied by the proper paperwork from those which are not. The purpose of the statute is clear, and making the distinction urged by Defendant would only detract from that purpose.

Finally, with respect to Defendant's contention the Commonwealth cannot show the element of intent, this is apparently based on Defendant's contention that another officer at the scene, Officer DeReemer, would have provided certain testimony had he been called to testify. Since he was not called to testify, however, and all the Court has to go on is the transcript from the preliminary hearing, the matter cannot be considered further at this time.

Accordingly, the Court finds sufficient evidence to support the charge, and that the petition is thus without merit.

ORDER

AND NOW, this 11th day of December 2006, for the foregoing reasons, Defendant's Petition for a Writ of Habeas Corpus is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

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