

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

**COMMONWEALTH**

**v.**

**MICHELLE SCHAPPELL,  
Defendant**

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**No. 1170-2009  
CRIMINAL DIVISION**

**OPINION AND ORDER**

Defendant filed a Petition for a Writ of Habeas Corpus on August 27, 2009. A hearing on the Motion was held on October 29, 2009; Defense Counsel offered the transcript of the Preliminary Hearing, and the Commonwealth presented additional live testimony.

***Background***

The following is a summary of the facts presented at the Preliminary Hearing. On July 3, 2009, at about 7:00 p.m., Officer Dustin Reeder (Reeder) of the Williamsport Bureau of Police (WBP) was dispatched to the municipal parking lot at the northwest corner of Court Street and West Fourth Street, where two intoxicated persons were attempting to get into a vehicle. Reeder went to the location described in the dispatch where he observed the vehicle in question backing out of a parking space. Reeder explained that the vehicle did not clearly back all the way out of the parking space before moving forward. As the vehicle moved forward it struck a yellow Nissan Exterra that was parked just to the operating vehicle's north.

As Reeder was crossing West Fourth Street, the vehicle had pulled north out of the parking lot. Reeder followed the vehicle and activated his emergency lights and siren in the area of West Edwin Street and Pine Street. The vehicle continued up Pine Street until it reached the area of Little League Boulevard before it pulled over. Reeder made contact with the driver, later

identified as the Defendant, Michelle Schappell and immediately detected an odor of alcoholic beverage coming from inside the vehicle. Reeder testified that there was also one passenger in the vehicle. The Defendant shuffled through her purse multiple times, passing her driver's license multiple times before she obtained all of the information Reeder requested. Reeder described the Defendant during this time as having extremely slurred speech, glassy eyes, unable to comprehend the reason for being stopped, denying everything, cursing, and extremely belligerent. Reeder asked the Defendant how many alcoholic beverages she had to drink that evening, to which Defendant responded she had a few beers, specifically Milwaukee's Best from Kelly's Bar on the south side of West Fourth Street, which is across from the parking lot where she parked.

Reeder requested the Defendant step from the vehicle and perform field sobriety tests. At that time, he also requested Officer Vognets (Vognets) to come to the scene for two reasons: to videotape the standard field sobriety test and to assist because the passenger was extremely belligerent and would not comply with Reeder's instruction to stay in the vehicle. Reeder waited for Vognets to get to scene and set up his video camera for the field sobriety testing. Once Vognets set up his equipment, Reeder had Vognets come over to the Defendant's vehicle to keep an eye on the passenger. Reeder performed some field sobriety tests and found Defendant to be very unsteady on her feet, belligerent, and an odor of alcohol emitted from her breath. As a result of his observations and the testing, Reeder opined that the Defendant was incapable of safe driving and attempted to place her under arrest.

Reeder advised the Defendant that she was under arrest for suspicion of Driving Under the Influence. When Reeder went to grab the Defendant to place her under arrest, she pulled away from him. Reeder attempted to grab her hand a second time and again she pulled away. At

that time, Reeder took the Defendant to the ground. While on the ground, the Defendant kept her hands close to her side, up by her chest area and would not allow him to place her hands behind her back. Reeder made several commands for the Defendant to place her hands behind her back, but she continued to keep them close to her side. Reeder explained that it took him a great amount of force to eventually pull her hands from her side to behind her back and place handcuffs on her. Reeder also testified that it took approximately 10 to 12 seconds to place handcuffs on her from the time she was on the ground. Reeder explained that Defendant was not trying to get away but just did not comply with his commands.

Reeder also testified that Officer Nathan Moyer (Moyer) showed up and helped Reeder escort the Defendant to the police cruiser. Reeder required Moyer's help as the Defendant would not get up off the ground. When inside the vehicle, the Defendant was trying to kick at the window, so the officers had to put shackles on her. The Defendant was taken to the Williamsport Hospital and Medical Center for processing.

Moyer testified that he was near Donna's Restaurant in the 700 Block of Park Ave and Walnut Street when he heard Reeder being dispatched to a call. Due to the officer's tone of voice over the radio and the conduct of the traffic stop, Moyer decided to go to Reeder's location. Moyer explained that it took him approximately one to two minutes to get there. When he arrived at the scene, he saw Reeder's vehicle behind the stopped vehicle and off to the side, a female (the Defendant) facedown on the ground and Reeder on top. Moyer heard Reeder command the Defendant to put her hands behind her back and stop resisting. Moyer observed that the female kept her arms under her chest area as Reeder was attempting to pull her arms out. Moyer assisted Reeder in forcibly bringing her arms up in position to be handcuffed.

Moyer testified that after placing the Defendant under arrest, he and Reeder had to help her stand up and practically carry her to the police cruiser because she could not hold herself up. Moyer explained that the Defendant was very angry towards Reeder and also cried at times. Moyer also testified that he did not witness the Defendant kick, punch, thrash, attack, or attempt to run from Reeder.

### *Discussion*

In Defendant's Motion for Issuance of Writ of Habeas Corpus she alleges the evidence presented by the Commonwealth fails to show a prima facie case of Resisting Arrest.

The burden the Commonwealth bears at the Preliminary Hearing is they must establish a prima facie case; the Commonwealth must present sufficient evidence that a crime has been committed and that the accused is the one who probably committed it. Commonwealth v. Mullen, 333 A.2d 755, 757 (Pa. 1975). See also Commonwealth v. Prado, 393 A.2d 8 (Pa. 1978). The evidence must demonstrate the existence of each of the material elements of the crimes charged and legally competent evidence to demonstrate the existence of the facts which connect the accused to the crime. See Commonwealth v. Wodjak, 466 A.2d 991, 996-97 (Pa. 1983). Absence of any element of the crimes charged is fatal and the charges should be dismissed. See Commonwealth v. Austin, 575 A.2d 141, 143 (Pa. Super. 1990).

A person violates 18 Pa.C.S. § 5104 and is guilty of resisting arrest if “with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.” The statute “does not require the aggressive use of force such as a striking or kicking of the officer. A person resists

arrest by conduct which ‘creates a substantial risk of bodily injury’ to the arresting officer or by conduct which justifies or requires ‘substantial force to overcome the resistance.’”

Commonwealth v. Miller, 475 A.2d 145, 146 (Pa. Super. Ct. 1984).

The Court finds sufficient evidence was presented to establish a prima facie case of Resisting Arrest. The testimony reveals that the Defendant pulled away from Reeder twice when he attempted to place her under arrest. Based upon her actions, Reeder took the Defendant to the ground, where she continued to resist by keeping her hands to her side. Once on the ground, it took the force of two officers to pull Defendant’s hands from her side to behind her back in order to place handcuffs on her. The officers also testified that they had to help the Defendant stand up and had to practically carry her to the police cruiser. Furthermore, once in the police cruiser, the officers had to shackle Defendant’s legs because she was kicking at the cruiser window. The Court finds this testimony sufficient to show the officers had to use substantial force to overcome the Defendant’s resistance. Therefore, the Commonwealth has presented prima facie evidence of Resisting Arrest.

**ORDER**

AND NOW, this \_\_\_\_day of December 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for a Writ of Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, Judge

xc: DA (MK)  
PD (RC)  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber (LLA)