

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA, :  
 :  
 vs. : No. 70-CR-2012  
 :  
 SHAWN MICHAEL NEFF, :  
 Defendant :

James M. Lavelle, Esquire  
Assistant District Attorney Counsel for the Commonwealth  
Joseph V. Sebelin, Jr., Esquire Counsel for the Defendant

Matika, J. - May , 2012

MEMORANDUM OPINION

The Defendant, Shawn Neff, was charged by Chief Thomas Beltz of the Franklin Township Police Department with Escape and Resisting Arrest. On March 2, 2012, Defendant filed a Writ of Habeas Corpus regarding both charges as well as a request for discovery<sup>1</sup>. We now look at the sufficiency of the Commonwealth's prima facie evidence for these charges.

FACTUAL AND PROCEDURAL BACKGROUND

On or about 11/8/11, the Defendant, Shawn Neff, was arrested and charged with Escape [18 Pa.C.S.A §5121(A)] and

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<sup>1</sup> At the hearing held on the Motion, counsel for the Defendant indicated that the Commonwealth had complied with the discovery request, thereby rendering the formal request moot.

Resisting Arrest (18 Pa.C.S.A. §5104). The charges stem from an attempt by Lehighton Police, with the assistance of Chief Beltz, to apprehend the Defendant on an outstanding felony robbery warrant.

At the preliminary hearing Chief Beltz testified that he, along with officers Michael Svetik and Derek Solt of the Lehighton Borough Police Department, went to 991 Main Road in Franklin Township in an attempt to serve a felony robbery arrest warrant on the Defendant. Upon entering the house, Chief Beltz testified that he heard the Defendant's father calling to him (the Defendant). The next thing he observed was the Defendant running between houses across the street. Chief Beltz got in his car and eventually observed the Defendant walking up the driveway of a neighbor's property. The Chief approached the Defendant and as the Defendant got closer to the Chief, he told the Defendant he was under arrest and that they had a felony warrant for him for robbery. Chief Beltz then testified that the Defendant "bolted down to the woods into another area".

Shortly thereafter, Chief Beltz observed the neighbor attempting to restrain the Defendant. Eventually, as Chief Beltz testified, Officer Svetik came upon the scene and attempted to take the Defendant into custody. While Officer Svetik was doing this, Chief Beltz observed the Defendant struggling to get away. The Defendant was pushing Officer

Svetik and attempting to pull away from him until the officer was eventually successful in taking the Defendant to the ground and handcuffing him.

Officer Svetik also testified that while in the residence he heard the Defendant's father say he would go get him (his son) and also heard the father say to someone "turn yourself in". Like Chief Beltz, the next thing this Officer observed was the Defendant running across the street.

Officer Svetik further testified that when he was finally able to catch up to the Defendant he attempted to take him into custody. Officer Svetik indicated that he told the Defendant to "get on the ground", but the Defendant refused. As Officer Svetik grabbed the Defendant, the Defendant was flailing and trying to break loose and pull away. Officer Svetik, who was wearing a Lehighton Police Department jacket, indicated that he was required to take the Defendant to the ground in order to handcuff and arrest him, as the Defendant was aggressively trying to get away.

At the conclusion of the preliminary hearing, Magisterial District Judge Kissner bound both charges over to the Court of Common Pleas. We are now called upon to review the record to determine the sufficiency of the evidence supporting these

charges<sup>2</sup>.

#### DISCUSSION

Defendant has requested that we dismiss both charges due to a lack of evidence being presented at the Preliminary Hearing.

"The basic principles of law with respect to the purpose of a preliminary hearing is well established, the principal function of which is to protect an accused's rights against an unlawful arrest and detention. At this stage of the process, the burden of showing that a prima facie case has been established, i.e., that a crime has been committed and the accused is probably the one who committed it, falls squarely on the Commonwealth. In order to meet that burden the Commonwealth is required to present evidence with regard to each of the material elements of the charge and to establish probable cause to believe the accused committed the crime".

Commonwealth v. McBride, 528 Pa. 153. (1991) (Citations omitted).

In passing judgment on the Writ of Habeas Corpus and the challenge to the prima facie case, we are required to view all evidence in the light most favorable to the Commonwealth. Commonwealth v. Packard, 767 A2d 1068, 1070 (Pa.Super. 2001).

#### I. ESCAPE - 18 Pa.C.S.A. §5121(A)

18 Pa.C.S.A. §5121 provides, in relevant part, that:

(a) Escape - A person commits an offense if he unlawfully removed himself from official detention or

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<sup>2</sup> The parties stipulated to allowing the transcript of the preliminary hearing to stand as the evidentiary basis upon which the Court would decide the Writ of Habeas Corpus.

fails to return to official detention following temporary leave granted for a specific purpose or limited purpose; and

(e) Definition - As used in this section, the phrase "official detention" means arrest, detention to any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; .....

18 Pa.C.S.A. §5121(A) and (E)

The Defendant contends that with regard to this charge, the Commonwealth has failed to establish that the Defendant was in "official detention". In support of this contention, the Defendant points the Court to Commonwealth v. Woody, 939 A2d 359 (Pa.Super. 2007). In Woody, the Court found that notwithstanding his failure to heed the officer's instruction to "get on the ground", the defendant did not "escape" despite fleeing on foot, as he was never actually detained by the officer. There was no arrest warrant or other basis for an arrest but simply only a failure to comply with an instruction to "get on the ground". Therefore, the Defendant's reliance on this case is misplaced.

In determining whether or not an official detention has occurred, the Court must look at the totality of the circumstances, including whether the police have restrained the liberty of a person by show of authority or physical force, and "whether a reasonable person would have believed he or she was

free to leave". Commonwealth v. Stewart, 648 A2d 797, 798 (Pa.Super. 1994). Here, like in Commonwealth v. Santana, 959 A2d 450 (Pa.Super. 2008); Commonwealth v. Fountain, 811 A2d 24 (Pa.Super. 2002); and Commonwealth v. Colon, 719 A2d 1099 (Pa.Super. 1998), we find that where a police officer informs an individual that they have a felony warrant for him and that he was under arrest as a result, an official detention has occurred. The Defendant's decision to turn and run instead of allowing the officer to take him into custody is prima facie evidence of the crime of escape.

## II. RESISTING ARREST - 18 Pa.S.C.A. §5104

The offense of Resisting Arrest is defined as follows:

A person commits a misdemeanor of the second degree 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.

18 Pa.C.S.A. §5104

Our Appellate Courts have held that a Defendant's use of passive resistance requiring substantial force to overcome provided sufficient evidence to uphold a Resisting Arrest conviction. See Commonwealth v. Thompson, 922 A2d 926 (Pa.Super. 2007) where the Defendant was convicted of Resisting

Arrest when she engaged in a scuffle with police and then interlocked her arms and legs with her husband and refused to respond to the officer's verbal demands to release their hands. Only after the officers were able to pry the couple apart were they successful in handcuffing them and taking them into custody.

Neither does this offense require the aggressive use of force such as striking or kicking an officer as our defendant would suggest is necessary. Commonwealth v. Miller, 475 A2d 145, 146 (Pa.Super. 1984). In fact, our case is quite similar to Commonwealth v. McDonald, 17 A3d 1282 (Pa.Super. 2011). In McDonald, the defendant ran from the police, was subdued by several officers, continued to struggle and refused to put his hands behind his back. In the case sub judice, the Defendant ran, was subdued by a third party, struggled with Officer Svetik, who then took the Defendant to the ground and only then was successful in handcuffing him. Defendant's argument completely ignores the statutory language of §5104 criminalizing resisting behavior that requires substantial force to surmount. Thompson, supra.

#### CONCLUSION

Based on the reasons stated above, we find that the Commonwealth has presented sufficient evidence to support a prima facie case on both the Escape and Resisting Arrest

charges. Consequently, Defendant's Petition for Habeas Corpus  
is DENIED.

BY THE COURT:

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Joseph J. Matika, Judge