

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-263-2017
v.	:	
	:	
DAVID HENDERSON,	:	SUPPRESSION
Defendant	:	

OPINION AND ORDER

David Henderson (Defendant) filed a Motion to Suppress Evidence on April 5, 2017. The Court scheduled a hearing for June 22, 2017. Defendant requests the suppression of all physical evidence and statements made by Defendant while he was being processed for commitment to the Lycoming County Prison. Defendant was incarcerated as a result of a bench warrant requested by the Cost Clerk's Office for his failure to pay his outstanding costs and fines. Defendant alleges that the process by which he was arrested for the outstanding warrant was defective therefore all of the evidence and statements obtained should be suppressed.

Background

Defendant was charged with Contraband-possession of controlled substance by inmate¹; a felony of the second degree and Possession of a Controlled Substance², an ungraded misdemeanor as a result of evidence found on him while being processed and committed to the Lycoming County Prison. Defendant was arrested on a Bench Warrant that was issued by The Honorable Richard A. Gray on September 23, 2016, for his failure to appear at a hearing on his failure to pay Costs and Fines.

¹ 18 Pa.C.S. § 5123(a.2).

² 35 P.S. § 780-113(2)

Factual Background

On October 14, 2016 the County had entered into a Cost, Fines & Restitution Agreement for Defendant to pay \$50 per month after a hearing on October 1, 2015³. See Commonwealth's Exhibit 1. Defendant was also required to pay \$40 per month in supervision fees on CR-942-2013 and to pay \$40 per month on CR-2083-2014. See Commonwealth's Exhibits 3 and 4 respectively. On June 16, 2016, the County of Lycoming Central Collections Office (Collections) prepared a letter to Defendant which indicated that he owed \$300 towards his outstanding balance of \$2,412.75 and that if he was unable to pay within 10 days, he would be required appear for a court hearing scheduled on 8/23/2016 at 1:30 p.m. in Courtroom #2. See Commonwealth's Exhibit 5. Defendant signed for this letter when it was received via certified mail at his home address. See Commonwealth's Exhibit 6.

On August 29, 2016, the Collections prepared a "Final Notice" letter to Defendant saying that its records indicated he failed to appear at the hearing on 8/23/2016 and that if he wanted to stop the bench warrant proceedings that had been initiated against him, he needed to pay \$200 on account no later than 10 days from August 29th. See Commonwealth's Exhibit 7. The letter was sent to the same address as the earlier certified letter which had been signed for by Defendant. Additionally verification was obtained from the US Post Office that showed the address used by Collections was the official address to which mail is received by the Defendant. See Commonwealth's Exhibit 8.

³ Judge Lovecchio held a hearing to which the Defendant appeared and found that Defendant had the ability to pay Costs and Fines in the underlying docket number CR-2083-2017 in the amount of \$50 per month and issued an installment order.

On the morning of October 14, 2016, Detective Loudenslager arrested the Defendant on the Costs and Fines Bench Warrant issued by Judge Gray. Arresting officers brought Defendant to the Lycoming County Prison for commitment on the warrant where the Defendant would be held until a hearing date could be scheduled. Upon his commitment, Defendant was searched and cocaine was found. Defendant was given his Miranda⁴ warnings and agreed to speak with the Detective. Affidavit of Probable Cause, 1/10/2017.

Discussion

Defense Counsel argues that the proper procedure in a collection of Costs and Fines matter is for a Petition for Contempt of the underlying Order be filed and an Order of Contempt of Court be signed by a Common Pleas Court Judge before a Bench Warrant can issue. Because Defense Counsel believes that the arrest of Defendant on October 14, 2016 was on an unlawfully issued bench warrant, all the fruits of that illegal arrest must be suppressed. The Commonwealth asserts that the notice Defendant received through the mail is sufficient and the warrant is lawful.

The facts agreed to by the parties were that the Defendant was responsible for a \$50. Per month repayment schedule determined after hearing and established by court order. The Defendant subsequently signed for a certified letter from the Collections. The letter stated that Defendant needed to forward partial payment immediately, and that if he were unable to pay, a hearing would be scheduled for 8/23/2016. The June 16, 2016 letter also explained to Defendant that if he failed to pay, adverse action might be taken against him including but not limited to 1) contempt of court proceedings being instituted against him 2) a warrant for his arrest

⁴ Miranda v. Arizona, 384 U.S. 436 (1966).

being issued 3) suspension of his driver's license 4) referral of this matter to a collection agency. See Commonwealth's Exhibit 5.

Defendant failed to pay and failed to appear at the hearing scheduled for August 23, 2016. Therefore, the County sent a final notice alerting Defendant that he failed to appear and what he must do to stop the bench warrant proceedings. A bench warrant did issue on 9/23/2016, and was vacated when Defendant was arrested on October 14, 2016.

The Court finds the applicable rules contained within the Pennsylvania Rule of Criminal Procedure that govern the issuance of a bench warrant for failure to pay Costs and Fines are Pa.R.Crim.P.150, 430, 431 and 706.

Pa. R. Crim. P. 706 Fines or Costs

(A) A court shall not commit the defendant to prison for failure to pay a fine for costs unless it appears after hearing that the defendant is financially able to pay the fines or costs.

(B) When the Court determines, after hearing, that the defendant is without the financial means to pay the fine or costs immediately or in a single remittance, the court may provide for payment of finds or costs in such installments⁵ and over such period of time as it deems to be just and practicable, taking into account the financial resources of the defendant and the nature of the burden its payment will impose, as set forth in paragraph (D) below.

(C)

(D) In cases in which the court has ordered payment of a fine or costs in installments, the defendant may request a rehearing on the payment schedule when the defendant is in default of a payment or when the defendant advises the court that such default is imminent. At such hearing, the burden shall be on the defendant to prove that his or her financial condition has deteriorated to the extent that the defendant is without the means to meet the payment schedule. Thereupon the court may extend or accelerate the payment schedule or leave it unaltered, as the court finds to be just and practicable under the circumstances of record. When there has

⁵ See October 1, 2015 order of Judge Lovecchio- Commonwealth's Exhibit 1.

been default and the court finds the defendant is not indigent, the court may impose imprisonment as provided by law for nonpayment.

The Comment to Pa.R.Crim.P. 706 Fines or Costs although not binding is helpful. It states

Under this rule, when a defendant fails to pay the fine and costs, the common pleas court judge may issue a bench warrant for the collection of fines and costs. When a “failure to pay” bench warrant is used, the bench warrant must be executed by the police officer following the procedures set forth in **Rule 431(C)(1)(c) and (C)(2), or if the defendant is unable to pay, the police officer must proceed as provided in Rule 150 (Bench Warrants).**⁶

Comment, Pa.R.Crim.P.706 (when a defendant fails to pay the fine and costs).

Rule 150. Bench Warrants

(A) In a court case when a bench warrant is executed, the case is to proceed in accordance with the following procedures.

(1) When a defendant or witness is arrested pursuant to a bench warrant, he or she shall be taken without unnecessary delay for a hearing on the bench warrant. The hearing shall be conducted by the judicial officer who issued the bench warrant, or, another judicial officer designated by the president judge or by the president judge's designee to conduct bench warrant hearings.

(2) In the discretion of the judicial officer, the bench warrant hearing may be conducted using two-way simultaneous audio-visual communication.

(3) When the individual is arrested in the county of issuance, if the bench warrant hearing cannot be conducted promptly after the arrest, the defendant or witness shall be lodged in the county jail pending the hearing. The authority in charge of the county jail promptly shall notify the court that the individual is being held pursuant to the bench warrant.

(4) When the individual is arrested outside the county of issuance, the authority in charge of the county jail promptly shall notify the proper authorities in the county of issuance that the individual is being held pursuant to the bench warrant.

⁶ The comment goes on to say “Nothing in this rule is intended to abridge any rights the Commonwealth may have in a civil proceeding to collect a fine.”

(5) The bench warrant hearing shall be conducted without unnecessary delay after the individual is lodged in the jail of the county of issuance on that bench warrant.

(a) When the bench warrant is issued by the supervising judge of a "multi-county" investigating grand jury, the individual shall be detained only until the supervising judge is available to conduct the bench warrant hearing.

(b) In all other cases, the individual shall not be detained without a bench warrant hearing on that bench warrant longer than 72 hours, or the close of the next business day if the 72 hours expires on a non-business day.

(6) At the conclusion of the bench warrant hearing following the disposition of the matter, the judicial officer immediately shall vacate the bench warrant.

(7) If a bench warrant hearing is not held within the time limits in paragraph (A)(5)(b), the bench warrant shall expire by operation of law.

Pa.R.Crim.P. 431 Procedure When Defendant Arrested with Warrant

(A)

(B)

(C) Bench Warrants

(1) When a bench warrant is executed, the police officer shall either

(a)

(b)

(c) accept from the defendant the amount of restitution, fine, and costs due as specified in the warrant if the warrant is for collection of restitution, fine and costs as specified in the warrant if the warrant is for collection of restitution, fine, and costs after a guilty plea or conviction⁷; or

⁷ Bench Warrant Failure to Pay, Warrant Control No: 41-BP-0000370-2016, page two of two indicates the amount required to satisfy sentence in Docket No: CP-41-CR-0002083-2014 is \$1,976.50.

(d) if the defendant is unable to pay, promptly take the defendant for a hearing on the bench warrant as provided in paragraph (C)(3)

(2) When the defendant pays the restitution, fine and costs or collateral amount pursuant to paragraph (C)(1), the police officer shall.....

(3) When the defendant does not pay the restitution, fine and costs or collateral, the defendant promptly shall be taken before the proper issuing authority when available pursuant to Rule 117 for a bench warrant hearing. The bench warrant hearing may be conducted using two simultaneous audio-visual communications.

The comment to Rule 431 states “For the procedures required before a bench warrant may issue for a defendant’s failure to pay restitution, a fine, or costs see Rule 430(B)(4). When contempt proceedings are also involved, see Chapter 1 Part D for the issuance of arrest warrants. The disjunctive nature of the two sentences indicates to the Court that it is possible to have a bench warrant issue for failure to pay restitution, a fine or costs and contempt proceedings be involved but it is not necessarily always the case as Defense Counsel argues.

Rule 430(B)(4) says

No warrant shall issue under Paragraph (B)(3) unless the defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in the issuance of a bench warrant, that the defendant has not responded to this notice within 10 days. Notice by first class mail shall be considered complete upon mailing to the defendant’s last known address.

Pa.R.Crim.P. 430. Issuance of a Warrant.

Paragraph (B)(3) reads in pertinent part “A bench warrant may be issued when... (b) the defendant has been sentenced to pay restitution, a fine, or costs and has defaulted on the payment.”

In reviewing the applicable rules, the Court finds that Pennsylvania Rule of Criminal Procedure 430(B)(4) controls the notice required to a Defendant before a

bench warrant may issue for failure to pay restitution, costs and fines. Commonwealth's exhibits 5 and 7 establish that the Collections office mailed notices to Defendant and he did receive the certified letter (Commonwealth's Exhibit 6) in compliance with the requirements of Pa.R.Crim.P.430(B)(4).

In addition, those same Rules also provide that a warrant cannot issue for the Defendant's noncompliance unless the Defendant has been given notice in person or by first class mail that failure to pay the amount due or to appear for a hearing may result in a bench warrant. Commonwealth's exhibit 5 was that notice given to Defendant. Once that letter was received, a bench warrant could issue if the Defendant failed to respond. The bench warrant was not requested until September 22, 2016 and issued by the Court until September 23, 2016⁸. The Court finds the timeline of the request and issuance of the warrant complies with the requirements of the rule.

Since the Court finds that the procedure undertaken by both Collections and the Court was in compliance with the applicable Rules of Criminal Procedure, the Defendant was lawfully arrested on a valid warrant and properly committed to the Lycoming County Prison to await a hearing on the warrant. Therefore, any statements made or evidence discovered during Defendant's processing were lawfully obtained.

⁸ See request for warrant and CPCMS order in official court documents contained within the Court file.

ORDER

AND NOW, this 16th day of August, 2017, based upon the foregoing Opinion, the Motion to Suppress is hereby DENIED.

BY THE COURT,

Nancy L. Butts, P.J.

cc: DA (SW)
Peter T. Campana, Esq.
Gary Weber, Esq.