

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

COMMONWEALTH	:	
	:	
v.	:	No.: 03-10,341
	:	
BRENT JENKINS,	:	
Defendant	:	

OPINION AND ORDER

Defendant Brent Jenkins is charged in the above-captioned information with Possession of a Controlled Substance, False Identification to Law Enforcement, Driving While Operating Privileges are Suspended, and Possession of Drug Paraphernalia arising from an incident on February 25, 2003 when Defendant was stopped by an officer of the Williamsport Bureau of Police for allegedly driving erratically.

Before the Court is Defendant's Motion to Suppress filed on March 24, 2003, and heard by the Court on April 8, 2003. He asserts in his motion that his constitutional rights were violated in that he was unlawfully arrested because no probable cause for arrest existed. He also alleges that certain controlled substances and drug paraphernalia that were removed from his person and his vehicle subsequent to his arrest should be suppressed as physical evidence obtained as a direct result of the unlawful arrest.

A review of the evidence presented at the hearing on this matter shows that on February 25, 2003 Williamsport Bureau of Police Officer Christopher Moore observed the Defendant driving in an erratic manner. He ran the vehicle registration

and discovered that despite the display of a registration sticker dated 05-03, the registration on the vehicle had expired almost two months before. Officer Moore then stopped Defendant's vehicle because of the expired registration and made contact with the Defendant. Defendant did not possess any documentation for the vehicle, nor did he have a driver's license on his person. Instead, he gave the officer his personal information. Officer Moore ran the information on his computer and got no record back. He then verified the information with the Defendant, including the spelling of the name given by Defendant. Defendant provided the same information to the officer. It was later determined that the information provided by the Defendant was false. While the officer was speaking with the Defendant, he noticed what he called a "distribution bag" laying on the vehicle's floor, half under the driver's seat and next to a \$10 bill. The officer immediately suspected that the Defendant was involved in narcotics activity and placed him under arrest. He was transported to City Hall where a search incident to arrest uncovered a baggie in Defendant's right boot that contained smaller 1/2" by 1/2" baggies of crack cocaine, a small amount of money and two cell phones. The officer had the Defendant's vehicle towed and later obtained a search warrant, recovering from the vehicle, inter. alia., the baggie that he had initially seen at the vehicle stop, the \$10 bill, a small vial of marijuana and two additional 1/2" by 1/2" baggies of crack cocaine. Upon examination, it was discovered that the baggie seen at the initial vehicle stop was empty. However, Officer Moore testified that he believed that the bag looked like one used to distribute cocaine as it had several knots in it, leaving spaces between the knots of approximately 1/2" by 1/2" and there was a slight tear in the bottom of the bag.

Officer Moore also testified that he could think of no reason for a baggie to be tied in that manner other than for the distribution of a controlled substance.

The first issue that Defendant raises is his contention that his arrest was unlawful because Officer Moore lacked probable cause to believe he had unlawfully possessed a controlled substance. Probable cause is defined in Pennsylvania law as “those facts and circumstances available at the time of the arrest which would justify a reasonable prudent man in the belief that a crime has been committed and that the individual arrested was the probable perpetrator”, Commonwealth v. Harper, 402 A.2d 536, 485 Pa. 572 (1979), citing Commonwealth v. Holmes, 393 A.2d 397, 482 Pa. 97 (1978), quoting Commonwealth v. Dickerson, 364 A.2d 677, 468 Pa. 599 (1975). The law with respect to probable cause was recently examined by the Pennsylvania Supreme Court in the case of Commonwealth v. E.M., 735 A.2d 654, 558 Pa. 16 (1999), which explained that

Probable cause is present when there is reasonably trustworthy information which warrants a reasonable person in the belief that the suspect has committed or is committing a crime. Commonwealth v. Rodriguez, 585 A.2d 988, 526 Pa. 268 (1991). The United States Supreme Court has stated: “perhaps the central teaching of our decisions bearing on the probable cause standard is that it is a practical, nontechnical conception.” See Illinois v. Gates, 462 U.S. 213, 76 L.Ed.2d 527, 103 S.Ct. 2317 (quoting Brinegar v. United States, 338 U.S. 160, 93 L.Ed.2d 1879, 69 S.Ct. 1302 (1949)). Quoting Chief Justice John Marshall, the Court added that probable cause means “less than evidence which would justify condemnation . . . it imports a seizure made under circumstances which warrant suspicion.” See 462 U.S. at 235 (quoting Locke v. United States, 11 U.S. 339, 7 Cranch 339, 348 L.Ed. 364 (1813)). In elaborating further on the probable cause standard, the Court noted: “Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same -- and so are law enforcement officers.” *Id.* Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement. *Id.* (quoting United States v. Cortez, 449 U.S. 411, 66 L.Ed.2d 621, 101 S.Ct. 690 (1981)). What may initially appear to be

innocent behavior frequently will provide a basis for a showing of probable cause; to require otherwise would be to sub silentio impose a far more rigorous definition of probable cause than the security of our citizens demands. Illinois v. Gates, 462 U.S. 213, 76 L.Ed.2d 527, 103 S.Ct. 2317 (1983).

In this case, Officer Moore testified that when he saw the baggie partially under the seat of the car he immediately believed that the Defendant was involved in illegal narcotics activity. The Court believes that Officer Moore had probable cause to make an arrest of the Defendant. This is because the Officer immediately recognized the baggie as a “distribution baggie” similar to others he had seen in the past. Immediately next to the baggie, on the floor of the vehicle, was a \$10 bill, which the officer also said was of significance to him. Additionally, the Defendant was driving a car with an expired registration plate onto which someone had affixed an improper registration sticker and, also significantly, when asked by the officer to identify himself, he provided a name and date of birth which did not match information contained in the computer database of individuals who possess a driver’s license within the Commonwealth of Pennsylvania. Analyzing this set of facts using the practical, nontechnical standard outlined above in the case of Commonwealth v. E.M., supra., this Court believes that, taken together, the officer had cause to believe that a crime was probably being committed at the time that he arrested the Defendant.

The Court’s analysis does not change because the baggie initially seen by the officer was eventually discovered to be empty. As already noted above, probable cause “requires only a probability or substantial chance of criminal activity, not an actual showing of such activity. By hypothesis, therefore, innocent behavior frequently will provide the basis for a showing of probable cause.” In the Interest of

O.A., a Minor, 717 A.2d 490, 552 Pa. 666 (1998). While one who possesses an empty baggie is certainly not guilty of a crime, the law does not require that Officer Moore be correct in his belief that the baggie was a distribution bag that contained controlled substances. The law requires only a probability or substantial chance of criminal activity, which existed in this case.

Defendant next claims that physical evidence seized from his person and his vehicle subsequent to his arrest must be suppressed because the seizure of those items violated the United States and Pennsylvania Constitutions.

The Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution provide that individuals shall be free from unreasonable searches and seizures. U.S. Const. amend. XIV; Pa. Const. art. I, § 8. However, an officer may conduct a full custodial search of a suspect when the suspect is lawfully arrested. Commonwealth v. Long, 414 A.2d 113, 489 Pa. 369 (1980). When an officer makes an unlawful arrest, any evidence seized during a search incident to the arrest must be suppressed. Commonwealth v. Lovette, 450 A.2d 975, 498 Pa. 665 (1982). Consequently, the propriety of a search depends upon the validity of the arrest. This Court has already concluded that Officer Moore had probable cause to arrest the Defendant. However, in determining whether an individual was lawfully arrested, we begin with the notion that law enforcement authorities must have a warrant to arrest an individual in a public place on a misdemeanor charge unless the misdemeanor is committed in the presence of the police officer. Commonwealth v. Clark, 735 A.2d 1248, 558 Pa. 157 (1999). See also Commonwealth v. Freeman, 514 A.2d 884, 356 Pa.Super. 332 (1986) and

Commonwealth v. Reeves, 297 A.2d 142, 223 Pa.Super. 51 (1972). Here, the crimes with which the Defendant is charged occurred in the presence of Officer Moore. Defendant's arrest, although made without a warrant, is therefore lawful and the search of his person incident to arrest is constitutionally permitted.

The items which were found in the Defendant's vehicle were discovered during the execution of a search warrant which had been obtained following the Defendant's arrest. Defendant makes no claim that the search warrant was defective. In light of the foregoing analysis, this Court will not suppress the items seized during the execution of the search warrant.

ORDER

AND NOW, this _____ day of April, 2003, based on the foregoing,
Defendant's Motion to Suppress, filed March 24, 2003 is DENIED.

By the Court,

_____ J.

xc: DA
 PD (MS)
 Hon. Nancy L. Butts
 Gary Weber, Esquire
 Diane Turner, Esquire