

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, :
 :
 vs. : NO. 1763-2006
 :
 DERRICK JOHNSON, : CRIMINAL ACTION - LAW
 :
 Defendant :
 : Omnibus Pre-Trial Motion

DATE: May 31, 2007

MEMORANDUM OPINION and ORDER

Before the court for determination is the Omnibus Pre-trial Motion of Defendant Derrick Johnson filed January 31, 2007. In the Omnibus Pre-trial Motion, Johnson asserts a Motion to Suppress Evidence and a *Habeas Corpus* Petition. In the Motion to Suppress, Johnson asserts that the evidence seized from his person and from a green Ford Taurus must be suppressed as the fruit of illegal searches. In the *Habeas Corpus* Petition, Johnson asserts that the Commonwealth failed to present sufficient evidence to establish a *prima facie* case for Counts 4, 5, 6, 7, and 10. The Motion to Suppress Evidence and the *Habeas Corpus* Petition are to be DENIED.

As to the Motion to Suppress, the search of Johnson's person was a lawful search conducted incident to a valid arrest. Based upon the totality of the circumstances, the Williamsport Bureau of Police had probably cause to arrest Johnson for being involved with the gunshots that were fired in the city on August 31, 2006 at around 4:00 p.m. Johnson was identified by an eyewitness as the individual seen running down an alley in the area of the reported gunshots holding a handgun. This identification may be used to form the basis of probable cause because it was made while Johnson was subjected to an investigation detention. This investigation detention

was supported by reasonable suspicion because Johnson matched a detailed description of the individual seen running down the alley in possession of a handgun, Johnson was stopped near the area where this individual had been seen, and Johnson was stopped soon after the description of the individual was broadcast over the police radio.

The search of the green Ford Taurus was valid. The Williamsport Bureau of Police seized the vehicle prior to obtaining a search warrant for it. This was permissible due to the exigent circumstances. The Williamsport Bureau of Police had been told by an eyewitness that the individual seen running down the alley in possession of a handgun had entered the green Ford Taurus and leaned down for a couple of seconds. It was reasonable for the officers to believe that the individual may have disposed of the handgun he was seen carrying in the green Ford Taurus. As such, the officers needed to secure the vehicle to protect the evidence, as well as, for safety. The individual seen earlier with the handgun had not been detained and could have later returned to the vehicle to re-acquired the handgun if the police had not acted. Therefore, their seizure of the green Ford Taurus was appropriate and justifiable under the circumstances.

But, even if the seizure of the green Ford Taurus was illegal, it did not taint the subsequent search. The seizure did not lead to the discovery of any evidence or any facts that were used to form the basis of the probable cause for the search warrant. Those facts had been obtained prior to and independent of the seizure of the vehicle. As such, any illegality pertaining to the seizure of the green Ford Taurus would not affect the legality of the search.

The search of the green Ford Taurus was valid since it was conducted pursuant to a search warrant supported by probable cause. The affidavit of probable cause states that an eyewitness

identified Johnson as the individual seen in possession of a handgun running down an alley in the area where gunshots were reported. It also states that Johnson was identified by an eyewitness entering the green Ford Taurus and presumably place something in it. The affidavit of probable cause states that an officer who secured the vehicle shortly after the 911 calls reporting the gunshots were made detected “a very strong odor of gunpowder” in the area of the vehicle. The affidavit of probable cause further links Johnson to the green Ford Taurus because its states that the vehicle’s owner, Scott Treese, told the Williamsport Bureau of Police that he had loaned the vehicle to Johnson days before the incident. As such, there was probable cause to believe that a handgun, which was likely involved in the gunshot incident, would be found in the green Ford Taurus. Accordingly, the search of the green Ford Taurus was valid.

As to the *Habeas Corpus* Petition, the Commonwealth has presented sufficient evidence to establish a *prima facie* case for the offenses charged. For Count 4, Delivery of a Controlled Substance, the Commonwealth has presented evidence that the alleged white substance Johnson delivered to Treese was in fact cocaine when Treese, a cocaine user who was familiar with its effects, testified at the preliminary hearing that he smoked the white substance Johnson had delivered to him and it produced the familiar effects of cocaine. For Count 5, Possession with Intent to Deliver a Controlled Substance, the Commonwealth has presented evidence that Johnson possessed the cocaine found on his person with the intent to deliver it when he possessed a total of 5.5 grams of cocaine in two clear plastic baggies, did not have any accouterments of personal use, and had recently engaged in the sale of cocaine to Treese. For Count 6, Possessing Instruments of Crime, the Commonwealth presented evidence that Johnson possessed a firearm with the intent to

employ it criminally when Johnson was seen in possession of a handgun shortly after gunshots were reportedly fired in the area of the city where he was located. For Count 7, Recklessly Endangering Another Person, the Commonwealth has presented evidence that gunshots were reportedly heard, that Johnson was seen in the area where the gunshots were heard in possession of a handgun, and that the revolver found in the green Ford Taurus had three expended shell casings inside the cylinder. This is sufficient circumstantial evidence to establish *prima facially* that Johnson fired the handgun and was the source of the reported gunshots. As such, the discharge of a firearm on a city street would constitute reckless conduct that places others in danger of serious bodily injury that could result from being struck by one of the discharged bullets. For Count 10, Receiving Stolen Property, the Commonwealth has presented sufficient evidence to establish the Johnson knew or should have known that the handgun was stolen. Johnson was not able to legally purchase a handgun. As such, he would have to obtain one through illegal means. More often than not, handguns obtained through illegal means have been stolen.

Accordingly, the Motion to Suppress Evidence and the *Habeas Corpus* Petition are to be denied.

ORDER

It is hereby ORDERED that the Motion to Suppress Evidence and Habeas Corpus Petition set forth in the Omnibus Pre-trial Motion of Defendant Derrick Johnson filed January 31, 2007 are DENIED.

BY THE COURT,

William S. Kieser, Judge

cc: Peter T. Campana, Esquire
District Attorney (KO)
Judges
Gary L. Weber, Esquire (Lycoming Reporter)
Christian J. Kalas, Esquire