

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**CHANCIES MCFARLAND,
Defendant**

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**No. CR-1039-2008
CRIMINAL**

OPINION AND ORDER

Before this Honorable Court is the Defendant’s Omnibus Pretrial Motion filed on July 7, 2008. A hearing on the Motion was held on September 19, 2008. Defendant raises two issues in his Motion: (1) that the arrest was illegal and therefore all evidence seized on or near him should be suppressed; and (2) there is insufficient evidence to hold him for Court in connection with the Possession with the Intent to Deliver charge.

Background

The following is a summary of the facts presented at the Preliminary Hearing. Sometime in the evening hours of May 7, 2008, Officer Kristofer Moore (Moore) of the Williamsport Bureau of Police and Trooper Davis of the Pennsylvania State Police were partnered together as part of a dual effort association with the State Police and Special Operations Group of the Williamsport Bureau of Police targeting crime specifically in the center zone of the city, which is known as a high crime area. The Officers were in an unmarked police unit traveling northbound on Walnut Street, approaching Little League Boulevard when they observed a vehicle further north from their location traveling the same direction, northbound in the area of Memorial Ave. As the Officers came upon the vehicle, they slowed waiting for movement from the vehicle. The vehicle then slowed and stopped partially in the travel lane. Moore testified the vehicle was not

parked curbside as it was noticeably much further than the twelve inch guideline for parking; it was maybe two and a half or three feet into the roadway.

After the vehicle stopped, an unknown black male, later identified as Chancies McFarland (Defendant) exited the vehicle, locked the door, and was about to walk off. At this time, Moore could see inside the vehicle and noticed it was unoccupied. Upon Defendant's exit, Moore yelled at him to stop, to return to the vehicle, and stay put. Moore also initiated the cruiser's emergency overhead lights and rear deck lights to perform a vehicle stop on the vehicle as it was illegally parked in the roadway. As Moore was calling out the vehicle stop to County Communications, Davis exited the police unit and while in front of the police unit asked Defendant for identification. Defendant still holding the vehicle's key in his hands told the trooper his identification was in the glove box and appeared as if he was going to put the key in the door. Instead of locating his identification, Defendant took off running northbound on Walnut Street and then northeast across Memorial Ave. Davis gave chase on foot and used a Taser ECD device on the Defendant once he was apprehended. Moore helped take Defendant to the ground, at which time Defendant was saying something like, "I just got paraphernalia."

Once to the ground, the Officers handcuffed the Defendant and Moore pulled out what he believed to be an eight ball size quantity of suspected cocaine in a small plastic bag from the Defendant's pocket. Moore also found a cell phone and a single twenty dollar bill. Defendant was later transported to City Hall, where it was discovered he was on probation out of Philadelphia.

The substance found on the Defendant field tested positive for cocaine; the weight estimated by police at 3.2 grams. Moore testified the Defendant was charged with several Motor Vehicle Code violations in addition to Possession with the Intent to Deliver and Possession of a

Controlled Substance. Moore testified that based upon his training and experience it was his opinion the Defendant possessed the cocaine with the intent to deliver based upon the facts that (1) he ran when the police asked him for identification, (2) the amount of cocaine possessed, (3) the presence of a cell phone, and (4) twenty dollars. He also testified the Defendant was asked at the time of booking whether he was under the influence of narcotics or addicted to narcotics and the Defendant answered in the negative to both.

Discussion

Suppression

Defendant alleges that the police could only issue a citation and did not have a right to stop the Defendant to investigate. Specifically, Defendant asserts the police did not have probable cause or reasonable suspicion to stop him when he was tasered. The Commonwealth argues that the Defendant committed a traffic violation giving the police the right to detain the Defendant in order to issue a citation.

According to the Pennsylvania Supreme Court, ““where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible.”” Commonwealth v. Bryant, 866 A.2d 1143, 1145 (Pa. Super. Ct. 2005) (quoting Commonwealth v. DeWitt, 608 A.2d 1030, 1031 (Pa. 1992)). Police officers are authorized to stop a vehicle whenever they have “reasonable suspicion that a violation of the Vehicle Code is occurring or has occurred.” Commonwealth v. Hall, 929 A.2d 1202, 1206 (Pa. Super. Ct. 2007) (citing 75 P.S. § 6308(b)). Under Pennsylvania Law, “[o]utside a business or residence district, no person shall stop, park or stand any vehicle, whether attended or unattended, upon the roadway when it is practicable to stop, park or stand the vehicle off the

roadway.” 75 Pa.C.S. § 3351(a). In Commonwealth v. Dever, the Pennsylvania Superior Court found that

[w]hen a suspect who the police are justified in detaining has demonstrated a propensity for resistance as well as an intention to flee, physical force may reasonably be used by the police to enable them to detain the suspect. Otherwise, the police would be powerless to frisk a suspect who decided to resist the officer or leave the area of investigation.

364 A.2d 463, 465 (Pa. Super. Ct. 1976)

In the instant case, Moore had reasonable suspicion to believe that a violation of the Motor Vehicle Code had occurred. He observed the Defendant’s vehicle come to a stop partially in the travel lane, exit the vehicle, lock the door, and begin to walk off. At the time Defendant took off running, Moore and Davis had reasonable suspicion to detain him as he had violated the Motor Vehicle Code. As Moore and Davis were justified in detaining the Defendant, the use of the Taser ECD device was not unreasonable. Therefore, the motion to suppress evidence obtained on or near the Defendant shall be denied.

Petition to Dismiss/Habeas Corpus

Defendant also alleges there is insufficient evidence to hold him for Court in connection with the Possession with the Intent to Deliver charge as the evidence only supports simple possession. Further, Defendant alleges Moore’s testimony would be speculation and there is no evidence upon which a jury could conclude the Defendant possessed the cocaine with the intent to deliver. The Commonwealth argues in opposition that Moore did not in his opinion state the evidence was equally consistent with possession, and it is up to the jury to accept or reject the opinion.

At the preliminary hearing the Commonwealth must establish a prima facie case, which requires 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).

The elements of a charge of Possession with the Intent to Deliver are the possession of a controlled substance and the specific intent to deliver said controlled substance to another. 35 Pa.C.S. § 780-113(a)(30). According to the Pennsylvania Supreme Court, the intent to deliver may be inferred from possession of a large quantity of controlled substances. Commonwealth v. Jackson, 645 A.2d 1366, 1368 (Pa. Super. 1994). However,

if the quantity of the controlled substance is not dispositive as to the intent, the court may look to other factors. Other factors to consider . . . include the manner in which the controlled substance was packaged, the behavior of the defendant, the presence of drug paraphernalia, and large sums of cash found in possession of the defendant.

Commonwealth v. Ratsamy, 934 A.2d 1233, 1237-38 (Pa. 2007) (citing Jackson, 645 A.2d at 1368). Further, “[e]xpert opinion testimony is admissible concerning whether the facts surrounding the possession of controlled substances are consistent with an intent to deliver rather than with an intent to possess it for personal use.” Ratsamy, 934 A.2d 1238.

The Court finds that sufficient evidence was presented to establish a prima facie case of Possession with the Intent to Deliver. At the preliminary hearing, Moore, a narcotics expert¹ testified the contraband found on the Defendant consisted of 3.2 grams of cocaine, a cell phone, and a twenty dollar bill. Moore also testified that when Davis asked Defendant for identification he fled. The Court finds the facts presented are sufficient to establish prima facie on both charges, and therefore, the Petition to Dismiss/Habeas Corpus shall be denied.

ORDER

AND NOW, this ____day of October 2008, based on the foregoing Opinion, it is ORDERED and DIRECTED as follows:

- I. Defendant's Motion to Suppress evidence obtained on or near the Defendant is DENIED.
- II. Defendant's Petition to Dismiss/Habeas Corpus is DENIED.

By the Court,

Nancy L. Butts, Judge

cc. DA (HM)
PD (NS)
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)

¹ Defense Counsel stipulated to the fact that Moore is an expert on narcotics.