

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

KAREEM GILLISON
Defendant

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No. 0084-2010
CRIMINAL

OPINION AND ORDER

The Defendant filed a Petition for Writ of Habeas Corpus and a Motion to Suppress on January 25, 2010. Both parties agreed to have the decision of the above matters determined on the transcript.

Background

A Preliminary Hearing was held before Magisterial District Judge Allen Page on January 7, 2010. Officer Jeremy Brown (Brown) testified at the Preliminary Hearing. Brown testified that on December 18, 2009, he was on patrol with Corporal Simpler (Simpler) in the city of Williamsport. While on patrol, Brown observed a Pontiac that was parked off the roadway at a tilted angle. Brown watched the vehicle pull out into the roadway without the driver using the required signal, which is a violation of the Motor Vehicle Code. Brown and Simpler then followed the vehicle to the 600 block of Campbell Street, where they decided to activate their emergency lights and conduct a traffic stop. Soon after Brown and Simpler stopped the vehicle, Officer Snyder (Snyder) and Corporal Moore (Moore) arrived on the scene. Brown approached the vehicle and observed a white female driver, Jessica Weaver (Weaver), a black male in the front passenger seat, Kareem Gillison (Gillison), a black male seated directly behind the front

seat passenger, Antwone Jackson (Jackson), and a child in an infant seat. Brown observed Jackson make a movement with his arms that concerned Brown. After this observation, Brown had Weaver exit the vehicle. Weaver told Brown that she only knew Gillison a little bit and that she did not know Jackson at all. Brown informed Weaver that he was concerned that Gillison and Jackson might leave weapons and narcotics in the vehicle. Weaver then gave Brown written consent to search the vehicle. Brown had both Jackson and Gillison exit the vehicle. Gillison stated to Brown that he did not have any weapons but did not answer when Brown asked if Gillison minded if Moore patted him down. Once he was out of the car, Gillison started to run away and Snyder chased Gillison in between two buildings. Snyder testified that while he was in pursuit of Gillison, Snyder observed movements around Gillison's waist area. Snyder observed a dark object come from Gillison and land on the ground. Brown ran to the other side of the building and observed Snyder wrestling with Gillison. Snyder ordered Gillison to stop resisting. Gillison was then taken into custody. Brown then searched the flight path, the area that Gillison traveled through as he fled, to see if Gillison dropped anything. Brown found a black, 9mm, High Point handgun with one bullet in the chamber in the yard of a residential home near where he conducted the traffic stop. The yard where the gun was found was in the exact route that Gillison took when he fled from the traffic stop. Furthermore, the gun was found in the same location where Snyder observed Gillison discard a dark object. Brown observed that the gun was not weathered even though there was snow on the ground. Brown then found a magazine with 9mm round in it about ten (10) to fifteen (15) feet from where he found the handgun. Brown ran a check of the gun through the County system and the search revealed that the gun was reported as stolen.

Discussion

Gillison filed a Petition for a Writ of Habeas Corpus in which he alleges that the Commonwealth failed to establish a *prima facie* case against him for the crime of Resisting Arrest. Specifically, Gillison argues that he was merely a passenger at a traffic stop at the time he ran from the police and, therefore, the police did not have any lawful reason to place him under arrest.

It is well settled in this Commonwealth that "a petition for writ of habeas corpus is the proper vehicle for challenging a pre-trial finding that the Commonwealth presented sufficient evidence to establish a *prima facie* case." Commonwealth v. Carbo, 822 A.2d 60, 67 (Pa. Super. 2003) (citing Commonwealth v. Kohlie, 811 A.2d at 1013 (Pa. Super. 2002); see Commonwealth v. Hetherington, 311 A.2d 209 (1975); Commonwealth v. Fountain, 811 A.2d 24, 25 n.1 (Pa. Super. 2002); Commonwealth v. Saunders, 691 A.2d 946, 948 (Pa. Super. 1997), *appeal denied*, 705 A.2d 1307 (1997)). "While the weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense, the absence of evidence as to the existence of a material element is fatal." Commonwealth v. Wojdak, 466 A.2d 991, 997 (1983) (See Commonwealth v. Prado, 393 A.2d 8 (1978); Commonwealth ex rel. Scolio v. Hess, 27 A.2d 705 (Pa. Super. 1942)). Courts define probable cause as "a reasonable ground of suspicion supported by circumstances sufficient to warrant an ordinary prudent man in the same situation in believing that the party is guilty of the offense." Kelley v. General Teamsters, Local Union 249, 544 A.2d 940, 942 (1987) (citing Miller v. Pennsylvania R.R. Co., 89 A.2d 809, 811 (1952)).

A person violates 18 Pa. C. S. A. 5104, Resisting Arrest or Other Law Enforcement, if that person “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.” The court in Commonwealth v. Jackson, 924 A.2d 618 (2007) emphasized the fact that in order for a person to be guilty of Resisting Arrest, the underlying arrest must be lawful. See Commonwealth v. Biagini, 655 A.2d 492 (1995). In this case, Gillison was the occupant of a car in a traffic stop. Case law is clear that in regards to a search of a vehicle

To justify . . . a [warrantless] search . . . , an officer must have independent probable cause to believe that a felony has been committed by the occupants of the vehicle, or that it has been used in the furtherance of the commission of a felony, or the officer must have a basis for believing that evidence of a crime is concealed within the vehicle, or that there are weapons therein which are accessible to the occupants.

Commonwealth v. Fountain, 621 A.2d 124 (Pa. Super. 1992) (See Commonwealth v. Milyak, 493 A.2d 1346, 1349 (1985)). In this case, the driver of the vehicle, Weaver, gave the officers permission to search the vehicle. Brown informed Weaver that he was concerned that Gillison and Jackson might leave weapons or narcotics in the vehicle. Brown asked Weaver if the officers could search the vehicle, but informed her that she was not required to give consent to the search. Weaver agreed to allow the officers to search the vehicle. The Court notes that based on the facts of this case, the officers would not have been justified in conducting a warrantless search of the vehicle absent consent. See Commonwealth v. Fountain, 621 A.2d 124 (Pa. Super. 1992). However, the officers had consent to search in this case. After obtaining consent to the search, Brown had Gillison and Jackson exit the vehicle. After Gillison exited the vehicle, he

took off running. The court in Illinois v. Wardlow, 120 S. Ct. 673 (2000). addressed the situation of a suspect fleeing from police officers,

Headlong flight -- wherever it occurs -- is the consummate act of evasion: it is not necessarily indicative of wrongdoing, but it is certainly suggestive of such. In reviewing the propriety of an officer's conduct, courts do not have available empirical studies dealing with inferences drawn from suspicious behavior, and we cannot reasonably demand scientific certainty from judges or law enforcement officers where none exists. Thus, the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior.

See United States v. Cortez, 101 S. Ct. 690 (1981). The Wardlow Court noted that when a person is approached by the police without reasonable suspicion or probable cause, that person does have the right to ignore the police and go about their own business. Wardlow at 677. (See Florida v. Royer, 103 S. Ct. 1319 (1983)).

But unprovoked flight is simply not a mere refusal to cooperate. Flight, by its very nature, is not "going about one's business"; in fact, it is just the opposite. Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or to stay put and remain silent in the face of police questioning.

Wardlow at 677. After a suspect flees from the police, the police are justified in conducting what amounts to a Terry stop, a stop allowing the police to investigate possible criminal behavior even though there is no probable cause to make an arrest. Wardlow at 677. (See Terry v. Ohio, 88 S. Ct. 1868 (1968)). Here, it is clear that Gillison fled the officers. The officers were therefore justified in conducting a Terry stop to investigate Gillison's possible criminal behavior. Thus, when Synder caught up to Gillison and struggled to take Gillison into custody, Gillison was not resisting arrest. Gillison was merely resisting a Terry stop. The Court finds there was no probable cause to charge Gillison with Resisting Arrest and that his Writ of Habeas Corpus as to said charge should be granted.

Gillison also filed a Motion to Suppress any evidence recovered as a result of his arrest. The Court notes that once Gillison was in custody for purposes of the Terry stop, the officers were justified in investigating Gillison's possible criminal behavior. Wardlow at 677. (See Terry). Gillison threw a loaded gun into the yard of a nearby house as he ran from Snyder. A search of Gillison's criminal history showed that he had two prior felony convictions for Receiving Stolen Property. Gillison appeared to be in violation of 18 Pa. C. S. A. 6105(a)(1) Persons Not to Possess. Gillison was arrested and a search revealed that he was in possession of \$175.00. Gillison was then taken to police headquarters where a strip search of his person yielded four (4) bags of cocaine, which field tested positive. The Court concludes that as the currency, controlled substance and drug paraphernalia were found on Gillison as the result of a search incident to a lawful arrest, evidence of such should not be suppressed. Furthermore, as the loaded gun and magazine were found as a result of a lawful Terry stop which led to Gillison's arrest, the Court concludes that this evidence should not be suppressed either. See Wardlow at 677. Therefore, the Court finds that Gillison's Motion to Suppress should be denied.

ORDER

AND NOW, this ____ day of April, 2010 based on the foregoing Opinion, it is hereby ORDERED and DIRECTED that count four, Resisting Arrest, is hereby DISMISSED. It is further ORDERED and DIRECTED that the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc. DA
Jeana Longo, Esq.
Amanda Browning, Esq. (Law Clerk)
Gary L. Weber (LLA)