

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

vs.

**NASHEEN TAYLOR,
Defendant**

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: No. CR-1542-2009

OPINION AND ORDER

Before the Court is Defendant's Omnibus Pretrial Motion filed on December 2, 2009. Defendant's Omnibus Motion includes a Motion to Dismiss all of the charges against him or in the alternative, a Motion to Suppress Evidence, a second Motion to Suppress Physical Evidence, a Motion for Writ of Habeas Corpus, a Motion for Disclosure of Evidence pursuant to Rule 404 (b) and a Motion to Reserve Right.

A hearing was held before this Court on February 2, 2010. Following the hearing, the Court entered an Order with respect to Defendant's 404 (b) Motion and Defendant's Motion to Reserve Right. This Opinion and Order will address Defendant's Motion to Dismiss, Motion to Suppress and Motion for Writ of Habeas Corpus.

Defendant is charged by Information filed on October 29, 2009 with one count of Possession with Intent to Deliver Cocaine, one count of Possession with Intent to Deliver Cocaine Base (crack), one count of Possession of Cocaine, one count of Possession of Cocaine Base (crack), one count of Possession of Hydrocodone, one count of Possession of Promethazine Codeine and one count of Possession of a Small Amount of Marijuana.

At the hearing, Trooper Edward Dammer of the Pennsylvania State Police testified on behalf of the Commonwealth. On March 17, 2009, he received information that an individual by the name of Therim Powell would be going to District Justice Schriener's office at

County Farm Road in Loyalsock to apparently bail out a woman named Ebony Conner. At that time, Trooper Dammer was in possession of a felony arrest warrant for Powell.

Trooper Dammer observed an individual exiting the building and approaching a van. Trooper Dammer believed the individual to be Mr. Powell. The warrant was several months old and Trooper Dammer assumed that Powell may have grown a beard.

As the Defendant was entering the van, Trooper Dammer approached with his gun drawn and pointed toward the Defendant. When Trooper Dammer was within two or three feet of the Defendant, Trooper Dammer realized the Defendant was not Mr. Powell.

Nevertheless, Trooper Dammer ordered the Defendant out of the vehicle and immediately escorted the Defendant to the back of the vehicle. At the time the Defendant was escorted to the back of the vehicle, Trooper Dammer conceded that the Defendant was not free to leave. The Defendant was ordered to his knees and immediately handcuffed, after which he was questioned.

Simultaneously with the arrest of the Defendant, Trooper James Wool of the Pennsylvania State Police observed a second individual in the van. Trooper Wool ordered the individual out of the van after which the individual was detained, patted down and placed in a PSP cruiser. This individual was identified as Mr. Powell. At some point during the arrest of the occupants, Sergeant Joseph Tripp who was assisting Trooper Dammer looked in the van and saw suspected marijuana in plain view on the passenger seat. Sergeant Tripp advised Trooper Dammer of what he saw, after which both Trooper Dammer and Trooper Wool verified the observation of what appeared to be a plastic bag on the front passenger seat that contained marijuana.

Trooper Dammer also indicated that at some point during the arrest of the Defendant, he noticed the odor of smoked marijuana coming from the van. He could not tell who smoked the marijuana or when it was smoked.

The van was subsequently seized and transported to the State Police Barracks. Trooper Dammer applied for a search warrant, which was approved by and Assistant District Attorney and subsequently authorized by District Justice Schriener. The search warrant was executed on the vehicle, and during the search the Troopers discovered crack cocaine and powder cocaine located under the middle of the driver's seat, marijuana located on the passenger seat, and Hydrocodone and Codeine medication in the front center console.

Mr. Powell was charged at Information No. 679-2009 (Lycoming County) with the same offenses as the Defendant. On June 25, 2009, Mr. Powell filed a Motion to Suppress Evidence, a Motion to Dismiss and a Motion for Writ of Habeas Corpus. A hearing on the matter was held before the Honorable William S. Kieser, Senior Judge, on October 14, 2009.

Judge Kieser determined that the evidence would be inadmissible because its seizure and discovery occurred as a result of the taking into custody of Defendant (Mr. Taylor) without probable cause and had it not been for the Defendant being taken into custody, the evidence would not have been discovered. Commonwealth v. Therim Powell, No. 679-2009 (October 14, 2009).

Judge Kieser decided that when Trooper Dammer directed the Defendant to come out of the van and proceed to its rear area, he was taking the Defendant into custody. Certainly, Judge Kieser concluded, the act of handcuffing Mr. Taylor effected his arrest. Judge

Kieser further determined that the arrest was not based upon probable cause. Judge Kieser noted that Trooper Dammer did not testify as to having any reasonable suspicion that any other criminal activity was afoot and as a result, all of the evidence garnered after the stop of the Defendant following Trooper Dammer's discovery that the Defendant was not Mr. Powell, must be suppressed, as its discovery would not have occurred had it not been for Mr. Taylor's illegal detention.

The first issue to be determined by this Court is whether it is bound by the decision of Judge Kieser.

The coordinate jurisdiction rule mandates that judges of coordinate jurisdiction sitting in the same case not overrule each other's decisions. Okkerse v. Howe, 521 Pa. 509, 516, 556 A.2d 827, 831 (1989). This is a rule of sound jurisprudence based on a policy of fostering the finality of pre-trial applications in an effort to maintain judicial economy and efficiency. Okkerse, supra.

Contrary to what the Commonwealth argues, this Rule is not limited to Appellate Court matters. As part of the law of the case doctrine, the coordinate jurisdiction rule operates to protect the settled expectations of the parties, to ensure uniformity of decisions, to maintain consistency during the course of a case, to effectuate the proper and streamlined administration of justice and to bring litigation to an end. Commonwealth v. Starr, 541 Pa. 564, 664 A.2d 1326 (1995).

In the context of a criminal proceeding these rules are especially important. They seek to ensure fundamental fairness by preventing a party aggrieved by one judge's interlocutory order to attack that decision by seeking and securing relief from a different judge

of the same court. Starr, supra. Departure from either of these principles is allowed only in exceptional circumstances such as where there has been an intervening change in the controlling law, a substantial change in the facts or evidence giving rise to the dispute in the matter, or where the prior holding was clearly erroneous and would create a manifest injustice if followed. Starr, supra.

On the other hand, in the context of criminal litigation, the concept of mutuality has retained its vitality. Commonwealth v. Hamlin, 302 Pa. Super. 86, 448 A.2d 538 (1982). Coordinate jurisdiction/collateral estoppel has generally been applied only in those criminal cases involving defendants who were actual parties to the prior adjudication. Hamlin, supra.

The policy surrounding this is perhaps even more compelling. Specifically, because there may have been a miscarriage of justice as to one joint offender is no reason why there should also be a miscarriage of justice as to the other joint offender. Hamlin, supra.

On balance, and because no authority has been cited to this Court which compels this Court to apply the findings of a coordinate judge sitting on a different case but deciding a similar issue with similarly situated Defendants, this Court concludes that because the parties were not the same, this Court is not bound by the decision of Judge Kieser.

The Commonwealth asserts that based upon the totality of the circumstances, the detention of the Defendant was constitutional. The facts, however, belie this conclusion. While the Court accepts the testimony of Trooper Dammer as credible, the sequence of the events is determinative.

Trooper Dammer approached the Defendant with his gun drawn assuming the Defendant was Mr. Powell and knowing that there was a felony warrant for Mr. Powell's

arrest. Upon getting within two to three feet of the Defendant, Trooper Dammer realized that the Defendant was not Mr. Powell. Despite realizing that the Defendant was not Mr. Powell and not having any articulable suspicion that the Defendant was engaged in any criminal activity whatsoever, Trooper Dammer ordered the Defendant out of the van, escorted him to the back of the van, directed him to kneel down, and then handcuffed him.

While Trooper Dammer smelled the odor of burnt marijuana, it was unclear as to when exactly he smelled such or to whom the odor could be attributed. Moreover, the decision to seize and handcuff the Defendant was not at all based on any odor of burnt marijuana. If anything, the odor was smelled by Trooper Dammer as an incidental consequence of the Defendant's seizure and arrest.

Reviewing the totality of the circumstances, there was no legally sufficient basis to immediately seize and arrest the Defendant. The Commonwealth only argues that the seizure and arrest of the Defendant were proper and not that the evidence would have been inevitably and legally obtained. Accordingly, this Court is constrained to conclude that the evidence must be suppressed, because its discovery would not have occurred but for the unconstitutional detention of the Defendant.

ORDER

AND NOW, this ____ day of March, 2010, following a hearing on Defendant's Omnibus Motion, the Court grants the Defendant's Motion to Suppress Evidence. All evidence seized by the Commonwealth following the illegal detention and arrest of the Defendant, including all of the seized marijuana, cocaine, crack, Hydrocodone, Codeine, paraphernalia and money is hereby suppressed. The Commonwealth is precluded from utilizing any of the evidence at the trial and against the Defendant.

In light of this Court's decision with respect to the Motion to Suppress, this Court will not address the Motion to Dismiss or Motion for Writ of Habeas Corpus.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Edward J. Rymza, Esquire
Henry Mitchell, Esquire (ADA)
Gary Weber, Esquire (Lycoming Reporter)
Work File