

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH**

**v.**

**BILAL JUSTICE,  
Defendant**

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**CR-1025-2010  
CRIMINAL DIVISION**

**OPINION AND ORDER**

The Defendant filed an Omnibus Motion on September 8, 2010. A hearing on the Motion to Suppress evidence and the results of a drug swipe test were held January 20, 2011. Although not part of the hearing per se, other issues regarding the failure to comply with discovery rules and disclosure of the Defendant's prior record were also discussed.

***Background***

On May 28, 2010, Trooper Tyson Havens (Havens) and Corporal Michael Simpler (Simpler) were working the p.m. shift in an unmarked police vehicle. While on Walnut Street in the area of Memorial Avenue, the pair saw Bilal Justice (Defendant) meet with an individual known as Michael Smith (Smith). Havens and Simpler knew Smith as they had arrested him before on drug related offenses. Havens also recognized the Defendant and knew his last name, but could not remember his first name. Havens and Simpler observed the Defendant and Smith walk up to one another. The Defendant extended his closed right hand towards Smith. Both the Defendant and Smith observed Havens and Simpler and at that point the greeting was terminated. The Defendant then pulled his hand back, held it tight to his legs, and walked in the opposite direction. Simpler exited the vehicle and went towards Smith. Havens exited the vehicle and walked toward the Defendant and tried to engage the Defendant in conversation. As Havens walked toward the Defendant, the Defendant continued to walk away from him and refused to answer him. Havens continued to follow the Defendant and watched the Defendant

place his right hand in his right pocket. The Defendant then walked up the ramp at Patterson's Market and went into the market. Havens attempted to talk to the Defendant up until the time the Defendant went into the market. Havens never told the Defendant to stop. Havens then went up the ramp and into Patterson's Market as well. After Havens entered the market, Simpler came into the market behind him. Havens then attempted to engage the Defendant in conversation again while Simpler talked with the store clerk. Since Havens could not remember the Defendant's first name, he mentioned the Defendant's brother's name, and asked the Defendant what his name was. The Defendant then responded with a fake name. At that point, Havens noticed the tattoos on the Defendant's hand and remembered the Defendant's first name. Havens then keyed his microphone to call the Montoursville Pennsylvania State Police (PSP) Barracks and have the Defendant's name run through the system to check for outstanding warrants. However, before Havens received an answer from the barracks, the Defendant walked up to the counter inside the store. The Defendant put his hips up against the counter, reached into his pocket and pulled out a plastic bag containing a white chunky substance. Havens and Simpler knew from their work experience that the substance was probably crack cocaine. Havens and Simpler then moved toward the Defendant. The Defendant took the bag and looked as though he was moving the bag toward a female who was standing next to him. Havens grabbed the Defendant's right arm and Simpler grabbed the left arm. The Defendant tensed up, pushed his body off the counter and backed his lower body back towards Havens and Simpler. Havens and Simpler told the Defendant not to resist. The Defendant was then able to bring both of his hands together and switch the bag of suspected cocaine from his right hand to his left hand. The Defendant continued to struggle against them so Simpler shot the Defendant in the back with a taser. After he was hit with the taser, the Defendant tensed up, but did not go to the ground. The Defendant threw the bag to the left. At the same time, Ayyub Ali (Ali), who was also inside the

store, ran out of the store. Havens ran out of the store after Ali and saw that the Williamsport City Police had arrived as support. Havens got another officer to look after Ali and then went back into the store to assist Simpler with the Defendant. Inside the market, Simpler was still struggling with the Defendant and had to tase him for a second time. While the Defendant was being tased for the second time, Simpler saw the Defendant try to throw the bag of cocaine towards another person. At that time, Simpler was able to secure the bag. The suspected cocaine field tested positive for cocaine. After a third tase, the Defendant was successfully handcuffed and transported back to Williamsport City Hall.

## ***Discussion***

### ***Motion to Suppress Physical Evidence***

The Defendant alleges that the crack cocaine seized on May 28, 2010 should be suppressed. The Defendant contends that Havens and Simpler's actions in following the Defendant into the market constituted an investigative detention which was not supported by reasonable suspicion. The Defendant further contends that the Defendant's forced abandonment of the cocaine was precipitated by illegal police conduct and an illegal seizure; therefore, pursuant to Pa.Const.Art. 1, Section 8 the cocaine should be suppressed.

Contact between police and citizens can generally be categorized into three levels; 1) mere encounter; 2) investigative detention; and 3) custodial interrogation. See Commonwealth v. Hudach, 82 Pa.D. & C.4<sup>th</sup> 261 (Pa.D.& Cnty. 2007). A mere encounter is the least restrictive of the interactions and need not be supported by any level of suspicion. Hudach at 264. During mere encounters, an officer simply requests information from the citizen and the citizen can choose whether or not to respond. Hudach at 264. An investigative detention requires that the citizen stop and respond to the officer's questioning. Hudach at 264. Investigative detentions

must be supported by reasonable suspicion that the citizen is involved in criminal activity. Hudach at 264. In determining whether the interaction is a “[m]ere encounter or an investigative detention, a court must decide, after looking at all of the circumstances surrounding the interaction between the police officer and the Defendant, if a reasonable person would believe that they were free to decline the police officer’s requests and terminate the interaction.” Hudach 264. While there is no strict formula to follow in making the determination, case law recognizes a number of factors to be considered: “the nature, length and location of the detention; whether the suspect was transported against his or her will, how far and why; whether restraints were used; whether law enforcement showed, threatened or used force; and the investigative methods employed to confirm or dispel suspicions.” Hudach at 264, 265.

In this case, the Court does not find that the interaction between Havens and the Defendant rose to the level of an investigative detention. The interaction between Havens and the Defendant took place in a public place where other citizens were present. While Simpler was also present in the store, he was at the front of the store speaking with the store clerk. There was no object or person blocking the exit of the market. When Havens followed the Defendant into the market, he merely continued his attempts to engage the Defendant in conversation. Havens mentioned the Defendant’s brother’s name and tried to get the Defendant to tell him his first name. Once Havens saw the tattoos on the Defendant’s hand, he remembered the Defendant’s name and that he was involved in an incident with him in 2006 where the Defendant absconded with Havens’ partner’s handcuffs. Havens then jokingly made a reference to the Defendant about the incident. Around this time, Havens keyed his microphone to contact the Montoursville PSP Barracks to run a search on the Defendant. The Defendant then walked away from Havens toward the counter in the market. The Defendant’s actions in his little to no response to Havens’ questions, coupled with the fact that he actually walked away from Havens,

demonstrates that the Defendant felt he was free to decline Havens' requests and to terminate the interaction. These facts establish that the interaction was a mere encounter and that the Defendant's attempt to abandon the bag of cocaine was not precipitated by illegal police interaction. Havens and Simpler did not attempt to arrest the Defendant until the Defendant pulled the bag of suspected cocaine out of his pocket in plain view. Therefore, the Court finds no reason to suppress the cocaine.

***Motion to Suppress the results of the drug swipe test***

The Defendant alleges that the results of the drug swipe test should be suppressed. The Defendant alleges that the search warrant granting the authority to conduct the drug swipe test of the Defendant's hands was not issued pursuant to probable cause. "A search warrant indicates that the police have convinced a neutral magistrate upon a showing of probable cause, which is a reasonable belief, based on the surrounding facts and totality of circumstances that an illegal activity is occurring or evidence of a crime is present." Commonwealth v. Petroll, 738 A.2d 993 (1999) (citing Commonwealth v. Jones, 668 A.2d 114, 116-117 (1995)).

The search warrant application for the drug swipe test in this case met the standard of probable cause. The application stated in detail Havens' training and experience relating to narcotics investigations. The application listed fourteen (14) paragraphs of information relating to narcotics investigations known to Havens based on his training and experience. Most importantly, the application also set forth the facts of this case as they are described above. The application stated that while inside Patterson's Market, the Defendant pulled a large bag of suspected crack cocaine out of his pants pocket. Once they observed the suspected cocaine, Havens and Simpler attempted to arrest the Defendant. The Defendant resisted arrest and had to be tased three times in order for Havens and Simpler to complete the arrest. The suspected

cocaine was field tested and field tested positive for cocaine. The Court finds that the information set forth in the application provided the basis for a reasonable belief that the Defendant was involved in illegal activity and that a drug swipe test of the Defendant's hands would likely show that evidence of a crime was present.

### *Habeas Corpus*

The Defendant alleges that based on the evidence presented at the preliminary hearing, the Commonwealth failed to establish sufficient probable cause that the Defendant committed the offenses of Count 4 Resisting Arrest, or of Count 5 Disorderly Conduct.

A petition for habeas corpus is the means by which a party can challenge at the pre-trial level whether the Commonwealth presented sufficient evidence against them to establish a prima facie case. Commonwealth v. Carbo, 822 A.2d 60, 67 (Pa. Super 2003). The standard for a prima facie case is met when the Commonwealth “produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense.” Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003).

A person commits the offense of 18 Pa.C.S. §5104 Resisting Arrest 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.” A person commits the offense of 18 Pa.C.S. §5503(a)(4) Disorderly Conduct if that person, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

The facts of this case clearly show that the Commonwealth provided sufficient probable cause to believe that the Defendant committed the offenses of Resisting Arrest and Disorderly Conduct. At the Preliminary Hearing held before Magisterial District Judge James G. Carn on July 2, 2010, Havens and Simpler testified to the facts as they are outlined above. The facts establish that the Defendant struggled against Havens and Simpler and that he had to be tased three times before he was successfully arrested. The Defendant committed these actions in a public place where other citizens were present. The Defendant was told not to resist but continued to struggle against both Havens and Simpler. The Court finds that the facts establish that the Defendant acted, with the intent to prevent Havens and Simpler from effectuating a lawful arrest or discharging their duties as police to recover the suspected cocaine, in such a way as to require and justify substantial force to overcome his resistance. The facts further establish that, at a minimum, the Defendant, by his actions in resisting an arrest in a public place where other citizens were present and requiring the police to use a taser against him three times, recklessly created a risk of public inconvenience, annoyance or alarm by creating a hazardous or physically offensive condition which served no legitimate purpose.

### **ORDER**

AND NOW, this \_\_\_\_day of February, 2011, based upon the foregoing Opinion, it is ORDERED and DIRECTED as follows:

1. As to the Defendant's Objection to the Commonwealth's Notice of Joinder/Motion for Severance of the Defendant's case to case No. 1022-2010 against Ayyub Ali, said Motion is hereby GRANTED. The Court notes as of the time for the hearing on January 20, 2011, the Commonwealth did not object to the severance of the two cases.
2. As to the Defendant's Motion requesting an order precluding the Commonwealth from

presenting evidence which the Commonwealth failed to provide although mandated to do so, said Motion is hereby DENIED. Said Motion is denied as the Court finds the Commonwealth's failure to respond to discovery requests was not intentional or deliberate.

3. As to the Defendant's Motion for an order directing the Commonwealth to timely provide mandatory discovery, the Court disposes of each item requested as follows:
  - a) With respect to Disciplinary Action Reports and Notices of Disciplinary Penalty against Trooper Tyson Havens of the PSP, as the Commonwealth does not have ability to provide this information, Defense Counsel is DIRECTED to go through the proper channels to obtain this information by contacting counsel for the Pennsylvania State Police.
  - b) With respect to the Defendant's prior record score, the Commonwealth is ORDERED and DIRECTED to further research the Defendant's prior record score and to share any information discovered with Defense Counsel.
  - c) As to the results and reports of scientific tests conducted on the crack cocaine, the Commonwealth is ORDERED and DIRECTED to make a copy of the results and reports and to provide Defense Counsel with a copy.
  - d) As to results or report of the "drug swipe" test, the Court notes that Trooper Havens wrote the results of the "drug swipe" test in his report dated June 7, 2010, a copy of which Defense Counsel received.
  - e) As to the disclosure of the tangible evidence of the pants, the Court notes that the Commonwealth offered to make the pants available to Defense Counsel for inspection as requested.
4. As to the Defendant's Motion for an order directing the Commonwealth to provide discretionary discovery items, Defense Counsel is DIRECTED to file a subpoena for any



additionally desired items of discovery that they do not receive from the Commonwealth.

5. As to the Defendant's Motion to Suppress the cocaine, said Motion is hereby DENIED.
6. As to the Defendant's Motion to Suppress the results of the drug swipe test, said Motion is hereby DENIED.
7. As to the Defendant's Motion to Dismiss Counts 1 and 3 of the filed information, said Motion is DENIED. Said Motion is denied because at the time for the hearing on the Motion to Suppress on January 20, 2011, the Commonwealth identified that Count 1 Possession With Intent to Deliver relates to cocaine, and Count 3 Possession of Drug Paraphernalia relates to the baggies.
8. As to the Defendant's Motions for a Writ of Habeas Corpus with respect to Counts 4 and 5, said Motions are DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA  
Ronald C. Travis, Esq.  
Amanda B. Browning, Esq. (Law Clerk)