

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

**COMMONWEALTH**

**v.**

**JHALIL K. MOORE,  
Defendant**

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**CR-488-2011**

**CRIMINAL DIVISION**

**OPINION AND ORDER**

The Defendant filed a Motion to Suppress and a Petition for Writ of Habeas Corpus on September 7, 2011. Following several continuances, a hearing on both was held January 13, 2012.

***Background***

On March 17, 2011, members of the Drug Task Force of the Williamsport Bureau of Police proceeded to 643 Locust Street in the City of Williamsport to serve a felony drug warrant on an individual by the name of Ralph Thomas (Thomas). Upon arrival at the address, the police observed several black males on the porch of the residence, two of whom ran away from the residence as the police arrived. One of the fugitives was subsequently identified as Jhalil Moore (Defendant). Officers Thomas Bortz (Bortz) and Justin Snyder (Snyder), both members of the Drug Task Force, assisted with the chase of the two fleeing individuals. Bortz testified at the January 13, 2012 hearing that at one point during the chase, he observed the Defendant crouched down on his heels in an area of weeds from a distance of about fifty yards away. The Defendant then began jogging away in a south bound direction, and Bortz believed at that point that the Defendant could have been Thomas, as their appearance was very similar when viewed from that

distance. The Defendant then ran to hide behind a large evergreen tree, at which point the Defendant was ordered to get on the ground; however, the Defendant continued to run until Bortz finally caught up with him on foot in the area of 612 Park Avenue. As Bortz chased the Defendant, he observed that the Defendant's arms were swinging, and he could not ascertain whether or not the Defendant discarded items at that time. Once the Defendant was detained, a cursory search of his person was completed. The Defendant told the police his name was "Tremayne Moore," which Bortz knew was not true since he was personally acquainted with Tremayne. The police then discovered that Tremayne was the Defendant's brother. The police received radio traffic that a "tossed handgun" was found in the flight path from 643 Locust Street, and at that point Snyder proceeded to further investigate the Defendant's flight path. Upon investigation, Snyder recovered a cell phone that looked like it had just been placed on the ground, and a plastic bag containing suspected crack cocaine. Snyder testified that no one else was observed to be in the area of the flight path besides the Defendant.

Once radio traffic was received that the Defendant could be arrested based on the items found in the his flight path, the Defendant was arrested and charged with Delivery of a Controlled Substance, Possession of a Controlled Substance, and Possession of Drug Paraphernalia. A search incident to arrest yielded \$2467.00, a cell phone, and a clear plastic baggie with an apple print on the side containing several smaller blue plastic baggies. The suspected crack cocaine tested positive for the presence of cocaine and a drug swipe of the Defendant positively indicated cocaine and marijuana.

## *Discussion*

### *Motion to Suppress - Unconstitutional search of the Defendant*

Defense Counsel avers in the motion that the search of the Defendant's person was unconstitutional as it was a warrantless search not supported by probable cause and that the evidence seized following the illegal search should therefore be suppressed. The Defense also maintains that the initial detention of the Defendant was not supported by reasonable suspicion and that the Defendant could not be detained while reasonable suspicion was gathered. In support of their argument, the Defense contends that the facts of this case are similar to those in Commonwealth v. Mistler, 869 A.2d 497 (Pa. Super. 2005) wherein members of the Pennsylvania State Liquor Control Enforcement (LCE) entered a fraternity party suspecting there would be underage drinking, and due to the size of the party, called the local police force for back-up. Of those in attendance, only those who were able to provide proof they were over 21 years of age, or who provided a "zero" breath test, were allowed to leave. Id. at 500. The Mistler Court determined that "[w]ithout individualized observation of specific conduct, i.e. drinking alcohol or demonstrating some indicia of intoxication, we agree with the suppression court that the LCE officers lacked reasonable suspicion to detain and cite the appellees." The Mistler Court relied on the reasoning of the court in Commonwealth v. Wood, 833 A.2d 740 (Pa. Super. 2003) which found that:

[t]o establish grounds for 'reasonable suspicion' sufficient to justify an investigative detention, the officer must articulate specific observations which, in conjunction with reasonable inference derived from these observations, led him reasonably to conclude, in light of his experience, that criminal activity was afoot the person he stopped was involved in that and that activity.

Id. at 747. To further support their argument, the Defense maintains that "flight alone does not constitute probable cause of an arrest." Commonwealth v. Banks, 658 A.2d 752 (Pa. 1995).

While the Court agrees with the Defense that flight alone does not in fact constitute probable cause to arrest, the Court finds that the circumstances of this case presented much more than mere flight alone, and that at the time the Defendant was detained, only reasonable suspicion was needed to justify the detention and the initial cursory search of the Defendant. See Terry v. Ohio, 88 S. Ct. 1868 (1968). Unlike the facts found in Mistler, the Court believes that the facts of this case did provide the officers with reasonable suspicion to detain the Defendant. At the time the officers began to chase the Defendant, they were unsure whether he was Thomas, an individual upon whom they were to serve a felony drug warrant, as the Defendant fled from the residence where they were to serve the warrant upon Thomas. In fact, Bortz testified that from a distance of about 50 feet during the search, the Defendant looked a lot like Thomas. Although Bortz was aware that the Defendant was not in fact Thomas at the time he was eventually detained, Bortz testified that during the chase he witnessed the Defendant's arms swinging and that he could not say whether or not the Defendant discarded any items. Once the Defendant was detained, he provided the police with a false name. The Court finds that "[b]ased upon a combination of facts and circumstances, in the instant case, a reasonable police officer could conclude that criminal activity was afoot." See Commonwealth v. Cook, 735 A.2d 673 (Pa. 1999) where the Supreme Court determined that

[t]he attempted exchange of an unidentified object in a high crime area, appellant's nervous behavior when the police made a U-turn; and appellant's flight, the police officers were able to point to specific and articulable facts, which in light of their police training and expertise, supported a finding of reasonable suspicion.

The Court also notes that the officers in this case received radio traffic that a handgun had been discarded in the Defendant's flight path, and that there were no other individuals observed in the path except for the Defendant. With this knowledge in mind, and while the Defendant was

detained, Snyder retraced the Defendant's flight path and found a cell phone and a plastic bag containing suspected crack cocaine. The Court finds this information provided probable cause for the Defendant's arrest and therefore the search incident to arrest. "Probable cause has been defined as those facts and circumstances available at the time of the arrest which would justify a reasonably prudent man in the belief that a crime has been committed and that the individual arrested was the probable perpetrator." Commonwealth v. Dickerson, 364 A.2d 677 (Pa. 1976).

The Court finds as there was reasonable suspicion for the initial detention, and subsequent probable cause for the Defendant's arrest, the evidence seized was not the fruit of an illegal search and the Motion to Suppress will be denied.

***Petition for Writ of Habeas Corpus***

The Defense maintains that the suppression of the evidence as requested in the Motion to Suppress would render the Commonwealth unable to present a prima facie case as to the charges against the Defendant.

Since the Court declined to suppress the evidence as requested, the Court finds that the Commonwealth is able to present a prima facie case as to the charges of Delivery of a Controlled Substance, Possession of a Controlled Substance, and Possession of Drug Paraphernalia.

**ORDER**

AND NOW, this \_\_\_\_ day of February, 2012, based upon the foregoing Opinion, the Defendant's Motion to Suppress and Petition for Writ of Habeas Corpus are hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: Aaron S. Biichle, Esq.  
Jeana A. Longo, Esq.