

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**MARLON TAYLOR,
Defendant**

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CR-1212-2011; 1285-2011

CRIMINAL DIVISION

OPINION AND ORDER

The Defendant filed an Omnibus Motion on October 12, 2011. A hearing on the Motion was held December 19, 2011.

Background

On August 2, 2011, Trooper Mitchell McMunn (McMunn) was on patrol with Corporal Michael Simpler (Simpler), both of the Pennsylvania State Police, when they observed a light colored Chevrolet Venture traveling south on Rose Street in Williamsport. After doing a u-turn to follow the vehicle, McMunn and Simpler saw the vehicle come to a stop and the four occupants exited the vehicle in a “hurried manner” in what appeared to the Troopers to be an effort to distance themselves from the vehicle. The Troopers tried to speak with the individuals, but were unsuccessful in engaging them in conversation. The individuals then began knocking on the windows and doors of various apartments in a nearby apartment complex before someone in one of the apartments let all four of them inside. The Troopers found the individuals behavior to be suspicious; however, because no laws were broken, they did not detain them at that time and instead continued on with their patrol. About 20-25 minutes later, the Troopers saw the

same four individuals walking up 7th Street toward High Street in Williamsport. The Troopers again tried to engage the individuals in conversation, but were once again unsuccessful. The Troopers then returned to the area where the van was parked and ran the registration of the vehicle, which came back as belonging to an Antoine Carter. The Troopers also looked inside vehicle, but observed no evidence of any crime. The following day, McMunn and Simpler were again on patrol when they saw the same Chevrolet Venture, this time with a lone occupant operating the vehicle at the corner of Elmira Street and Park Avenue in the City of Williamsport. The individual, later identified as Marlon Taylor (Defendant), looked at the Troopers, who were in full uniform, turned up Elmira Street and then parked outside the American Rescue Workers building. The Troopers pulled up beside the vehicle and asked the Defendant how he was doing. The Defendant indicated that he was “alright” and appeared to the Troopers to be “nervous and shaky.” Simpler then got out of his vehicle, approached the Defendant, and stated, “your license is suspended, isn’t it?” at which point the Defendant ran, distancing himself from the vehicle. The Troopers both testified at the hearing on the Omnibus Motion that the area of Elmira Street is a high crime area, as they have made many arrests in that area. Once the Defendant took off running, both Simpler and McMunn pursued him on foot and yelled for the Defendant to stop running. Simpler tried to tase the Defendant, but missed. McMunn and Simpler continued to chase the Defendant and Simpler caught up with him and tackled him. Since the Defendant would not give up his hands to be placed in handcuffs easily, McMunn and Simpler both had to pry the Defendant’s hands out from under him. The Defendant was then placed under arrest and a search of his person revealed a cell phone, change and approximately \$100.00 in cash. After the Defendant was arrested, Simpler went back to the Defendant’s vehicle with Officer Justin Snyder (Snyder) of the Williamsport Police. Both of the back vent windows of the vehicle were

open and Snyder alerted Simpler to the strong odor of marijuana emanating from the vehicle. The vehicle was then towed to the Montoursville barracks where McMunn also smelled what he believed to be an odor of raw marijuana coming from the vehicle. Trooper Dennis Haines was called to the barracks with his K-9 Tequila which alerted positive on the vehicle as well. A search warrant was then obtained on the vehicle and a search yielded a loaded .22 caliber firearm with 10 rounds and 1 in the chamber. The firearm was discovered to have been previously stolen from an individual in State College. After the Defendant was arrested, it was verified that his license was in fact suspended.

The Defendant was thereafter charged with Receiving Stolen Property, Person Not to Possess a Firearm, Driving while Operating Privilege is Suspended, and Resisting Arrest. The charges of Resisting Arrest and Person Not to Possess a Firearm were subsequently dismissed at the preliminary hearing before Magisterial District Judge Allen Page for lack of a prima facie case. However, the Commonwealth then re-filed both charges, but thereafter agreed to dismiss the charge of Resisting Arrest at the time of the second preliminary hearing. On September 12, 2011 the Defendant was arraigned on case number 1212-2011 for Receiving Stolen Property and Driving Under Suspension and on October 3, 2011 on case number 1285-2011 for the Persons Not to Possess a Firearm charge. These charges have been joined by the Commonwealth for trial.

In his Omnibus Pretrial Motion, the Defendant contends that the Troopers did not have reasonable suspicion to believe criminal activity was afoot before attempting to conduct an investigative detention of him, the Troopers did not have probable cause to arrest him, and the search warrant that was used to search the vehicle he was driving was defective because it was based upon information and facts that were illegally obtained by the Troopers. As the Troopers

located the firearm, which is the subject of charges against the Defendant, upon execution of the search warrant, the Defendant contends that the illegal conduct of Troopers in obtaining the search warrant should result in the suppression of the firearm.

Discussion

Reasonable suspicion for detention of the Defendant

In his Motion to Suppress, the Defendant claims that the interaction between the Troopers and the Defendant began as a mere encounter, but quickly escalated to an investigative detention when Simpler exited the police vehicle and approached an apparently nervous Defendant and asked him if his license was suspended. The Defendant contends that the interaction was at that point an investigative detention as Simpler's question launched an investigation into whether the Defendant had committed a crime by driving without a license. However, the Defendant contends that he had not, at that point in time, engaged in any form of criminal conduct to warrant the reasonable suspicion necessary to justify an investigative detention. Therefore, the Defendant contends that all evidence obtained subsequent to Simpler's question should be suppressed.

The Court agrees with the Defendant that Simpler's actions in exiting his vehicle, approaching the Defendant, and asking the Defendant about the status of his license did constitute an investigative detention for which reasonable suspicion was required. See Commonwealth v. Dehart, 745 A.2d 633 (Pa. Super. 2000). However, contrary to the Defendant's assertion otherwise, the Court finds that the Troopers did have reasonable suspicion to necessitate an investigatory detention of the Defendant. Whether reasonable suspicion exists to warrant an investigatory detention depends on whether "[t]he facts available to the officer at

the moment of the [intrusion] warrant a man of reasonable caution in the belief that the action taken was appropriate....this assessment....requires an evaluation of the totality of the circumstances.” Commonwealth v. Taggart, 997 A.2d 1189, 1192 (Pa. Super. 2010) (Quoting In re M.D., 781 A.2d 192, 197 (Pa. Super. 2001)). The Court finds that the Defendant’s evasive conduct in parking and quickly exiting the vehicle after seeing the Troopers, his nervous demeanor, along with the fact that the encounter took place in an area cited by both Troopers as that of a high crime area, provides sufficient reasonable suspicion to warrant an investigative detention. See Taggart at 1194-1195.

Illegal arrest of the Defendant

The Defendant further opines that the Troopers subjected the Defendant to an illegal custodial detention/arrest when they arrested him. The Defendant contends that his flight was provoked by the Troopers conduct when they illegally seized him for an investigative detention, and that at the time the Troopers took him to the ground, they had observed no criminal actions on the part of the Defendant. Furthermore, the Defendant states that even after the Troopers searched him, the only items found on his person, a cell phone, change and approximately \$100.00 in cash, were not items of contraband. Based on these facts, the Defendant contends that the Troopers lacked probable cause to arrest the Defendant when they were aware of no facts at the time of his arrest that would have warranted a person of reasonable caution to believe that the Defendant was committing a crime.

The Court disagrees with the Defendant that his flight was provoked by the Troopers conduct, as the Court finds, as discussed above, that the Defendant was not illegally seized. The Court finds that the Defendant’s suspicious behavior in an area of high crime provided further

reasonable suspicion for the Defendant's detention. However, once the Troopers detained the Defendant following the foot pursuit, the Defendant was not merely detained for investigatory purposes, he was arrested. The Court agrees with the Defendant that at the time of his arrest, the Troopers lacked probable cause for the arrest as they were aware of no facts to warrant a person of reasonable caution to believe that the Defendant was committing a crime. In fact, the Troopers both admitted during their testimony that at the time they pursued the Defendant on foot prior to his arrest, they were not aware that the Defendant had violated either the crimes code or the vehicle code. Therefore, the Court agrees with the Defendant that the Troopers lacked probable cause to effectuate an arrest at the time of his arrest. However, for the reasons to follow, the Court finds that the illegal arrest of the Defendant is immaterial, as the police would have subsequently had probable cause to arrest the Defendant notwithstanding the actions taken leading to the arrest.

Defective search warrant

The Defendant argues that the search warrant used to search the van was defective because it was based upon false information and facts illegally obtained by the police. While the Court agrees with the Defendant that the Troopers lacked probable cause to effectuate an arrest at the time the Defendant was arrested, the Court does not believe that the search warrant in this case was defective. As stated above, the search warrant in this case was predicated upon the smell of marijuana emanating from the vehicle, which the Court finds is independently sufficient to substantiate a search warrant. Furthermore, as the Defendant was not the owner of the vehicle, the Court believes that securing the vehicle at the barracks until the search warrant was obtained was proper, as the owner's whereabouts were unknown and he conceivably could have

returned to the scene at any time to remove the vehicle. As the Court believes that the search warrant was not predicated upon the illegal conduct of the Troopers, the Court declines to suppress the firearm discovered following execution of the warrant.

ORDER

AND NOW, this 10th day of January, 2012, based upon the foregoing Opinion, the Defendant's Motion to Suppress is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: Martin Wade, Esq.
Kyle W. Rude, Esq.