

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-803-2012
:
vs. :
:
DUMFER ADJEI-FRIMPONG, :
Defendant :

OPINION AND ORDER

This matter came before the Court on March 20, 2013 for a hearing and argument on Defendant’s omnibus pretrial motion, which was filed on October 16, 2012. The relevant facts follow.

On December 2, 2011, Officer Jeremy Brown and Officer Robert Williamson of the Williamsport Bureau of Police responded to a report of a hit and run in the 300 block of Locust Street next to Bart’s Pizzeria. The officers made contact with the victims of the hit and run. Two vehicles were hit: a maroon van and a red car. Each had gold transfer paint on them, and a gold gas cover with red paint on it was on the ground at the scene. The police also discovered that the incident, or at least a portion of it, was captured on video by the video surveillance equipment at Bart’s Pizzeria. The clarity of the video was not good, but the officers could tell that the vehicle was a gold Buick and the driver was an African-American male. They also could see the driver’s hair and the color of his clothing.

At approximately 9:44 p.m. on December 26, 2011, someone claiming to be one of the victims from the hit and run the night before called County Communications and stated that he or she was following the suspect vehicle. Since the vehicle was leaving Williamsport and headed north toward Old Lycoming Township, Officer Brown made a

request through County Communications for Old Lycoming Township police to stop the vehicle.

Officer Jeffrey Hughes, of the Old Lycoming Township Police Department, was on duty in the area. He was provided with a license plate number and a description of the suspect vehicle. He located the suspect vehicle traveling north on Lycoming Creek Road and stopped it in the 2900 block, which is in Loyalsock Township. Officer Hughes candidly admitted that he did not have any information to corroborate that this was the vehicle that had been involved in the hit and run and, in fact, he had no information about that incident.

The person who was following the vehicle pulled in behind Officer Hughes' vehicle.

Officer Hughes approached the driver of the vehicle and asked him for his license, registration and insurance. The driver was Defendant Dumfer Adjei-Frimpong. Defendant provided his identification card and told Officer Hughes that his license was suspended. Defendant had to make a phone call to find out where the registration and insurance cards were, because he was not the owner of the vehicle.

Shortly thereafter, Officer Brown and Officer Williamson arrived. Officer Hughes finished writing a citation for driving under suspension and then he gave Defendant's identification card and the citation to the Williamsport officers.

Officer Brown approached Defendant and asked him to exit the vehicle. He told Defendant that he was investigating a hit and run that had occurred the night before. Defendant exited the vehicle and put his hands in his pockets. Officer Brown told Defendant

to slowly remove his hands from his pockets and to keep them out. Within a few seconds, however, Defendant began to put his hands back in his pockets. Officer Brown immediately took Defendant to the back of the vehicle and patted him down for weapons. No weapons were discovered, but during the pat down Officer Brown felt a small bag of marijuana in the “watch pocket” of Defendant’s jeans and removed it. Once Officer Brown discovered the marijuana, he conducted a full search of Defendant’s person and he found small bag of pills in the watch pocket. The pills contained cocaine.

On March 26, 2012, Officer Williamson filed three traffic citations against Defendant – two for driving under suspension and one for accidents causing damage to unattended property – related to his driving on December 25, 2011. On that same day, Officer Williamson filed a criminal complaint against Defendant charging him with possession of a controlled substance (cocaine), possession of a small amount of marijuana, and possession of drug paraphernalia.

On July 12, 2012, at the time scheduled for the hearing on the traffic citations, Defendant entered a guilty plea to the citation for accidents involving damage to unattended property and one of the citations for driving under suspension. Officer Williamson withdrew the other citation for driving under suspension.

On October 16, 2012, Defendant filed his omnibus pretrial motion, which contained a motion to dismiss based on 18 Pa.C.S. §110; a motion to suppress physical evidence based on an illegal stop, frisk, and search; a request for disclosure of any promises of immunity or leniency and the criminal history information of all persons the

Commonwealth intends to call as a witness at trial; a motion for disclosure of other crimes or bad acts evidence; a motion for formal discovery; and a motion to reserve right.

Defendant first asserts that he is entitled to dismissal of the charges in this case pursuant to 18 Pa.C.S. §110(1)(ii), because the traffic citations and the drug charges arose from the same criminal episode.

Section 110 states, in relevant part:

Although a prosecution is for a violation of a different provision of the statutes than a former prosecution or is based on different facts, it is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal or in a conviction as defined in section 109 of this title (relating to when prosecution is barred by former prosecution for the same offense) and the subsequent prosecution is for:

...

(ii) any offense based on the same conduct or arising from the same criminal episode, if such offense was known to the appropriate prosecuting officer at the time of the commencement of the first trial and occurred within the same judicial district as the former prosecution unless the court ordered separate trial of the charge of such offense;

18 Pa.C.S. §110 (1)(ii). A defendant is entitled to relief on this type of claim if the following four-part test is met:

(1) the former prosecution resulted in an acquittal or a conviction; (2) the current prosecution must be based on the same criminal conduct or have arisen from the same criminal episode as the former prosecution; (3) the prosecutor must have been aware of the current charges before the commencement of the trial of the former charges; and (4) the current charges and the former charges must be within the jurisdiction of a single court.

Commonwealth v. Gimbara, 835 A.2d 371, 373-74 (Pa. Super. 2003), citing Commonwealth v. Failor, 564 Pa. 642, 647, 770 A.2d 310, 313 (2001).

The only dispute in this case is whether Defendant has shown the second factor. In Commonwealth v. Schmidt, the Superior Court noted,

This concept of criminal episode has been defined as ‘an occurrence or connected series of occurrences and developments which may be viewed as distinctive and apart although part of a larger or more comprehensive series.’ With respect to the factors relevant to a determination of ‘same criminal episode,’ the Supreme Court framed the standard as follows: Where a number of charges are logically and/or temporally related and share common issues of law and fact, a single criminal episode exists, and separate trials would involve substantial duplication and a waste of scarce judicial resources. In such cases, failure to consolidate will bar successive prosecutions. In ascertaining whether a number of statutory offenses are ‘logically related’ to one another, the court should initially inquire as to whether there is a substantial duplication of factual, and/or legal issues presented by the offenses. The single criminal episode analysis essentially considers the totality of the circumstances.

919 A.2d 241, 245-46 (Pa. Super. 2007).

Upon considering the totality of the circumstances, the Court concludes that the traffic citations and the drug charges are not part of the same criminal episode. Although the offenses were only a day apart, they are not logically related, because they do not involve a substantial duplication of factual or legal issues.

The issues for the traffic citations were whether Defendant was the driver of the vehicle which struck two vehicles near Bart’s Pizzeria and whether Defendant’s license was suspended. The evidence needed to prove these offenses likely would include the video surveillance tape from Bart’s Pizzeria, a certified copy of Defendant’s driving record, and perhaps testimony from the owners of the damaged vehicles.

The issues for the drug charges in this case are whether Defendant knowingly

possessed cocaine, marijuana, and drug paraphernalia. The evidence to prove these offenses would include Officer Brown's testimony about how he discovered the small bags of pills and vegetable material in the watch pocket of Defendant's jeans, as well as testimony from the person who tested the pills and vegetable material and determined that those items contained cocaine and marijuana, respectively.

While certainly the basis for the stop of Defendant's vehicle could be introduced as part of the background of how Officer Brown came into contact with Defendant and discovered that he possessed controlled substances, it is a de minimis duplication of facts that is insufficient to establish a logical relationship between the offenses. See Schmidt, 919 A.2d at 243; Commonwealth v. M.D.P., 831 A.2d 714, 720 (Pa. Super. 2003).

Defendant next asserts that the stop of his vehicle and the pat down and search of his person were illegal; therefore, the physical evidence must be suppressed. Based on the record presented in this case, the Court is constrained to agree.

Once a defendant files a motion to suppress, the Commonwealth bears the burden to prove, by a preponderance of the evidence, that the challenged evidence was not obtained in violation of the defendant's rights. Pa.R.Cr.P. 581 (H); Commonwealth v. Wallace, 42 A.3d 1040, 1047-48 (Pa. 2012).

Here, the sole basis for the stop was that someone claiming to be a victim or witness called County Communications and reported that he or she was following a vehicle believed to be involved in the hit and run previous night. The Commonwealth, however, did

not call this person as a witness. There also was nothing in the record to indicate how this victim/witness would even know what the offending vehicle looked like, as Defendant was charged with accidents involving damage to an **unattended** vehicle.

Officer Hughes did not have any information about the hit and run incident; he just had the license number and description of the vehicle that the caller was following, which was provided to him by County Communications. He also did not observe any vehicle code violations or other criminal activity to independently justify the stop. He stopped the vehicle at the request of the Williamsport police officers. Officer Brown and Officer Williamson, however, were not in hot pursuit of the vehicle and did not see it on December 26, 2011 until Officer Hughes had already pulled it over.

Apparently, none of the police officers prepared a police report. If so, no testimony was elicited regarding reports. Moreover, no reports were utilized to refresh the officers' memories. They could not remember any details about the description of the suspect vehicle provided by the caller, the name of the caller or even whether the caller's name was mentioned in the dispatch. The most they could say was that County Communications typically would state if a call was anonymous and they did not think County Communications said that in this case.

Even the officers' testimony about their observations of Defendant and the vehicle was vague and conclusory. They stated that Defendant and the vehicle he was driving matched the description of the driver and the suspect vehicle from the hit and run, but they did not provide a detailed description for either one. For example, although Officer Brown

testified that he could observe the driver's hair and clothing on the video from Bart's Pizzeria, he could not provide a description of the individual's hair and clothing other than the clothing might have been red. While he testified that Defendant was wearing the same clothing that the hit and run driver was wearing the previous night, he cannot bootstrap his testimony with observations that were not made until after the stop occurred.

Officer Brown and Officer Williamson never caught up to the vehicle until a few minutes after Officer Hughes stopped it. No one mentioned a description of the driver's clothing in the dispatch. Moreover, the pursuit and stop occurred at approximately 9:00 p.m. on December 26 and, unless the dome light or a map light was on inside the vehicle, one generally would not be able to see inside the vehicle while it was being driven. Therefore, based on the facts of record, the police had no idea what clothing Defendant was wearing until they made contact with him after the vehicle was stopped.

Defense counsel argued that the officers' conclusory statements amounted to no more than "just trust us." The court is constrained to agree. The court understands that given the apparent lack of police reports and the passage of time, the officers' memories have faded. Nevertheless, it is still the Commonwealth's burden to present **facts** from which the court could conclude that the officers had reasonable suspicion or probable cause to believe that Defendant was the driver of the vehicle involved in the hit and run incident before Officer Hughes stopped the vehicle. The testimony elicited by the Commonwealth from the officers was inadequate to satisfy the Commonwealth's

burden of proof.

ORDER

AND NOW, this ___ day of May 2013, the Court DENIES Defendant's motion to dismiss pursuant to 18 Pa.C.S. §110, but GRANTS Defendant's motion to suppress contained in his omnibus pretrial motion and precludes the Commonwealth from introducing any evidence obtained as a result of the stop of Defendant's vehicle. In light of the suppression of all of the physical evidence, the Court finds that Defendant's remaining portions of Defendant's omnibus pretrial motion are moot.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Edward J. Rymza, Esquire (defense attorney)
Work file