

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

ALIEK CARR,
Defendant

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CR: 1990-2012
CRIMINAL DIVISION

OPINION AND ORDER

The Defendant filed a Motion to Suppress Evidence on January 2, 2013. A hearing on the motion was held April 16, 2013.

Background

On October 17, 2012, Douglas Paulhamus (Paulhamus) was in his vehicle outside the Wal-Mart on 1015 N Loyalsock Ave, Montoursville waiting for his drug dealer to arrive so that he could purchase heroin. Paulhamus stated that he had waited in the parking lot for approximately two (2) hours before the Montoursville Police Department made contact with him, which resulted in them finding him in possession of drug paraphernalia.¹ Paulhamus was asked whether he would set up a narcotics purchase by calling his drug dealer, which Paulhamus agreed to do. Paulhamus called his drug dealer, whom he was supposed to meet at the Wal-Mart, and was told to now meet at the Best Buy parking lot in Muncy Township. Paulhamus was searched prior to the controlled buy and was told to buy \$110.00 worth of heroin.²

Chief Jeffrey Gyurina (Gyurina) of the Montoursville Police Department realized that the Best Buy was not in his jurisdiction. Gyurina made a phone call to Chief McKibben (McKibben) of the Muncy Township Police Department. As a result of this phone call with

¹ Paulhamus was not charged with any crimes as a result of the drug paraphernalia being found.

² The money was photographed and the serial codes were documented. Paulhamus' personal money was used for the controlled buy.

McKibben, Gyurina believed that he had jurisdiction to pursue the controlled buy in Muncy Township. McKibben did not testify at the suppression hearing.

Montoursville Police positioned themselves in the McDonald's lot across the street from the Best Buy parking lot. Gyurina observed a white Pontiac Bonneville with dark tinted windows pull next to Paulhamus' vehicle, stop, and then leave. Paulhamus stated at the hearing that the drug dealer pulled his white Bonneville next to his vehicle, they each rolled down their windows, and he threw the \$110.00 into the white Bonneville. The driver in the Bonneville then threw eleven (11) bags of heroin into Paulhamus' vehicle and left. Montoursville Police approached the Bonneville identifying themselves as police and ordering the driver out of the vehicle. The driver began to back his vehicle away from the officers but after his vehicle stopped he was taken into custody. The driver was identified as Aliek Carr (Defendant). A search incident to arrest resulted in cash being found in the Defendant's right pant pocket and three cellphones. Gyurina also observed that a vent was missing from the dashboard of Defendant's vehicle and that he could see in plain view a bag with multiple smaller bags within it. From Gyurina's past experience he believed the smaller bags contained heroin.

Paulhamus drove his vehicle to the police waiting nearby and while doing so consumed three (3) bags of the heroin. Gyurina had questioned Paulhamus about whether he had consumed any of the heroin because he saw a piece of wax paper outside the pavement of his vehicle. Paulhamus originally denied consuming the heroin and stated that he tried to consume a single bag but the heroin blew out of the packaging. At the suppression hearing, however, Paulhamus stated for the first time that he had consumed three (3) bags of heroin.³

³ Paulhamus stated that his attorney advised him to tell the truth at the suppression hearing and that is why he now testified that he had consumed the three (3) of the bags of heroin.

The Defendant was transported to the Montoursville Police Department where he waived his Miranda Rights. Officer Kurt Hockman (Hockman) asked the Defendant whether he would consent to a search of his vehicle or whether they should obtain a search warrant. At the time, Hockman stated that the Defendant was in a holding cell cuffed to a bench. Hockman would have been in full uniform and it would be possible that he had a holstered gun on his person. Hockman stated that the Defendant wanted to get to Lycoming County Prison as soon as possible and that he wanted to consent to a search. Hockman then read the Defendant the consent to search form and the Defendant signed the document. The document, in part, states:

“Without a search warrant, and of my right to refuse to consent to such search without a warrant, hereby authorize members of the Montoursville Police and their agents, to conduct a complete search of the above located at Montoursville Police Department.

These police officers are authorized by me to take from the item searched any letters, materials or other property that they may desire. Drugs, phones, guns, money.

I am giving this written permission to the Montoursville Police and its officers and agents voluntarily and without threats or promises of any kind.”

As a result of this consent, Montoursville Police searched the white Pontiac Bonneville and heroin and cash were found. As seen by Gyurina at the time of arrest, heroin was found in one of the vehicle’s air vents.

The Defendant was charged with Possession with Intent to Deliver,⁴ Delivery of a Controlled Substance,⁵ and Possession with Intent to Deliver.⁶ On January 2, 2013, the Defendant filed a Motion to Suppress Physical Evidence. The Defendant alleges that the investigation, controlled buy, and arrest were conducted outside Montoursville Police Department’s jurisdiction. In addition, the Defendant argues that his consent to search his vehicle was given involuntarily.

⁴ 35 Pa.C.S. § 780-113(a)(30).

⁵ 35 Pa.C.S. § 780-113(a)(30).

⁶ 35 Pa.C.S. § 780-113(a)(30).

Motion to Suppress

The Defendant's first issue was that police did not have jurisdiction to conduct the investigation, controlled buy, and arrest of the Defendant. 42 Pa.C.S. § 8953 has determined when a municipal officer shall have the power and authority to enforce the laws of the Commonwealth when beyond their territorial limit:

(2) Where the officer is in hot pursuit of any person for any offense which was committed, or which he has probable cause to believe was committed, within his primary jurisdiction and for which offense the officer continues in fresh pursuit of the person after the commission of the offense.

(4) Where the officer has obtained the prior consent of the chief law enforcement officer, or a person authorized by him to give consent, of the organized law enforcement agency which provides primary police services to a political subdivision which is beyond that officer's primary jurisdiction to enter the other jurisdiction for the purpose of conducting official duties which arise from the official matters within his primary jurisdiction.

42 Pa.C.S. § 8953(a)(2), (4).

The Commonwealth argued that Montoursville Police were in hot pursuit of the Defendant for committing the crime of Criminal Use of Communication Facility. 18 Pa.C.S. § 7512. A person commits the offense if they use "a communication facility to commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony under this title . . . known as The Controlled Substance, Drug, Device and Cosmetic Act." *Id.* The Court disagrees that this is applicable as the police in this case did not pursue the Defendant for this offense but to conduct a controlled buy to bring other charges. In fact, the Commonwealth did not charge the Defendant with the crime of Criminal Use of a Communication Facility. The Court is unable to find that the Montoursville Police were in hot or fresh pursuit of the Defendant while they were intending to and setting up a controlled buy.

The Commonwealth's second argument is that Montoursville Police had obtained consent of the chief law enforcement officer under 42 Pa.C.S. § 8953(a)(4). At the suppression hearing, Gyurina testified that he made a phone call to McKibben of the Muncy Township Police Department. Gyurina was going to testify to the contents of that conversation but defense counsel objected to hearsay and the Commonwealth conceded the questions on its own. The Court is unaware of the conversation between Gyurina and McKibben. The Court believes it may infer from the conversation that Gyurina believed that he had jurisdiction to pursue the controlled buy in Muncy Township as a result of the conversation he had with McKibben, since they set up their surveillance within the Township.

With such limited evidence, the Court must determine if the Commonwealth has established enough evidence to determine that the Montoursville Police were properly enforcing the law outside their jurisdiction. “[I]n Pennsylvania, the Commonwealth, and not defendant, has the initial burden of going forward with evidence and of establishing that the challenged evidence was not obtained in violation of defendant’s rights.” Commonwealth v. Ryan, 442 A.2d 739 (Pa. Super. 1982). Further, the Commonwealth has the burden of persuasion. Commonwealth v. Enimpah, 2013 PA Super 20 (Pa. Super. 2013). The Commonwealth has “the burden of persuading the trier of fact that the fact alleged is indeed true.” Id. (citing Commonwealth v. Jury, 636 A.2d 164, 169 n.5 (Pa. Super. 1993)).

In Taylor, a Brookhaven police officer was asked by an Upper Darby Township officer to work at a DUI checkpoint. Taylor v. DOT, Bureau of Driver Licensing, 948 A.2d 189 (Pa. Commw. 2008). The Superior Court stated that there was no evidence that the officer from Upper Darby had authority to give proper authorization under 42 Pa.C.S. § 8953(a)(4). Id. at

195. The Superior Court stated that they could not solely accept the testimony of the Brookhaven police officer that he received proper authorization. Id.

While the Court can infer from the testimony of Gyurina that he received authorization, the Commonwealth did not sufficiently meet its burden of establishing that the evidence was not obtained in violation of the Defendant's rights. The record is still silent on what Gyurina and McKibben discussed prior to Montoursville Police entering Muncy Township. Further, there was absolutely no testimony on whether McKibben had authorization to allow Montoursville Police to continue their investigation into Muncy Township. See Taylor, 948 A.2d at 195. Without the Commonwealth establishing its burden, the Court does not have sufficient evidence to find that Montoursville Police had jurisdiction to conduct the controlled buy and arrest of the Defendant.

As the Commonwealth did not sufficiently prove that Montoursville Police had jurisdiction to conduct the controlled buy and arrest, the Court will not address the additional issue of whether the Defendant voluntarily consented to a search of his vehicle.

ORDER

AND NOW, this _____ day of May, 2013, after a hearing and based upon the foregoing Opinion, the Defendant's Motion to Suppress is hereby GRANTED. The Court is unable to find that the Montoursville Police Department had jurisdiction to enforce the laws of the Commonwealth in Muncy Township. Accordingly, it is ORDERED and DIRECTED that all of the items seized by police during the controlled buy and arrest of the Defendant in Muncy Township, are hereby SUPPRESSED.

By the Court,

Nancy L. Butts, President Judge

xc: DA (AB)
Edward J. Rymysza, Esq.
Eileen Dgien, Dep. CA