

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

HAKIM HOPKINS,
Defendant

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No. 948-2012
CRIMINAL

OPINION AND ORDER

On April 9, 2012, Hakim Hopkins (Defendant) was charged with two (2) counts Person Not to Possess Firearms,¹ a felony of the second degree; two (2) counts of Firearms not to be Carried Without License,² a felony of the third degree; Possession With Intent to Deliver,³ an ungraded felony; Receiving Stolen Property,⁴ a felony of the second degree; and other ungraded misdemeanor drug charges. On June 4, 2012, Shaka Mzee Johnson, Esq. represented the Defendant at his Preliminary Hearing. On September 13, 2012, Attorney Johnson was granted leave of Court to withdraw as counsel by the Honorable Marc Lovecchio. Peter Campana, Esquire was subsequently retained by the Defendant and continues to represent him.

On October 31, 2012, the Defendant filed an Omnibus Pre-trial motion, which included a Petition for Writ of Habeas Corpus and a Motion to Suppress Evidence. Specifically, the Petition for Writ of Habeas Corpus alleges that the Commonwealth did not establish a *prima facie* case for any of the charges against him at the Preliminary Hearing and that this Court must dismiss all the charges. At the hearing on the Motions, Attorney Campana informed the Court that no transcript/recording of the Preliminary Hearing was prepared and that the Commonwealth would have to re-present the entire Preliminary Hearing to establish that *prima facie* evidence

¹ 18 Pa.C.S.A. § 6105(a)(1).

² 18 Pa.C.S. § 6106.

³ 35 P.S. § 780-113(a)(30).

⁴ 18 Pa.C.S. § 3925(a).

had been presented. The Court deferred its decision on the Habeas and heard testimony on the Motion to Suppress. Defendant and the Commonwealth have filed briefs on the issue of whether the Court should permit the consideration of the Habeas Corpus Motion.⁵

Discussion

The Defendant argues that the Commonwealth has the burden of presenting sufficient evidence to establish a *prima facie* case of each of the charges against the Defendant and because there is no transcript or record of the preliminary hearing, the Commonwealth must establish the *prima facie* case completely a second time. The Commonwealth disagrees and argues that the Defendant has the burden of challenging the sufficiency of *prima facie* evidence and therefore has the burden of producing a transcript of the preliminary hearing.⁶

Pennsylvania Rules of Criminal Procedure sets forth the requirements for motions seeking relief within the courts of the Commonwealth of Pennsylvania. One such requirements states that “[t]he motion shall state *with particularity* the grounds for the motion, *the facts that support each ground*, and the types of relief or order requested.” Pa.R.Crim.P. 575(a)(2)(c) (emphasis added). In addition, “[t]he failure, in any motion, to state a type of relief or a ground therefore shall constitute a waiver of such relief or ground.” Pa.R.Crim.P. 575(a)(3). Rule 581 echoes these requirements for a suppression motion, that bald assertions without specificity are not sufficient.⁷

In Lewis, a defendant challenged the weight of the evidence by stating that “the verdict was against the weight” without pleading additional information. Commonwealth v. Lewis, 2012 Pa. Dist & Cnty. Dec. LEXIS 108 (Pa. County Ct. 2012). The Allegheny County Common

⁵ Due to time constraints, the Court was unable to hear argument on the Motion to Suppress on December 12, 2012.

⁶ See Commonwealth v. Owen, 580 A.2d 412 (Pa. Super. 1990).

⁷ “The Motion shall state specifically and with particularity the evidence sought to be suppressed, the grounds for suppression, and the facts and events in support thereof.” Pa.R.Crim.P. 581(D).

Pleas Court of Pennsylvania found that the defendant had waived this issue because there was no particularity or facts set forth in support of the motion. The Common Pleas Court relied upon Dixon, which applied Pa.R.Crim.P. 581(D). Commonwealth v. Dixon, 997 A.2d 368 (Pa. Super. 2010). Rule 581(D) requires particularity for suppression motions and has similar language found in Rule 575(a)(2)(c). See also Commonwealth v. Waters, 2011 Pa. Dist. & Cnty. Dec. LEXIS 31 (Pa. County Ct. 2011); Commonwealth v. Quel, 2010 Pa. Dist. & Cnty. Dec. LEXIS 456 (Pa. County Ct. 2010).

Here, the Defendant alleges that the Commonwealth did not establish a *prima facie* case on all of the charges against him. In addition, the Defendant challenges the finding by stating that each and every element of the crimes charged against the Defendant were not established by the Commonwealth. The Defendant's Petition states:

11. The Defendant submits that the Commonwealth does not have sufficient evidence to establish a *prima facie* case on the charges pending against him. Specifically, the Commonwealth's evidence is insufficient to prove that he is a prohibited person or that he has possession of the firearms which were found in the vehicle during the course of the search. Furthermore, the evidence is insufficient to prove that the Defendant had possession of a controlled substance or that he had the intent to deliver a controlled substance. Also, the evidence is insufficient to show that the Defendant possessed the alleged stolen property or that he possessed drug paraphernalia
12. The evidence is insufficient because it merely proves that the Defendant may have been present in a vehicle at a time when the police searched the vehicle and found firearms, drugs, stolen property and drug paraphernalia. However, the Commonwealth's evidence is insufficient to prove that the Defendant exercised conscious dominion and control over any of the items in question.

Omnibus Pre-Trial Motion at 3. The Petition generally challenges the elements of the crimes without reference to any testimony presented at the hearing. For example, the charge of Person Not to Possess Firearms states that a "person who has been convicted of an offense enumerated in subsection (b) . . . shall not possess, use, control . . . a firearm in this Commonwealth." 18 Pa.C.S. § 6105. The Petition only states that "the Commonwealth's evidence is insufficient to

prove that he is a prohibited person or that he had possession of the firearms which were found in the vehicle during the course of the search.” The Defendant does not state a single fact that supports the claim but just calls into question each element of the crime. The Defendant also does not reference what evidence the Commonwealth did submit and why it was insufficient despite the fact the MDJ held the charge for court.

Further, the Defendant alleges that for all the charges the Commonwealth did not prove possession of any of the contraband. Once again Defendant argues broad generalities and does not include any particular evidence presented which fails to establish possession. In the Affidavit of Probable Cause, South Williamsport Police stated that the Defendant admitted that a blue gym bag that included ammunition belonged to him. Also, a shoe box found in the vehicle included a pair of ten and a half (10 ½) men’s shoes and the Defendant was the only male occupant in the vehicle. Based upon defense counsel’s oral arguments at the hearing and the Motion itself, this Court finds that the Defendant has not complied with the Rules of Criminal Procedure and is not entitled to have a hearing on the Writ of Habeas Corpus. Although the Court believes that a transcript of the testimony may not be required, something more than boilerplate allegations must be pled to show how the Commonwealth failed to present a *prima facie* case.

ORDER

AND NOW, this _____ day of January, 2013, based on the foregoing Opinion, the Court finds that the Defendant's Petition for Writ of Habeas does not comply with the Rules of Criminal Procedure by failing to state with particularity the grounds for the motion or the facts that support each ground. Therefore, the Defendant's Petition for Habeas Corpus is hereby DENIED.

It is ORDERED and DIRECTED that argument on the Motion to Suppress will be scheduled for **April 16, 2013 at 10:30 a.m. in Courtroom No. 1, Lycoming County Courthouse, Williamsport, Pennsylvania 17701**. The hearing will be scheduled for one half (1/2) hour.

By the Court,

Nancy L. Butts, President Judge

cc. DA (MW)
Pete Campana, Esq.
April McDonald, CST