

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	CR: 378-2012; 646-2012;
	:	375-2012; 376-2012
DARRYL WORTHY,	:	
STANLEY MORGAN,	:	
DAVON GRISSOM,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

Darryl Worthy (Worthy), Stanley Morgan (Morgan), and Davon Grissom (Grissom) filed Omnibus Pre-trial motions on August 8, 2012, August 2, 2012, and August 8, 2012, respectively. Hearings on all three motions were held on October 23, 2012, December 18, 2012, and January 25, 2013. An additional hearing for Worthy’s motion was held on February 8, 2013. In lieu of oral argument, counsel agreed to submit their arguments through briefs. The last brief was due to the Court on April 11, 2013.

Background

On February 2, 2012, a home invasion robbery occurred at 921 Arch Street, Williamsport. As a result of a vehicle stop conducted by Old Lycoming Township Police and the Pennsylvania College of Technology Police Department, the Defendants were detained and later transported to Williamsport City Hall. The Court finds the following facts from the Suppression hearings, which were held on October 23, 2012, December 18, 2012, January 25, 2013, and February 8, 2013:

Corporal Morris M. Sponhouse, II

On October 23, 2012, Corporal Morris M. Sponhouse, II (Sponhouse) of Old Lycoming Township Police testified about his role the vehicle stop of the Defendants. On February 2, 2012 at approximately 10:56 PM, Sponhouse heard a Williamsport Bureau of Police (WBP) dispatch that there was a home invasion at 921 Arch Street in the Newberry section of Williamsport. N.T., October 23, 2012, p. 6. In response to the dispatch and by request of Watch Commander Sergeant Moore (Moore) of the WBP, at 10:49 PM, Sponhouse moved his police vehicle to the intersection of Dewey and Memorial Avenues, which is at the border between Old Lycoming Township and the City of Williamsport. Id. at 6-7, 33-34. Arch Street, where the home invasion occurred, turns into Dewey Avenue as it enters Old Lycoming Township. Id. at 7. Sponhouse observed this location for any fleeing vehicles. Id. While there, Sponhouse received more information about the identities of the suspects, specifically that three (3) or four (4) black males fled the scene on foot south on Funston Avenue. One of the suspects was wearing a mask, gray hoodie, and possibly Timberland boots. Id. at 8. In addition, red gloves may have been used and there were two (2) hand guns visibly possessed in the home invasion. Id.

While stationary at his location, Sponhouse would illuminate passing vehicles to determine the number of occupants and their appearance. Id. at 9. Sponhouse stated that his position was located four (4) or five (5) blocks from the scene of the home invasion and that from his prior experience the suspects would have gotten into a car.¹ Sponhouse sat at the location for twenty (20) minutes and had not observed a vehicle with black males or multiple occupants. Eventually, Sponhouse observed a vehicle that he believed fit the description of the suspects:

¹ Sponhouse testified that he has ten (10) years of experience with the Old Lycoming Township Police.

A vehicle came down Round Hill Road, which is, um – Memorial Avenue turns into Round Hill Road then it goes up to Grimesville. I know this road for a short cut to the west end of the city. If you're in the far end of the city and you want to get to, um, the east end of Newberry or into the city itself you can take Grimesville Road to Round Hill and then to Memorial Avenue.

I saw a silver Mercury come down that road. It stopped at Dewey and Memorial Avenue, preceded east bound to my location. As it passed in front of me I illuminated the vehicle like I had done with the others. I observed three (3) black males inside the vehicle. Pulled from my location and was attempting to get a registration plate on the vehicle to run it.

Id. at 11. Sponhouse followed the vehicle and did not activate his lights or siren.² Id.

Sponhouse observed the driver and the back seat passenger, on the opposite side of the vehicle than the driver, moving around within the vehicle. Id. at 11-13. The back seat passenger appeared to be reaching toward the driver's side of the vehicle and in the process went out of view. Id. at 13. The driver was seen reaching over to the passenger side of the vehicle, which caused the vehicle to travel into the opposite lane on several occasions. Id. at 15. On another occasion the driver appeared to bend forward as if he was reaching underneath the front of his seat. Id. The movement within the vehicle continued while Sponhouse followed the vehicle and at one point the vehicle went so far into the opposing lane than an oncoming car slowed almost to a stop. Id. 16. Based on Sponhouse's experience and training, he believed that the movements of the occupants in the vehicle were consistent with concealing objects and of suspects preparing to flee from a vehicle. Id. at 18-19.

During this time, Sponhouse was in contact with another police vehicle following the suspect's vehicle, which was driven by his supervisor Sergeant Hope (Hope). Id. at 16. As Sponhouse and Hope together determined they should stop the vehicle, they were requested to do so by WBP and to identify each of the occupants. Id. Sponhouse activated his emergency lights and siren approximately 100 yards from the intersection of Cemetery Street and Memorial

² A video from Sponhouse's vehicle was introduced at the Suppression Hearing. Id. at 22.

Avenue.³ Id. at 16. The vehicle continued to the stop sign and then proceeded forward but a Pennsylvania College of Technology police cruiser pulled into their lane of travel. Id. at 17.

Once the vehicle was stopped, Sponhouse and other police officers conducted a “felony vehicle stop,” a specific type of stop used to remove occupants from a vehicle when handguns are suspected to be present. Id. at 78. As the stop took place Sponhouse stood outside the vehicle with his hand on his holstered gun. Id. at 47.

I made contact with the driver. Requested the driver to turn off the vehicle and throw the keys out the window, which he did. I then took the driver out of the vehicle, Mr. Worthy, walked him to the back of the car and detained him at that point and did a search of his person. On him I found some papers and a large sum of money that ended up being over \$1,300.00.

Id. at 19-20. Prior to detaining Worthy, Sponhouse advised him that he was being detained for both his and officer safety until they figured out what was going on. Id. at 24. Sponhouse then handcuffed Worthy and moved him from the vehicle before searching him. Id. at 48. The search of Worthy was not merely a pat down but a search of his pockets. Id. at 57. Sponhouse stated that he “detained him and searched his person for anything that would have been involved in the home invasion.” Id. at 58. In Sponhouse’s experience, the large sum of money found on Worthy was consistent with proceeds from a home invasion: large sums of money, valuables, and jewelry. Id. at 20.

After the search, Sponhouse explained to Worthy that another officer would be coming to talk to him momentarily and that they were waiting for a WBP officer to come to the scene. Id. Sponhouse never told Worthy that he was arrested. Id. at 77. Approximately ten (10) to fifteen (15) minutes after the stop, Sponhouse transported Worthy to Williamsport City Hall. Id. at 54, 76.

³ Sponhouse estimated that the site of the vehicle stop from the home invasion was half a mile to a mile. Id. at 43.

Sergeant Joseph Hope

On December 18, 2012, Sergeant Joseph Hope (Hope) of Old Lycoming Township Police testified concerning the vehicle stop of the Defendants. On February 2, 2012, Hope also heard the dispatch for a home invasion that occurred on the 900 block of Arch Street. N.T., December 18, 2012, p. 5. He noted the description given of three (3) to four (4) black males, 5 foot ten to six foot, skinny, one wearing a mask, one wearing a jacket with a gray hood, red gloves, dark jeans and Timberland boots. Id. at 5-6. In addition, he remembered hearing there were two handguns involved, one of the guns was described as black and the other was described as silver. Id. at 6. After the dispatch, Hope positioned parked his marked unit near the intersection of Dewey and Memorial Avenue, facing southbound on Dewey. Id. at 7, 16. Hope's prior experience has shown him that when an individual commits a crime on foot they often flee the area using a vehicle and utilize certain routes out of the city. Id. at 35.

We generally go to that location [Dewey and Memorial Avenue] when things occur in the city whether in Newberry or down in the city. We have had other stops there that have been consistent with criminal activity that it seems to be an escape route or a thoroughfare that it seems like the criminals take usually Memorial Avenue to Moore Avenue. From the Newberry section a lot of times they come up Grimesville, Fox Hollow, and Round Hill, which brings them to that point.

Id. at 7. Hope parked his vehicle with his lights off and observed the area for approximately fifteen (15) minutes. Id. at 8-9, 17.

I observed an eastbound vehicle coming from Round Hill Road to Memorial Avenue right to the intersection. It appeared to be coming at a pretty fast rate for the intersection that it was approaching with a stop sign. The vehicle came to an abrupt stop. I had ample lighting with the street lighting and also with the traffic approaching southbound on Dewey Avenue I could see three black males in the vehicle. The driver looked to my direction and my marked car was right there and to put it bluntly he had the "oh, shit" look.

Id. at 9. Hope specifically described the driver's face as startled and surprised and that he quickly turned his head back before pulling away. Id. at 8-9, 20.

Hope radioed Sponhouse, as he was located a block east of his position, and learned that he was already running the registration of the vehicle. Id. at 9-10. Hope followed the suspects behind Sponhouse's vehicle. Id. at 10. Hope could observe that the suspect vehicle was "pretty much [travelling] all over the road crossing the center line and the other lane of traffic back and forth."⁴ Id. As Hope and Sponhouse began discussing stopping the vehicle, they received a dispatch from Moore requesting them to stop the car and identify the occupants. Id. at 43. They discussed how to stop the vehicle and believed that since it was a home invasion and firearms were involved they settled on a "felony stop." Id. at 11. After the vehicle had been stopped, Hope approached the vehicle with his gun drawn and ordered the driver to shut the vehicle off and to throw the keys out of the vehicle. Id. at 12, 22.

At that point I holstered my weapon and the first individual that was removed, I believe, was the rear right-seat passenger, which he was my responsibility so I actually removed him, told him he was detained. He was handcuffed for safety. He was backed away from the vehicle asked if he had any weapons. He said no. He was patted down and no weapons were found.

Id. at 12. The rear right seat passenger was identified as Grissom. Id. Grissom was approximately 5'10" and wearing a gray hoodie. Id. at 13.

Agent Leonard Dincher

On December 18, 2012, Agent Leonard Dincher (Dincher) of the WBP testified in regarding the actual arrest of the Defendants. Dincher, as affiant, had been reached at home and asked that the officers on scene arrest the Defendants. On February 2, 2012, Moore related to Dincher that three (3) or more individuals were involved in a home invasion and that handguns were involved. N.T., December 18, 2012, p. 49. Moore had informed Dincher that two (2) black males were stopped at the 900 block of Arch Street but it was determined that they were not

⁴ Hope testified that he would have stopped the vehicle solely on the traffic violations committed. Id. at 39.

suspects. Id. at 45. Later, Moore called Dincher and told him that three (3) individuals had been stopped by Old Lycoming Township Police and their names were Worthy, Grissom, and Morgan. Id. at 49-50. He directed that a one-on-one/show-up identification be conducted with the witnesses from the home invasion. Id. at 50. The witnesses who were transported to the scene, however, could not positively identify any of the Defendants. Id.

Despite the lack of a positive identification, Dincher still had the Defendants arrested and transported to City Hall. He was aware of the facts surrounding a previous home invasion involving one of these suspects. Id. at 54. A few days prior to February 2, 2012, a home invasion occurred on the 700 block of West Third Street. Id. Witnesses from that home invasion stated that there were two (2) individuals that entered the house and that there were weapons. Id. at 54-55. In addition, an ATM card that was stolen from the house was used that night at a bar called The Shamrock. Id. at 55, 84. After viewing video from the ATM, Dincher identified Worthy as using the stolen ATM card at The Shamrock. Id. at 55.

After directing the Defendants to be transported to City Hall, Dincher had the Defendant's vehicle impounded. Id. at 82. Magisterial District Judge (MDJ) Allen Page III issued a search warrant on February 3, 2012 at approximately 6:00 AM. Id. A search was conducted on the vehicle after the search warrant was obtained. Id.

Officer Brian Aldinger

On January 25, 2013, Officer Brian Aldinger (Aldinger) of the WBP testified about his role in the witness identifications of the Defendants. On February 2, 2012, immediately after going on duty at 11:00 PM, Aldinger responded to the dispatch of a home invasion. N.T., January 25, 2013, p. 7. The description which was given of the suspects was four (4) to five (5) black males, 5'10'' to 6 foot tall, wearing dark clothes, and last seen southbound on Funston

Ave. Id. at 7-8. At approximately 11:15 PM, Moore requested that Aldinger pick up a witness from 921 Arch Street and transport him to a vehicle stop located at Cemetery Street and Memorial Avenue. Id. 8-9.

Aldinger picked up Shawn Andrews (Andrews), who told him that he chased the suspects through his back yard. Id. at 9. Andrews also told Aldinger that he heard a commotion and confronted the suspects in his back yard. Id. at 18. Once on scene, Andrews stated that he only got a good look at their backs while he chased them. Id. Andrews stated that Morgan had a similar build and appearance to one of the suspects but that he could not be sure. Id. at 20. Andrews indicated that there was nothing about the other two that would make him believe they were involved. Id. at 21. In attempting to identify the suspects, Andrews focused on what the Defendants were wearing at the time. Id. at 27.

Aldinger then dropped Andrews back at his residence and picked up Ross Weaver (Weaver) and Courtney Marks (Marks). Id. at 21. Aldinger told Weaver and Marks that a vehicle had been stopped and the police wanted them to look at the occupants. Id. at 22. Weaver and Marks stated that they were forced to lie down on the ground during the home invasion and that they did not get a good look at the suspects. Id. During the show up identification, Weaver and Marks were unable to positively identify the Defendants. Id. Officer Paulhamus, however, conducted the identification and Aldinger was not present for the entire identification. Id. at 29.

Sergeant Kris Moore

On January 25, 2013, Sergeant Kris Moore (Moore) of the WBP testified about his involvement with the identification of the Defendants. On February 2, 2012, Moore received a dispatch of a home invasion involving three (3) to four (4) black males, one wearing a hoodie. Id. at 35-36. When Moore arrived at 921 Arch Street he saw that Officers Stolfus and Ananea

had stopped two black males. Id. at 37. The two individuals were asked for identification and were run for warrants. Id. at 41. The individuals were subsequently released. Id. at 42.

Moore requested County Communications to contact Old Lycoming Township Police and have them position themselves on the border of the Williamsport City and Old Lycoming Township line. Id. at 42. After the request, County Communications told Moore that Old Lycoming believed they had a vehicle trying to get away from them somewhere in the area. Id. The vehicle was stopped and Moore was notified of the names of the individuals in the vehicle. Id. at 43. Moore immediately called Dincher because Moore knew he was investigating a similar incident and one of the names of the occupants was also attached to that investigation. Id. at 44. Following the conversation with Dincher, Moore had Aldinger transport the witnesses to the vehicle stop to conduct a show-up identification. Id.

Officer Jeffrey Paulhamus

On January 25, 2013, Officer Jeffrey Paulhamus (Paulhamus) of the WBP testified as to what he did on February 2, 2012. Paulhamus responded to the vehicle stop conducted by Old Lycoming Township Police. Id. at 77. Aldinger had brought Andrews to the vehicle stop and Paulhamus asked him “do you recognize any of these people?” Id. at 79. Andrews pointed to Morgan and stated that he may be one of them. Id.

Aldinger then transported Andrews back to his residence, retrieved Weaver and Marks, and brought them back to where the Defendants had been waiting. Id. Paulhamus went to the rear of the car, opened the door, and asked “do you recognize any of these people?” Id. Weaver and Marks both looked at the Defendants and stated “yeah, I think those are the ones that did it.” Id. Both Weaver and Marks spoke at the same time and were pointing at Grissom and Worthy. Id. at 80.

Rebeckah Liddington

Rebeckah Liddington (Liddington) testified that she was at 921 Arch Street on February 2, 2012. At approximately 10:30 to 11 PM, Liddington stated that she was in the kitchen when she heard a loud bang. N.T., January 25, 2013, p.5. Liddington saw a gun and then the whole face of one of the intruders for approximately five (5) to ten (10) seconds. He was wearing pants and a dark hoodie and the hood was up. Id. at 8. The individual had squinty eyes, which were sunken. He was a light skinned black male, 5'6'' to 5'8'', and had a boxy face. The other intruder she saw had a face mask, red gloves, a darker complexion, athletic build, and was approximately six (6) feet tall.

On February 9, 2012, Liddington was requested to go to City Hall to meet with the WBP. Liddington was shown pictures of items recovered and asked if she could identify any of them. After Liddington was able to identify some of the items, she believed she was shown six (6) to seven (7) photographs of black males. Liddington identified the fourth picture as the gunman; the photograph depicted Worthy. Dincher, who had conducted the photo identification, did not tell Liddington whether she had identified one of the suspects. The Commonwealth introduced the photo array given to Liddington at the hearing, which consisted of eight (8) photographs of black males.

Dustin Runyon

On February 2, 2012, Dustin Runyon (Runyon) was also inside 921 Arch Street when the home invasion occurred. Runyon stated that he saw an individual with a gun and then he later saw his face. Runyon saw the intruders for about five (5) to ten (10) seconds and saw a black male, with chin facial hair, approximately 5'8'' to 5'10'' tall, with a hood covering the sides of

his face and hair. The other intruder he estimated was approximately six feet tall and was wearing red mask and red gloves.

On February 9, 2012, Runyon was requested to go to City Hall to speak with police. Runyon was shown photos of property and told to identify any items which belonged to him which were taken from him that night. In addition, Runyon was given photographs of individuals and was able to identify a photo that depicted Worthy. Dincher also did not tell Runyon whether he correctly identified a suspect. In addition, as part of his testimony at the Suppression Hearing, Runyon specifically identified Worthy as being one of the people who came into 921 Arch Street on February 2nd.

Ross Weaver

On February 2, 2012, Ross Weaver (Weaver) was inside 921 Arch Street when he heard a loud boom near the front door. N.T., February 8, 2013, p. 3. Weaver looked out the door and did not see anything. Weaver went back upstairs to his room and then heard another bang. He came back downstairs and saw that the door was off its hinges and so he ran to the third floor of the house for safety. The intruders found Weaver using a cell phone as a light source. Weaver was directed by the intruders to open a safe and to empty his pockets. While this was happening, Weaver saw one of the assailant's faces for about two (2) to three (3) seconds. The individual was not wearing a mask but had a hood covering his head. Weaver was then brought to the downstairs of the house and he saw the individual again for an additional three (3) to five (5) seconds.

Following the home invasion, Weaver drove to his mom's house and called police. Police arrived at 921 Arch Street within five (5) to ten (10) minutes. Eventually, Weaver was taken with Courtney Marks to the vehicle stop to view some individuals. Weaver stated that he

could identify one person but he was uncertain because he was so far away from the person to be identified, it was dark, and he was wearing different clothing. Weaver also believed that one of the other Defendants looked familiar. When police asked Weaver and Marks if they recognized any of the Defendants, they both simultaneously identified Worthy. They stated that Worthy looked like one of the assailants but that they were not one hundred percent sure.

On February 9, 2012, Weaver was asked to take a look at some pictures at City Hall. Weaver and Runyon went together, but they were not sure why they were asked to come down. Weaver stated he looked through approximately ten (10) to twelve (12) photographs of men and that he instantly identified Worthy. Weaver said he had no doubt that Worthy was involved in the home invasion, but did admit that he saw a photograph of Worthy published in the Sun Gazette newspaper a few days earlier.

During the course of the suppression hearings, Defendants joined with the issues raised by their co-Defendants. These issues were not originally raised in their individual omnibus motions. Following the suppression hearings, the parties requested to submit briefs on all the issues they had raised prior to and during the hearing. Worthy raised the following issues: 1) whether the police lacked probable cause to conduct a felony stop and search of the Defendant; 2) whether the identifications of the Defendant should be suppressed as prejudicial and unduly suggestive; and 3) whether the Commonwealth established a *prima facie* case for the charges of Tampering and Obstruction. Grissom raised the following issues: 1) whether there no reasonable suspicion for the police to conduct a vehicle stop; 2) whether an in-court identification of the defendant should be suppressed; 3) whether the Commonwealth failed to establish a *prima facie* case for all of the charges against the Defendant. Finally, Morgan raised the following issues: 1) whether police had probable cause to execute a felony stop and custodial

detention; 2) whether the Commonwealth filed multiplicative counts against the Defendant; and 3) whether the Commonwealth failed to establish a *prima facie* case for all of the charges against the Defendant.

Discussion

Motion to Suppress

1. Whether there was reasonable suspicion to conduct a vehicle stop

The Defendants contend that the stop of their vehicle was unconstitutional for multiple reasons. In order for this Court to adequately consider the vehicle stop each aspect of the stop will be analyzed separately, starting with reasonable suspicion to stop the vehicle. First, reasonable suspicion is decided by the court after a review of the totality of the circumstances. Commonwealth v. Fulton, 921 A.2d 1239, 1243 (Pa. Super. 2007). “In making this determination, we must give ‘due weight . . . to the specific reasonable inferences [the police officer] is entitled to draw from the facts in light of his experience.’” Id. (citing Commonwealth v. Cook, 735 A.2d 673, 76 (Pa. 1999)). To establish reasonable suspicion the officer must be able to articulate specific observations that led him to reasonably conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. Commonwealth v. Little, 903 A.2d 1269, 1272 (Pa. Super. 2006).

The Supreme Court of Pennsylvania has found reasonable suspicion to stop a vehicle existed when the vehicle was stopped near the scene of the crime but did not have occupants that matched the description of the suspects. In Ellis, police received a burglary alarm from a business. Commonwealth v. Ellis, 662 A.2d 1043 (Pa. 1995). While an officer was responding to the alarm, he “was advised that two actors, who were described as white or possibly ‘Mexican,’ were leaving the scene of the burglary.” Id. 1045. Within a half mile of the business,

the officer saw a vehicle that matched the description of a vehicle leaving the area of the crime and its location “corresponded to the position where a car would be found had it left the burglary site at the time of the broadcast.” Id. The vehicle had two (2) black occupants.

The Supreme Court of Pennsylvania found that the police had reasonable suspicion to stop the vehicle. Id. at 1048. The Supreme Court noted that vehicle was the only vehicle near the burglary; the vehicle was in an area where it would have been if it left the business when the burglary was broadcasted, and that the vehicle matched the description of a vehicle near the burglary. Id. Notwithstanding that the broadcast stated that two white males were the suspects, the Supreme Court found that the above listed facts were sufficient to establish reasonable suspicion to conduct a vehicle stop. Id.

Furthermore, the Superior Court of Pennsylvania has found reasonable suspicion by an analysis of the totality of the circumstances even though the description of the suspect was meager. In Jackson, an officer received a dispatch about a robbery in progress and described the perpetrator as “an armed male wearing a black baseball hat and black jacket.” Commonwealth v. Jackson, 678 A.2d 798, 799 (Pa. Super. 1996). The officer saw an individual wearing a dark colored baseball cap and a black jacket. The officer stopped and searched the individual. Id. at 800. The Superior Court found that the officer did not have specific and articulable facts based solely on the description. Id. at 801. The Court, however, assessed all the circumstances and found that the officer did have reasonable suspicion:

First, [the defendant] exactly fit the given, yet meager, description from the police report. Second, [the defendant] was both spatially and temporally proximate to the scene of the crime when stopped by [the officer]. Third, the nature of the crime was a serious felony. Lastly, the confrontation between [the defendant] and [the officer] was late in the evening in an area even [the defendant] claims was particularly dangerous.

Id. The Superior Court found reasonable suspicion based on the broad description of the suspect and his location.

The Commonwealth cites Palagonia in support of their position. Commonwealth v. Palagonia, 868 A.2d 1212 (Pa. Super. 2005). In Palagonia, an individual saw two men jump from her second floor balcony onto the ground. Id. at 1214. The witness called police and described two young, white males that fled in the direction of Overlook Road. Id. at 1217. “Within minutes, [an officer] observed a car in the area, the only car on the road, and in it were two young males. These observations, taken in their totality, were sufficient to lead the officer to believe that [the defendant] was involved in criminal activity, thus permitting a stop for further investigation.” Id.

Here, the Defendants argue that the stop was illegal, but they do not provide any case law to show that the stop by police effectuated without reasonable suspicion. Morgan and Worthy specifically argue that the stop was equivalent to an arrest in which the police did not have sufficient probable cause to conduct.

Here, the Court finds that the police had reasonable suspicion to conduct the vehicle stop. In the experience of Officers Sponhouse, Hope, and Moore, the suspects from the home invasion would have fled on foot to a vehicle. Sponhouse and Hope positioned themselves on a street where in their experience assailants have used to flee the City of Williamsport and was in close proximity only four (4) to five (5) blocks from the home invasion. Sponhouse and Hope observed Dewey Avenue and Memorial Avenue for approximately fifteen (15) to twenty (20) minutes and did not see any vehicle that had occupants that matched the description of the suspects or the number of suspects until the Defendants’ vehicle. The Defendants’ vehicle had contained three (3) black males. Hope observed the driver give a startled and surprised look

when he saw Hope's marked police vehicle. Sponhouse and Hope followed the vehicle and observed furtive movements within the vehicle and the vehicle repeatedly swerve into the opposite lane of travel.

The Court acknowledges that the officers would not have had reasonable suspicion for the vehicle stop based solely on the description of the suspects supplied to Sponhouse and Hope. However, in consideration of the totality of circumstances of the Defendants engaging in additional suspicious behavior after police began to follow them including but not limited to violations of the vehicle code as well as their vehicle being spatially and temporally proximate to the scene of the home invasion, this Court finds sufficient reasonable suspicion to determine the police conducted a legal vehicle stop.

2. *Whether the police properly conducted a search of the Defendants based on reasonable suspicion*

Following the vehicle stop which the Court found to be based on reasonable suspicion, police conducted a search of each of the Defendants. The Court's analysis must next determine if police conducted a legal search of the Defendants based upon reasonable suspicion and officer safety. "[A] pat-down of a suspect's outer garments is justified during a valid investigatory stop if the officer 'observed unusual and suspicious conduct which leads him to reasonably believe that the suspect may be armed and dangerous.'" Commonwealth v. Spears, 743 A.2d 512 (Pa. Super. 1999). Terry has established that a frisk effectuated for the safety of an officer is "limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby. id. (citing Terry v. Ohio, 391 U.S. 1, 24 (1968)).

If a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent, there has been no invasion of the suspect's privacy beyond that already authorized by the officer's search for weapons;

if the object is contraband, its warrantless seizure would be justified by the same practical considerations that inhere in the plain view context.

Id. (citing Minnesota v. Dickerson, 508 U.S. 366, 374 (1993)).

Hope had conducted a pat down of Grissom, who was the rear seat passenger for weapons. As supported by the record, the Court finds this search was lawfully conducted based on the reasonable suspicion that criminal activity was taking place.

Additionally, the Court finds that Sponhouse, however, did not properly conduct a search of Worthy following the vehicle stop. Sponhouse stated that he “detained [Worthy] and searched his person for anything that would have been involved in the home invasion.” N.T., October 23, 2012, p. 58. In addition, Sponhouse testified that he *searched* Worthy’s pockets. Id. at 57 (emphasis added). Since the search was effectuated not for the safety of an officer but specifically for evidence of the home invasion, it exceeded the scope of his authority and was improperly conducted.

The Court notes, the Commonwealth did not present any evidence or testimony regarding the search of Morgan.⁵ Defense counsel for Morgan joined those specific issues raised by co-Defendants during the suppression hearing. Based on the evidence provided to the Court, it appears that no weapons or contraband were found on Morgan during his pat down and that there is no evidence to be suppressed for this issue. However, as the Commonwealth has the burden at a suppression hearing and the Defendants have raised the issue of the legality of the stop and the suppression of contraband found as a result, the Court finds that the search of Morgan was improper. see Commonwealth v. Enimpah, 2013 PA Super 20 (Pa. Super. 2013) (stating that the Commonwealth has the burden of persuasion at suppression hearings).

⁵ In reviewing the transcript of the preliminary hearing for the Habeas Corpus portion of this opinion, the Court also did not find any information regarding the search of Morgan.

Even though the Court has found that the pat downs of Worthy and Morgan were improper, this does not end the discussion on whether evidence obtained from the searches should be suppressed. The Commonwealth argues in the alternative that the evidence discovered from the pat downs would still be admissible under the doctrine of inevitable discovery. The Pennsylvania Supreme Court has adopted the inevitable discovery doctrine stating that “where the evidence obtained as the result of illegal police activity would have been discovered in the course of a lawfully conducted investigation, no purpose is served in applying the exclusionary rule.” Commonwealth v. Wiley, 904 A.2d 905, 909 (Pa. 2006).

In Ingram, a police officer conducted an illegal pat down by searching a defendant’s pockets and finding marijuana, which resulted in immediate arrest. Commonwealth v. Ingram, 814 A.2d 264 (Pa. Super. 2002). The Superior Court stated that if the police officer conducted a proper pat down he would have found a gun that the defendant was not permitted to carry. Id. at 272. The discovery of the gun “would have resulted in a lawful arrest of [the defendant] and a search of [the defendant’s] person incident to arrest would have produced the drugs obtained.” Id. “It is well established that a warrantless search incident to a lawful arrest is reasonable, and no justification other than that required for the arrest itself is necessary to conduct such a search.” Id.

Here, Sponhouse’s search of Worthy resulted in the discovery of some papers and over \$1,300.00. The Commonwealth did not provide any testimony that any items were found on Morgan. As discussed below, police had probable cause to arrest the Defendants based upon evidence other than the items found on the Defendants. Had the Defendants been arrested first and then searched pursuant to that lawful arrest the items in question would have ultimately been discovered. As such, the Court finds that those items found on Worthy as a result of an illegal

search would have been inevitably discovered by a full search incident to lawful arrest and should not be suppressed. If any items had been found on Morgan⁶ they would have been discovered as well.

3. *Whether the police arrested the Defendants following the stop of the vehicle and prior to the witnesses being brought to the scene to make identifications*

The Defendants contend that they were arrested shortly after the vehicle stop and that it was done without probable cause. “A ‘custodial detention’ must be supported by probable cause; it is deemed to arise when the conditions and/or duration of an investigating detention become so coercive as to be the functional equivalent of arrest.” Commonwealth v. Douglass, 539 A.2d 412, 418 (Pa. Super. 1988) (finding that a three and a half hour detention was not custodial). “An arrest is an act that indicates an intention to take a person into custody or that subjects the person to the will and control of the person making the arrest.” Commonwealth v. Guillespie, 745 A.2d 654, 660 (Pa. Super. 2000). Factors to consider when determining if a detention is investigative or custodial include: 1) the basis for the detention (the crime suspected and the grounds for suspicion); 2) the duration of the detention; 3) the location of the detention (public or private); 4) whether the suspect was transported against his will (how far, why); 5) the method of detention; 6) the show, threat, or use of force; and 7) the investigative methods used to confirm or dispel suspicions. Douglass, 539 A.2d at 421.

In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the [defendants]. A court making this assessment should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second guessing.

⁶ Again, the Court is not certain if anything was discovered on or seized from Morgan.

Guillespie, 745 A.2d at 660. The court is to conduct an objective test viewed in “light of the reasonable impression conveyed to the person subjected to the seizure . . .” Id.

In Lovette, the police received an anonymous phone call that there were males in a vacant house with stolen property. Commonwealth v. Lovette, 450 A.2d 975 (Pa. 1982). Police arrived at the location and found various items in the vacant house. Id. at 976. Police inspected the scene and found that a house nearby had its rear door broken down and the owner of the house identified some of the items in the vacant house as being taken from his home. Id. Police also identified muddy tracks from a muddy plot of ground between the victim’s house and the vacant house. Id. Police patrolled the area and observed three black males a block and a half from the scene of the burglary and with mud on their shoes. Id. Police conducted a pat down of the individuals, which resulted in a ring, hat, and a silver dime being found. Id. The three men were transported to the victim’s house where the items were identified as stolen. Id.

The Supreme Court of Pennsylvania found that the seizure of the three males constituted an arrest and needed probable cause. “The police had the option of detaining the suspects at the site of the initial encounter and either bringing the complainant to the site for his identification of the questioned articles or taking those items to him. Either situation would present a much stronger case for the position the Commonwealth presently urges.” Id. at 980.

In Guillespie, two men were told to step away from a building and were placed in handcuffs. Guillespie, 745 A.2d at 660. Officers explained that a robbery had just occurred and that they matched the suspects’ descriptions. Id. Officers also told the individuals that they had to wait until the victim could come to the scene to make an identification. Id. The Superior Court found that the officers were not unnecessarily intrusive towards the suspects.

[T]he handcuffing of [the suspects] was merely part and parcel of ensuring the safe detaining of the individuals during the lawful *Terry* stop. The police diligently pursued

bringing the robbery victim to the scene for identification purposes. While the use of restraints is a factor to be considered with regard to whether a detention is custodial, in the present case other factors mitigate against such a finding – e.g., minimal duration of detention, no transport against will, no show or threat or use of force.

Id. at 660-61. The Superior Court also noted that the Supreme Court had declined to hold that every time an individual is placed in handcuffs that such individual has been arrested. Id.

Defense counsel argues that multiple factors exist to indicate that the Defendants were in a custodial detention. First, Hope displayed his gun initially during the felony stop of the vehicle. Second, the scope of Sponhouse's search of Worthy exceeded his lawful authority. Lastly, the Defendants were handcuffed.

The Commonwealth argues that circumstances exist that mitigate against a finding of a custodial detention. Initially, Hope holstered his gun after the driver threw the keys out of the vehicle and before the Defendants exited the vehicle. Next, the Defendants were told they were being handcuffed for their own safety as well as the safety of the officers. Sponhouse explained to Worthy that they were waiting for WBP to arrive and that they would be questioning him. Also, the detention was only for approximately ten (10) to fifteen (15) minutes and the police diligently brought witnesses to the scene of the vehicle stop where the Defendants remained. Defendants were not placed in a police vehicle or transported from the scene of the stop. Next, the detention of the Defendants occurred outside along the street and in public. Finally, the Court has determined the police had reasonable suspicion to believe that the Defendants had participated in a home invasion using handguns.

Based on the totality of these circumstances, the Court believes that the detention of Worthy and Grissom was investigatory and did not rise to the level of a custodial detention. As discussed above, the multiple mitigating factors found by the Court including the length of the detention and the fact that the Defendants were not transported outweigh the evidence supporting

a custodial detention. Precedent has established that police may detain suspects while witnesses are diligently brought to the scene. The Court finds that the detention of Grissom was not custodial as the search of Grissom was based upon reasonable suspicion

The detention of Worthy, however, must be distinguished from that of Grissom as Worthy was improperly searched following the vehicle stop. The Court's standard must be to evaluate the detention based upon the reasonable impression conveyed to the Defendant. Sponhouse testified at court that he searched the Defendant's pockets for evidence of the home invasion. Sponhouse, however, never told Worthy he was looking for stolen items. Sponhouse told Worthy that he was detaining him for his safety as well as his own until they figured out what was going on. Based upon that information, Worthy's reasonable impression was that his pockets were searched for safety. In addition, Sponhouse did not display a gun or ever tell him that he was being arrested. After evaluating all the factors, the Court believes that Worthy's detention also did not reach the level of a custodial detention.

As stated above, the Commonwealth did not provide any testimony of the search of Morgan, or what Morgan was told to justify his search, the detention along the road, or whether he had been arrested. As no evidence was presented to show otherwise, the Court must find that the Commonwealth did not meet their burden and that the detention of Morgan was custodial following the stop of the vehicle. The Court shall suppress any statements made by Morgan or any witness identifications made of Morgan after the vehicle stop but prior to police gaining probable cause and transporting him to Williamsport City Hall. The Court, however, is unaware of any incriminating statements or identifications made of Morgan.

4. *Whether there was probable cause to make an arrest of the Defendants*

The Defendants contend that the police did not have probable cause to arrest the Defendants. “[P]olice have probable cause [to arrest] where the facts and circumstances within the officer’s knowledge are sufficient to warrant a person of reasonable caution in the belief that an offense has been or is being committed.” Commonwealth v. Rogers, 849 A.2d 1185, 1192 (Pa. 2004). Probable cause is determined by considering all the relevant facts under the totality of the circumstances. Commonwealth v. Gray, 503 A.2d 921 (Pa. 1985).

Based upon the totality of the circumstances the Court finds that the police had probable cause to arrest the Defendants. As the Court reviewed in its analysis of reasonable suspicion, the Defendants matched the description dispatched of the suspects, the driver’s behavior when observing a marked police unit, the erratic movement of the vehicle, the occupants in the vehicle making furtive movements within when being followed by police, the car observed within a mile of the site of the home invasion and the use of a thoroughfare that in the Old Lycoming officers’ experience is typically used by suspects when they are fleeing the City. In addition to those factors, additional information was provided by Dincher about a similar home invasion that occurred on the 700 block of West Third Street in which a credit card was stolen from that home invasion and was used by Worthy at a bar shortly after it was taken. The perpetrators in that prior home invasion also used guns but only involved two (2) black males as suspects. Finally, both Weaver and Marks looked at the Defendants during their identification and stated “yeah, I think those are the ones that did it.” Weaver and Marks spoke simultaneously and pointed

directly at Grissom and Worthy.⁷ After assessing the totality of the evidence presented, the Court finds that there was probable cause to arrest the Defendants.⁸

5. *Whether the show up identifications of the Defendants should be suppressed*

The Defendants allege that the show up identifications for Weaver and Marks were highly prejudicial and should be suppressed. The Commonwealth argues that show up identifications are not suggestive as to give rise to an irreparable likelihood of misidentification. In support of their position, the Commonwealth relies on Moyer, which dealt with a witness to a burglary. Commonwealth v. Moyer, 836 A.2d 973 (Pa. Super. 2003). The witness had seen the defendant enter her apartment and flee. Id. at 975. The police transported the witness to the location where the defendant was placed in a van by himself and handcuffed. Id. While the witness was in route to view the defendant, police told her that “they had someone” and that they “found him running down the street all sweaty and just tired looking.” Id. at 977-78.

The Superior Court of Pennsylvania found that the show up identification was not tainted with suggestiveness. The Superior Court noted that out of court identifications conducted in similar conditions are consistently upheld. Id. at 977 (citing Commonwealth v. Allen, 429 A.2d 1113 (Pa. Super. 1981); Commonwealth v. McElrath, 592 A.2d 740 (Pa. Super. 1991); Commonwealth v. Bell, 562 A.2d 849 (Pa. Super. 1989)).

Here, the eyewitnesses were not told any information as to why they were being taken by the police other than they had a vehicle stopped and they wanted them to “look at the people.” N.T., January 25, 2013, p. 19. When they arrived at the scene Officer Paulhamus asked if they could recognize any of the people. Id. at 78. He did not provide the witnesses with any other

⁷ According to Dincher, this was not a positive identification.

⁸ The transcript of the preliminary hearing, which the Court read for the Habeas Corpus issues, states that officers also saw two black masks in the Defendants’ vehicle.

information as to why they were being viewed. Based upon the precedent established within this Commonwealth and the evidence presented here, the Court finds that the show up identifications of the Defendants in handcuffs were not unduly suggestive.

6. *Whether the photo identifications of Worthy were unduly suggestive*

Worthy has alleged that the photo identifications of him were unduly suggestive. “[A] photographic identification is unduly suggestive if, under the totality of the circumstances, the identification procedure creates a substantial likelihood of misidentification.” Commonwealth v. Kendricks, 30 A.3d 499, 504 (Pa. Super. 2011).

Whether an out-of-court identification is to be suppressed as unreliable, and therefore violative of due process, is determined from the totality of the circumstances. We will not suppress such identification unless the facts demonstrate that the identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.

Id. (citing Commonwealth v. Burton, 770 A.2d 771 (Pa. Super. 2001)). A photo array is not unduly suggestive if the suspect’s photo does not stand out more than others and each person depicted in the array are of similar facial characteristics. Id. (citing Commonwealth v. Fisher, 769 A.2d 1116, 1126 (Pa. 2001)). “The photographs in the array should all be the same size and should be shot against similar backgrounds.” Id. (citing Commonwealth v. Thomas, 575 A.2d 921 (Pa. Super. 1990)).

This Court has reviewed the photos groups used for Liddington, Runyon and Weaver. There are seven (7) photographs in each grouping besides the one of Worthy. All the photographs were of the same size. The photo of Worthy depicts a black male with short hair and facial hair. Almost every photo in the array depicts individuals with black skin, short hair, and some kind or similar facial hair. One of the photos, however, had a black male with a shaved head and no facial hair, had a bright blue background, and did not have JNET or

Pennsylvania Justice Network printed in the margin. Only one of the photos did not appear similar to the Defendant and there were six (6) others that were similar; the photo used of Worthy very closely resembled the six (6) others. Therefore, the Court finds that the photo array was not unduly suggestive and did not create a substantial likelihood of misidentification.

Petition for Habeas Corpus

a. Worthy's charge of Tampering with Evidence and Obstruction

Worthy alleges that the Commonwealth failed to establish a *prima facie* case for the charges under docket number 646-2012, which include Tampering With or Fabricating Physical Evidence and Obstructing Administration of Law or Other Government Function Law Enforcement. The principal function of a preliminary hearing is to protect an individual's right against an unlawful arrest and detention. Commonwealth v. Mullen, 333 A.2d 755 (Pa. 1975). A preliminary hearing is not a trial and the Commonwealth only bears the burden of establishing at least a *prima facie* case that a crime has been committed. Commonwealth v. Prado, 393 A.2d 8 (1979).

A *prima facie* case exists 'when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused committed the offense. Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury.'

Commonwealth v. Weigle, 997 A.2d 306, 311 (Pa. 2010) (citing Commonwealth v. Karetny, 880 A.2d 505, 513 (Pa. 2005)). The Commonwealth need not establish guilt beyond a reasonable doubt.

In this case, Dincher testified at the preliminary hearing that on February 2, 2012 at approximately 10:30, Worthy was under arrest for the home invasion addressed above. N.T., April 10, 2012, p. 2. Worthy was handcuffed to the wall and his feet were shackled. Id. at 4.

An evidence bag with items taken from Worthy was placed on a desk a few feet from him. Id. Dincher had observed the contents of the bag, which included cash, keys, and a cell phone. Id. Dincher then left the booking room. Id.

On February 15, 2012, Dincher was cataloging the evidence and he could not find the cell phone he had previously observed. Id. Dincher viewed a video tape of the booking room and observed Worthy reach his right hand into his left pocket and free his hand from the handcuff. Id. at 5. Worthy then reached into the evidence bag and “pulls out some papers . . . crumbles them up and throws them towards the garbage can in the booking room.” Id. Worthy also pulled out an at-home drug testing booklet from the evidence bag and ripped something out of it, placed the paper in his mouth, and threw the rest into the garbage can. Id. at 5-6. Finally, the Defendant used a cell phone in the evidence bag to make three (3) phone calls. Id. at 6. The phone was found logged on the intake form for the Lycoming County Prison and seized by Dincher pursuant to a search warrant. Id. at 7. While Worthy was taking things out of the evidence bag he kept looking at a camera in the room and the door into the booking room. Id. at 10.

An individual commits Tampering With or Fabricating Physical Evidence if “believing that an official proceeding or investigation is pending or about to be instituted, he alters, destroys, conceals or removes any record, document or thing with intent to impair its verity or availability in such proceeding or investigation.” 19 Pa. C.S. § 4910(1). The trier of fact can infer from the circumstances that the defendant intended to impair the proceeding or investigation pending. See Commonwealth v. Morales, 669 A.2d 1003 (Pa. Super. 1996). The Commonwealth also does not have to prove exactly what the item was. Id.

Here, the Commonwealth has established a *prima facie* case against the Defendant for Tampering With or Fabricating Physical Evidence. The Defendant had been arrested and transported to City Hall in regards to an alleged home invasion. The Defendant was handcuffed, shackled, and in a booking room. The circumstances suggest that the Defendant knew an official investigation or proceeding was pending against him. Further, the Defendant took off his handcuffs, opened a police evidence bag, removed papers from the bag, some of which he threw away or placed in his mouth, and then removed a cell phone from the same police evidence bag and took it with him. Based on the evidence, the Court finds the Defendant intended to impair the availability of the paper and cell phone to the police for future proceedings and investigation.

Similarly, the offense of Obstructing Administration of Law or Other Government Function is committed if a person “intentionally obstructs, impairs or prevents the administration of law or other governmental function by force, violence, physical interference or obstacle, breach or duty, or any other lawful act” Although the items seized by the police were Defendant’s, once they were in the possession of the police the Defendant was no longer entitled to them until they might be returned after the investigation was concluded. As the Defendant was interfering with the police investigation by altering or removing those items from police possession, such behavior establishes the unlawful act required for *prima facie* of Obstructing Administration of Law or Other Government Function.

b. Morgan’s allegation of multiplicative counts

Morgan alleges that he has been charged with multiplicative counts. The Court has reviewed the Information filed against the Defendant and does not agree. The Court will address each charge and why they are not multiplicative.

Counts 1 through 4 are each charged as Criminal Conspiracy to commit Robbery. The Commonwealth chose to charge the Defendant with each applicable subsection under the Robbery Statute. 18 Pa.C.S. § 3701.

Counts 5 through 8 are Criminal Conspiracy charges but each alleges a different crime. Count 5 is Criminal Conspiracy for Burglary. Count 6 is Criminal conspiracy for Criminal Trespass. Count 7 is Criminal Conspiracy for Theft by Unlawful Taking. Count 8 is Criminal Conspiracy for Receiving Stolen Property.

Similar to the analysis for counts 1 through 4, counts 9 through 12 of his information charges Morgan with each applicable subsection under the Robbery statute itself. These charges are then filed for each victim alleged to be present during the home invasion, specifically four (4) charges each for Ross Weaver, Courtney Marks, Rebeckah Liddington, and Dustin Runyon. These charges account for counts 9 through 24.

Finally, counts 25 through 28 are listed as separate counts, which include Burglary, Criminal Trespass, Theft By Unlawful Taking or Disposition, and Receiving Stolen Property. Counts 29 through 32 were charged as Simple Assault listing one count each for the four individuals in the house as each of the Counts 33 through 36 for Terroristic Threats was charged. Clearly each offense charged related to specific and discrete activity and was not duplicated in any way.

c. Morgan and Grissom's allegation that the Commonwealth did not establish a prima facie case for any of the 35 offenses they were charged with

Morgan and Grissom allege that the Commonwealth did not establish a *prima facie* case for any of the charges against them at the preliminary hearing. Specifically, they contend that

other than being found in a vehicle with Worthy and in the presence of items stolen from the home invasion, there is no evidence they engaged in the home invasion.

At the Preliminary Hearing, Weaver testified that he observed four (4) to five (5) silhouettes enter his house. N.T., February 28, 2012, p. 5, 18. During the encounter, Weaver saw three (3) different pairs of shoes including boots, timberland type boots, and Nike boots. Id. 7. Weaver testified that two (2) of the assailants had masks and the one who did not who he identified, was Worthy. Id. at 7-8. One of the masked assailants was wearing red knit gloves. Id. at 8. The second masked assailant was described as tall and skinny. Id. at 9. Weaver stated that multiple objects were missing after the encounter, including a drum pad, gray backpack with crew, piece of mail with his name on it, ID, driver's license, \$3090, cell phone, bank card, and a safe. Id. at 10. Weaver was shown and identified photographs of the drum equipment, the safe, and backpack. Id. at 12. Weaver was also shown photographs of two (2) masks and identified them as similar to the ones used during the home invasion. Id. at 12-13. Weaver testified that he saw three (3) black males in his house. Id. at 44.

In addition, Runyon testified that he saw one of the assailants with red knit gloves and a mask covering his face. Id. at 57-58. Runyon also saw another assailant without a mask, which he identified as Worthy. Id. 60. Runyon's cell phone was taken from him and a photograph of it was later shown to him by Dincher. Id. at 59. Dincher also showed Runyon a picture of the red gloves he saw during the home invasion. Id.

Liddington testified that she saw at least two black males during the home invasion. Id. at 86, 100. One of the individuals had a mask. The other individual did not have a mask and had a gun; this individual was identified as Worthy. Id. at 86-87. Liddington had some cash and an iPhone stolen. Id. at 88. The iPhone had a pink and white leopard case on it. Id. Liddington was

shown a photograph of the phone by Dincher. Id. Dincher also showed Liddington a photo of red gloves, which she identified as being used in the home invasion. Liddington was shown a photo of two (2) masks at the preliminary hearing and she stated that they were similar to the one used in the home invasion. Id. at 89.

Marks testified that she saw three (3) black males enter the house. Id. at 111. Two (2) had masks and the other was not wearing a mask and had a gun. Id. While being forced to lie on the ground, Marks saw a pair of black Nike boots and a pair of tan work boots. Id. at 112. Marks identified a picture shown by Dincher of the Nike boots and one of the masks. Id. at 113-14.

Agent Stephen Sorage (Sorage) of the WBP testified about the search of the vehicle in which the Defendants were found. Id. at 141. On the passenger side of the vehicle, in-between the front seats approximately \$1,400 was found. Id. at 142. In the back seat a black balaclava style mask and another black ski type mask was found. Id. A crew backpack with cell phones and mail addressed to Weaver was also found between the driver's seat and the rear driver's area. Id. at 143. Additionally, tools were found in the vehicle, specifically a bent screwdriver. Id. Finally, Worthy's residence was searched and red gloves and a number of shoes were found. Id. at 144.

Dincher showed photographs of the items found to the witnesses. Id. at 149. Marks identified a pair of Nike boots, which Worthy was wearing at the time of his arrest. Id. at 149-50. Additionally, Marks identified the black balaclava mask. Id. at 150. Weaver identified drum equipment, Timberland boots, red gloves, and white Supra sneakers found at Worthy's residence. Weaver identified a black ski mask, Crew backpack, and a phone seized from the vehicle. Id. at 153. Runyon identified his phone taken from the vehicle and the red gloves from

Worthy's residence. *Id.* at 154. Liddington identified the red gloves and her cell phone. *Id.* at 154.

The Court finds that the Commonwealth has established a *prima facie* case that Morgan and Grissom were involved in the home invasion. Witness accounts and identifications provide evidence that Morgan and Grissom were involved. When all the witness testimony is combined, three separate black males were described as the assailants. One of the occupants in the vehicle, Worthy, was positively identified by multiple witnesses as being the assailant without a mask and having a gun. Weaver and Marks also believed Grissom was involved in the home invasion, even though he was not positively identified.

In addition, physical evidence circumstantially establishes that Worthy and Grissom were involved in the home invasion. The vehicle that was stopped with the Defendants had three black males and contained many of the things that were stolen in the home invasion. The vehicle also had two masks that many of the witnesses identified as being similar to the ones used in the home invasion, which could only have been worn by Grissom and Morgan as Worthy was identified as not having worn a mask at all. Finally, Worthy and Grissom were found with approximately \$1,400 on each of them. Another \$1,400 was found near where Morgan would have been sitting in the vehicle. Based on the amount of money stolen from the home invasion, it would appear that the Defendants split the money equally among themselves. Therefore, the Court finds that the Commonwealth presented *prima facie* evidence that Morgan and Grissom had engaged in the home invasion with Worthy and were not merely present at the scene of a crime and the charges against them were properly held for court.

ORDER

AND NOW, this _____ day of July, 2013, after a hearing and based upon the foregoing Opinion, Defendants' Motion to Suppress is hereby GRANTED in part and DENIED in part. This Court finds that the Commonwealth did not provide sufficient evidence to determine whether Stanley Morgan was in custodial detention following the vehicle stop. Any items found on Morgan's person, however, would have been inevitably discovered from a search incident to lawful arrest. Accordingly, it is ORDERED and DIRECTED that any witness identifications of Morgan or incriminating statements made by Morgan following the vehicle stop but prior to probable cause to arrest the Morgan are hereby SUPPRESSED. In all other regards, the Defendant's Omnibus Pre-trial Motions are DENIED.

By the Court,

Nancy L. Butts, President Judge

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