

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

: No. CR-1923-2013

:

vs.

:

: **Opinion and Order re**

: **Defendant's Omnibus Pretrial Motion**

JUMICHAEL DRUMMOND,

:

Defendant

:

OPINION AND ORDER

This matter came before the court on Defendant's omnibus pretrial motion.

The relevant facts follow.

At approximately 3:19 p.m. on October 16, 2013, Officer Damon Hagan of the Williamsport Bureau of Police was in full uniform and on routine patrol in a marked police vehicle near the Timberland Apartments when he observed Defendant JuMichael Drummond standing on a street corner with a family member. A few days earlier, Officer Hagan had seen a manila envelope with Defendant's name and biographical information on it in the warrant drawer, leading him to believe that there was an outstanding warrant for Defendant's arrest, but he did not open the envelope or actually see the warrant. Officer Hagan drove past Defendant and circled the block while trying to get another unit in the area. When he came back around the block, Defendant was walking north with his relative. Officer Hagan got out of his vehicle and directed Defendant and his relative to stop. Defendant took off running. Defendant was eventually taken into custody. He was searched incident to arrest and a bag of marijuana was found on his person. Along Defendant's flight path, the police also found six blue bags of heroin near apartment 4-I. At the police station, Defendant admitted that he possessed the marijuana and the heroin.

Around 3:30 p.m., Matthew Oldt, the maintenance supervisor at Timberland Apartments, was advised by a tenant that she discovered a handgun. He went to an area near apartment 3-G and observed a silver handgun in plain view under a bush as if it would have fallen out of the bush. Mr. Oldt called 911 and guarded the firearm until Corporal Jeffrey Paulhamus retrieved it.

Corporal Paulhamus ran the serial number of the handgun and discovered that it was reported stolen. Corporal Paulhamus also determined that Defendant did not have a license to carry a firearm. Furthermore, Defendant had a robbery conviction that made him a person who was not permitted to possess a firearm.

The police charged Defendant with persons not to possess a firearm,¹ receiving stolen property,² firearms not to be carried without a license,³ possession of a controlled substance,⁴ possession of a small amount of marijuana,⁵ and possession of drug paraphernalia.⁶

Defendant filed an omnibus pretrial motion, which contained: a motion to suppress evidence on the basis that his arrest and detention were not supported by the requisite probable cause and due to the illegal forced abandonment of any property; a motion to disclose any promises of immunity or leniency and to provide criminal history from NCIC and/or JNET; a motion for disclosure of other crimes evidence pursuant to Pa. R.E. 404(b); a

¹ 18 Pa.C.S. §6105.

² 18 Pa.C.S. §3925.

³ 18 Pa.C.S. §6106.

⁴ 35 P.S. § 780-113(a)(16).

⁵ 35 P.S. §780-113 (a)(31).

⁶ 35 P.S. §780-113(a)(32).

motion for discovery of expert reports; a petition for writ of habeas corpus; and a motion to modify bail. At the hearing and argument on the omnibus motion, the Commonwealth introduced the preliminary hearing transcript as Commonwealth exhibit 1, the surveillance videos from Timberland Apartments as Commonwealth exhibit 2, and supplemental testimony from Officer Hagan.

Defendant first contends that all the evidence against him must be suppressed because the Commonwealth has failed to prove that there was a valid outstanding warrant for Defendant's arrest on October 16, 2013.

Officer Hagan testified at the preliminary hearing that he knew there was an active warrant for Defendant because he had seen it in the warrant drawer within a few days of seeing Defendant out in the field and it turned out that it was a PFA warrant. Preliminary Hearing Transcript, at 9-10. However, upon cross-examination, Officer Hagan admitted he never saw the warrant itself; he only saw an envelope in the warrant drawer with Defendant's name on it, which would mean that there was an active warrant that had not yet been served. He explained that when the warrant is served, it is removed from the warrant drawer and you wouldn't see the warrant or the envelope for the warrant in the drawer.

At the suppression hearing, Officer Hagan supplemented his preliminary hearing testimony. He again admitted that to the best of his knowledge he did not recall seeing the actual warrant, just the envelope. Although he could check for outstanding warrants if the computer equipment in his vehicle was working and JNET was online, he did not think that he checked or requested a check on the warrant. Nevertheless, Officer Hagan professed that there was no doubt in his mind that there was a warrant. He testified that once

a warrant was served, the envelope never returns to the warrant drawer. He also stated that he had never looked in an envelope that did not have a warrant in it. To the best of his knowledge, he made an assumption based on his prior experience that there was a warrant in that envelope. He conceded that he did not observe Defendant engage in any illegal activity and the only reason Defendant was stopped and taken into custody was due to the warrant.

Defense counsel argued that the evidence was insufficient for a stop or arrest.

According to the defense, the most the Commonwealth established was that there was an envelope with Defendant's name on it, not an actual warrant. The Commonwealth did not introduce a warrant or the envelope and therefore, the defense did not know if either actually existed. Officer Hagan also did not take any steps to verify that there was a valid outstanding warrant. He did not run Defendant's name through the computer in his vehicle or check at the station. Furthermore, there is no good faith exception to the warrant requirement in Pennsylvania. Defense counsel cited cases such as *Whiteley v. Warden*, 401 U.S. 560 (1971); *Commonwealth v. Mackie*, 320 A.2d 842 (Pa. 1974); *Commonwealth v. Galendez*, 27 A.3d 1042 (Pa. Super. 2011); and *Clark v. State*, 637 So.2d 1010 (Fla. App. 1994).

The prosecutor argued that the information possessed by Officer Hagan was at the most three or four days old; therefore, the information was not stale. He also noted that there is Pennsylvania case law that permits an officer to arrest based on information provided by another officer and radio bulletins, as well as case law that an officer can arrest an individual based on information in NCIC that there was a bench warrant for the individual's arrest when it turned out that the bench warrant had been vacated.⁷ He argued that Officer

⁷ At the time that Defendant was arrested, there were Superior Court decisions that held an officer could rely on NCIC and a defendant was not entitled to suppression even if the information in NCIC was incorrect and the

Hagan had probable cause to arrest based on the totality of the circumstances and the case law.

Although not analyzed in this manner by the parties, the court finds that there are two separate inquiries that must be made in this case: (1) whether Officer Hagan had reasonable suspicion to direct Defendant to stop; and (2) whether Officer Hagan had probable cause to arrest Defendant when he was actually taken into custody.

Based on the totality of the circumstances including, but not limited to, Officer Hagan's observation of an envelope with Defendant's name and biographical information on it in the warrant drawer a few days earlier and his experience that he had never seen an envelope in that drawer that did not have a warrant in it, the court finds that Officer Hagan had reasonable suspicion to believe that Defendant was a wanted individual and to direct him to stop. Unfortunately, Defendant did not comply with Officer Hagan's direction to stop. Instead, he fled in a high crime area. Defendant's flight would only strengthen the officer's belief that there was a warrant for Defendant's arrest.

The court does not believe Officer Hagan was required to confirm the validity of the warrant before he tried to detain Defendant. To do so would run the risk that Defendant would disappear by entering a residence or leaving the area before Officer Hagan could check his computer, radio the appropriate individuals or receive a response.

As the Pennsylvania Supreme Court noted in *Commonwealth v. Chase*: "A finding of reasonable suspicion does not demand 'a meticulously accurate appraisal' of the

warrant had been satisfied days earlier. See for example, *Commonwealth v. Riley*, 425 A.2d 813 (Pa. Super. 1981). Though not cited by either attorney, the case law appears to have changed between Defendant's arrest and the suppression hearing when the Pennsylvania Supreme Court decided *Commonwealth v. Johnson*, 86 A.3d 182 (Pa. 2014).

facts. Indeed, even stops based on factual mistakes generally are constitutional if the mistake is objectively reasonable.” 599 Pa. 80, 960 A.2d 108, 120 (2008)(citations omitted). Since Officer Hagan had a reasonable basis to believe there was a warrant for Defendant’s arrest which justified his command that Defendant stop, Defendant’s alleged act of discarding controlled substances along his flight path cannot be considered a forced abandonment.

By the time Defendant was actually taken into custody, the police had discovered the discarded heroin and had probable cause to arrest Defendant for illegally possessing controlled substances. Therefore, the search of Defendant’s person was valid because it was incident to his lawful arrest for possession of controlled substances.

Accordingly, the court will deny Defendant’s motion to suppress the evidence in this case.

Next, Defendant requests the disclosure of any promises of immunity, leniency or preferential treatment as well as the complete criminal history from the National Crime Information Center (NCIC) and/or the Pennsylvania Justice Network (JNET) of the Commonwealth witnesses. The Commonwealth shall provide this information to defense counsel within thirty (30) days.

Defendant also requests that the court issue an order requiring the Commonwealth to disclose any other crimes, wrongs or bad acts evidence that may be admissible at trial under Pa.R.E. 404(b). The Commonwealth shall provide the information required by Rule 404(b) no later than the pre-trial date unless the reason for such was discovered afterwards.

Defendant also requested certain discovery. The court notes that the request for videotapes is moot. Defendant also requests discovery of reports from the

Commonwealth's expert witnesses. The Commonwealth shall provide expert information that complies with Pa.R.Crim.P. 573(B)(1)(e) and (2)(b) by the date of the pretrial unless there is cause shown to excuse disclosure after that date.

Defendant also filed a petition for writ of habeas corpus with respect to the charge of receiving stolen property and the two firearm charges. Defense counsel withdrew his objection that the Commonwealth's entire case for these charges was based on hearsay, because the Commonwealth introduced the video from Timberland Apartments. Nevertheless, he still contended that the evidence failed to establish that Defendant was in possession of the firearm.

The proper means to attack the sufficiency of the Commonwealth's evidence pretrial is through the filing of a petition for writ of *habeas corpus*. *Commonwealth v. Marti*, 779 A.2d 1177, 1179 n.1 (Pa. Super. 2001). At a *habeas corpus* hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a prima facie case against the defendant. See *Commonwealth v. Williams*, 911 A.2d 548, 550 (Pa. Super. 2006).

"A prima facie case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime." *Commonwealth v. Packard*, 767 A.2d 1068, 1070 (Pa. Super. 2001). "While the weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe that the person charged has committed the offense, the absence of evidence as to the existence of a material element is fatal." *Commonwealth v. Wojdak*, 466 A.2d 991, 997 (Pa. 1983). The Commonwealth, however, need not prove the

defendant's guilt beyond a reasonable doubt at this stage of the proceedings.

Commonwealth v. Santos, 583 Pa. 96, 876 A.2d 360, 363 (2005).

Although the Commonwealth may have difficulty proving Defendant's guilt beyond a reasonable doubt, the court finds that the evidence, when viewed in the light most favorable to the Commonwealth, is sufficient to demonstrate probable cause that Defendant possessed the firearm. When Defendant fled from Officer Hagan, he ran through the Timberland Apartment complex. Videotapes from the apartment complex surveillance system show Defendant running past some bushes outside Building 3 and there is some movement in one of the bushes as Defendant runs by. Shortly thereafter, a tenant contacts Matthew Oldt, the maintenance supervisor, and tells him that she found a handgun under a bush outside apartment 3G. Mr. Oldt goes to that area and observes a silver handgun lying under the bush as if it would have fallen out of the bush. Mr. Oldt called 911 and guarded the firearm until Corporal Jeffrey Paulhamus retrieved it.

From these facts a jury could infer that Defendant discarded the firearm into the bush as he ran by. The jury is not required to make this inference and they might not since one cannot actually see a firearm on the videotape. This evidence, however, presents a factual issue for the jury.⁸

⁸ The Commonwealth has submitted either the firearm or swabs taken from the firearm for DNA testing, but has not received any results, yet.

ORDER

AND NOW, this ___ day of October 2014, upon consideration of Defendant's omnibus pretrial motion, it is ORDERED and DIRETED as follows:

1. The court DENIES Defendant's motion to suppress.
2. The Commonwealth shall provide any promises of immunity, leniency or preferential treatment as well as criminal history of its witnesses to defense counsel within thirty (30) days if it has not already done so.
3. The Commonwealth shall provide any Pa.R.E. 404(b) notice to defense counsel by the date of the pretrial unless the reason for such was discovered afterwards.
4. The Commonwealth shall provide expert information that complies with Pa.R.Crim.P. 573(B)(1)(e) and (2)(b) by the date of the pretrial unless cause shown to excuse disclosure after that date.
5. The court DENIES Defendant's petition for writ of habeas corpus with respect to the receiving stolen property charge and the two firearms charges.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Edward J. Rymysza, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file