

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. CR-1253-2013
vs.	:	
	:	
SHERMAN KELLER,	:	
Defendant	:	Motion for Writ of Habeas Corpus

OPINION AND ORDER

Defendant is charged with resisting arrest out of an incident that allegedly occurred on July 16, 2013. Before the Court is Defendant's Motion for Writ of Habeas Corpus (hereinafter "Petition") filed on January 28, 2014. A hearing on the Petition was held on March 31, 2014. Corporal Brad Eisenhower of the Pennsylvania State Police testified that on July 16, 2013, he was advised by Trooper Jennifer McMunn, also of the Pennsylvania State Police, that she had a bench warrant from Montgomery County for Defendant. Trooper McMunn requested that Corporal Eisenhower and other troopers arrest Defendant at his parent's address.

Corporal Eisenhower and other members of the State Police traveled to 1631 Elwood Avenue in Williamsport and eventually arrested Defendant.

The determinative facts are not in dispute. At the time Corporal Eisenhower took Defendant in custody, the "bench warrant" that Trooper McMunn referred to was an application for bench warrant that was ostensibly signed by Judge Braxton, of the Court of Common Pleas of Montgomery County, PA, below typewritten language approving the application, directing the clerk to issue a bench warrant and forfeiting bail. Said document was marked as Commonwealth Exhibit 1.

Because the Lycoming County Prison would not accept Defendant on the alleged bench warrant, Defendant was detained and incarcerated on an Adult Probation detainer. Subsequent to Defendant's arrest, the bottom portion of the "bench warrant" was completed and again signed by Judge Braxton. This portion of the "bench warrant" directed the sheriff or any authorized person to take Defendant into custody. This document was marked as Commonwealth Exhibit 2.

Defendant's argument in support of his Petition is simple. Defendant alleges that at the time he was arrested there was not in existence a valid bench warrant and accordingly his arrest was illegal. The Commonwealth counters that the document entitled "Application for Bench Warrant" is in fact a valid bench warrant and accordingly, Defendant's arrest was legal. Alternatively, the Commonwealth argues that if the "Application" document did not constitute a valid bench warrant, because Corporal Eisenhower had a good faith belief that the bench warrant existed, the arrest of the Defendant was legal.

A habeas corpus petition is the means by which a party can challenge whether the Commonwealth presented sufficient evidence to establish a prima facie case. Commonwealth v. Carbo, 822 A.2d 60, 67 (Pa. Super. 2003)(citations omitted). The standard for a prima facie case is met "when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense." Commonwealth v. Huggins, 836 A.2d 862, 866 (Pa. 2003)(citations omitted).

The prima facie case merely requires evidence of the existence of each element of the crime charged. Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2001). “[T]he Commonwealth must show sufficient probable cause that the defendant committed the offense, and that the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury.” Commonwealth v. Winger, 957 A.2d 325, 328 (Pa. Super. 2008)(citations omitted).

A person is guilty of resisting arrest if “with the intent of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily injury to the public servant or anyone else or employs means justifying or requiring substantial force to overcome the resistance.” 18 Pa.C.S.A. §5104. In order for a person to be guilty of resisting arrest, the underlying arrest must be lawful. Commonwealth v. Jackson, 924 A.2d 618, 620 (Pa. 2007).

The police must have probable cause before making an arrest or custodial detention. Commonwealth v. Goldsborough, 31 A.3d 299, 306 (Pa. Super. 2011). For the purposes of resisting arrest, the question with respect to the lawfulness of the arrest is the existence of probable cause. Id.; Commonwealth v. Maxon, 798 A.2d 761, 770 (Pa. Super. 2002); Commonwealth v. Stortecky, 352 A.2d 491, 492 (Pa. Super. 1995).

Since probable cause must be determined on the basis of the knowledge of the arresting officer at the time of an arrest, in a similar situation, an arrest based on information from NCIC was upheld even though that information was inaccurate or the arresting officer did not know and could not reasonably be expected to know that the

information was wrong when he made the arrest. Commonwealth v. Riley, 425 A.2d 813, 816 (Pa. Super. 1981).

In this case, Corporal Eisenhower was advised that a warrant had been issued for the Defendant's arrest. He was entitled to rely on the information provided by another trooper. Accordingly, he had sufficient probable cause to arrest Defendant, regardless of whether the warrant document was properly signed by the Court.

Alternatively, this Court finds that the warrant was, in fact, valid. As such, Corporal Eisenhower had sufficient probable cause to arrest Defendant and the arrest was lawful.

A reading of the warrant document specifically notes that it was approved by the Court. A judge signed it. The remaining portion of the document to be completed by the Clerk of Court was, at the very most from a substantive standpoint, a ministerial act. Moreover, albeit hearsay which is admissible in part for prima facie purposes, the practice in Montgomery County for the issuance of bench warrants was followed.

ORDER

AND NOW, this ____ day of April 2014, following a hearing, argument and review of the respective party's legal submissions, the Court **DENIES** Defendant's petition for habeas corpus.

By The Court,

Marc F. Lovecchio, Judge

cc: DA (AC)
Michael J. Rudinski, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File