

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : **CR-1495-2014**
:
v. :
: **CRIMINAL DIVISION**
NAFIS ANTUAN FAISON, :
Defendant : **1925(a) Opinion**

OPINION IN SUPPORT OF ORDER IN COMPLIANCE WITH RULE 1925(a)
OF THE RULES OF APPELLATE PROCEDURE

This Opinion is written in support of the Court’s Sentencing Order of April 27, 2015.

The Defendant’s concise statement contains two issues. For the second issue, the Court will rely on the Opinion filed on August 14, 2015. For the first issue, the Court will rely on the Opinion filed on January 14, 2015 and the following discussion in this Opinion.

In the Opinion filed on January 14, 2015, the Court wrote that a man entered the relevant apartment at 1:00 p.m. A woman, not a man, actually entered the apartment at that time, but this does not change the Court’s determinations in the Opinion. See N.T., 12/1/14, at 5.

For the following reasons, the Court found that the Defendant was in the apartment during the controlled buy. Officer Snyder testified that the confidential informant told him that there was another man besides Peterson in the apartment. N.T., 12/1/14, at 18-19. Detective Diaz testified that the Defendant exited the apartment after the controlled buy. Id. at 7-8. Snyder testified that there was only one door “to enter and exit the apartment.” Id. at 25. Snyder also testified that surveillance was maintained after the controlled buy. Id. at 17-18.

As discussed in the Opinion filed on January 14, 2015, the Court believes that the facts and circumstances known to the police at the initiation of the detention were sufficient for probable cause. Nonetheless, the Court will now discuss why the Defendant was not under arrest until the pre-transport search. An officer with reasonable suspicion “may conduct a brief, investigatory stop to maintain the status quo temporarily while obtaining more information.”

Commonwealth v. Pizarro, 723 A.2d 675, 681 (Pa. Super. 1998). The factors considered to determine whether a detention is investigative or custodial include:

the basis for the detention (the crime suspected and the grounds for suspicion); the duration of the detention; the location of the detention (public or private); whether the suspect was transported against his will (how far, why); the method of detention; the show, threat or use of force; and, the investigative methods used to confirm or dispel suspicions.

Id.

Here, some circumstances support a determination that the Defendant was initially subject to a custodial detention. Paulhamus handcuffed the Defendant, took the Defendant's cell phone, and told the Defendant that he was detained. N.T., 12/1/14, at 31-32. Other circumstances support a determination that the Defendant was initially subject to an investigative detention. Paulhamus did not place the Defendant in the police car or transport the Defendant until after the pre-transport search. N.T., 12/1/14, at 32. Only 10 to 15 minutes elapsed between Paulhamus detaining the Defendant and the transport to police headquarters. Id. The police were in the process of executing a search warrant in the apartment that the Defendant had just left. Id. at 25-26. A confidential informant had purchased cocaine in the apartment. There was no testimony that Paulhamus drew his weapon or threatened the Defendant. After examining the circumstances, the Court finds that the circumstances supporting an investigative detention outweigh the circumstances supporting a custodial detention. Therefore, the Defendant was initially subject to an investigative detention, not a custodial one.

DATE: _____

By the Court,

Nancy L. Butts, President Judge