

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR- 1031-2015
 :
 SHAWN HAYMAN, :
 :
 Defendant : Omnibus Pretrial Motion

OPINION AND ORDER

Defendant is charged by Information filed on July 16, 2015 with two counts of criminal conspiracy to possess with intent to deliver controlled substances, two counts of possession with intent to deliver controlled substances, two counts of possession of a controlled substance and two counts of possession of drug paraphernalia.

Defendant filed an omnibus pretrial motion on August 19, 2015. The hearing was originally scheduled for September 23, 2015 but continued to December 7, 2015 upon motion of the Commonwealth due to the affiant, Trooper Robert Williamson's unavailability.

Defendant's omnibus pretrial motion consists of a motion to suppress. Defendant contends that the heroin allegedly seized from him following his arrest should be suppressed because he was illegally arrested without probable cause.

Trooper Williamson testified at the December 7, 2015 hearing. He began his law enforcement career with the Williamsport Bureau of Police in 2011. Since May of 2014, he has been employed as a trooper for the Pennsylvania State Police. Throughout his law enforcement career, he has been involved in scores of drug trafficking investigations and arrests, and hundreds of drug possession investigations and arrests.

On May 23, 2015, he was patrolling the area of East Third Street near the Kmart Plaza in Loyalsock Township traveling east. Earlier, he had been dispatched to this area. A known and identified individual reported to the PSP that he observed several suspicious transactions in the Kmart parking lot. The transactions involved a gold Pontiac G-6 vehicle occupied by two black males. They appeared to be making several drug transactions. The witness provided to PSP the vehicle's license plate number.

At approximately 12:10 p.m., Trooper Williamson observed the same gold Pontiac with the same license plate number and occupied by two black males. The vehicle was traveling eastbound in front of him. The vehicle made a right turn without using its turn signal. As a result, Trooper Williamson conducted a traffic stop of the vehicle.

This area of Loyalsock where the traffic stop was effectuated was a high "drug" area. Recently, there was "a lot of drug dealing activity" in the area. The PSP had made many arrests in the area for illegal drug sales, drug possession and paraphernalia possession. Numerous cars had been stopped with resulting criminal charges.

Approximately a week earlier, in the same area, Trooper Williamson had stopped a gold Pontiac occupied by two black males. Although no drugs were found, his suspicions were raised because the occupants had \$3,500.00 in cash on them and a few cell phones. According to the occupants, one was not employed and the other was a barber.

As well, earlier in the day on May 23, 2015, Trooper Williamson reviewed surveillance cameras from the Faxon Bowling Lanes. The bowling lanes are located near the Kmart Plaza. The camera depicted an apparent drug transaction between the occupant of a

green car and the same gold Pontiac. After the gold Pontiac left, an employee of the lanes found the occupant of the green car in it and smoking crack cocaine.

Trooper Williamson identified the driver of the vehicle after the stop as Troy Brown and determined that Mr. Brown was operating the vehicle under suspension. The front seat passenger was identified as Defendant. Trooper Williamson removed Mr. Brown from the vehicle. Upon request, Mr. Brown permitted Trooper Williamson to search the vehicle.

In the vehicle's center console, Trooper Williamson located a solid black eyeglass case. Within that case, Trooper Williamson located 19 sealed Suboxone patches. They were in their original foil packages and clearly marked as Suboxone.

As a result, both Mr. Brown and Defendant were arrested and taken into custody. Defendant was subsequently searched incident to an arrest and 110 baggies of heroin were discovered in his left sneaker.

Defendant argues that Trooper Williamson did not have the right to place him under arrest following Trooper Williamson's discovery of the Suboxone patches.

To determine whether probable cause exists, the court must consider "whether the facts and circumstances which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime." *Commonwealth v. Ibrahim*, 2015 PA Super 231, 2015 Pa. Super. LEXIS 732, *10-11 (November 6, 2015)(quoting *Commonwealth v. Rodriguez*, 585 A.2d 988, 990 (Pa. 1991)). Probable cause is determined by considering all of the relevant facts under the

totality of circumstances. *Commonwealth v. Gray*, 503 A.2d 921, 926 (Pa. 1985).

The Commonwealth first asserts that it had probable cause to arrest the Defendant for possession of a controlled substance, namely Suboxone.

Suboxone, also known generically as Buprenorphine is a schedule V substance under Pennsylvania's Controlled Substance, Drug, Device and Cosmetic Act ("the Act"). 35 P.S. § 780-104 (5) (ii). Curiously, under Pennsylvania's Administrative Code, Buprenorphine is classified as a schedule III drug. 25 Pa. Code § 25.72 (d) (10). Regardless, its possession is illegal "unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner." 35 P.S. § 780-113 (a) (16).

The Commonwealth has not provided to the court any authority, nor has the court found any, which mandates that an individual who possesses prescription medication must have with him that prescription and/or the container in which the medication was provided to him. In other words, it does not appear illegal under Pennsylvania law for an individual to possess prescribed controlled substances that are "loose."

Accordingly, the immediate arrest of Defendant for possession of a controlled substance would be improper. There were no facts upon which a man of reasonable caution could believe that Defendant had committed or was committing a crime.

The proper course of action would have been for Trooper Williamson to detain Defendant and inquire further as to the presence of the substance, Defendant's connection to that substance if any and if so, whether Defendant had a valid prescription with respect to that substance.

Additionally, however, the Commonwealth argues that it had sufficient probable cause to arrest Defendant for delivery of Suboxone. The Court agrees.

As Trooper Williamson credibly testified, the initial caller had observed several apparent drug transactions in the Kmart parking lot and the caller identified the same gold Pontiac G-6 vehicle as well as the same license plate and the fact that the occupants were two black males. All of the information relating to the identification of the actors and the vehicle matched the information given to dispatch by the reporting party. This particular area was a high drug transaction area as evidenced by numerous drug transaction and drug possession arrests in close proximity to where Defendant's vehicle was stopped and within the recent past.

As well, approximately one week earlier, Trooper Williamson stopped the same vehicle with the same occupants. While no drugs were located, PSP found a couple of cell phones as well as \$3,500.00. Yet, Defendant said he didn't work while Mr. Brown said he was a barber.

Further, on the same date of the stop, a few hours earlier, Trooper Williamson reviewed surveillance cameras from the Faxon Bowling Lanes which is located within a mile or so of the Kmart Plaza. The camera depicted an apparent drug transaction between the occupant of a green car and the same gold Pontiac. After the gold vehicle left, an employee of the lanes found the occupant of the green car smoking crack cocaine.

Finally, the Suboxone was found hidden in the center console and again Trooper Williamson observed even more cellphones.

When all of these circumstances are taken into consideration as a whole, Trooper Williamson had reasonably trustworthy information to believe that Defendant had committed or was in the process of committing a delivery of a controlled substance or possession with intent to deliver a controlled substance.

ORDER

AND NOW, this __ day of December 2015, following a hearing and argument, Defendant's omnibus pretrial motion seeking suppression is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Matthew Welickovitch, Esquire (APD)
Gary Weber, Esquire, Lycoming Reporter
Work file