

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-2035-2014
v.	:	
	:	
MICHAEL JAMES WILLITS,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

On January 29, 2015, the Defendant filed an Omnibus Pre-trial Motion. A hearing on the motion was held on March 10, 2015.

I. Background

On November 30, 2014 at approximately 10:30 A.M., Corporal Morris Sponhouse (Sponhouse) of the Old Lycoming Township Police Department was operating a patrol car on Lycoming Creek Road. An Isuzu Trooper vehicle pulled in front of Sponhouse's patrol car. Sponhouse "ran the registration" and discovered that the Trooper was registered to the Defendant. Sponhouse knew that a "domestic relations warrant" had been issued for the Defendant. He contacted the Lycoming County Communications Center, which confirmed that the Defendant was the subject of a warrant.

Sponhouse pulled up next to the Trooper and saw that the Defendant was driving. He recognized the Defendant because he had seen the Defendant's photograph on a list of people subject to warrants. The Defendant turned off Lycoming Creek Road. Sponhouse continued on Lycoming Creek Road but turned around at the first safe location. He then turned where the Defendant had turned. Sponhouse saw the Trooper parked in the parking lot of a motel. The Trooper was parked in front of room 111 and there were at least two open parking spots on each

side of the vehicle. At most, two minutes had elapsed between Sponhouse recognizing the Defendant and Sponhouse seeing the Trooper in the motel parking lot.

Sponhouse went to the motel's office and asked if a room was being rented by the Defendant. The Defendant did not have a room under his name, but Sponhouse was directed to room 116, which the motel staff believed was associated with the Trooper. Sponhouse went to room 116 and talked with the people in the room. The people said that they did not know the Defendant and agreed to let Sponhouse search the room. Sponhouse searched the room and did not find the Defendant.

Officer Jacob Summers (Summers) of the South Williamsport Police Department arrived at the motel. Sponhouse told Summers about the Defendant. The officers then noticed that the door to room 111 was about six inches open. Four minutes had elapsed between Sponhouse arriving at motel and the officers noticing that the door to room 111 was partially open. The officers approached room 111; they could see the carpet and part of the bed, but they could not see the majority of the room. Sponhouse twice knocked on the door and twice asked if anybody was in the room. After Sponhouse did not receive an answer, he pushed the door open, again knocked, and again asked if anybody was in the room. Sponhouse did not receive an answer and did not see anybody in the room. He then closed the door to where it had been. Sponhouse told Summers to stay outside of the room while Sponhouse went to the office to find out who was renting room 111.

After Sponhouse left for the office, Summers noticed room 111's curtains move. Summers unholstered his Taser, opened room 111's door, and stepped a foot and a half inside of the room. He saw a person behind the curtains and pressed against the wall. Summers ordered the person to keep his hands where Summers could see them, come out to the middle of the

room, and lie down on the floor. Summers identified the person as the Defendant, who lay down on his stomach. Summers took a step back towards the door and glanced in the direction of the motel's office. As Summers glanced towards the office, the Defendant sprung up and quickly approached Summers. Summers saw the Defendant approaching and ducked slightly as he braced for impact. Some part of Defendant's body hit the left side of Summers' face. Summers did not see specifically what part of the Defendant's body hit him.

The Defendant wrapped his hands around Summers' Taser and started twisting it. Summers believed that the Defendant was trying to take the Taser. During the struggle, Summers and the Defendant spun around, so the Defendant was closer to the door. Summers felt his grip on the Taser loosening, and he pushed the Defendant. As he pushed the Defendant, Summers lost grip of the Taser, which fell to the floor. Summers grabbed a backpack that the Defendant was wearing. As Defendant ran out of the room, the backpack was separated from the Defendant.

The parties stipulated that if Kathy McClesky (McClesky) was called to testify, she would have testified that she rented room 111 and the Defendant had stayed in the room. McClesky would have also testified that the Defendant gave her money to stay in the room.

The Defendant was charged with Aggravated Assault,¹ Escape,² Flight to Avoid Apprehension, Trial, or Punishment,³ and Possession of Drug Paraphernalia.⁴ The Defendant argues that Summers' warrantless entry into room 111 was illegal because there were no exigent circumstances justifying the entry. He, therefore, asks that the evidence from the motel room be suppressed. In addition, the Defendant argues that the Commonwealth has not established a

¹ 18 Pa.C.S. § 2702(a)(3).

² 18 Pa.C.S. § 5121(a). The Escape charge is graded as a felony of the third degree under 18 Pa.C.S. § 5121(d)(1).

³ 18 Pa.C.S. § 5126(a).

⁴ 35 P.S. § 780-113(a)(32).

prima facie case of aggravated assault because it did not present any evidence that the Defendant attempted to cause or intentionally or knowingly caused bodily injury to Summers. Furthermore, the Defendant argues that the Commonwealth has not established a *prima facie* case of escape because the Defendant was not officially detained. The Defendant cites Commonwealth v. Fountain to support his argument.⁵ According to the Defendant, he was not officially detained because he was not told that he was the subject of a warrant. Lastly, the Defendant argues that the escape charge is improperly graded as a third-degree felony since he did not use the force “as contemplated in the statute.”

II. Discussion

A. Although Warrantless, Officer Summers’ Entry into Room 111 was not Unreasonable Because There were Exigent Circumstances.

The Fourth Amendment to the United States Constitution safeguards against unreasonable searches and seizures. See U.S. Const. amend. IV; Commonwealth v. Curry, 494 A.2d 1146, 1148 (Pa. Super. 1985). “[A] warrantless search of a residence is *per se* unreasonable unless justified by a specific exception to the warrant requirement.” Commonwealth v. Gutierrez, 750 A.2d 906, 909 (Pa. Super. 2000). In Commonwealth v. Richter,⁶ the Superior Court of Pennsylvania explained the exigent circumstances exception to the warrant requirement:

The exigent circumstances exception to the warrant requirement recognizes that some situations present a compelling need for instant arrest, and that delay to seek a warrant will endanger life, limb or overriding law enforcement interests. In these cases, our strong preference for use of a warrant must give way to an urgent need for immediate action.

⁵ 811 A.2d 24 (Pa. Super. 2002).

⁶ 791 A.2d 1181 (Pa. Super. 2002).

In determining whether exigent circumstances exist, a number of factors are to be considered. Among the factors to be considered are: (1) the gravity of the offense, (2) whether the suspect is reasonably believed to be armed, (3) whether there is above and beyond a clear showing of probable cause, (4) whether there is a strong reason to believe that the suspect is within the premises to be searched, (5) whether there is a likelihood that the suspect will escape if not swiftly apprehended, (6) whether the entry was peaceable, and (7) the time of the entry, i.e., whether it was made at night. These factors are to be balanced against one another in determining whether the warrantless intrusion was justified.

Other factors may also be taken into account, such as whether there is hot pursuit of a fleeing felon, a likelihood that evidence will be destroyed if police take the time to obtain a warrant, or a danger to police or other persons inside or outside the dwelling.

791 A.2d at 1184-85 (quoting Commonwealth v. Santiago, 736 A.2d 624, 631-32 (Pa. Super. 1999)).

Here, Officer Summers entered room 111 without a warrant. Therefore, the entry was unreasonable unless there were exigent circumstances. Certain factors favor a finding that exigent circumstances did not exist in this case. The Defendant was not being sought for committing a serious crime. There was no indication that the Defendant was armed, and there was no indication that he was a danger to police or other persons around the motel. In addition, it was unlikely that evidence would be destroyed since the Defendant was being sought as a result of a “domestic relations warrant.”

However, certain factors favor a finding that exigent circumstances did exist. First, the Defendant was the subject of a warrant, so there was above and beyond a clear showing of probable cause to arrest him. Second, Summers had strong reason to believe that the Defendant would be in room 111. Summers saw room 111’s curtains move, so there was a strong reason to believe that somebody was in the room. The Defendant’s vehicle was parked in front of room 111, and there were two open parking spaces on each side of the vehicle. The officers already knew that the Defendant was not in room 116. Third, there was a likelihood that the Defendant

would escape if not swiftly apprehended. The Defendant's vehicle was easily accessible from room 111, and the person in room 111 had already indicated that he or she did not want to be found since the person did not answer when the officers knocked. Fourth, the entry was made during the day. Fifth, the entry was peaceable as the door was partially open. Sixth, the officers were in hot pursuit of the Defendant. Sponhouse arrived at the motel within two minutes of recognizing the Defendant. He noticed that the room 111's door was partially open within four minutes of arriving at the motel. After examining the appropriate factors, the Court finds that the factors weigh in favor of there being exigent circumstances. Although warrantless, Summers' entry into room 111 was not unreasonable and, thus, not illegal.

B. The Commonwealth Established a *Prima Facie* Case of Aggravated Assault.

To establish a *prima facie* case “[t]he Commonwealth must show sufficient probable cause that the defendant committed the offense, and 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. When deciding whether a *prima facie* case was established, [courts] must view the evidence in the light most favorable to the Commonwealth, and [courts] are to consider all reasonable inferences based on that evidence which could support a guilty verdict.” Commonwealth v. Barnes, 14 A.3d 128, 130 (Pa. Super. 2011).

To establish a *prima facie* case of aggravated assault, the Commonwealth must “show probable cause that [the Defendant] (1) attempted to cause or intentionally or knowingly caused (2) bodily injury (3) to a police officer (4) in the performance of his duties.” Commonwealth v. Marti, 779 A.2d 1177, 1180 (Pa. Super. 2001) (citing 18 Pa.C.S. § 2702(a)(3)). Here, Officer Summers testified that the Defendant approached him and some part of the Defendant's body hit him in the face. Summers also testified that the Defendant grabbed the Taser and started twisting

it to the point where Summers began to lose his grip. Such evidence is sufficient to establish a *prima facie* case of aggravated assault.

C. The Commonwealth Established a *Prima Facie* Case of Escape, a Third-Degree Felony, Because the Commonwealth Presented Sufficient Evidence that the Defendant was in Official Detention and Employed Force to Effect an Escape.

“A person commits [the offense of escape] if he unlawfully removes himself from official detention” Commonwealth v. Fountain, 811 A.2d 24, 26 (Pa. Super. 2002) (quoting 18 Pa.C.S. § 5121(a)). “[T]he phrase ‘official detention’ means arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes” Id. (quoting 18 Pa.C.S. § 5121(e)). An escape “is a felony of the third degree where the actor employs force, threat, deadly weapon or other dangerous instrumentality to effect the escape.” 18 Pa.C.S. § 5121(d)(1)(ii).

Here, Summers testified that his Taser was unholstered as he entered the room. He told the Defendant to keep his hands where Summers could see them, move to the middle of the room, and lie down. A reasonable person in the Defendant’s position would not believe he was free to leave the room. Therefore, the Commonwealth presented sufficient evidence that the Defendant was in official detention.

In addition, Summers testified that some part of the Defendant’s body hit him in the face. He also testified that the Defendant grabbed and twisted the Taser. Therefore, the Commonwealth presented sufficient evidence that the Defendant employed force to effect an escape. Because the Commonwealth presented sufficient evidence that the Defendant was in

official detention and employed force to effect an escape, it has established a *prima facie* case of escape, a third-degree felony.

III. Conclusion

Although warrantless, Officer Summers entry into room 111 was not unreasonable because there were exigent circumstances. The Commonwealth presented sufficient evidence to establish a *prima facie* case of aggravated assault. The Commonwealth established a *prima facie* case of escape, a third-degree felony, because it presented sufficient evidence that the Defendant was in official detention and used force to effect an escape.

ORDER

AND NOW, this _____ day of May, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Omnibus Pre-Trial Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge