

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-1233-2014  
 :  
 RASHAUN RULEY, :  
 :  
 Defendant : Omnibus Pretrial Motion

**OPINION AND ORDER**

Before the Court is Defendant Rashaun Ruley’s Motion to Suppress and Petition for Writ of Habeas Corpus. Both filed as part of Defendant’s Omnibus Pretrial Motion which was filed on August 18, 2014. A hearing on the motion was held before the Court on November 10, 2014.

The Information filed against Defendant on August 7, 2014 charges him with one count of Possession with Intent to Deliver Heroin and one count of Possession of a Small Amount of Marijuana for Personal Use.

On June 29, 2014 at approximately 5:45 p.m., Sergeant Kris Moore of the Williamsport Bureau of Police was dispatched to the area of the 600 block of Second Street and Maynard Street for a fight or disturbance “involving handguns.”

By the time Sergeant Moore arrived, other officers had identified three potential actors and had interaction with them. Sergeant Moore was providing cover from a distance. Sergeant Moore recognized one of the suspects as Defendant. Through the Lycoming County Communications, Sergeant Moore had been advised that there was an active bench warrant for Defendant’s arrest.

Sergeant Moore talked briefly with Defendant while Defendant was sitting on

the back steps of the residence, not Defendant's, adjacent to Second Street. Given Sergeant Moore's training and experience with individuals under the influence of controlled substances and based on his observations of Defendant, he concluded that Defendant was "very, very high."

Sergeant Moore had multiple prior contacts with Defendant. On this occasion, Defendant was speaking slowly, mumbling much more than usual, was very soft spoken and was "real high."

Being made aware of the warrant, Sergeant Moore advised Defendant that he would be taking him into custody. Sergeant Moore began to help Defendant off the steps and readily noticed that Defendant was in no shape to safely walk. Sergeant Moore remarked to Defendant that Defendant was "high as a kite" to which Defendant responded that he had been "smoking all day."

Sergeant Moore concluded that Defendant was under the influence of marijuana to a degree that presented a danger to Defendant and others. While escorting Defendant back to the patrol unit, Sergeant Moore searched Defendant as part of the Defendant's arrest due to the bench warrant.

The search incident to the arrest yielded the heroin and marijuana that formed the basis of the charges against Defendant.

With respect to the warrant, it had previously been issued under Information No. 1724-2013 of Lycoming County. It was issued by the Court on June 19, 2014 as a result of Defendant's failure to appear for a criminal trial scheduled on June 17, 2014. However, by

stipulated order of the parties signed by the Court on June 24, 2014, the bench warrant was vacated. Apparently, Lycoming County Communications and Sergeant Moore were unaware that the bench warrant was vacated prior to Sergeant Moore arresting Defendant on said warrant.

Defendant argues that the controlled substances seized from him must be suppressed and that the charges must be dismissed because the bench warrant used by the Sergeant Moore to justify Defendant's arrest was not, in fact, active at the time and, accordingly, Defendant's arrest was illegal.

In response, the Commonwealth contends that Sergeant Moore relied in good faith on the information from Lycoming County Communications, that Defendant through his counsel was responsible for the warrant not being properly vacated and that, in the alternative, Sergeant Moore had an independent basis to arrest Defendant for public drunkenness in violation of 18 Pa. C.S.A. § 5505.

In Commonwealth v. Richard Johnson, 86 A.3d 182 (Pa. 2014), the Pennsylvania Supreme Court rejected the argument that an officer's good faith belief that he was arresting a defendant on a valid warrant when in fact the warrant was not valid, defeated the application of the exclusionary rule under the Pennsylvania constitution. In Johnson, Pennsylvania State Trooper Knott placed the defendant under arrest after receiving a "hit" advising him that there was an active arrest warrant for the defendant. During his search of the defendant pursuant to said arrest, he discovered controlled substances and other indicia of intent to deliver said controlled substances. Trooper Knott subsequently determined, however, that the warrant

notification that he relied upon when he arrested the defendant was no longer valid as it had been previously served on the defendant several days earlier.

The Commonwealth argued that suppression of the evidence obtained as a result of the defendant's arrest was inappropriate given the Trooper's reasonable and proper reliance on the warrant. The Commonwealth argued that where police act on a warrant they believe to be valid, the physical evidence obtained as a result of such arrest should not be suppressed.

The Supreme Court rejected the Commonwealth's argument finding that the trial court properly suppressed the physical evidence seized by the police incident to an invalid and expired arrest warrant. Consistent with prior authority, the Court rejected a good faith exception to the exclusionary rule.

The Court noted that under Pennsylvania constitutional law and in particular Article I, § 8, "[f]rom the perspective of the citizen whose rights are at stake, an invasion of privacy, in good faith or bad, is equally as intrusive. This is true whether it occurs through the actions of the legislative, executive or the judicial branch of government." Johnson, 86 A.3d at 189, citing Commonwealth v. Edmunds, 586 A.2d 887, 901 (Pa. 1991).

While in this case the Commonwealth argues that a good faith exception should apply, this Court is bound by the decision in Johnson. Moreover, the Commonwealth's argument that a good faith exception should apply or that the exclusionary rule should not apply under the facts of this case is also misplaced.

Specifically, utilizing the language of Johnson, the Commonwealth attempts to articulate a "principled reason consonant with the Edmunds court's existing articulation of

the purpose of the exclusionary rule under Article I, § 8” as to why this Court should not apply the exclusionary remedy here. The Commonwealth asserts that the stipulated order vacating the bench warrant was prepared by defense counsel and did not copy the appropriate entities.

This argument is misplaced for two reasons. First, the Commonwealth is equally as responsible in that the Commonwealth signed the stipulated order and was aware to whom the order was being sent. Indeed, it begs logic to suggest that the defense is somehow responsible when the Commonwealth both signed the stipulated order and received a copy of the stipulated order.

Secondly, and as previously cited, the invasion of privacy and the need for the exclusionary rule is evident whether the error occurs through the action of the legislative, executive or the judicial branch of government. Johnson, 86 A.3d at 189, citing Edmunds, 586 A.2d at 901.

The Commonwealth’s main argument against suppression asserts that regardless of whether the bench warrant was valid, Sergeant Moore had independent probable cause to arrest Defendant for public drunkenness. The Commonwealth asserts that Sergeant Moore clearly articulated probable cause for the offense of public drunkenness and that his failure to charge the Defendant with public drunkenness is of no moment.

In support of its position, the Commonwealth cites Commonwealth v. Canning, 587 A.2d 330 (Pa. Super. 1991). In Canning, the Court upheld a defendant’s conviction for drug offenses concluding that the defendant’s arrest and search were legal.

The police officer responded to a complaint that a partially dressed stranger was pacing back and forth on a neighbor's porch and made contact with the defendant, who appeared both confused and intoxicated. The Court held that the facts were clearly sufficient to justify a person of reasonable caution to believe that the defendant had violated the Crimes Code with respect to public drunkenness. The Court further held that the legality of the arrest was not obviated because the defendant was not charged with public drunkenness. The Court concluded that because there was probable cause to arrest, the officer was justified in searching the defendant incident to that arrest and the evidence was properly admissible. Any subsequent events or what may have occurred after the arrest were irrelevant to the determination of probable cause. Canning, 587 A.2d at 332.

Canning, however, is factually distinguishable in a few important aspects. First, in Canning, the officer testified that he arrested the defendant for public intoxication. Canning at 331. In this case, Sergeant Moore specifically testified that he arrested Defendant on the bench warrant. Second, the probable cause that was established in Canning related to the defendant appearing in a public place under the influence of alcohol to a degree that he might endanger himself or others or annoy persons in his vicinity, a violation of 18 Pa. C.S. § 5505. As the Court noted once this probable cause was established, it did not dissipate simply because the defendant was not charged with the particular crime which led to the finding of probable cause. Canning, supra. at 332.

In this case, the probable cause which led to the arrest was the bench warrant and not Defendant allegedly violating 18 Pa. C.S. § 5505.

The Commonwealth has not provided any authority that supports its argument that although Sergeant Moore arrested Defendant on what turned out to be an invalid or expired bench warrant, the Commonwealth could now, after the fact, claim that probable cause existed on a different matter.

Pursuant to Rule 440 of the Pennsylvania Rules of Criminal Procedure, a police officer must exhibit some sign of authority and may arrest without a warrant in a summary case only as authorized by law. Pa.R.Crim.P. 440. There is no evidence in this particular case that Sergeant Moore exhibited any sign of authority or that he was in full uniform at the time he executed the alleged summary arrest. Furthermore, arrests without warrants in summary cases are intended only in exceptional circumstances, such as those involving violence or the imminent threat of violence, or those involving a danger that the defendant will flee. Pa.R. Crim.P. 440, comment. No evidence of any such exceptional circumstances was presented in this case.

Finally, and perhaps determinatively, Sergeant Moore's relevant observations of Defendant were not obtained until after he decided to place Defendant under arrest on the warrant. It was not until after Sergeant Moore decided to arrest Defendant and began taking him into custody that he determined Defendant could not walk, which led Sergeant Moore to believe Defendant could endanger himself or others. Up until this point, Defendant was merely sitting on a porch not endangering or annoying anyone. See Commonwealth v. Meyer, 431 A.2d 287, 290-91 (Pa. Super. 1981)(section 5505 is carefully drawn so as not to punish all forms of drunkenness but only drunkenness to such a degree as to endanger the

person himself or other persons or property or annoy persons in the vicinity; the Model Penal Code comment states that the requirement that an individual be manifestly under the influence was designed to require some *aberrant* behavior before arrest is authorized).

Under these circumstances, the Court cannot conclude Sergeant Moore had probable cause to arrest Defendant's for public drunkenness.

**ORDER**

**AND NOW**, this \_\_\_ day of January 2015, following a hearing, the Court **GRANTS** Defendant's Omnibus Motion. All evidence seized from Defendant following his illegal arrest is suppressed and the charges against Defendant are dismissed.

By The Court,

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Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)  
Jeffrey Frankenburger, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file