

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR- 1121-2015
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 JEROME WILSON, :
 :
 Defendant : Motion to Suppress

OPINION AND ORDER

Jerome Wilson (“Wilson”) is charged by Information filed on July 31, 2015 with one count of conspiracy to possess with intent to deliver a controlled substance, two counts of possession with intent to deliver a controlled substance, one count of possession of a small amount of marijuana, two counts of possessions of heroin and one count of possession of drug paraphernalia.

Wilson filed a petition for habeas corpus on September 23, 2015. The hearing was held on October 28, 2015. Prior to testimony being taken, Wilson raised a suppression issue relating to an alleged warrant deficiency. In an order dated October 28, 2015, the court directed that the issue be addressed in a motion to suppress to be filed by November 11, 2015. The order also directed that the basis for the late filing be explained in the motion.

Wilson filed the motion on November 12, 2015. In the motion Wilson alleges that he was arrested on an invalid warrant that was not “active” and that all of the evidence obtained after his arrest must be suppressed.

A hearing and argument on Wilson’s motion to suppress was held on December 29, 2015. The Commonwealth first argued that the motion was untimely. Defense

counsel admitted that he was provided discovery on August 21, 2015, which included a document dated June 16, 2015, that stated: “There are no active warrants in file...please do not detain on this w[arrant].” Defense counsel conceded as well that, according to the affidavit of probable cause attached to the complaint and the preliminary hearing testimony, Wilson was taken into custody because he was “wanted out of Philadelphia.”

Defense counsel claims he did not file his suppression motion in a timely manner as required by the rules because he “simply missed” the issue until he first spoke with his client about it in court prior to the October 28, 2015 habeas corpus hearing. He argues that the motion should nonetheless be heard in the interests of justice. Alternatively, he argues that there is no timeliness issue because his argument is a “jurisdictional argument” that can be raised at any time.

The court will first address Wilson’s “jurisdictional argument.” While this argument is creative, it is without merit. In fact, Wilson has not provided to the court any legal authority whatsoever in support of his position. Indeed, it seems evident to the court that Wilson is simply using semantics to avoid a potential timeliness objection.

The fact that troopers may have placed an individual in custody based on the invalid, non-verified or even non-existent warrant does not equate to the troopers not having jurisdiction to act. Jurisdiction is generally defined as the geographic area within which a law enforcement officer has the authority to act. 42 Pa. C.S.A. § 8951. Clearly, the troopers had the power and authority to enforce the laws of the Commonwealth in the geographic area where Wilson was placed in custody. 42 Pa. C.S.A. § 8953.

Regarding the Commonwealth's timeliness issue, the parties do not contest that a suppression motion must be filed within 30 days after the arraignment unless the opportunity therefore did not exist or the defendant, defense attorney or the attorney for the Commonwealth was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown. Pa. R. Crim. P. 579 (A), 581. However, a judge may excuse a defendant's tardy presentation of a suppression motion when required in the interests of justice. *Commonwealth v. Johonoson*, 844 A.2d 556, 561 (Pa. Super. 2004).

The court deems as de minimis and without merit the Commonwealth's objection to the fact that the motion to suppress was filed on November 12, 2015 and not November 11, 2015. On November 11, 2015, the courthouse was closed due to Veteran's Day. Accordingly, the motion will be deemed to be timely filed with respect to the court's October 28, 2015 order. Nonetheless, the determinative issue is whether Wilson's failure to file the motion within 30 days of the date of the arraignment should be excused in the interests of justice.

Wilson and defense counsel clearly had knowledge of the facts in support of the motion no later than August 21, 2015, the date that the discovery was provided to defense counsel. Defense counsel has been representing Wilson since the preliminary hearing on July 6, 2015. Defense counsel admittedly "missed this issue" and argues that if the issue is not heard at this time, it will simply provide a PCRA issue in the future if Wilson is convicted. The fact that an issue may provide a future PCRA issue is not a reason, in this court's opinion, to permit the filing of a late motion.

Rather, the court must determine the apparent merits of the motion and in light of such whether the interests of justice require it to be heard at this time. The court concludes that it would constitute a manifest injustice to Wilson as well as to the citizens of this Commonwealth if Wilson proceeded to a trial without the court having an opportunity to determine whether Wilson's rights may have been constitutionally violated and whether the evidence against him should have been excluded. An apparent violation of the Constitution cannot be overlooked. Otherwise, an individual faces potential conviction on evidence that should not have been used against him and the trial itself would be a tremendous waste of time, energy and resources by all involved.

Further, the court does not view Wilson's motion as a last ditch effort by Wilson to delay the proceedings or to manipulate the process in order that he may obtain a better plea offer. Without addressing the actual merits of the claim, the suppression issue has "apparent merit" simply by virtue of the fact that Wilson was clearly arrested on an outstanding warrant that was never verified and in fact not "active."

Finally, the Commonwealth has not argued any prejudice with respect to the timing of the motion. Indeed, the Commonwealth was fully prepared at the hearing to meet Wilson's substantive claims.

Accordingly, and in the interests of justice, the court will permit Wilson's motion to suppress to be heard at this time.

At the hearing, Trooper Tyson Havens of the Pennsylvania State Police (PSP) testified. Much of his testimony mirrored his prior testimony in both this matter as well as

hearings involving Defendant's Co-Defendant, Donald Smith ("Smith"). The court incorporates the recitation of facts set forth in its prior opinions and orders in both this case and Smith's case.

On June 16, 2015, Trooper Havens and Trooper Robert Williamson were on duty and patrolling in an unmarked vehicle in Loyalsock Township. They were assigned to an "aggressive patrol" traveling throughout specific areas of Loyalsock Township and Williamsport where "a lot of drug activity was being reported by civilians."

Approximately a week earlier, Trooper Havens was speaking with Trooper William Holmes regarding drug activity in Loyalsock Township in the area of the Kmart Plaza. Trooper Holmes provided Trooper Havens with at least one surveillance photo of a black male between 20 and 30 years old, who weighed approximately 220 pounds, had tattoos on his left arm and was wearing bright red shoes. Trooper Holmes related to Trooper Havens that he observed the black male conduct what appeared to be at least five different drug transactions with unknown individuals in cars in the area. Trooper Holmes asked for Trooper Havens' assistance in identifying the black male.

At approximately 10:00 a.m. on June 16, 2015, while Troopers Havens and Williamson were stationary near the area of the Best Western Hotel in Loyalsock Township across the street from the Kmart Plaza, they observed a passenger in a vehicle that passed in front of them. Both Trooper Williamson and Trooper Havens concluded that the passenger "looked a lot like the guy in the surveillance photo" provided by Trooper Holmes. This particular area was a known "narcotics area." In fact, the troopers were stationed in close

proximity to the area where Trooper Holmes previously took the picture of the suspect.

Trooper Havens and Trooper Williamson followed the vehicle around the hotel. The vehicle parked and the troopers parked beside the vehicle. The passenger exited the vehicle. Trooper Havens immediately recognized the individual as the same individual in the surveillance photo “right down to the bright red shoes.” In fact, Trooper Havens had nicknamed the unknown black male as “Dorothy” because of his red shoes. Trooper Havens concluded as well that the suspect might have been wearing the same shorts as were depicted in the surveillance photo.

The suspect exited the vehicle and quickly started walking away toward a breezeway. Trooper Havens exited his vehicle and called out for the suspect to stop. The passenger looked back, saw Trooper Havens who was in uniform, made eye contact with Trooper Havens and walked away even faster. It was clear to Trooper Havens that the suspect wanted to get away. For a short period of time, perhaps a few seconds, Trooper Havens lost sight of the suspect in the breezeway area.

As a result, Trooper Havens jogged after the suspect, observed him at the end of the breezeway and called for him to stop a second time. The suspect continued walking away at a fast pace. Trooper Havens jogged faster and caught up with the suspect. Trooper Havens grabbed the suspect’s arm. Immediately, the suspect tensed. Trooper Havens, based on his personal experience in the field for over two decades, concluded that “a fight was coming.” For “officer safety”, Trooper Havens placed the suspect in handcuffs. The suspect was wearing a t-shirt and shorts. Trooper Havens was not concerned with the suspect having

any weapons; he just did not want to get in a fight and be “rolling around on the floor.”

Trooper Havens advised the suspect that he was not under arrest, just being detained.

The suspect was escorted/walked back to the PSP vehicle. The walk back was approximately 30 to 40 feet. The suspect was identified as Smith.

Regarding Wilson’s arrest on the alleged warrant, Trooper Havens testified that “almost simultaneously” with Smith being brought back to the vehicle and then released from his handcuffs, identification information was obtained from Wilson. This identification information was radioed to a Police Communication Officer (PCO) employed by the PSP. After inputting the information into the national database known as NCIC, the PCO informed Trooper Havens that Wilson was “wanted” on a warrant out of Philadelphia. Wilson was immediately placed in handcuffs and detained on the warrant.

Shortly thereafter, the PCO communicated to the alleged issuing warrant authority that Wilson was in custody. It was requested that the warrant be confirmed and that instructions with respect to extradition be provided.

While the warrant was being confirmed, the troopers were continuing their investigation. Wilson was searched, but nothing was found on him.

As Wilson was being handcuffed, Trooper Havens asked Smith if he had any weapons on him. Smith advised that he did not, but he stated that he had “a little personal use heroin in his pocket.” Smith directed Trooper Havens to his front right cargo shorts pocket where Trooper Havens discovered 22 bags of suspected heroin in bundled amounts. Trooper Havens also discovered a cigar wrapper with four bags of suspected heroin, \$536.00, and two

cellular phones in other areas on Smith's person.

As a result of the heroin and paraphernalia in his possession, Smith was taken into custody.

Smith was advised of his Miranda rights and agreed to speak with Trooper Havens. He stated that he was a heroin user and that the heroin found on him was for personal use. He also indicated that there was additional heroin inside Room 123 of the Best Western Hotel, in which "they" (meaning him and Wilson) were staying.

As well, a check with hotel staff revealed that Room 123 was rented on the previous date by Wilson. The heroin found on Smith field tested positive.

Both Wilson and Smith were transported in handcuffs from the scene to the State Police Barracks. Wilson was initially handcuffed to a bench before being taken to an interview room for further questioning.

Meanwhile, Trooper Havens prepared an affidavit of probable cause and an application for a search warrant. The search warrant was executed shortly after it was authorized.

In Room 123, the troopers found an additional 136 bags of heroin, \$359.00 in cash, two scales, a pill bottle containing marijuana and different size clothing of the approximate sizes of Wilson and Smith.

The search warrant was authorized at 12:00 noon by MDJ Gary Whiteman. At approximately 10:26 a.m., an hour and a half prior to the authorization of the search warrant, the Philadelphia Police Department responded to the request by the PSP PCO for the warrant

confirmation and extradition directions. The response indicated that there were no active warrants in the file and to not detain Wilson on the warrant. (Commonwealth Exhibit 3). Trooper Havens testified that he was not aware of this information from Philadelphia until well after the preliminary hearing on July 6, 2015.

While at the barracks, Wilson was read his Miranda rights and agreed to speak with the troopers. He admitted to receiving \$200.00 from Smith for the purpose of driving Smith around to sell heroin. Further, he agreed to cooperate with law enforcement in both state and federal investigations and to act as a confidential informant.

The interview of Wilson occurred as stated after he was read his rights, agreed to waive his rights and after the execution of the search warrant.

Trooper Havens testified that regardless of the validity of the warrant, Wilson would have remained detained because of the drug investigation. Trooper Havens testified that the “warrant had nothing to do with it” and that once the drugs were found on Smith, both Wilson and Smith were being detained at the very least on reasonable suspicion that they were engaging in illegal drug trafficking.

Clearly, Wilson was taken into custody and arrested on what the troopers believed to be a valid warrant. This was verified by the troopers in numerous prior proceedings, all of their investigative reports, the affidavit of probable cause for the criminal charges, and the affidavit of probable cause for the search warrant. Clearly, Wilson’s arrest was illegal. He was arrested on a warrant that was not active at the time. *Commonwealth v. Johnson*, 624 Pa. 325, 86 A.3d 182 (2014). This, however, does not end the inquiry.

The determinative issue in this case is whether the evidence obtained after Wilson's arrest should be suppressed or in other words whether the exclusionary rule should apply. It should be noted from a factual standpoint that no controlled substances or contraband whatsoever were found on Wilson when he was arrested illegally. Instead, the evidence against Wilson was obtained independent of the warrant for his arrest and pursuant to the investigation of Smith and Smith's drug dealing activities.

Along the reasoning and holding of *Johnson*, the Commonwealth advances a "principled reason consistent 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. Specifically, the Commonwealth argues that none of the evidence came to light by the exploitation of Wilson's illegal arrest. The court agrees.

"The test for excludability is not whether the evidence would have come to light but for the illegal actions of the police, but rather, whether the evidence 'has been come at by exploitation of that illegality....'" *Commonwealth v. Butler*, 729 A.2d 1134, 1138 (Pa. Super. 1999)(quoting *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407 (1963)), appeal denied, 560 Pa. 668, 742 A.2d 167 (1999).

In the seminal case of *Wong Sun*, the United States Supreme Court rejected a "but for" test and stated the following:

We need not hold that all evidence is "fruit of the poisonous tree" simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is "whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary

taint.”

371 U.S. at 487-88, 883 S. Ct. at 417 (1963).

In this case, neither the search of Smith nor of Room 123 was causally related to the illegal arrest of Wilson, much less tainted by that arrest. The troopers did not exploit Wilson’s illegal arrest at all in order to gain access to or search Smith or Room 123. See *Commonwealth v. Millner*, 585 Pa. 237, 888 A.2d 680 (2005); *Butler*, supra.

Wilson also argues that the statements he gave to the police following his illegal arrest must be suppressed, because they clearly were a result of his illegal arrest. Wilson argues that police exploited the illegal arrest by taking him into custody, keeping him in custody while the search warrant was executed and then interrogating him following the execution of the search warrant. The court cannot agree.

Regardless of the warrant, the troopers were going to investigate Wilson’s connection to or involvement with Smith. Within minutes of the troopers first contact with Wilson and while Wilson, Smith and the troopers were still at the hotel parking lot, Smith told Trooper Havens that he had heroin on his person, he and Wilson were staying in Room 123, and there was more heroin in the hotel room. Not only were these statements against Smith’s penal interest, they were corroborated by the items found on Smith’s person. The troopers clearly had probable cause that Smith was distributing heroin, despite Smith’s contention that the heroin was for his personal use. At that point, the troopers also had at least reasonable suspicion (if not probable cause) that Wilson was a co-conspirator or accomplice of Smith’s, which was only strengthened when the troopers discovered that

Room 123 was rented in Wilson's name.

The questioning of Wilson at the barracks did not relate to his warrant or the charges or circumstances related to that warrant. The questioning was directed to Wilson's connection to or involvement with Smith and the heroin. At the barracks, Wilson was read his Miranda rights. He waived those rights, agreed to speak with Trooper Williamson, and admitted that Smith paid him \$200 to drive Smith to places where he was conducting drug transactions.

The purpose of the exclusionary rule under Article I, § 8 is to protect the implicit right to privacy, which is guaranteed under the Pennsylvania Constitution.

Commonwealth v. Mason, 535 Pa. 560, 637 A.2d 251, 256 (1993).

Miranda rights are required before a custodial interrogation or when police questions are "calculated to, expected to, or likely to illicit an incriminating response, or that the questions were asked with an intent to extract or an expectation of eliciting an incriminating statement." *Commonwealth v. Davis*, 460 Pa. 37, 331 A.2d 406, 407 (1975) (citing *Commonwealth v. Yount*, 455 Pa. 303, 309, 314 A.2d 242, 246 (Pa. 1974)).

Given the fact that Wilson was advised of his Miranda rights and knowingly waived such, the court sees no purpose in applying the exclusionary rule. Moreover, even if there hadn't been a warrant for Wilson's arrest, Wilson would have been questioned at the hotel parking lot, without Miranda warnings, as part of an investigative detention.

The court also notes that even if it had found that the statements were the result of Wilson's illegal arrest on the warrant and subject to suppression, the statements

would be admissible for impeachment purposes. PA. CONST. Art. 1, §9 (“The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself.”).

ORDER

AND NOW, this __ day of January 2016, following a hearing and argument, the court **DENIES** Wilson’s motion to suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Jerry Lynch, Esquire
Gary Weber, Esquire, Lycoming Reporter
Work file