

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-477-2017
v.	:	CR-524-2017
	:	
JAHREESE STRICKLAND,	:	PRETRIAL MOTIONS
ARIEL HARLAN,	:	
Defendants	:	

OPINION AND ORDER

Defendant, Jahreese Strickland (Strickland) filed a Motion to Dismiss on April 19, 2017 and a Motion to Suppress on April 21, 2017. Defendant Ariel Harlan (Harlan) filed an Omnibus Pretrial Motion on May 1, 2017. The Commonwealth filed a Motion to Consolidate on April 19, 2017. All matters were set for hearing and argument on July 13, 2017. The Court granted the Commonwealth's Motion to Consolidate, as Defense Counsel had no objection to the consolidation.

Background

The charges arise out of motor vehicle stop within the City of Williamsport on March 9, 2017. Strickland is charged in CR-477-2017 with Possession with Intent to Deliver¹, Possession of a Controlled Substance², and Possession of Drug Paraphernalia³. Harlan is charged in CR-524-2017 with Possession with Intent to

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(16).

³ 35 P.S. § 780-113(a)(32).

Deliver⁴, Delivery of a Controlled Substance⁵, Possession of a Controlled Substance⁶, and Possession of Drug Paraphernalia⁷.

Testimony

Officer Corter, Preliminary Hearing

Officer Michael Corter (Corter) of the Williamsport Bureau of Police testified that on March 9, 2017, at approximately 6:10 pm he was on duty with Officer Bonnell in an unmarked police car traveling on High Street. They observed a Dodge Dart pulling out of the Uni-Mart at Sixth and High Streets and proceeded to follow it. Preliminary Hearing, 3/16/2017, at 4. After observing the vehicle turn onto Hepburn Street they “activated [their] emergency lights and conducted a traffic stop”. Id. at 5. When initiating contact with the female driver (Harlan), Corter could immediately smell the odor of raw marijuana. Id. The officers’ searched the vehicle based upon the smell of raw marijuana. Id. at 6. They recovered “two plastic baggies knotted on the ends containing raw marijuana...and four sandwich style baggies containing brownies that were infused with marijuana as well.” Id. Corter also testified that there was nothing recovered from either the vehicle or Defendant’s person that could be used for the ingestion of the raw marijuana. Id. at 7. A search of Strickland recovered \$1,120 in cash in various denominations from his left front pocket. Id.

⁴ 35 P.S. § 780-113(a)(30).

⁵ 35 P.S. § 780-113(a)(30).

⁶ 35 P.S. § 780-113(a)(16).

⁷ 35 P.S. § 780-113(a)(32).

Officer Corter, Suppression Hearing

Corter also testified at the suppression hearing that he and Officer Bonnell were in an unmarked unit looking for traffic violations and aggressive driving. At the 1000 block of High Street he observed a vehicle that he ultimately determined to be operated by Harlan traveling eastbound. When the vehicle came to the intersection of High Street, and Hepburn Street, a “T” intersection it failed to signal until coming to a complete stop, and then turned northbound on Hepburn Street.

Corter testified that vehicles traveling eastbound on High Street cannot go straight at Hepburn Street; they can only turn left or right. Corter testified that the speed limit in that section of Williamsport is 35 mph. He testified that he observed the vehicle come to a stop then activate the left turn signal. The vehicle did turn left and travel northbound. He initiated the traffic stop due to the driver’s failure to signal prior to 100 feet before stopping at the stop sign⁸.

Discussion

Motion to Dismiss, Jahreese Strickland

Defendant Strickland requests that the charges against him be dismissed as his Counsel argues the Commonwealth did not present a prima facie case at the

⁸ **b) Signals on turning and starting.** — At speeds of less than 35 miles per hour, an appropriate signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning. The signal shall be given during not less than the last 300 feet at speeds in excess of 35 miles per hour. The signal shall also be given prior to entry of the vehicle into the traffic stream from a parked position.

75 Pa.C.S. § 3334(b).

preliminary hearing. Rather than offering further argument at the time set for hearing, both Counsel rested on the preliminary hearing transcript.

In order to prove a prima facie case, the Commonwealth must present evidence of each element of the crime charged. The Commonwealth does not need to prove their case beyond a reasonable doubt at the preliminary hearing, just that a crime occurred and Defendant is likely the one who committed it:

Under our long-standing law, the test of sufficiency of the evidence to hold a defendant for trial upon charges has been the showing of prima facie evidence that a crime has been committed and that the defendant was the perpetrator of that offense. Commonwealth v. Ruza, 511 A.2d 808 (1986); Commonwealth v. Wojdak, 466 A.2d 991 (1983); Commonwealth v. Prado, 393 A.2d 8 (1978); Commonwealth ex rel. Maisenhelder v. Rundle, 198 A.2d 565 (1964).

To satisfy this requirement the evidence presented by the Commonwealth must show that the existence of each of the material elements of the charge is present. The evidence should be such that, if presented at the trial in court and accepted as true, the judge would be warranted in allowing the case to go to the jury. Commonwealth v. Wojdak, *supra*; Commonwealth v. Prado, *supra*.

However, the weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense. Commonwealth v. Wojdak, 466 A.2d 1000...

The question at a preliminary hearing is not whether there is sufficient evidence to prove the defendant guilty beyond a reasonable doubt; rather, the question is whether the prosecution must be dismissed because there is nothing to indicate that the defendant is connected with the crime.

Commonwealth ex rel. Buchanan v. Verbonitz, 581 A.2d 172, 176 (Pa. 1990) (dissent by then Chief Justice Nix who found Commonwealth had presented its prima facie case at the preliminary hearing).

In order for the Possession with the Intent to Deliver and Possession of a Controlled Substance charges to be held against Strickland, some evidence of the following four elements must have been shown at the preliminary hearing:

1. that the item is in fact a controlled substance.

2. that the item was possessed by the defendant;
3. that the defendant was aware of the item's presence and that the item in fact was the controlled substance; and
4. that the defendant possessed this item or these items with the specific intent, or goal delivering the item to another.

Pa. SSJI (Crim) 16.01 (possession of a controlled substance [and possession with intent to manufacture or deliver a controlled substance])

Commonwealth has established the first and second elements since Corter testified that the marijuana found on Strickland field tested positively as marijuana. Corter testified that upon the search of Defendant's person he found "a bag of marijuana, packaged the same as the two that were found in the center console".in his right front pocket. The reasonable inferences taken from the fact that no marijuana injection device was recovered from the vehicle or Defendant's person and the packaged marijuana found in the car is that he does not ingest the marijuana he possessed in his right front pocket. Coupled with the large amount of cash found on Defendant's person, the Court finds the Commonwealth has presented prima facie evidence that the Defendant Possessed a Controlled Substance with the intent to deliver that substance.

In order for the Possession of Drug Paraphernalia charge to be held against Defendant, some evidence must have been presented that the Defendant possessed drug paraphernalia. The "baggie" used to hold the illicit substance would be considered "paraphernalia" under the statutory definition:

"DRUG PARAPHERNALIA" means all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

35 Pa. Stat. Ann. § 780-102 (definitions, The Controlled Substance, Drug, Device and Cosmetic Act)

Although Defense Counsel for Strickland argues that the marijuana and money recovered from Defendant's person was for rent and security for an apartment and that all of the marijuana was hers as was testified to by Harlan at the preliminary hearing, these arguments go to the weight to be given to the Commonwealth's evidence. Weight and credibility are not issues for the preliminary hearing. See the standard quoted *supra*. As such the Motion to Dismiss must fail and all charges will be held for court.

Suppression

Defense Counsel for both Harlan and Strickland argue that Corter did not have probable cause to initiate the motor vehicle stop. Since the Harlan was parked at High Street and Hepburn Street, Defense argues Harlan only needed to activate her turn signal after coming to a complete stop and before initiating the turn;⁹ the predicate to finding a violation of turning movements requiring signaling is that the vehicle be traveling. Defense Counsel posits that because the vehicle in question was at a complete stop at the stop sign, it was not traveling, and therefore parked. Part (a) of Section 3433¹⁰ applies to these facts here and Harlan only needed to signal after

⁹ No Motor Vehicle Recording was provided to the Court and the parties appear to agree to the sequence of events as testified to by Officer Corter. The Court finds Officer Corter credible in his testimony.

¹⁰ Upon a roadway no person shall turn a vehicle or move from one traffic lane to another or enter the traffic stream from a parked position unless and until the movement can be made with reasonable safety nor without giving an appropriate signal in the manner provided in this section.

making her complete stop to enter traffic rather than 100 feet prior to the stop. The Court finds no facts to support Defendant's vehicle was parked on High Street.

“**Park**” is defined by the Motor Vehicle Code as

(1) When permitted, means the temporary storing of a vehicle, whether occupied or not, off the roadway.

(2) When prohibited, means the halting of a vehicle, whether occupied or not, except momentarily for the purpose of and while actually engaged in loading or unloading property or passengers.

75 Pa.C.S. § 102 (Definitions, “Park” or “parking)

Finding neither definition of parked to be applicable here; the Court finds that the Defendants were traveling in a motor vehicle, not parked. The vehicle travelled eastbound on High Street and came to a complete stop at the stop sign at the intersection of High and Hepburn Streets. Harlan was required to signal to other drivers its intent to turn left within 100 feet of the stop sign, as proscribed in part (b).

In support of its position, Defense Counsel cited this Court's opinion, Commonwealth v. Erwin¹¹, to distinguish traveling from parked. As in Erwin, the driver did not initiate her turn signal until stopped at the stop sign. Irrespective of the speed the Defendant's vehicle was traveling (in the instant case 0 mph), Corter had probable cause to believe a violation of the Motor Vehicle Code had occurred and legally stopped the Defendants' vehicle. Since the stop of Harlan's vehicle was lawful the evidence collected as a result of the stop will not be suppressed.

75 Pa.C.S. § 3433(a).

¹¹ <http://www.lycolaw.org/Cases/opinions/2013/Erwin111313bt.pdf> where this Court found that when a vehicle turning onto Little League Boulevard only initiated its turn signal while completing the turn was traveling for purposes of 3433(b.)

ORDER

AND NOW, this _____ day of August, 2017, based upon the foregoing Opinion, the following is ORDERED and DIRECTED:

1. Defendant Strickland's Motion to Dismiss and Motion to Suppress are hereby DENIED.
2. Defendant's Harlan's Motion to Suppress is hereby DENIED.

BY THE COURT,

Nancy L. Butts, P.J.

cc: Aaron Biichle, Esq. Defense Counsel
Andrea Pulizzi, Esq. Defense Counsel
DA (SW)
Gary Weber, Esq.