

<p style="text-align: center;">IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA</p> <p>COMMONWEALTH</p> <p style="text-align: center;">vs.</p> <p>QUAHEEM BARNES, Defendant</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p style="text-align: center;">: No. CR-1959-2017</p> <p style="text-align: center;">: Opinion and Order regarding</p> <p style="text-align: center;">: Defendant's Omnibus Pretrial Motion</p>
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OPINION AND ORDER

This matter came before the court on the defendant's omnibus pretrial motion. The relevant facts follow.

On October 20, 2017 at approximately 9:45 a.m. Officer Clinton Gardner of the Williamsport Bureau of Police was on patrol in a marked unit and in full uniform. He had a civilian ride along with him. As he was travelling east on Memorial Avenue, he observed three black men pass by each other on Memorial Avenue as they crossed Seventh Avenue. The defendant was travelling west on Memorial Avenue and appeared to be on his headset. He looked up at Officer Gardner in a "surprised" manner. The two other black males were travelling west on Memorial Avenue. When they crossed Seventh Avenue, they looked back at Officer Gardner and then got on their cell phones. In Officer Gardner's experience, this area was a "high-crime area." Officer Gardner believed he could have interrupted a possible narcotics transaction and the individuals may have been calling to re-coordinate that transaction.

Officer Gardner initially followed the two males travelling east, and then he came back around to observed the defendant. As Officer Gardner was facing south on Grier Street, he observe the defendant cross Grier Street as he continued walking west on

Memorial Avenue. The defendant began to yell at Officer Gardner, asking “Why are you following me? Why are you harassing me?” Officer Gardner told the defendant to stop yelling and to continue walking.

The defendant proceeded west on Memorial Avenue, north on Rose Street and east on Isabella Street. Officer Gardner proceeded north on Rose Street, drove past Isabella Street and then turned east on Freed Street. He then drove south on Tenth Avenue toward Isabella Street. Officer Gardner drove slowly and parked periodically so as to not follow the defendant too closely. As the defendant crossed to the other side of Isabella Street, he began yelling profanities at Officer Gardner. People began coming out of their residences and onto their porches. One resident specifically looked in the direction of the defendant and Officer Gardner. Officer Gardner again told the defendant to stop yelling.

As the defendant walked away down Isabella Street, he was not using the sidewalk. Officer Gardner instructed the defendant to use the sidewalk. The defendant went onto the sidewalk and continued walking east on Isabella Street. He got on his phone and began screaming “the police are f****ing following me.” Officer Gardner pulled up next to the defendant and again told him to stop yelling. The defendant replied, “F*** you, man.”

Officer Gardner got out of his vehicle and asked the defendant for his name. The defendant did not provide his name and tried to walk away. Officer Gardner then told the defendant that he was not free to leave and again asked for the defendant’s name. The defendant told the officer his name. As Officer Gardner waited for dispatch to run a warrant check on the defendant’s name and date of birth, he noticed a bulge in the defendant’s waistband. He was concerned the bulge may be a weapon from the manner in which it was

bulging from the defendant's shirt and waistband. He asked the defendant if he could pat him down. The defendant said no. When Officer Gardner told the defendant he was going to pat him down anyway, the defendant took off running. Officer Gardner chased the defendant on foot for about a half block. He deployed his Taser. Both probes struck the defendant, who immediately fell to the ground. Officer Gardner and two other officers who arrived as backup handcuffed the defendant and rolled him over. On the ground beneath the defendant, the police found a Sig Sauer .380 handgun. There were six bullets in the magazine and one in the chamber. The hammer was cocked. The police had dispatch run the serial number on the handgun, and it came back stolen.

The defendant was charged with firearms not to be carried without a license, receiving stolen property, escape, and disorderly conduct.¹

The defendant filed an omnibus pretrial motion which consisted of a motion to suppress physical evidence; a petition for writ of habeas corpus; a motion to compel disclosure of promises of immunity, leniency or preferential treatment and criminal history; a motion for disclosure of other crimes, wrongs or acts pursuant to Rule 404(b) of the Pennsylvania Rules of Evidence; and a motion to reserve right.

In his motion to suppress physical evidence, the defendant asserted that Officer Gardner lacked reasonable suspicion or probable cause to stop the defendant and there was no justification for the subsequent frisk of the defendant. The defendant argued that there was insufficient evidence to support the officer's hunch or speculation that he had

¹ A resisting arrest charge was filed against the defendant but it was not held for court following the preliminary hearing.

foiled a drug transaction. Furthermore, the defendant contended that the manufactured basis of speaking loudly and using profanity was insufficient to establish reasonable suspicion or probable cause for a charge of disorderly conduct based on unreasonable noise. The defendant noted that there was no evidence that his conversation was so unreasonably loud, boisterous or unseemly that it was inconsistent with neighborhood tolerance or standards that would justify an arrest and his detention and arrest were not justified merely because people stopped, looked and listened. Additionally, the defendant averred that there was no justification for the frisk where the officer acknowledged that the bulge did not provide any configuration of a gun.

The Commonwealth countered that the evidence was sufficient to charge the defendant with disorderly conduct based on unreasonable noise. The Commonwealth noted that Officer Gardner repeatedly told the defendant to stop yelling, but he persisted. Multiple people came out of their residences as a result of the commotion the defendant was making. Furthermore, although Officer Gardner could not definitively state that the bulge was a firearm, he testified that the manner in which the defendant's shirt and waistband were bulging was consistent with the defendant's possession a firearm. Therefore, Officer Gardner had reason to believe not only that the crime of disorderly conduct was a foot but also that the defendant may be armed and dangerous.

The court agrees with defense counsel that Officer Gardner did not have reasonable suspicion to believe that he had foiled a drug transaction; he only had a hunch based on speculation and conjecture. Officer Gardner did not see any kind of exchange occur, he did not hear any conversation that would suggest that the defendant was

coordinating a drug transaction, and he did not see any drugs or money. In fact, the police did not find any controlled substances on the defendant's person when he was arrested.

Nevertheless, due to the defendant's multiple, loud, profanity-laced tirades, the court finds that by the time Officer Gardner actually detained the defendant, he had reasonable suspicion as well as probable cause to believe that the defendant had committed the crime of disorderly conduct. Officer Gardner did not need any suspicion to drive around on public streets in the areas in which the defendant was walking and, based on the evidence presented at the hearing, he did not initiate any conversation with the defendant. Instead, Officer Gardner only responded to the defendant's outbursts. If the defendant had heeded Officer Gardner's statements to stop yelling, he would not have been detained.

The court also finds that Officer Gardner had reasonable suspicion to believe that the defendant was armed and dangerous. There was a bulge in the defendant's waistband area near his right hip that, due to its location and the manner it was bulging from the defendant's shirt and waistband, was consistent with the defendant's possession of a firearm. Officer Gardner testified that he immediately thought that the bulge was a gun. Although Officer Gardner did not see the butt, an outline or the "configuration" of a gun, he reasonably believed that the defendant possessed a firearm. Contrary to defense counsel's arguments, Officer Gardner did not need to specifically see the configuration of a gun or be certain that the defendant possessed a gun. He only needed to possess articulable facts that would lead a reasonable person with his training and experience to believe that the defendant possessed a gun. Therefore, the court will deny the defendant's motion to suppress.

The defendant next requests habeas corpus relief with respect to the charge of

receiving stolen property and the disorderly conduct charge based on a hazardous or physically offensive condition. With respect to the receiving stolen property charge, defense counsel argues that there is no evidence to suggest that the defendant was aware that the firearm was stolen because the defendant never made any statements indicating that he had some reason to believe the gun was stolen and Officer Gardner never asked him if he had purchased the gun or if he knew it was stolen. Although the defendant did not make any statements about the firearm to suggest that he knew or had reason to believe it was stolen, the Commonwealth does not need to prove the defendant's guilt through direct evidence, but can satisfy its burden through circumstantial evidence. Officer Gardner testified that he observed a bulge in the defendant's waistband near his right hip that was consistent with a firearm. Officer Gardner asked the defendant what it was and the defendant said "nothing." The defendant then ran away from Officer Gardner when he told the defendant that he was going to pat him down for weapons. When the defendant was apprehended, the police found a cocked, loaded firearm on the ground underneath him. Flight and concealment are hallmarks of consciousness of guilt. The jury is permitted but not required to infer consciousness of guilt from the defendant's concealment of the firearm in his waistband and the defendant's flight from Officer Gardner when he attempt to conduct a pat down of the defendant's body for weapons. Therefore, the court will deny the defendant's request for habeas corpus relief with respect to the charge of receiving stolen property.

As relates to the defendant's request for habeas corpus relief, a person commits disorderly conduct if, with the intent to cause public inconvenience, annoyance or alarm, or **recklessly creating a risk thereof**, he creates a hazardous or physically offensive

condition by any act which serves no legitimate purpose of the actor. 18 Pa. C.S. §5503(a)(4)(emphasis added). While the defendant may or may not have intended to cause public inconvenience, annoyance or alarm, the Commonwealth presented a prima facie case that he recklessly created the risk thereof when he ran from the police while carrying a cocked, loaded firearm in the waistband of his pants. The firearm could have fallen out of his pants and discharged during his flight or discharged when he was tased and both he and the firearm struck the ground. These types of discharges are foreseeable. In fact, the national news recently reported about a video of an off-duty FBI agent who, while dancing in a nightclub, performed a back flip which caused his loaded service firearm to fall out of his pants and discharge, injuring another patron in the club. Several years ago, now former NFL wide receiver Plaxico Burress accidentally shot himself in the thigh when he grabbed at the loaded firearm he was carrying in his pants to keep it from falling out of his pants when he stumbled going up a flight of stairs in a nightclub. The court recognizes that the firearm in this case did not discharge. Such was not required, though, as the defendant did not need to actually create public inconvenience, annoyance or alarm; he needed only to recklessly create a risk of public inconvenience, annoyance or alarm. Accordingly, the court will deny the defendant's request for habeas corpus relief with respect to the charge of disorderly conduct based on creating a hazardous or physically offensive condition.

The defendant next requests the court to issue an order compelling the Commonwealth to disclose the criminal histories as well as any promises of immunity, leniency, or preferential treatment of all persons the Commonwealth intends to call as witnesses at trial. As this type of information typically qualifies as *Brady* material, the court

will grant this request and require the Commonwealth to provide this information within 30 days of this Order or at least two days prior to jury selection, whichever occurs first.

The defendant also seeks disclosure of other crimes, wrongs or bad acts evidence pursuant to Rule 404(b) of the Pennsylvania Rules of Criminal Procedure. Rule 404(b) generally requires the Commonwealth to provide reasonable notice in advance of trial “of the general nature of any such evidence the prosecutor intends to introduce at trial.” Pa. R. Evid. 404(b)(3). Accordingly, the court will grant this request. If this case is still on the trial list, the Commonwealth must provide notice on or before July 25, 2018. If this case has been continued from the trial list, the Commonwealth must provide this information at least three weeks prior to jury selection in this case.

Finally, with respect to the defendant’s motion to reserve the right to file additional pretrial motions, the court grants the motion in part. The defendant may file additional pretrial motions only if he pleads facts in the motion to show that the opportunity to file the motion did not previously exist, the defendant or his attorney were not aware of the grounds for the motion, or the interests of justice require the court to hear the motion.

ORDER

AND NOW, this ___ day of July 2018, upon consideration of the defendant’s omnibus pretrial motion:

1. The court denies the defendant’s motion to suppress physical

evidence.

2. The court denies the defendant's petition for writ of habeas corpus.

3. The court grants the defendant's motion to compel disclosure of promises of immunity, leniency or preferential treatment and criminal history. The Commonwealth is directed to provide the requested information to defense counsel within 30 days of this Order or at least two days prior to jury selection, whichever occurs first.

4. The court grants the defendant's motion for disclosure of other crimes, wrongs or acts pursuant to Rule 404(b) of the Pennsylvania Rules of Evidence. If this case is still on the trial list, the Commonwealth shall provide notice to defense counsel of the general nature of any such evidence the prosecutor intends to introduce at trial on or before July 25, 2018. If this case has been continued from the July 16 pretrial list and/or the call of the list on July 31, 2018, the Commonwealth shall provide the notice to defense counsel at least three weeks prior to jury selection.

5. The court grants in part the defendant's motion to reserve the right to file additional pretrial motions. The defendant may file additional pretrial motions only if he pleads facts in the motion to show that the opportunity to file the motion did not previously exist, the defendant or his attorney were not aware of the grounds for the motion, or the interests of justice require the court to hear the motion.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)

Edward J. Rymza, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file