

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-721-2020
:
vs. :
:
: OPINION AND ORDER RE
NICHOLAS ETUMNU, : DEFENDANT’S OMNIBUS PRETRIAL
Defendant : MOTION

OPINION AND ORDER

Defendant Nicholas Etumnu was charged with possession with intent to deliver a controlled substance (cocaine). Defendant filed an Omnibus Pre-Trial Motion, which contained a motion for additional discovery, a motion to suppress physical evidence, a motion to suppress statements and a motion to reserve the right to file additional pre-trial motions.

The court held a hearing and argument on Defendant’s motion on October 15, 2020. Detective Michael Cashera and Trooper Jason Miller testified at the hearing.

On June 8, 2020, members of the United States Marshals Service and the Lycoming County Narcotics Enforcement Unit (NEU) went to 924 Race Street in Williamsport to execute a search warrant. They were entering the residence through the rear door. Detective Michael Cashera of the NEU was part of the team that was covering the front of the residence. He parked his vehicle approximately twenty (20) feet from the front porch. Detective Cashera observed Defendant flee out of the front door of the residence and run across Race Street into a parking area. Detective Cashera exited his vehicle and multiple times yelled, “Police. Stop.” Detective Cashera observed Defendant reach into his pocket and remove a large clear plastic bag containing a white substance. As Defendant fled, he threw the plastic bag near the eastern curb of Race Street. Defendant then threw a second

bag closer to the western curb. Detective Cashera testified that the bag and its contents appeared to be 100% narcotics or drug related.

Detective Cashera caught up to Defendant and tackled him to the ground. Following a brief struggle, Detective Cashera handcuffed Defendant. Detective Cashera moved Defendant into a seated position and then searched him. Detective Cashera found a large amount of currency on Defendant's person. Detective Cashera walked Defendant back through Defendant's flight path and placed him on the front steps of the residence until other officers placed him in the back of a vehicle and transported him to City Hall.

Trooper Jason Miller was in a separate vehicle parked at the northwest corner of the front of the residence. Trooper Miller exited his vehicle and was in the yard with Detective Curt Loudenslager when Trooper Miller observed Defendant come out of the front door and run past him. Trooper Miller also pursued Defendant, but from a different angle than Detective Cashera. Trooper Miller and Detective Loudenslager also identified themselves as police and directed Defendant to stop. Defendant continued to flee and as he did so, Trooper Miller also observed Defendant throw items, including a large, clear plastic bag containing a white substance, whose appearance was consistent with a controlled substance. Trooper Miller stopped and examined the bag while Detective Cashera pursued Defendant and took him into custody.

Defendant was transported to City Hall. Trooper Miller and Officer Joshua Bell were in a processing room with Defendant. Defendant spontaneously made statements to Trooper Miller that he was going to beat this case like he did the last one and that he fled because the Marshals were coming in the rear door. Trooper Miller did not read Miranda

rights to Defendant, but he did not question him. However, Trooper Miller did tell Defendant that he was behind him chasing him and he would testify against him.

In his motion, Defendant asserted that there was no basis to arrest him; therefore, any search incident to his arrest was unlawful. He also asserted that he was in custody and that the police did not give him *Miranda* warnings; therefore, his statements must be suppressed. At the conclusion of the hearing, defense counsel conceded that he did not have a basis to suppress the statements if they were “blurted out.” Defense counsel also stated that he was not challenging the discarded items. Rather, he was seeking suppression of the evidence taken from Defendant’s person, as Defendant was not lawfully arrested when Detective Cashera searched Defendant. Counsel argued that the police could not lawfully arrest Defendant before they examined the discarded items and their contents.

The Commonwealth argued that there was probable cause to arrest Defendant for possession of a controlled substance where Detective Cashera had no doubt that Defendant had controlled substances in his hands immediately before he threw them.

The court finds that Detective Cashera had probable cause to arrest Defendant.

Probable cause is determined by considering the totality of the circumstances. *Commonwealth v. Hannon*, 837 A.2d 552, 554 (Pa. Super. 2003). An officer must make a practical, common sense determination whether, given all the circumstances known to him at the time, there is a fair probability that a crime was committed and that the suspect was the one who committed the crime. *Id.* The court must view the information offered to establish probable cause in a common sense, nontechnical, ungrudging and positive manner.

Commonwealth v. Harrell, 65 A.3d 420, 436 (Pa. Super. 2018). The court does not ask whether the officer's belief was correct or more likely true than false; rather, probable cause requires only a probability, not a *prima facie* showing of criminal activity. *Commonwealth v. Burno*, 154 A.2d 764, 781 (Pa. 2017).

The evidence presented by the Commonwealth established a fair probability that Defendant was committing the crime of possession of a controlled substance. As Marshals were entering the rear of 924 Race Street to execute a search warrant, Defendant ran out of the front door. Detective Cashera and Trooper Miller yelled, "Police. Stop." Defendant continued to flee and, as he ran, he threw plastic bags containing a white substance onto the ground. There was more than a fair probability that the plastic bags contained controlled substances. The bags looked like distribution bags and their contents looked like controlled substances. Detective Cashera testified credibly that he was in close proximity to Defendant when he started throwing what Detective Cashera would describe as a distribution bag. He also testified that the items appeared to be narcotics or drug related "one hundred percent."

It is common sense that individuals who possess plastic bags of innocuous white substances such a baking soda or laundry detergent do not typically flee from the police and discard the bags of substances; however, individuals who possess contraband, such as controlled substances, do.

Since Detective Cashera personally observed Defendant in possession of the plastic bags containing white substances and it was reasonable for Detective Cashera to believe that the white substances were controlled substances, Detective Cashera could

lawfully arrest Defendant without a warrant. Pa. R. Crim. P. 502(2)(a)(criminal proceedings in court cases shall be instituted by an arrest without a warrant when the offense is murder, a felony or a misdemeanor committed in the presence of the police officer making the arrest). Therefore, the court will deny Defendant's motion to suppress evidence.

The court finds that Defendant voluntarily and spontaneously made statements to Trooper Miller. The statements were not the result of custodial interrogation. Therefore, the court will deny Defendant's motion to suppress statements.

The court notes that it addressed Defendant's motion for additional discovery in a separate order at the time of the hearing in this matter. In that order, the court also permitted Defendant to file a supplemental motion within thirty days after receiving the additional discovery. Therefore, the remainder of Defendant's omnibus pretrial motion is now moot.

ORDER

AND NOW, this ___ day of December 2020, upon consideration of Defendant's Omnibus Pre-trial Motion, it is ordered and directed as follows:

1. The court denies Defendant's motion to suppress physical evidence.
2. The court denies Defendant's motion to suppress statements.
3. The court previously addressed Defendant's motion for additional discovery and his motion to reserve right. These motions are now moot.

By The Court,

Marc F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)
Robert Hoffa, Esquire
Work file