

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1417-2020
vs. :
KORYNA COSTELLO, :
Defendant : Omnibus Pretrial Motion

OPINION AND ORDER

Defendant is charged by Information filed on October 29, 2020 with attempted escape and disorderly conduct related to an incident that allegedly occurred on August 16, 2020. While law enforcement were investigating potential illegal firearm transfers from 1612 High Street between Jordan Watkins and Jashair Jones, law enforcement detained or attempted to detain Defendant who allegedly attempted to flee.

On December 9, 2020, Defendant filed an Omnibus Pretrial Motion, which included a motion to suppress, a petition for habeas corpus, a motion for return of property and a motion for discovery. Hearings were held on January 20, 2021, April 7, 2021 and July 21, 2021.

By agreement of the parties, the following documents and items were admitted into the record for consideration by the court in connection with the motion to suppress and petition for habeas corpus:

- (1) The transcript of the preliminary hearing held on October 13, 2020 before MDJ Christian Frey (C-1);
- (2) A citizen’s Youtube or Snapchat video of a portion of the incident (C-2);
- (3) The Commonwealth’s written response to Defendant’s letter Brief (C-

- 3);
 - (4) October 20, 2020 written decision of MDJ Frey (C-4);
 - (5) Map of the area where the incident allegedly occurred (D-1);
 - (6) A report authored by Officer Clinton Gardner (D-2);
 - (7) Photographs of Bernadette Mandville and Defendant (D-3 and D-4);
- and
- (8) A report authored by Detective Tyson Havens detailing the contents of Jordan Watkins' phone calls intercepted by law enforcement (D-5).

Defendant's motions for return of property and discovery were disposed of by Orders dated January 20, 2021. This Opinion and Order shall address Defendant's motion to suppress and petition for habeas corpus.

Addressing the motion to suppress, Defendant asserts that law enforcement lacked reasonable suspicion to detain her, her initial detention turned into a custodial arrest without the requisite probable cause, and law enforcement unlawfully seized and retained her cell phone.

According to the testimony presented at the preliminary hearing, which was held on October 30, 2020, as well as the testimony from the hearings held in this matter on April 7, 2021 and July 21, 2021, Detective Tyson Havens of the Lycoming County Narcotics Enforcement Unit (NEU) was working on August 16, 2020 and obtained audio surveillance information (they were listening to real time phone calls) "regarding the moving of two illegal guns from 1612 High Street." The conversations involved Jordan Watkins and Jashair Jones. Watkins' girlfriend, Bernadette Mandville, was also "involved" in the calls. Shahara

Flanders, who was pregnant with Watkins' child, was residing at 1612 High Street and involved in the calls as well. The key call was at approximately 11:38 a.m. when Watkins spoke with Flanders. The call confirmed the officers' suspicions that the one gun was taken inside of 1612 High Street and that Flanders knew its location. From what he heard, the guns were in a black bag, although they did not know who was transporting them.

At 11:52 a.m., Detective Havens and other members of the NEU, as well as members of the Pennsylvania State Police (PSP), responded to 1612 High Street. Detective Havens observed, among other things, a suspect, Jordan Watkins, walking down the street in front of 1612 High Street; another suspect, Jashair Jones, driving Mandeville's vehicle near the residence; and eventually Defendant in the driver's seat of the vehicle that Mr. Jones usually drove. Mr. Jones was driving the vehicle that Detective Havens knew Mr. Watkins previously operated. A conversation ensued between Mr. Watkins and Mr. Jones over the phones relating to identifying Detective Havens and Mr. Jones being followed.

Other law enforcement followed Mr. Jones and eventually stopped him. Detective Havens followed Mr. Watkins. Mr. Watkins called Ms. Mandeville and advised her of such and requested that she come and get him. Subsequent conversations involved Watkins, Flanders, Mandeville and Ronnell Wylie. Detective Havens interpreted the calls as evidencing the hiding of the gun at 1612 High Street.

After further investigation, including following Mr. Watkins, they then "encounter[ed] Ms. Costello parked on Louisa Street at Dale Place facing east." The car was in the lane of travel and not "in a parking stall." At the time, Detective Havens believed Defendant to be Bernadette Mandeville, the girlfriend of Mr. Watkins. Detective Havens

drove his vehicle “back around” and parked his vehicle partially blocking Defendant so that she could not drive forward. Detective Havens was in plain clothes and in an unmarked “civilian” vehicle.

Upon parking his vehicle, Detective Havens knew it was not Mandeville in the driver’s seat of the vehicle. Detective Havens then got out of his vehicle, put his chain and law enforcement badge around his neck, and approached Defendant identifying himself as a detective.

At this time, he believed that neither Mr. Jones nor Mr. Watkins, were in possession of the black bag as Detective Havens observed Mr. Watkins walking without a bag and the other officers did not observe a black bag when they stopped Mr. Jones. What Detective Haven did not know was that Mr. Watkins had already “doubled back and tucked the situation” (the firearm) inside 1612 High Street upon seeing Detective Havens in the area. Mr. Watkins stated such during an intercepted phone conversation but the officer monitoring the calls did not either hear or understand what was being said or he did not relay it to the officers in the field. Detective Havens did, however, notice a black bag in the backseat of the vehicle being driven by Defendant.

Detective Havens told Defendant that she was being detained, that she was not free to leave, and that they “were investigating a very serious crime.” He asked her where “Jashair” was and she replied that she didn’t know a “Jashair.”

Initially, Defendant refused to respond to Detective Havens’ request for identification. Defendant indicated that she wanted to leave but Detective Havens said no. Defendant ultimately provided her driver’s license to Detective Havens but continued to state

that she wanted to leave and was going to leave.

Notably, approximately ten minutes “or so” prior to the incident, the phone calls being listened to concerned a gun transaction between Jordan Watkins and Jashair Jones. Illegal guns were being moved from 1612 High Street with one of the guns being in a black bag. A named female was identified on the calls as knowing about the guns, but the female was not Defendant.

Each time Defendant indicated that she wanted or was going to leave, Detective Havens told her “many, many times” that she could not leave, she was being detained, and was not free to go. Detective Havens explained to Defendant that if she left she would be charged with escape.

Officer Gardner of the Williamsport Bureau of Police, dressed in a vest with a police insignia, started approaching the passenger side of the vehicle at which time, Defendant put the vehicle in drive, cut the wheels to the right and started to drive away. Detective Havens instructed her to stop and to not drive away. Detective Havens took a step to the side and tried to reach into the driver’s side door to open it and stop Defendant but the door was locked.

Officer Gardner was working in surveillance in the area. He was aware that phone calls were being intercepted in real time and that guns were being moved from 1612 High Street. He was aware that the individuals potentially involved were Watkins, Jones and Mandeville. Either Havens or Bell requested Officer Gardner’s assistance. It was relayed to him that Mandeville had been stopped. Detective Havens, however, realized after he had blocked the vehicle and was approaching it that the driver was not Mandeville.

Officer Gardner arrived at the scene and saw Detective Havens at the driver's door. He did not know who was in the driver's seat. He approached the passenger side. He got to the front of the car and put his body "in front." Defendant "still went forward a bit" approximately six to ten feet, until Officer Gardner drew his pistol, aimed it at Defendant and instructed her to stop. Defendant then stopped the vehicle. Following "a bit of a struggle" in which she forced the officers to remove her from the vehicle, Defendant was taken into custody.

In viewing the videotape by a concerned citizen, much of what Detective Havens and Gardner testified to appears accurate. After about 15 seconds of an undeciphered conversation between Detective Havens and Defendant, she moved her car forward approximately three feet traveling very slowly. Detective Havens tried to open the driver's side door but was unable to do so. There was a brief lapse in the videotape but then one could view the car moving slowly a few more feet at which time Defendant stopped. Another officer, presumably Officer Gardner, directed Defendant to get out of the car and Defendant complied. While Defendant was being handcuffed, Detective Havens noted "I tried to tell you." The struggle did not ensue, however, until Officer Gardner took Defendant's phone. Defendant objected but as Detective Havens testified, any resistance by Defendant was "easily overcome."

There are three types of interactions with law enforcement requiring three different levels of suspicion.

The first is a mere encounter, sometimes referred to as a consensual encounter, which does not require the officer to have any suspicion that the citizen is or has been engaged in criminal activity...The second type of interaction, an investigative detention, is a temporary detention of a citizen.

This interaction constitutes a seizure of a person, and to be constitutionally valid, police must have a reasonable suspicion that criminal activity is afoot. The third, a custodial detention, is the functional equivalent of an arrest and must be supported by probable cause. A custodial detention also constitutes a seizure.

Commonwealth v. Powell, 228 A.3d 1, 4 (2020), citing *Commonwealth v. Adams*, 205 A.3d 1195, 1199-200 (Pa. 2019).

Clearly, when Defendant was approached by Detective Havens, and considering the totality of the circumstances, his statements and conduct communicated to her, as well as to a reasonable person, that she was not at liberty to ignore the police presence and to go about her business. *Commonwealth v. Cost*, 224 A.3d 641, 650 (Pa. 2020).

Detective Havens drove his vehicle in the opposite lane of traffic and then pulled partially in front of Defendant's vehicle blocking, at least in part, her ability to move forward. He immediately identified himself as a police officer, was wearing police identification, and directly communicated to Defendant that she was being detained, that she was not free to leave and that they were investigating a very serious crime. During the brief conversation between them, Defendant insisted that she wanted to leave. Detective Havens told her on numerous occasions that she could not leave and if she left, she would be charged with escape.

To maintain constitutional validity, an investigative detention must be supported by a reasonable and articulable suspicion that the person seized is engaged in criminal activity. *Commonwealth v. Brame*, 239 A.3d 1119, 1127 (Pa. Super. 2020).

This reasonable suspicion standard allows a police officer to stop an individual based upon specific and articulable facts and rational inferences from those facts

that warrant a belief that the individual is involved in criminal activity. *Commonwealth v. Hicks*, 208 A.3d 916, 932 (Pa. 2019), *cert. denied*, 140 S. Ct. 645 (2019).

When evaluating whether reasonable suspicion exists in a particular case, the court must view the circumstances through the eyes of a trained officer, not an ordinary citizen. *Commonwealth v. Milburn*, 191 A.3d 891, 898 (Pa. Super. 2018). Although the police officers' own observations, knowledge and experience does weigh heavily in determining whether reasonable suspicion exists, our courts remain mindful that the officer's judgment is necessarily colored by his or her primary involvement in the often-competitive enterprise of ferreting out crime. *Commonwealth v. Beasley*, 761 A.2d 621, 626 (Pa. Super. 2000). The test to be applied remains an objective one and will not be satisfied by an officer's hunch or unparticularized suspicion. *Id.*

In this case, however, there was far more than a hunch or suspicion. Detective Havens articulated specific observations that suggested Defendant's involvement in criminal activity.

He listened to a phone call taking place only minutes before the stop. The phone call involved the transfer of illegal guns from 1612 High Street and involved a named female, as well as Mr. Watkins and Mr. Jones. According to the information relayed on the phone calls, the guns were being transported in a black bag.

Upon immediately arriving at the address within minutes of the phone calls, the information heard on the phone call was corroborated. Mr. Watkins was walking down the street in front of and then away from the residence. Detective Havens noticed Mr. Jones traveling south on Dale Place, intersecting with High, and then turning right on High Street

traveling past the residence. Mr. Jones was driving the vehicle that Detective Havens knew Mr. Watkins normally operated. Other officers stopped Mr. Jones, but he was not in possession of the firearms.

Detective Havens followed Mr. Watkins until the PSP took over the surveillance. He then doubled back to cover the rear of 1612 High Street and while doing so, he noticed a car illegally parked in the traveling lane of Louisa Street, a block north of the residence at 1612 High Street. He knew that law enforcement had stopped Mr. Jones driving that car the previous day. He saw Defendant in the driver's seat of the car but he believed her to be Mr. Watkins' girlfriend. It appeared to Detective Havens that Defendant was waiting for someone. He then essentially circled his vehicle around and pulled in front of the car.

When Detective Havens approached Defendant, he identified himself as a detective with the NEU and immediately observed a black bag in the back seat as well as the odor of marijuana. He first asked for her identification, which she refused to provide. Detective Havens clearly instructed Defendant more than once that at that time she was being detained, she was not free to leave and if she left, she would be charged with escape.

The investigative detention related to the firearms, however, soon turned into a custodial detention or the functional equivalent of an arrest of Defendant for escape or attempted escape. Despite the warning by Detective Havens, Defendant started to leave. Detective Havens attempted to stop her yet she continued in her attempt until Officer Gardner drew his weapon and ordered her to stop and get out of the car.

In order to support this seizure of Defendant, the police needed probable

cause. Probable cause is made out when the facts and circumstances which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a man of reasonable caution in the belief that the suspect has committed or is committing a crime. The question to be asked is not whether the officer's belief was correct or more likely true than false. Rather what is required is a probability, and not a prima facie showing, of criminal activity. In determining whether probable cause exists, the courts apply a totality of the circumstances test. *Commonwealth v. Brogdon*, 220 A.3d 592, 599 (Pa. Super. 2019), citing *Commonwealth v. Thompson*, 604 Pa. 198, 985 A.2d 928, 931 (2009).

Probable cause does not require certainty, but rather exists when criminality is one reasonable inference, not necessarily even the most reasonable inference. *Commonwealth v. Spieler*, 887 A.2d 1271, 1275 (Pa. Super. 2005).

Certainly, law enforcement had probable cause to stop Defendant. Combined with the reasons supporting reasonable suspicion, Defendant initially refused to provide Detective Havens with any information including her identification, she lied about knowing Mr. Jones, she possessed a black bag in the back of her car, Mr. Jones had been driving that vehicle the previous day, Defendant was a female, and determinatively, despite clearly being told that she was the subject of an official detention and being told many times not to leave and despite Detective Havens' physical attempts to stop her, she continued until she was essentially forced to stop at gunpoint.

The court also notes that regardless of whether Mr. Jones drove Defendant's vehicle or Defendant was driving Mr. Jones' vehicle, the vehicle was associated with Mr.

Jones based on the traffic stop the previous day, Mr. Jones was involved in the phone calls regarding the transfer of firearms, and there was a black bag in the vehicle consistent with the information that the firearms were being transported in a black bag. Law enforcement had a duty to investigate further. Although Detective Havens may not have provided Defendant with all the details of the investigation, Detective Havens specifically informed Defendant that she was the subject of an official detention, he was investigating a very serious crime, she could not leave, and if she did, she would be charged with escape.

In Count 2 of the Omnibus Pretrial Motion, Defendant filed a Motion to Dismiss/Habeas Corpus Petition. Defendant alleged that the charges against her, attempted escape (F3) and disorderly conduct (M3), should be dismissed because Detective Havens had no legitimate/legal authority for detaining Defendant and the detention was not “official” in that Detective Havens did not adequately demonstrate both the authority and physical force necessary for official detention.

Where a defendant seeks to challenge the sufficiency of the evidence presented by the Commonwealth, she may do so by the filing of a writ of *habeas corpus*. *Commonwealth v. Landis*, 48 A.3d 432, 444 (Pa. Super. 2012) (en banc). At a *habeas corpus* hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a *prima facie* against the defendant. *See Commonwealth v. Hilliard*, 172 A.3d 3, 10 (Pa. Super. 2017)

The definition of *prima facie* is not precise or without difficulty. On the one hand, it has been described as evidence, read in a light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably

the perpetrator of that crime. *Commonwealth v. Packard*, 767 A.2d 1068, 1070 (Pa. Super. 2001), *abrogated on other grounds by Commonwealth v. Dantzer*, 135 A.3d 1109, 1112 n.5 (Pa. Super 2016).

On the other hand, it has been defined as evidence, which if accepted as true, would warrant submission of the case to a jury. *Packard, id.*; *Commonwealth v. Karetny*, 880 A.2d 505, 514 (Pa. 2005); *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2001).

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 has committed the offense. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2011). The evidence must be read in a light most favorable to the Commonwealth and inferences reasonably drawn from the evidence of record which would support a verdict of guilty, must be given effect. *Id.*

As previously discussed in this Opinion, Detective Havens had reasonable suspicion to stop and detain Defendant and her vehicle to investigate their involvement in firearms transactions. Then he developed probable cause for attempted escape and disorderly conduct when Defendant attempted to drive away after Detective Havens showed her his badge and informed her that she was under official detention, she was not free to leave and if she attempted to do so, she would be charged with escape.

Defendant argues that Detective Havens did not adequately demonstrate both the authority and physical force necessary for official detention. Defendant notes that: (1) Detective Havens did not produce a firearm, was not in any uniform and drove only a “civilian” vehicle; (2) she only moved her vehicle approximately 6 feet; and (3) she

immediately complied with custody once Officer Gardner produced his service revolver. Defendant fails to mention, however, that Detective Havens showed her his badge and she spoke with him for a short time before attempting to leave.

A person commits escape if he or she unlawfully removes himself or herself from official detention. 18 Pa. C.S.A. §5121(a). Official detention means “arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged to be found delinquent, detention for extradition or deportation, **or any other detention for law enforcement purposes**; but the phrase does not including supervision of probation or parole, or constraint incidental to release on bail.” 18 Pa. C.S.A. §5121(e)(emphasis added); *Commonwealth v. Steawart*, 648 A.2d 797, 798 (Pa. Super. 1994). Furthermore, “any other detention for law enforcement purposes” extends to pre-arrest situation. *Stewart, supra*.

Viewing the evidence in the light most favorable to the Commonwealth, Detective Havens detained Defendant for law enforcement purposes, i.e., to investigate information he possessed regarding illegal firearms transfers that had occurred or were about to occur in the area. He showed Defendant his badge. Defendant did not question that Detective Havens was a law enforcement officer. She spoke with him. She initially did not want to provide identification and she said repeatedly that she wanted to leave. Detective Havens told her she was the subject of an official investigation into a serious offense, she could not leave, and if she tried to leave she would be charged with escape. When she attempted to leave, he attempted to open the door of the vehicle to stop her, but the door was locked. She drove several feet before stopping when Officer Gardner stepped in front of her vehicle and drew his firearm.

In light of these circumstances, the court finds that the Commonwealth has presented a *prima facie* case of attempted escape. Whether the fact finder chooses to find those circumstances as fact or accept Defendant's arguments regarding the circumstances she focuses on in her argument are issues for trial.

Similarly, the court finds that the Commonwealth presented a *prima facie* case for disorderly conduct. The Commonwealth charged Defendant with disorderly conduct in violation of section 5503(a)(4) of the Crimes Code, which states:

A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: ... (4) creates a hazardous or physically offensive condition by any act which serves no legitimate purpose of the actor.

18 Pa.C.S.A. §5503(a)(4).

Defendant's attempt to leave despite being told she was not free to do so created a hazardous or physically offensive condition to Detective Havens and Officer Gardner. Detective Havens took a couple steps to the side because the vehicle started to move. Preliminary Hearing Transcript, 10/13/2020, at 25. Officer Gardner walked past the passenger side of the vehicle, got in front of it, drew his weapon, and ordered Defendant to stop the vehicle. Preliminary Hearing Transcript, at 24. Defendant's actions also caused or recklessly created a risk of causing public inconvenience, annoyance or alarm. Other individuals were in the area and someone began to take a video recording of the incident. Detective Havens testified at the preliminary hearing that these people were alarmed by everything that was happening and Defendant essentially forced us to remove her from the vehicle and put handcuffs on her. Preliminary Hearing Transcript, at 12. He also testified

that when Defendant attempted to leave, the camera dropped to the ground and a lady said “Oh my God” or something like that. Preliminary Hearing Transcript, at 25.

ORDER

AND NOW, this 26th day of October 2021, the court DENIES Defendant’s Omnibus Pretrial Motion.

By the Court,

Marc F. Lovecchio, Judge

cc: K. Michael Sullivan, Esq. (ADA)
Nicole Spring, Esq. (PD)
Gary Weber, Esquire
Judge Lovecchio