

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :  
 :  
 vs. : No. CR-1557-2020  
 :  
 MALIK WASHINGTON, :  
 Defendant : Motion to Suppress

**OPINION AND ORDER**

Defendant is charged by Information filed on December 3, 2020 with persons not to possess arising out of an incident in which Defendant, a convicted felony offender, allegedly possessed a loaded .380 firearm on October 31, 2020 in an alley between Hawthorne and Glenwood Avenues in Williamsport.

Defendant filed a motion to suppress on December 23, 2020 claiming that the Williamsport Police violated his Fourth Amendment rights by continuing to investigate and search the area where the firearm was eventually located. Defendant specified that the continued search was without probable cause.

A hearing was held on March 30, 2021. Officer Thad Trafford of the Williamsport Bureau of Police testified that he was on duty on October 31, 2020 when he was dispatched to the rear of the 400 block of Hawthorne Avenue for a disturbance possibly involving a gun. He soon arrived at an unnamed public alley between Hawthorne and Glenwood Avenues and encountered three individuals including Defendant. Defendant and another individual were walking towards Officer Trafford and away from a gray car parked on the one side of the alley. Upon questioning, all three denied that there was any gun involved. Defendant said that it was a “family issue” that was resolved.

Despite their denials, Officer Trafford was still concerned. He noticed that the back door to the residence on Hawthorne Avenue was smashed and that one of the individuals, (Deqwan Stafford) had blood on his knuckles. Other Williamsport police officers responded to the scene. All three individuals were frisked but no weapons were found. The gray car was searched with the consent of its owner but again, no weapons were found.

While Officer Trafford was talking to the three individuals, he observed a female peeking out of the shattered door. He went to the door and spoke with Nicole Stafford, Defendant's sister. She admitted to Officer Trafford that there was a gun. She specified that Defendant possessed the gun, pointed it at her husband, and then threatened him.

Based upon this information, the officers detained both Defendant and one of the other individuals, Alrashan Jones. Both were placed in separate police cars for officer safety reasons.

Officer Trafford then spoke with Dequan Stafford, Nicole's husband and one of the three individuals initially confronted in the alley. Mr. Stafford admitted that a gun was present and that it could possibly be located on the other side of the alley near a wood pile.

Accordingly, the officer searched the area of three wood piles behind 418 Glenwood Avenue which was owned by a third party. There was a sign on the garage indicating that it was private property and to keep out. The gun was found 10 to 20 feet from the sign in the corner of a fence next to or behind the wood piles. The gun was loaded.

Sergeant Jody Miller had actually located the gun. Officer Trafford took photographs, which were entered into evidence.

After the gun was seized, Defendant was taken into custody. Officers soon

discovered that the back of the garage near the wood piles contained a surveillance camera. They obtained a video of the surveillance taken during the time of the alleged offense. The video was played for the court. It depicted Defendant walking toward the gray car then hurriedly reaching in the car grabbing the gun and tossing it next to the wood piles near the fence. Defendant then returned to the area of the car and started walking toward Officer Trafford's vehicle as Officer Trafford approached down the alley.

Because Defendant is charged with a possessory offense, he is entitled to a review of the merits of his suppression motion without a preliminary showing of ownership or possession in the premises or items seized. *Commonwealth v. Enimpah*, 106 A.3d 695, 698 (Pa. 2014).

In other words, Defendant has standing that empowers him to assert a constitutional violation and thus seek to exclude or suppress the government's evidence pursuant to the exclusionary rules under the Fourth Amendment of the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution. *Id.* at 699.

However, if the Commonwealth demonstrates that Defendant lacked a reasonable expectation of privacy in either the place invaded or the thing seized, Defendant's suppression motion will fail. *Enimpah*, at 701, 703. A defendant has no basis to contest the search and seizure of an item which he has voluntarily abandoned. *Commonwealth v. Smith*, 732 A.2d 1226, 1233 (Pa. Super. 1999).

As the Pennsylvania Supreme Court explained in *Commonwealth v. Shoatz*, 469 Pa. 545, 366 A.2d 1216 (1976),

The theory of abandonment is predicated upon the clear intent of

an individual to relinquish control of property he possesses.

Abandonment is primarily a question of intent, and intent may be inferred from words spoken, acts done, and other objective facts. All relevant circumstances existing at the time of the alleged abandonment should be considered. Police pursuit or the existence of a police investigation does not itself render abandonment involuntary. The issue is not abandonment in the strict property-right sense, but whether the person prejudiced by the search has voluntarily discarded, left behind, or otherwise relinquished his interest in the property in question so that he could no longer retain a reasonable expectation of privacy with regard to it at the time of the search.

366 A.2d at 1220

The pertinent question in this case is whether Defendant's action in removing the gun from the vehicle, secreting it on the property of a third party and thereafter denying any knowledge of it, constitutes such a relinquishment of interest in it so that he can no longer assert a reasonable expectation of privacy regarding it. Under the circumstances as set forth above, the court can see no basis upon which Defendant can claim that he maintained a reasonable expectation of privacy of the gun. See, for example, *Commonwealth v. Anderl*, 477 A.2d 1356, 1362-1364 (Pa. Super. 1984).

**ORDER**

**AND NOW**, this \_\_\_\_ day of April, 2021, Defendant's Motion to Suppress is **DENIED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: Michael Sullivan, Esquire ADA

Andrea Pulizzi, Esquire  
Gary Weber, Esquire  
Judge Marc F. Lovecchio