

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : **No. CR-724-2020**
:
vs. :
:
:
QUINTON JAMAL WILSON, : **The Commonwealth's**
Defendant : **Motion to Reconsider**

OPINION AND ORDER

By Opinion and Order dated December 23, 2020, the court granted Defendant's Motion to Suppress. A hearing was held on October 27, 2020. Based on the evidence, the court concluded that the pat down or frisk of Defendant was not based on reasonable suspicion. The evidence indicated that while Defendant was in violation of the conditions of his probation, he was not being taken into custody. A pat down was to look for evidence of other violations such as a possession of a firearm or controlled substances. Unfortunately, there were no facts which lead officers to believe Defendant was in possession of any prohibited items.

On February 16, 2021, the Commonwealth filed a Motion to Reconsider the Opinion and Order. An argument was held on March 12, 2021.

The Commonwealth does not argue, either that it did not have a full and fair opportunity to litigate the suppression motion or that it did not have the right to appeal the Order entered on that motion. Certainly, the Commonwealth had every incentive to defend against the motion or to appeal it. According to the Commonwealth, Defendant has a long history of criminal behavior, which includes possession of firearms. The Order at issue suppressed a firearm and was dispositive with respect to Count 1, receiving stolen property, a felony of the second degree and Count 2, firearms not to be carried without a license, a

misdemeanor of the first degree.

The suppression Order was final and appealable, because it substantially handicapped or terminated the prosecution of Defendant on those particular charges.

Defendant first argues that the motion was untimely. Defendant contends that a dispositive suppression order, which effectively ends the prosecution case, is a final Order subject to the time constraints regarding modification of 42 Pa. C.S. § 5505. However, the Court's Order granting Defendant's suppression motion was interlocutory, and the thirty-day modification period of §5505 is inapplicable. *Commonwealth v. James*, 69 A.3d 180, 186 (Pa. 2013). Accordingly, the court has the authority to revisit its initial ruling and to reach a different result. *Id.*

With respect to Defendant's Motion to Suppress, the Commonwealth had the initial burden of going forward with evidence and of establishing that the challenged evidence was not obtained in violation of Defendant's rights. *Commonwealth v. Ryan*, 442 A.2d 739, 742 (Pa. Super. 1982). The courts of this Commonwealth have held that a suppression court, in its discretion, may reopen a suppression hearing, after the issuance of a suppression order, to allow the Commonwealth to present additional testimony. *Commonwealth v. Branch*, 437 A.2d 748 (Pa. Super. 1981); *Ryan, Id.* Indeed, a second suppression hearing may be necessary in such cases where new evidence, previously unavailable, is presented for consideration. *Commonwealth v. Sample*, 321 Pa. Super. 487 (1983).

In this case, however, the Commonwealth is not requesting the court to reopen the record to present additional evidence. Instead, the Commonwealth is requesting the court

to reopen the case to present additional argument and preventing a failure or miscarriage of justice.

This Court has not found, nor has the Commonwealth presented it with any case authority, to support a reconsideration of a suppression order to permit the Commonwealth to argue a different legal theory. There is always in litigation a margin of error which both parties must take into account. While Pennsylvania does not follow the principle of “basic and fundamental error”, giving a judge the chance to correct errors is advantageous. It promotes the orderly and efficient use of judicial resources. It permits a trial court to correct an error prior to trial thus leading to a more just result at trial. It saves the litigants any expense and delay inherent in appellate review. See, for example, *Commonwealth v. Burchard*, 349 Pa. Super. 456 (1986).

On the other hand, Pennsylvania jurisprudence employs a deep-rooted principle that absent some new evidence, it is improper for a judge to overrule an interlocutory order by another judge. *Id.* The parties are entitled to some degree of finality to determinations of all pretrial issues so that judicial economy and efficiency can be maintained. *Id.* The binding nature of a suppression determination gives the parties an opportunity to prepare and present their respective cases accordingly. *Buchard, Id.*

The Commonwealth argues that the policy against perpetuating an erroneous ruling supports its request. On the facts of this case, however, that policy can be given very little, if any, weight. Undoubtedly, the Adult Probation officers had probable cause to believe that the defendant was in technical violation of the conditions of his probation by not staying at his approved address and the Adult Probation officers had the right to arrest the defendant

and take him into custody. Undoubtedly, if the probation officers had exercised that right and arrested Defendant, that arrest would have resulted in the weapon being lawfully obtained during a search incident to arrest. Based on the testimony presented at the suppression hearing, however, that did not occur in this case. Under the directive of the President Judge and within the probation officers' discretion,¹ they decided not to arrest Defendant or take him into custody. Defendant's supervising officer told Defendant to return to his approved address and he would come see him there later that night.

Indeed, the circumstances were exceptional. But for the pandemic and but for the directive of the court, the defendant would have been taken into custody immediately and the contraband would have been seized and utilized against the defendant in connection with both new criminal charges and a probation violation. However, this was not the case.

ORDER

AND NOW, this ___ day of April 2021, the Commonwealth's Motion to Reconsider is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Joseph Ruby, Esquire (ADA)
Robert Hoffa, Esquire
Work file
Gary Weber, Esquire

¹Due to the pandemic, the President Judge sent an email to Chief and Deputy Chief of the Adult Probation Office asking them not to issue bench warrants if possible but, obviously, there could be exceptions.