

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-834-2023
:
vs. : Opinion and Order re
: Petition for Habeas Corpus/
MICHAEL ANTHONY BENSON, : Omnibus Pre-Trial Motion
Defendant :

OPINION AND ORDER

Before this Court is Michael Benson's (Defendant) Omnibus Motion in the nature of a Habeas Corpus Motion. For the reasons set forth below the Court finds that sufficient evidence has not been presented and shall grant the Defendant's Habeas Corpus motion as to counts 1 and 10.

At the hearing on the habeas motion, the Commonwealth presented testimony as there was no transcript or recording of the Defendant's preliminary hearing held on June 27, 2023. The Commonwealth asserted that it established a *prima facie* case for all of the charges. Defendant has alleged that the evidence presented by the Commonwealth did not establish sufficient facts to establish the elements of the crimes of Escape¹ and Evading Arrest or Detention on Foot².

Background

On June 19, 2023, the Williamsport Bureau of Police charged Defendant with Escape, Prohibited Offensive Weapon, Possession of a Small Amount of Marijuana, Possession of a Controlled Substance (buprenorphine), Possession of Drug Paraphernalia, Misbranding, Obstructing Public Crossings, Loitering, and Unreasonable Use of Mechanical Devices. At

1. 18 Pa. C.S.A. §5121(a).
2. 18 Pa. C.S.A. §5104.2(a).

Arrest or Detention on Foot. These charges were filed from an incident that was alleged to have occurred on the same day as the result of a gathering outside the Shamrock Bar, 767 West Fourth Street, Williamsport, PA. The Public Defender's Office originally represented Defendant. On September 8, 2023, current Defense Counsel was appointed as the Public Defender's Office discovered it had a conflict with their representation of Defendant. An Omnibus Motion was filed on the Defendant's behalf on January 4, 2024. Commonwealth did not object to its untimeliness³.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. *Id.* Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof.

2. 18 Pa. C.S.A. §5104.2(a).

³ Defendant also raised a discovery issue in this case and a companion case filed to 1341-2023. These matters were disposed of by the Court in a separate order.

Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). “The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence.” *Commonwealth v. DiStefano*, 782 A.2d 574, 582 (Pa. Super. 2001); *see also Commonwealth v. Jones*, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. *Commonwealth v. Wojdak*, 466 A.2d 991, 997 (Pa. 1983); *see also Commonwealth v. Kohlie*, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003).

Did the Commonwealth present prima facie evidence of Escape?

Defendant is charged with one count of Escape, 18 Pa. C.S. §5121(a). In Pennsylvania, a person commits an offense if he unlawfully removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited period. For purposes of this offense,

the phrase “**official detention**” means arrest, detention in any facility for custody of persons under charge or conviction of crime or alleged or found to be delinquent, detention for extradition or deportation, or any other detention for law enforcement purposes; but the phrase does not include supervision of probation or parole, or constraint incidental to release on bail.

18 Pa. C.S. §5121(e)(emphasis in the original).

The evidence presented at the hearing on the habeas motion was that Officer Thomas Bortz of the Williamsport Bureau of Police was working the day shift and, at about 8 a.m. on June 19, 2023, Officer Nicholas Carrita (Carrita) radioed out on five individuals who were loitering in front of the Shamrock Bar in the 700 Block of West Fourth Street in the City of

Williamsport. N.T., 2/5/2024 at 9 (Habeas Hearing Transcript). Bortz testified that the 700 Block of West Fourth Street has been the highest crime block in the city for all of his 21 years on the WBP. *Id.* He also testified that several months prior to this incident, members of the City administration and management of the Weightman building were meeting to direct positive policing efforts to reduce public urination, drug use and “other associated public offenses.” *Id.* When Bortz arrived on the scene, he observed Defendant loitering in front of the Shamrock and heard Carrita telling him to just leave the area. *Id.* at 11. While others who had been loitering were leaving the area, Bortz saw Defendant walking back and forth in the block in front of the Shamrock and Weightman building. *Id.* Bortz yelled to him to leave but instead saw him alternately walking out into traffic talking to cars stopped at the red light and pacing in front of the Shamrock. *Id.* Bortz estimated that Defendant refused 6 to 10 orders given by the police to leave the area. *Id.* Finally, a decision was made to arrest Defendant for loitering. *Id.* Bortz acknowledged that there were maybe eight signs posted against loitering on the front of the buildings in the 700 block of West Fourth Street. *Id.* at 13. The Commonwealth introduced exhibits showing all of the signs prohibiting loitering in the block. Commonwealth’s Exhibits #1-5.

Bortz then testified that he and Carrita made the decision to arrest Defendant and begin to walk toward him. *Id.* at 13. Defendant responded by hopping on his e-bike or electric scooter and travelled away from the officers diagonally to the opposite side of the intersection. *Id.* at 14. Neither police unit had its lights on or emitted an audible signal. *Id.* It was at this time Defendant began playing through a large speaker on his scooter the song “fuck the police.” *Id.* As Bortz and Carrita were reviewing the applicable sections of the law that they believed that Defendant was violating, they saw him interfering with the pedestrian

traffic on the sidewalk. *Id.* at 15. He was also digging through a backpack that he had with him. *Id.* at 16. It was at this point that Bortz had “had enough” and activated the overhead lights on his police vehicle signifying that he wanted Defendant to stop where he was. *Id.* at 15. Defendant proceeded to hop onto his e-bike while Bortz yelled at him that he needed to stop and that he was not free to leave. *Id.* Because Bortz was on foot and the Defendant was on his e-bike, he was able to travel away quickly. *Id.* Bortz estimated that Defendant was able to travel about two-thirds of a city block away from them, so Carrita had to drive down the block to stop Defendant. *Id.* at 16. Bortz reaffirmed on cross examination that he activated his overhead lights before he told Defendant that he was not free to leave. *Id.* at 19. Bortz clarified that at no time before Defendant hopped on his bike was he in handcuffs or placed under arrest. *Id.* When Carrita stopped Defendant, he placed Defendant under arrest. Once Defendant was placed under arrest, Bortz testified that he smelled like marijuana. *Id.* at 16. Defendant’s backpack was searched and the contents were depicted in Commonwealth’s #6.

The question before the court is whether Defendant was in “official detention” for the purposes of the escape statute. Defense counsel relies on the case of *Commonwealth v. Woody*, 939 A.2d. 359 (Pa. Super. 2008). The Superior Court found that Woody was not detained when police merely told Woody after he was pulled over for a traffic violation, to stop and get on the ground as he left his vehicle and ran and therefore, Woody was not guilty of the offense of escape. 939 A.2d at 363. *Woody* distinguishes *Commonwealth v. Stewart*, 436 Pa. Super. 626, 648 A.2d 797 (1994) and highlights that the determination of official detention requires an evaluation of the specific circumstances. *Woody*, 939 A.2d at 362.

In *Stewart*, Superior Court stated that

It is not necessary that the suspect be physically restricted by bars, handcuffs, or locked doors. Escape encompasses more than the traditional notion of a prisoner scaling a prison wall. Not all interactions between the police and citizens involve seizure of persons. Only when the police have restrained the liberty of a person by show of authority or physical force may we conclude that a seizure has occurred. An evaluation as to whether a seizure has occurred must be viewed in light of all the circumstances and whether a reasonable person would have believed he or she was free to leave.

628 A.2d at 798 (citations and internal quotation marks omitted).

The court in *Stewart* found that the officer exhibited a show of authority by drawing his gun, requesting that Stewart turn the car off and place his or her hands on the dashboard and that show of authority was sufficient to place Stewart in official detention. When Stewart drove off in his car, despite the officer's clear instructions, it established the crime of escape, 'a flagrant and unlawful removal from official detention.' 628 A.2d at 799.

In *Commonwealth v. Smith*, the Superior Court reviewed *Stewart* and the state of the law with respect to official detention.

This Court has previously determined that official detention, in the context of escape, means "a seizure in which the police have restrained the liberty of a person by show of authority or physical force." *See Commonwealth v. Santana*, 959 A.2d 450, 452 (Pa. Super. 2008) (internal citations and quotations omitted). "Official detention" has also been interpreted to mean a seizure in which "the police have restrained the liberty of a person by show of authority or physical force." *Commonwealth v. Stewart*, 648 A.2d 797, 798 (Pa. Super. 1994). The determination of whether or not a seizure has occurred is based on the totality of the circumstances and "whether a reasonable person would have believed he or she was free to leave." *Id.* "Not all interactions between the police and citizens involve seizure of persons. Only when the police have restrained the liberty of a person by show of authority or physical force may we conclude that a seizure has occurred." *Commonwealth v. Jackson*, 630 A.2d 1231, 1236 (Pa. Super. 1993).

Commonwealth v. Smith, 1239 WDA 2020, 2022 WL 214292, * 2 (Pa. Super. Ct. Jan. 25, 2022)(non-precedential).

Here, the Commonwealth has failed to show that they restrained the Defendant's liberty by a show of authority or physical force. The Court finds that this case is similar to *Woody* and *Smith*. The police repeatedly told Defendant to leave the area. Eventually, Defendant hopped on his bike and travelled away from the officers diagonally to the opposite side of the intersection. Then he was walking into traffic, playing music and looking through a backpack on the opposite side of the street. In other words, Defendant was in front of the officers on the other side of the street, possibly with his back to them. As in *Woody* and *Smith*, the officers yelled for Defendant to stop. Although they had decided to arrest him, there is no testimony that they yelled or told Defendant that he was under arrest. Since there was no seizure or show of physical force toward the Defendant, it is unclear whether the Defendant believed that he was free to leave, as the police had directed him to do multiple times, or required to stay. Furthermore, as evidenced by *Woody* and *Smith*, yelling for someone to stop is insufficient to place someone in "official detention." Under the totality of the circumstances, Defendant was not in official detention. Therefore, the Court finds that *prima facie* on this charge has not been met.

Did the Commonwealth present prima facie evidence on the charge of Evading Arrest or Detention on Foot?

Defendant is charged with one count of evading Arrest or Detention on Foot. A person is guilty of that charge if he "knowingly and intentionally flees on foot from a public servant attempting to lawfully arrest or detain that person." 18 Pa. C.S.A. § 5104.2. This offense was enacted in 2022 to enable law enforcement to charge a Defendant who flees on foot and as a consequence that chase results in death or serious injury to the law enforcement

officer or other persons as a consequence of the Defendant's actions. There is no case law specifically defining what is "on foot."

The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions. When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit. 1 Pa.C.S.A. § 1921(a), (b).

Here, although the Defendant needed to take a step or two next to his scooter or e-bike to get on it and get it started, it is clear from the testimony of Bortz that the Defendant fled on a motorized vehicle and not on foot. Therefore, the Commonwealth has failed to meet its burden on this charge.

Conclusion

The Commonwealth has failed to present prima facie evidence on the charges of Escape and Evading Arrest or Detention on Foot. Accordingly, the Court will grant Defendant's Petition for Habeas Corpus contained in his Omnibus Pre-Trial Motion.

ORDER

AND NOW, this 11th day of June, 2024, the court GRANTS Defendant's Petition for Habeas Corpus contained in his Omnibus Pre-Trial Motion. The charges of Escape and Evading Arrest or Detention on Foot are hereby DISMISSED.

By the Court,

Nancy L. Butts, President Judge

cc: DA(PY)
Eric A. Williams, Esquire
Jerri Rook