

gibbsIN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
vs. : **No. CR-855-2017**
 :
RAYMOND GIBBS, : **Opinion and Order Re**
Defendant : **Defendant's Omnibus Pretrial Motion**

OPINION AND ORDER

This matter came before the court on August 10, 2017 for a hearing and argument on the omnibus pretrial motion filed by Defendant, Raymond Gibbs. The omnibus motion consists of a motion to suppress physical evidence; a motion to disclose promises of leniency and complete criminal histories from the National Crime Information Center (NCIC) or the Pennsylvania Justice Network (JNET); a motion for disclosure of other crimes, wrongs, or acts pursuant to Pa. R. E. 404(b); and a motion to reserve right.

By way of background, Defendant is charged with conspiracy to deliver a controlled substance, an ungraded felony; conspiracy to criminally use a communication facility, a felony of the third degree; and possession of a controlled substance, an ungraded misdemeanor.

At approximately 2:30 p.m. on March 2, 2017, Trooper Edward Dammer and Trooper Tyson Havens of the Pennsylvania State Police (PSP) were assigned to the Criminal Interdiction Unit and were conducting patrol activity in the City of Williamsport. They were in full uniform and were driving a marked vehicle. As they were traveling on Washington Boulevard, they observed a vehicle parked in the parking lot at 505 Washington Boulevard, the bar/restaurant formerly known as “Joey’s Place.”

There were three occupants in the vehicle. A male was in the driver's seat, a female was seated in the front passenger seat, and another male was seated in the rear passenger seat. The rear passenger door was open, and the male in the rear seat was talking with the other occupants.

The troopers drove their vehicle around the block and entered the parking lot from the north entrance. They observed the female occupant showing a pill bottle to the rear passenger. She was holding it over her left shoulder. The driver, however, made eye contact with the troopers and immediately said something to the female, who then dropped her arm in a quick attempt to conceal the bottle.

Being "fairly confident" that the occupants of the vehicle were engaging or attempting to engage in a drug deal, the troopers pulled their vehicle to a nearby parking spot, got out and confronted the occupants. Trooper Havens spoke with the passenger while Trooper Dammer spoke with the driver.

Defendant was identified as the rear passenger. Defendant spoke with the troopers and admitted that he contacted the female passenger via cell phone; he made arrangements with her to purchase Oxycodone pills for \$100; and he had made arrangements to deliver the pills to another person, who Defendant identified as "Bubby."

Defendant asserts that all of physical evidence and any admissions made by Defendant must be suppressed because the police lacked reasonable suspicion to believe that criminal activity was afoot and to thus detain Defendant at the scene. The court cannot agree.

As the Pennsylvania Supreme Court explained in *Commonwealth v. Brown*

While warrantless seizures ... are generally prohibited, they are permissible if they fall within one of a few well-delineated exceptions. One such exception allows police officers to detain individuals for a brief investigation when they possess reasonable suspicion that criminal activity is afoot. Reasonable suspicion is a less stringent standard than probable cause necessary to effectuate a warrantless arrest, and depends on the information possessed by police and its degree of reliability in the totality of the circumstances. In order to justify the seizure, a police officer must be able to point to "specific and articulable facts" leading him to suspect criminal activity is afoot. In assessing the totality of the circumstances, courts must also afford due weight to the specific, reasonable inferences drawn from the facts in light of the officer's experience and acknowledge that innocent facts, when considered collectively, may permit the investigative detention.

606 PA. 198, 996 A.2d 473, 476-77 (2010)(citations omitted); see also *Commonwealth v. Holmes* 609 Pa. 1, 14 A.3d 89, 95-96 (2011); *Commonwealth v. Rogers*, 578 Pa. 127, 849 A.2d 1185, 1189 (2004).

The court finds as credible the testimony of Trooper Dammer and Trooper Havens. Both troopers have extensive experience and training in illegal drug interdiction, investigation and prosecution. The area where the vehicle was parked was a high drug crime area. Specifically, the level of drug crime in that "corridor" was well above the average for the Williamsport area. Numerous patrols recently resulted in scores of drug related arrests. The defendant appeared to have been sitting in the rear seat only temporarily. According to Trooper Dammer, the manner in which the individuals were interacting was suspicious. The female passenger attempted to hand the orange pill bottle to the male passenger in the rear seat. The driver saw the police approaching and alerted the female passenger, who then attempted to hide the pill bottle.

These “specific and articulable facts” would lead a reasonable police officer to suspect that criminal activity was afoot, i.e., the female passenger was delivering or attempting to deliver controlled substances to the male in the rear seat. Therefore, contrary to Defendant’s assertions, the troopers had reasonable suspicion to detain the occupants of the vehicle and investigate their reasonable belief that a drug deal was afoot.

Defendant next requests that he be provided with the names and addresses of all persons who have been offered immunity, favorable consideration, leniency or favorable treatment in this case, and the substance of the promises or agreements of immunity, leniency or preferential treatment. As well, Defendant requests that the Commonwealth produce all evidence in their possession or available to them of any prior arrest or convictions of all persons the Commonwealth intends to call as a witness at trial. Specifically, Defendant seeks the Commonwealth to provide the criminal history of its witnesses from NCIC and/or JNET.

Consistent with the court’s prior practice, the court will grant this request. If the Commonwealth has not already done so, it shall provide to defense counsel within 30 days the criminal histories of its witnesses and any promises of leniency, immunity, or preferential treatment.

Defendant also requests that the court issue an order requiring the Commonwealth to disclose any other crimes, wrongs or bad acts pursuant to Pa. R. E. 404(b). Consistent with the court’s prior practice, the court will require the Commonwealth to provide any 404(b) notice no later than the pretrial date.

Finally, Defendant seeks to reserve the right to make additional pre-trial motions. Defendant notes that he has been furnished some discovery, but there may be additional discovery that has not been received. Consistent with the court's prior practice, the court will grant this motion, provided any additional motion is based on new discovery.

ORDER

AND NOW, this ___ day of September 2017, following a hearing and argument on Defendant's omnibus pretrial motion:

1. Defendant's motion to suppress physical evidence is DENIED.
2. With respect to Defendant's motion for JNET information, said information shall be provided as requested within thirty (30) days of today's date.
3. With respect to Defendant's motion for a 404 (b) notice, said notice must be provided by the Commonwealth no later than the pretrial date.
4. With respect to the Defendant's motion to reserve right, said motion is GRANTED to the extent any additional pretrial motion is based on new discovery.

By The Court,

Marc F. Lovecchio, Judge

cc: District Attorney
Aaron Biichle, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File