

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : NO.: CR-1286-2017
:
vs. :
:
MICHAEL WILLITS, :
Defendant : Omnibus Motion, Nunc Pro Tunc

OPINION & ORDER

Before the Court is Defendant’s Omnibus Motion (Motion to Suppress), Nunc Pro Tunc, filed on February 9, 2018. On February 26, 2018, the Court held argument on the timeliness of the Motion.

By way of background, via a Criminal Complaint filed on June 27, 2017, the Defendant was charged with driving under the influence of a drug or combination of drugs, possession of controlled substances, tampering with or fabricating physical evidence and related charges. Defendant’s preliminary hearing was scheduled for July 25, 2017. At Defendant’s preliminary hearing, he was represented by Greta Davis of the Lycoming County Public Defender’s office. The preliminary hearing was waived. Defendant was “seeking [a] global [offer]” with respect to all three of his then pending cases. Defendant’s arraignment was scheduled for August 14, 2017 but was waived. A guilty plea was scheduled for October 6, 2017. On October 19, 2017, William Miele, Chief Public Defender entered his appearance on defendant’s behalf. Previously, on October 3, 2017, Mr. Miele filed a Motion on Defendant’s behalf for a drug and alcohol evaluation. Mr. Miele filed a formal request for pretrial discovery on November 29, 2017. Defendant’s October 6, 2017 guilty plea was continued on behalf of the Commonwealth, without objection from the Defendant, to

December 15, 2017. On December 15, 2017, upon motion of the Defendant, over objection of the Commonwealth, Defendant's guilty plea was continued to February 2, 2018.

On February 2, 2018, Defendant indicated that he was no longer willing to plead guilty and his case was placed on the May 8, 2018 pretrial list with Call of the List scheduled for May 22, 2018.

Shortly thereafter, on February 9, 2018, Defendant filed his Motion to Suppress alleging that the results of his blood draw collected at the Williamsport Hospital on April 28, 2017 should be suppressed because his consent to the blood test was coerced and not voluntarily given.

The Commonwealth argues that Defendant's Motion should be dismissed as untimely. Defendant concedes that the Motion was untimely filed but argues that the Court should nonetheless consider it in the interest of justice.

Rule 581 of the Pennsylvania Rules of Criminal Procedure governs the timeliness of suppression motions. Unless the opportunity did not previously exist, or the interest of justice otherwise require, a suppression motion must be made in an omnibus pretrial motion as set forth in Rule 578. If a timely motion is not made, the issue of suppression is deemed waived. Rule 581 (B). An omnibus pretrial motion must be filed within thirty (30) days after the arraignment unless the opportunity therefore did not exist or the defendant, defense attorney or the attorney for the Commonwealth was not aware of the grounds for the motion or unless the time for filing has been extended by the Court for cause shown. Rule 579 (A).

Defendant's Omnibus Pretrial Motion which consists solely of a Motion to Suppress must have been filed within thirty (30) days of Defendant's arraignment or no later than September 14, 2017. As the rule and case law note, however, a judge may excuse a defendant's tardy presentation of a suppression motion when required in the interest of justice. *Commonwealth v. Johonson*, 844 A.2d 556, 561 (Pa. Super. 2004).

Under the circumstances in this particular case, the Court concludes that the interest of justice require that the suppression motion be heard at this time.

While the Defendant clearly had knowledge of the facts in support of the motion at the time he received a copy of the criminal complaint and supporting affidavit, it was not until December of this year that defense counsel received and subsequently reviewed the discovery. According to the proffer made at the argument in this matter, the documentation allegedly supports defendant's argument that he was never read the DL-26B form, nor did he sign it, until after the blood test was given.

Next, and while Defendant continued to be represented by the Public Defender's Office, there recently has been a change in personnel necessitating different attorneys to take over the handling of the case. It was anticipated throughout that Defendant's three pending cases could be resolved. Defense counsel did not want to risk losing the benefit of a plea agreement by the filing of a suppression motion. Once it became clear, however, that a plea agreement could not be reached, this motion was filed within a week.

Finally and perhaps determinatively, the underlying suppression motion has

an apparent merit to it such that the interest of justice require it to be heard. Specifically, if the blood test occurred at 2:07 a.m. and the defendant was not read the DL-26B form until two minutes after, a strong argument can be made that he did not give blood voluntarily.

ORDER

AND NOW, this 27th day of February 2018, following a hearing and argument, Defendant's nunc pro tunc request is **GRANTED**. The hearing on Defendant's Suppression Motion is scheduled for **March 27, 2018 at 10:00 a.m. in Courtroom No. 4** of the Lycoming County Courthouse.

By The Court,

Marc F. Lovecchio, Judge

cc: Susan Roinick, Esquire, Assistant Public Defender
Melissa Kalas, Esquire, Assistant District Attorney
Gary Weber, Lycoming Reporter
Work File