

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

vs.

**HAKIM PRICE,
Defendant**

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: No. CR-376-2010

OPINION AND ORDER

Before the Court is Defendant's Motion In Limine filed on July 26, 2010.

Following the hearing on said Motion, the Court issued an Order indicating that it would defer a decision on the Motion until the time of or during trial. Recently, however, the Court ordered, obtained and reviewed a transcript of the hearing on the Motion In Limine. Following review of the transcript and the applicable law, the Court is of the opinion that a decision on the Motion is capable of being rendered at this time and would assist the parties in pretrial preparation.

The first issue concerns evidence tending to show that the Defendant had access to a residence where Co-defendant Kareem Ray resided, was utilizing that residence with Kareem Ray prior to the incident giving rise to these charges, showed up at the residence following the incident giving rise to these charges, utilized a specific bedroom for an unknown purpose and then left. The evidence would further establish that upon a consensual search of the bedroom, 55 packets of heroin were found. This heroin was stamped with the phrase "Pepsi". The evidence would also establish that the heroin located in the vehicle in which the Defendant was driving, which consisted of 12 bags found in the glove box, had some packages which were labeled "Pepsi" while other packages were labeled blank.

The Commonwealth contends that this evidence is relevant to establish Defendant's intent to sell/deliver heroin. Preliminarily, the Court has reviewed the court file

along with the testimony of the hearing on the Motion In Limine and finds that the Possession with Intent to Deliver charge only encompasses the heroin located in the vehicle.

This does not, however, end the inquiry. The Commonwealth is entitled to introduce relevant evidence including relevant bad act evidence to prove, among other things, intent. Commonwealth v. Page, 2009 Pa. Super. 20 (2009); Pa. R.E. 404 (b) (2), (b) (3). Said evidence may be admissible only if its probative value outweighs the potential prejudice. Page, supra.; Pa. R.E. 404 (b) (3). The Court finds that the evidence is probative to Defendant's intent to deliver. The evidence tends to show that the Defendant possessed heroin of a sufficient quantity and type for the purpose of delivering it. The evidence is also relevant to intent when placed in the context of the allegation that the Defendant fled from the police.

Moreover, the Court determines that the probative value outweighs the potential for prejudice. While there is some potential for prejudice, the Court is not convinced that the jury would convict the Defendant because a jury perceived the Defendant had bad character or a propensity to commit crimes based solely on the disputed evidence. Moreover, the Court is of the opinion that a cautionary instruction would address any claim of prejudice.

Because the Court concludes that the probative value of such evidence outweighs its potential prejudice, the Court will deny the Defendant's Motion In Limine with respect to the proffered evidence.

The next issue concerns the Commonwealth's intent to offer testimony of Trooper Tyson Havens that the Defendant, following questioning, allegedly wrote a statement outside of Trooper Havens' presence. Upon Trooper Havens' return, the Defendant then crossed out what he wrote.

The Court cannot conceive of a legitimate basis upon which the Commonwealth could utilize the crossed out statement in its case in chief. According to the Commonwealth, Trooper Havens returned and noticed that the Defendant had written something out. While the Trooper was standing there, the Defendant crossed out what he had written. The Court finds that this conduct by the Defendant does not constitute either a statement or an admission. Additionally, the Court concludes that the alleged statement cannot be utilized for substantive evidence on cross-examination as it was not a writing signed and adopted by the Defendant. Pa. R.E. 803.1 (1) (b). Finally, the Court concludes that even if the Defendant decides to testify, he may not be impeached under Rule 613 of the Pennsylvania Rules of Evidence in that the Court has concluded that his alleged written statement does not constitute a “statement.” Of course, this does not preclude the Commonwealth from utilizing the Defendant’s alleged oral statements to Trooper Havens assuming that it was voluntary and that the observance of all constitutional requirements have been satisfied. Commonwealth v. Tervalon, 463 Pa. 581, 345 A.2d 671 (1975).

The last issue concerns a conversation that the Defendant allegedly had with an individual by the name of Jen Dietrich. The Commonwealth proffers that some time in January 2010, the Defendant approached Jen Dietrich and indicated that he was suppose to kidnap her on behalf of “Bird” a Kevin Webster, but he would not do so if Ms. Dietrich left the Defendant and Mr. Ray alone.

In essence, the Commonwealth argues that this evidence constitutes an admission by Defendant that he and Kareem Ray were dealing drugs and that the Defendant did not want Ms. Dietrich to act as a confidential informant against them. As proffered,

however, there is an insufficient basis upon which the Court could conclude that the statement is relevant. There was no indication, for example, that Defendant knew that Ms. Dietrich was acting as a confidential information and working with the police. Moreover, the Court is of the opinion that any relevancy or probative value to the statement would be far outweighed by its prejudicial impact. Accordingly and without prejudice to the Commonwealth to raise the issue upon a more detailed offer of proof, Defendant's Motion will be granted with respect to this issue.

ORDER

AND NOW, this ____ day of October, 2010, following a hearing and argument on Defendant Motion In Limine, said Motion In Limine is DENIED with respect to the Defendant's activities and the drugs found at 816 Elmira Street. Defendant's Motion is GRANTED with respect to the alleged written statement made by Defendant to Trooper Havens and the Defendant's alleged statement to Jen Dietrich. The Commonwealth is precluded from utilizing any of said evidence at the trial in this matter.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Trisha Hoover, Esquire (PD)
Mary Kilgus, Esquire (DA)
Gary Weber, Esquire (Lycoming Reporter)
Work File