

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
vs. : **No's. 1772-2008**
 : **1092-2009**
NAHEEM STINNETT, :
Defendant :

OPINION AND ORDER

Before the Court is an Omnibus Motion filed on behalf of Defendant Naheem Stinnett. The Defendant is charged at Information No. 1092-2009 with one count of Criminal Contempt to Commit Criminal Homicide, a Felony 1, one count of Aggravated Assault, also a Felony 1 and one count of recklessly endangering another person. At Information No. 1772-2008, Defendant is charged with one count of Person not to Possess, Use, Manufacture, Control, Sale or Transfer Firearms, a Felony 2 and one count of Firearms not to be Carried without a License, a Felony 3.

On August 25, 2008, in the area of the 700-800 block of Second Street Defendant is alleged to have fired a weapon at another adult individual. Allegedly, the shooting occurred following an argument over a dice game.

In his Omnibus Motion, Defendant has filed a Motion for Writ of Habeas Corpus; a Motion to Sever; a Motion for Disclosure of 404 (b) Evidence; a Motion to Disclose Existence of and Substance of Promises of Immunity, Leniency or Preferential Treatment including a Motion for a Complete NCIC and J-NET Criminal History; a Motion to Suppress Identification; and a Motion to Reserve Right. A hearing was held before the Court on February 17, 2010 at which time the Commonwealth presented the testimony of Corporal Jody Miller of the Williamsport Bureau of Police in connection with the Motion to Suppress. As well, argument was held on the remaining Motions and with respect to the Motion for Writ of

Habeas Corpus, the Commonwealth indicated that it intends to introduce the transcript of a preliminary hearing that was held before the Honorable Kenneth D. Brown, Senior Judge, on November 24, 2009 and December 9, 2009.

By way of background, a preliminary hearing was originally scheduled and subsequently waived after a plea agreement was negotiated. The Commonwealth, however, refused to honor the plea agreement and the cases were remanded for a preliminary hearing before Senior Judge Brown.

With respect to the Motion for Writ of Habeas Corpus before this Court, Defendant submits that the admissible evidence before Senior Judge Brown did not make out a prima facie case on any of the charges. This Court is of the opinion, however, that under the Coordinate Jurisdiction Rule, it cannot overrule Senior Judge Brown in connection with the sufficiency of the evidence issue.

Under the Coordinate Jurisdiction Rule, judges of coordinate jurisdiction sitting in the same case should not overrule each other's decision. This is premised on the sound jurisprudential policy of fostering finality in pretrial proceedings. The rule bars a transferee court from disturbing the findings of fact and conclusions of law of the transferor court except under exceptional circumstances. Commonwealth v. Star, 664 A.2d 1326 (Pa. 1995).

Those circumstances which may permit a transferee court to decide a similar issue involving the same parties differently than the previous court would involve intervening changes in the law or facts or if the purposes of the rulings are different. Star, supra. In this case, however, the Defendant has not advanced any argument or presented any evidence that would compel this Court to overrule the decision of Senior Judge Brown.

A decision on a Petition for Habeas Corpus determines whether the evidence is sufficient to proceed further. This is the same sufficiency of evidence issue which is determined at a preliminary hearing. In this case, the preliminary hearing was held before a judge of coordinate jurisdiction and involves the same issues and the same parties as the Petition for Habeas Corpus would. Accordingly, the Court denies the Defendant's Petition for Habeas Corpus.

With respect to Defendant's Motion to Sever, the Commonwealth has agreed to sever the two Informations. The trial at No. 1772-2008 shall be conducted separately from the trial at No. 1092-2009.

With respect to Defendant's Motion for Disclosure of Rule 404 (b) evidence, the Court will not proactively require the Commonwealth to comply with its obligations under Rule 404 (b). Accordingly, the Motion is denied. This is without prejudice to the Defendant to raise any objections he wishes to raise regarding the disclosure of the 404 (b) evidence if any including objections to the timeliness of the disclosure.

With respect to Defendant's Motion to Disclose Brady information, the Commonwealth is bound to disclose any and all Brady information. Again, the Court will not require the Commonwealth to provide information which it is required to otherwise under the law.

To the extent the Defendant requests that the District Attorney provide to him copies of the computer-generated NCIC and JNET forms, the Court grants the Defendant's request. The Commonwealth is directed to provided to Defendant copies of the computer-

generated NCIC and JNET forms regarding the Defendant and all Commonwealth witnesses to the extent those generated forms contain *Brady* information and/or the Defendant's prior record.

With respect to the Defendant's Motion to Suppress Identification, Defendant argues that the photographic lineup was unduly suggestive for several reasons which include the fact that the photo array has the term "JNET" on the actual paper which depicts the photos and allegedly implies that people are involved in the criminal justice system, that only eight photographs were utilized, that 50 percent of the individuals in the photo array were wearing white t-shirts, that the officers went to the residence to ask the alleged eyewitnesses to view an array and that at some time during the photo array, the officer told the reluctant witnesses to "do the right thing" or to "protect the community".

A photographic identification is unduly suggestive if, under the totality of the circumstances, the identification procedure creates a substantial likelihood of misidentification. Commonwealth v. Dejesus, 580 Pa. 303, 860 A.2d 102 (2004). In reviewing the totality of the circumstances, the Court is not convinced that the identification procedure created a substantial likelihood of misidentification.

Following the alleged incident, law enforcement officers interviewed at least three alleged eyewitnesses. The eyewitnesses provided the officers with a physical description of the "shooter" which fit the general description of the Defendant. As well, at least one eyewitness provided law enforcement with a description of an individual who was involved in a prior incident noting that this individual was the same individual who was involved in the shooting.

Through investigation, law enforcement determined that the Defendant was a possible suspect. Defendant's photograph was retrieved from a law enforcement database and inserted in a photo array computer program. The computer program then randomly selected numerous photographs of individuals who had the same physical characteristics as those of the Defendant. This computer-generated compilation was then reviewed by Corporal Miller of the Williamsport Bureau of Police. Corporal Miller selected seven photographs similar to the Defendant. Then the computer randomly placed the suspect's photo and the seven similar photographs and generated a photo array of the eight photographs. Corporal Miller saved this array, printed it, and showed it to the eyewitnesses. The Court viewed the photographic arrays and there is nothing in the photographs that suggest that they would create a substantial likelihood of misidentification. The JNET description on the photographs is of little significance in that there is no testimony that the witnesses knew what it meant or why it was on the array.

With respect to the procedures utilized in the identification process, there is nothing to indicate undue suggestiveness. All three witnesses were contacted at their home and requested to go to the "management office" for the purpose of looking at some photos. Upon going to the office, they were told by Corporal Miller that if they recognized any individual to let him know who it was and how they knew the person. There was no testimony whatsoever that the witnesses were prompted to select an individual photo or that they were somehow directed to the photograph of the Defendant, which all three of them allegedly circled or identified.

All of the witnesses had an opportunity to view the Defendant at the time of the crime, there was little if any discrepancies between the description of the Defendant and the description supplied by the witnesses, the photo array was conducted in an objective and non-suggestive manner, at least one witness previously identified the Defendant as being involved in another incident, the one witness quickly identified the Defendant in the photo array while the other witnesses somewhat reluctantly did so and the arrays were conducted within days of the incident.

In considering the totality of all of the circumstances, the Court concludes that the procedure utilized was not unduly suggestive and, accordingly, denies Defendant's Motion to Suppress.

Finally, with respect to Defendant's Motion to Reserve Right, the Defendant is granted 30 days from receipt of any additional discovery to file any supplemental Pretrial Motions pursuant to the Pennsylvania Rules of Criminal Procedure.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Edward J. Rymza, Esquire
Eric Linhardt, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File