

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
vs. : **No. CR-1260-2009**
 :
DAMONTRAY TAYLOR, :
Defendant :

OPINION AND ORDER

Before the Court is the Commonwealth’s oral Motion requesting the Court to take judicial notice of facts necessary to meet to the Commonwealth’s burden of establishing that the two-year mandatory minimum sentence applies pursuant to 18 Pa. C.S.§ 6317.

By way of background, following a jury trial on March 11, 2010, the Defendant was found guilty of possession with intent to deliver a controlled substance and other related charges. Immediately following the guilty verdict, the Commonwealth gave notice to the Defendant and the Court that it would be seeking the mandatory minimum. By written notice filed on March 17, 2010, the Commonwealth indicated that it would pursue the mandatory two-year minimum sentence pursuant to 18 Pa. C.S. § 6317. Defendant’s sentencing was scheduled for May 12, 2010 before the undersigned. At the sentencing hearing, the Commonwealth requested that the Court take judicial notice that the arrest of the Defendant in the 600 Block of Campbell Street where he was found to be in possession with intent to deliver a controlled substance (PWID), “is in its entirety the property of the Campbell Street Community Center which contains a recreational center and playground”.

Judicial notice is intended to avoid the formal introduction of evidence in limited circumstances where the facts to be proved are so well known that evidence in support of them is unnecessary. Commonwealth v. Brown, 839 A.2d 433 (Pa. Super. 2003). In essence, the Commonwealth requests the Court to take judicial notice that the Defendant committed the

crime of possession with intent to deliver within 250 feet of the real property on which is located a recreational center and playground. The Commonwealth contends that the “600 Block of Campbell Street”, where the Defendant committed the crime of PWID, is the same property of the Community Center which contains both a recreational center and a playground area.

In support of this argument, the Commonwealth references the testimony of the affiant, Officer Jeremy Brown who at trial testified that he stopped the Defendant in the 600 Block of Campbell Street. To prove the location of the Community Center, the Commonwealth argues that the Court should take judicial notice of the Verizon telephone directory that lists the address of the Community Center as 600 Campbell Street. To further prove the location of the Community Center, the Commonwealth argues that the Court should take judicial notice of a bing.com plot map that purportedly shows a 600 Campbell Street address. Finally, the Commonwealth contends that the Community Center property “indisputably” contains both a recreational center and a playground area.

In order for the Court to take judicial notice of certain facts, they must be of a matter of common knowledge and derived from reliable sources whose accuracy cannot reasonably be questioned. Brown, supra., Pa. R.E. 201. Internet sites such as Mapquest which purport to establish distances between locations are not so reliable that their accuracy cannot reasonably be questioned. Brown, supra. A Court cannot take judicial notice of a Mapquest distance determination in order to invoke the mandatory sentencing provisions provided by 18 Pa. C.S. § 6317. Brown, supra.

Regarding the Verizon phonebook, it cannot be concluded that the addresses contained in such are not subject to reasonable dispute or whose accuracy cannot reasonably be questioned. The Court has not found, nor has it been provided with any case authority supporting taking judicial notice of addresses in phonebooks.

Even if the Court did take judicial notice of the address of the Community Center by utilizing the phonebook, the Court has no basis to conclude that the Center “indisputably” contains both a playground and recreational center. Judicial knowledge is different from judicial notice.

Certainly, this Court would abuse its discretion if it took judicial notice of all of the proposed facts necessary for the Commonwealth to meet its burden. Indeed, the facts that the Commonwealth contend are of unquestionable accuracy are not. Judicial knowledge of the area demonstrates contrary facts. While the “address” of the Community Center may be the 600 Block of Campbell Street, the Community Center property actually is bordered by Memorial Avenue, Campbell Street and Little League Boulevard. This is an entire one block south of where the Commonwealth claims the property is located. Moreover, the 600 Block of Campbell Street where the Defendant was stopped goes from Memorial Avenue north to Park Avenue and encompasses numerous residential homes.

The Court will not take judicial notice of the proposed facts as requested by the Commonwealth. Accordingly, the Commonwealth has failed to meet its burden of proving by a preponderance of evidence that the Defendant was convicted of a predicate offense that occurred within 250 feet of the real property on which is located a recreational center or

playground. In imposing its sentence, the Court will not apply the mandatory minimum sentence pursuant to 18 Pa. C.S. § 6317.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Paul J. Petcavage, Esquire (ADA)
Robert Cronin, Esquire (PD)
Court Administrator
Gary Weber, Esquire (Lycoming Reporter)
Work File