IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	**No. CR-1478-2913**
	:	
vs.	:	
	:	
	:	**Opinion and Order re**
CHARLES ENGLISH,	:	**Defendant's Omnibus Pre-trial Motion**
Defendant	:	

OPINION AND ORDER

This matter came before the court on Defendant's Omnibus Pretrial Motion. The court held hearings on the motion on December 6, 2013 and January 22, 2014. The relevant facts follow.

On July 18, 2013, police and other emergency personnel were dispatched to the Sheetz in the 100 block of Maynard Street to respond to a hit and run accident in which a silver vehicle with the license plate JGE8425 collided with a red or maroon vehicle and then fled the scene. According to witnesses who called 911, the silver vehicle contained 3 or 4 occupants.

Dispatch received several reports from different witnesses describing the occupants, not all of which were entirely consistent. A female witness at or near 835 First Street reported seeing the vehicle at Maynard and First Streets when a black male got out of the vehicle and took off running. The black male was wearing a dark blue shirt and shorts with gold stripes and was headed east on School Alley. An officer on that street, however, indicated that nobody was walking on School Alley.

Another dispatch broadcasted a report of two black male passengers with white shirts walking north on Maynard Street from First Street and another black male

fleeing the vehicle and going east on Second Street, possibly to Walnut Street. The individual fleeing the vehicle was seen shoving something down his pants as he was exiting the car. This individual was described as a heavy set black male (about 200-220 pounds) wearing blue shorts with gold stripes and either a white or gray shirt, who was going east in the alley. Shortly thereafter, another dispatch indicated that gray boxer briefs were showing under the shorts and the individual was 5'5" and 220 pounds. Subsequent calls indicated that this individual was walking in the area of Walnut Street and Little League Boulevard.

A silver Buick Lacrosse with front end damage and license plate JGE8425 was discovered in the 800 block of First Street.

Justin Ottaviano, a Williamsport police officer who was in the area of Walnut Street and Little League Boulevard, asked for a better location and was advised that the individual was walking east on Lycoming Street. Officer Ottaviano then observed two black males walking in the 500 block of Lycoming Street, one of whom was a heavy set individual wearing a white t-shirt and blue shorts with gold stripes down the sides. As the black males turned the corner onto Locust Street, Officer Ottaviano and his partner pulled over and exited their vehicle. One drew his firearm and the other drew a taser and they ordered the black males to stop. Officer Ottaviano ordered the black male who was wearing the blue shorts with gold stripes, later identified as Defendant, to put his hands up and get up against the wall of a nearby store. He frisked him for weapons. During the frisk, Officer Ottaviano felt what he immediately recognized as a bundle of heroin in Defendant's right shorts pocket. He pulled the heroin out of Defendant's shorts, handcuffed him and arrested him for possession of controlled substances.

As a result of a search incident to Defendant's arrest, the police discovered 46 baggies of heroin wrapped in 4 bundles; 3 cell phones; 3 wads of currency totaling approximately $5300; and a key and key fob for a Buick. The key fit the Buick that was abandoned on First Street.

Sergeant Matthew Jodun, of the Penn College police, transported a witness, Jonathan Grove, from First Street to Locust and Lycoming Streets where Defendant and the other black male were being detained for the purpose of a "show up." Mr. Grove noted that Defendant was the same general height and weight as the individual that he observed leaving the vehicle and he was wearing a shirt and shorts that matched the description he had given to the police, but he also noticed that Defendant was wearing bright green footwear. He did not remember the individual who he saw leaving the vehicle wearing such brightly colored footwear, which he would have noticed, so he could not positively identify Defendant as the individual who fled from the vehicle. Mr. Grove was positive the individual was wearing gray boxer shorts. Defendant's boxer shorts were not showing when Mr. Grove was asked to make his identification. As he was transporting Mr. Grove back to First Street, Sergeant Jodun learned that Defendant was wearing gray boxer shorts.

Officer Ottaviano filed a criminal complaint against Defendant charging him with possession with intent to deliver a controlled substance, possession of a controlled substance, possession of drug paraphernalia, accidents involving damage to attended vehicle or property, and careless driving.

Defendant filed an omnibus pretrial motion.

The first three issues asserted in Defendant's omnibus pretrial motion seek

habeas corpus relief or dismissal of count 4, accidents involving damage to attended vehicle or property for the following reasons: (1) the Commonwealth did not present prima facie evidence to establish that Defendant was the driver of the vehicle involved in the accident on Maynard Street; (2) the Commonwealth did not present a prima facie case that the other vehicle was damaged; and (3) the charge was filed under the wrong subsection of the Vehicle Code. The court cannot agree with any of Defendant's assertions.

At a habeas corpus proceeding, the issue is whether the Commonwealth has presented sufficient evidence to prove a prima facie case against the Defendant. See Commonwealth v. Williams, 911 A.2d 548 (Pa. Super. 2006); Commonwealth v. Carbo, 822 A.2d 60, 75-76 (Pa. Super. 2003). A prima facie case exists when the evidence sufficiently establishes "both the commission of a crime and that the accused is probably the perpetrator of that crime." Commonwealth v. Packard, 767 A.2d 1068, 1070 (Pa. Super. 2001).

The court must view the evidence and all reasonable inferences to be drawn from the evidence in a light most favorable to the Commonwealth. Commonwealth v. Santos, 583 Pa. 96, 101, 876 A.2d 360, 363 (2005), citing Commonwealth v. Huggins, 575 Pa. 395, 836 A.2d 862, 866 (2003). A prima facie case "merely" requires evidence of each element of the offense charged; not evidence beyond a reasonable doubt. Id.

The Commonwealth established a prima facie case that Defendant was the driver of the silver vehicle involved in the accident in the 100 block of Maynard Street. At the preliminary hearing, Carl Ardabel testified that, as he was turning into Sheetz, he saw a silver car and before he knew it he was hit. The driver of the silver vehicle was a black male, who was between 6' to 6'4", weighed approximately 200-220 pounds and was wearing a

white shirt.

Shortly after the accident, Jonathan Grove and Christopher Gilmour were leaving their employment in the 800 block of First Street when they observed a smashed silver Buick pull into the yard of an abandoned house across the street. A stocky black male wearing a white or gray t-shirt and blue shorts with gold stripes exited the vehicle and walked away.

The description of the driver was dispatched to police. Officer Ottaviano stopped a stocky black male wearing a white t-shirt and blue shorts with gold stripes. This individual was subsequently identified as Defendant. Defendant had a Buick key in his pocket, which was the ignition key for the smashed Buick that was abandoned on First Street.

From this evidence and the reasonable inferences that can be drawn from the evidence, a reasonable jury could conclude that Defendant was the driver of the silver vehicle that was involved in the accident, he left the scene of the accident, drove to First Street, abandoned the vehicle and walked to the area of Lycoming and Walnut Street where he was stopped by Officer Ottaviano.

The evidence presented at the preliminary hearing also supports the conclusion that there was damage to Mr. Ardabel's vehicle. Although it would have been helpful if the Commonwealth had expressly questioned Mr. Ardabel about the damage sustained in the hit and run, Mr. Ardabel testified that he was dazed because of the airbag, the dust and everything. He looked up and about ten people came over, asking him if he was alright.

It is clear from Mr. Ardabel's testimony that the impact of the collision was sufficient to cause the airbag to deploy and cause bystanders to be concerned about Mr. Ardabel's well-being. While the court does not know what other repairs were needed to the vehicle Mr. Ardabel was driving, certainly the airbag needed to be replaced.

Defendant also claims that he is entitled to dismissal of Count 4, because the Information indicates that the failure to render aid is a violation of section 3734 when in actuality section 3734 deals with a violation for a driver operating without lights on a motor vehicle for the purpose of avoiding identification or arrest.

Count 4 of the Information states:

> **COUNT 4 – ACCIDENT INVOLVING DAMAGE TO ATTENDED VEH/PROPERTY- (MISDEMEANOR 3)**
>
> The Actor was the drive [sic] of a vehicle involved in an accident resulting in damage to a vehicle or other property attended by any person and failed to immediately stop said vehicle at the scene of the accident or as close thereto as possible, and failed to fulfill the requirements of Section 3744, relating to duty to give information and render aid, in violation of Section 3734 [sic] of the Pennsylvania Motor Vehicle Code, Act of June 17, 1976, 75 Pa. C.S. Section 3743(a).

Although there are typographical errors in portions of the description of Count 4 of the Information, when the entire description is read as a whole it sufficiently puts Defendant on notice of the correct violation. The citation to the Vehicle Code contains the correct section number and it is clear that the first reference merely transposed the last two digits.

Defendant next asserts that he is entitled to suppression of the fruits of the search of his person, because the police lacked probable cause or reasonable suspicion to effectuate the seizure of and detention of Defendant.

The police must have probable cause before making an arrest or custodial

detention. Commonwealth v. Goldsborough, 31 A.3d 299, 306 (Pa. Super. 2011).

> Probable cause is made out when the facts and circumstances which are within the knowledge of the officer at the time of the arrest, and of which he has reasonably trustworthy information, are sufficient to warrant a [person] of reasonable caution in the belief that the suspect has committed or is committing a crime. The question we ask is not whether the officer's belief was correct or more likely true than false. Rather, we require **only a probability**, and not a *prima facie* showing, of criminal activity. In determining whether probable cause exists, we apply a totality of the circumstances test.

Goldsborough, supra, quoting Commonwealth v. Williams, 2 A.3d 611 (Pa. Super. 2010)(en banc), *appeal denied*, 19 A.3d 1051 (Pa. 2011)(internal citations and quotation marks omitted)(emphasis in original)

The police must have reasonable suspicion before subjecting a person to an investigative detention. Commonwealth v. Goldsborough, supra, citing Commonwealth v. Cottman, 764 A.2d 595 (Pa. Super. 2000).

> Reasonable suspicion exists only where the officer is able to articulate specific observations which, in conjunction with reasonable inferences derived from those observations, led him to reasonably conclude, in light of his experience, that criminal activity was afoot and that the person he stopped was involved in that activity. Therefore, the fundamental inquiry of a reviewing court must be an objective one, whether the facts available to the officer at the moment of intrusion warrant a [person] of reasonable caution in the belief that the action take was appropriate.

Goldsborough, supra, quoting Commonwealth v. Jones, 874 A.2d 108, 116 (Pa. Super. 2005)(internal citations and quotation marks omitted).

"The key difference between an investigative and a custodial detention is that the latter 'involves such coercive conditions as to constitute the functional equivalent of an arrest.'" Goldsborough, supra (citations omitted).

> The court considers the totality of the circumstances to determine if an encounter is investigatory or custodial, but the following factors are specifically considered: the basis for the detention; the duration; the location; whether the suspect was transported against his will, how far, and why; whether restraints were used; the show, threat or use of force; and the methods of investigation used to confirm or dispel suspicions.

Id., *quoting* Commonwealth v. Teeter, 961 A.2d 890, 899 (Pa. Super. 2008). The mere fact that the police draw their weapons does not automatically turn an investigatory detention into an arrest. See Commonwealth v. Ferraro, 352 A.2d 548, 551 (1975).

Based on the totality of the circumstances, the court finds that Officer Ottaviano's initial contact with Defendant was an investigatory detention that did not rise to the level of an arrest until after he discovered controlled substances during his pat down of Defendant. Although a weapon and a taser may have been drawn for officer safety, such did not transform the investigatory detention into an arrest. Defendant was stopped in public, he was not transported against his will, and no restraints were used until after he was arrested for the controlled substance violations.

Officer Ottaviano stopped Defendant to confirm his belief that Defendant was the driver of the silver vehicle involved in the hit and run accident. Officer Ottaviano had reasonable suspicion to believe that Defendant was the driver. Defendant generally met the description of the driver of the silver vehicle. The color of the individual's shirt and his height and weight varied somewhat among the witnesses. The driver of the other vehicle described the individual as a black male wearing a white shirt who was between 6' and 6'4" tall. The witnesses on First Street described the individual as a stocky black male wearing a white or gray shirt and blue shorts with gold stripes. They estimated his weight as between

200 and 220 pounds and his height around 5'5". Although there was one witness who stated that the individual's shirt was blue and that description also was dispatched over the radio, most of the witnesses indicated that the individual was wearing a white or gray shirt.

The witnesses on First Street also described the individual's direction of travel. As the dispatches progressed, the individual was seen in the area of Walnut and Lycoming Streets.

Officer Ottaviano observed Defendant, a stocky or heavyset black male wearing a white shirt and blue shorts with gold stripes, in the area of Walnut and Lycoming Streets and stopped him, just as any other reasonable person in his situation would do.

Defendant makes much of the fact that, in response to routine booking questions, he indicated that his height was 6' and his weight was 260 pounds. He also notes that none of the witnesses described his lime green sneakers.

These circumstances do not negate Officer Ottaviano's reasonable suspicion. Witnesses frequently do not remember every detail of an individual's appearance or clothing. Thus, it does not surprise the court that the witnesses did not describe the individual's sneakers. Furthermore, just because Defendant's height and weight are reported as 6' and 260 pounds on the booking sheet does not necessarily mean this information is accurate. Various information regarding Defendant's driver's license is listed on the second page of Defendant's Exhibit 1. On this document, Defendant's height is listed as 5'11". Regardless of Defendant's exact height and weight, he met the description of a stocky or heavy set black male wearing blue shorts with gold stripes.

Defendant also contends that Officer Ottaviano lacked reasonable suspicion to conduct a pat down search. Again, the court cannot agree.

At the suppression hearing, Officer Ottaviano testified that he frisked Defendant because he was concerned for officer safety based on a dispatch that the driver retrieved something from the vehicle and stuffed it down his pants. This testimony was supported by the recording and transcript of the 9-1-1 communications. At 15:41:53, dispatch stated: "Okay[,] he was seen as he was exiting the car shoving something down his pants." Similarly, at 15:46:34, dispatch relayed specifically to Officer Ottaviano, "Watch his hands – he stuffed something down his pants." The court finds that these dispatches gave Officer Ottaviano a basis to believe Defendant was armed and dangerous, justifying a pat down search for weapons.

Defendant argues that the pat down was unlawful because the officer testified on cross examination at the preliminary hearing that he automatically conducts a pat down for weapons anytime he stops somebody to make sure they are not armed. Regardless of what Officer Ottaviano does in other cases, he had a specific basis to conduct a pat down in this case. Therefore, Defendant's claim that the pat down was unlawful lacks merit.

Defendant next seeks suppression of the results of the show up because it was highly suggestive, giving rise to an irreparable likelihood of misidentification.

> In reviewing the propriety of identification evidence, the central inquiry is whether, under the totality of the circumstances, the identification was reliable. The purpose of a "one on one" identification is to enhance reliability by reducing the time elapsed after the commission of the crime. "Suggestiveness in the identification process is but one factor to be considered in determining the admissibility of such evidence and will not warrant exclusion absent other factors." As this Court had explained, the following factors are to be considered in determining the

> propriety of admitting identification evidence: "the opportunity of the witness to view the perpetrator at the time of the crime, the witness' degree of attention, the accuracy of his prior description of the perpetrator, the level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation. The corrupting effect of the suggestive identification, if any, must be weighed against these factors. Absent some special element of unfairness, a prompt "one on one" identification is not so suggestive as to give rise to an irreparable likelihood of misidentification.

Commonwealth v. Moye, 836 A.2d 973, 976 (Pa. Super. 2003), *quoting*, Commonwealth v. Meachum, 711 A.2d 1029, 1034 (Pa. Super. 1998), *appeal denied,* 556 Pa. 689, 727 A.2d 1119 (1998).

Here, there was not any special element of unfairness. The witness observed Defendant abandoning the vehicle in broad daylight from across the street. His prior description of the perpetrator was accurate. According to the 9-1-1 recordings, the hit and run occurred at approximately 15:31:52 and the show up occurred at 15:55:00. Therefore, the time between the crime and the confrontation was little more than twenty-three minutes. Although the witness was not certain, because Defendant was wearing lime green footwear and the witness did not notice the individual's footwear, Defendant otherwise matched the description. Accordingly, the court will deny Defendant's request to suppress any identification testimony from the show up.

Defendant also seeks suppression of the results of the ion scan conducted on funds seized from Defendant on the basis that the money was the fruit of the illegal search. Since the court has found that the search was not illegal, it will deny Defendant's request to suppress the results of the ion scan.

Defendant next asserts that the evidence seized as a result of the search of the

automobile pursuant to a search warrant should be suppressed because the probable cause came to light as a result of the illegal search of Defendant's person; and the affidavit of probable cause was deceptive and inaccurate. The court already found that the search of Defendant's person was lawful, so the court will not suppress on that basis.

Defendant contends that the affidavit of probable cause was deceptive and inaccurate because it failed to disclose the following information: (1) the suspected driver was described as wearing a blue shirt, but Defendant was not wearing a blue shirt at the time of the interaction with the police; (2) the suspected driver was described as being 5'5" tall and Defendant was at least 6'0" tall; (3) the suspected driver was described as weighing 200 pounds and Defendant weighed 260 pounds; (4) none of the descriptions of the suspected driver mentioned lime green footwear and Defendant was wearing such footwear when he was seized; and (5) the affidavit asserted that Jonathan Grove had positively identified Defendant when the recordings establish that he did not.

It would have been helpful if the parties had submitted the affidavit of probable cause as an exhibit in this case. Nevertheless, the court does not believe the alleged inaccuracies negate probable cause in this case.

Most of the witnesses described the suspected driver as wearing a white or gray shirt, not a blue shirt. Defendant was wearing a white shirt. Furthermore, as Lieutenant Helm credibly explained in his testimony at the suppression hearing, sometimes things get transcribed incorrectly and "blue shorts" are misinterpreted as a "blue shirt". In this case, it appears that one of the witnesses or the dispatcher incorrectly reported that the shirt was blue, when in fact, blue was the correct description of the individual's shorts. Therefore, the

court does not believe the affidavit was inaccurate or deceptive with respect to the color of the individual's shirt if it did not state that the driver was wearing a blue shirt.

Similarly, there were variations in the witness descriptions of the suspected driver's height and weight. Lieutenant Helm testified that he spoke to the witnesses in the 800 block of First Street. Those witnesses told him that the driver was a stocky black male. They looked at Lt. Helm and said that the driver was a little taller than he was. Lt. Helm knew he was 5'5" tall. Therefore, information was relayed to dispatch that the suspect was a heavy set black male, 5'5"tall and about 200-220 pounds. At that time, however, no one had spoken to the driver of the vehicle that was struck in the hit and run. At the preliminary hearing, Carl Ardabel testified that the suspect was between 6'0" and 6'4" tall. It also must be remembered that the witnesses were **estimating** the suspected driver's height and weight. They didn't have a tape measure and a scale to obtain his exact measurements or weight.

Since none of the witnesses described the suspect's footwear, it also is not surprising that the police did not include the fact that Defendant was wearing lime green footwear in the affidavit of probable cause.

The court also recognizes that the lime green footwear prevented Mr. Grove from being sure or positive that Defendant was the driver of the silver vehicle. At that time, however, Mr. Grove did not know that Defendant was wearing gray boxers underneath his shorts like Mr. Grove saw on the individual who got out of the smashed silver Buick or that the police found a Buick key when they searched Defendant incident to his arrest for controlled substance violations.

Probable cause is determined from the totality of the circumstances. The

court finds that, despite Defendant's allegations regarding inaccuracies, probable cause existed to search the Buick. The suspected driver was a heavy set black male wearing a white or gray shirt and blue shorts with gold stripes. Defendant is a heavy set black male who, on the night in question, was wearing a white shirt and blue shorts with gold stripes. Officer Ottaviano located Defendant in the area of Lycoming and Walnut Streets consistent with a report of the area where the suspect was last seen. Defendant was found in possession of a Buick key, as well as controlled substances, cell phones and a large amount of cash. The key was the ignition key for the smashed Buick that was abandoned on First Street. Under these facts and circumstances, a reasonable officer would expect to find evidence and information relevant to the hit and run and Defendant's controlled substance violations inside the abandoned silver Buick.

Defendant seeks suppression of the car key seized from his person as fruit of the poisonous tree of any illegal detention and search. Officer Ottaviano had reasonable suspicion to stop Defendant to confirm his belief that he was the driver involved in the hit and run accident. Based on the dispatches that the individual was seen shoving something down his pants as he was exiting the silver vehicle, Officer Ottaviano had a basis to believe Defendant may be armed and dangerous, so he conducted a pat down of Defendant for officer safety. During the pat down, Officer Ottaviano felt what he immediately recognized as a bundle of heroin in one of the pockets of Defendant's shorts. He retrieved the heroin and arrested Defendant for controlled substance violations. During the search incident to Defendant's arrest, Officer Ottaviano discovered a Buick car key. Since the key was not discovered during an illegal detention and search, Defendant's motion to suppress the key

will be denied.

At the hearing on Defendant's motion, defense counsel indicated that the Commonwealth responded to his motion to disclose any promises of immunity, leniency or preferential treatment contained in Section L of his motion. Therefore, this portion of the motion is moot.

In subpart M of his Omnibus motion, Defendant requests an order requiring the Commonwealth to disclose to him any other crimes, wrongs or acts which may be admissible at trial pursuant Pa.R.E. 404(b). Rule 404(b)(3) requires the prosecutor to provide reasonable notice in advance of trial, unless pretrial notice is excused by the court on good cause shown, of any such evidence the prosecutor intends to introduce at trial. Therefore, the court will grant Defendant's request and direct the Commonwealth to provide notice in accordance with Rule 404(b)(3) no later than the pretrial conference date in this case, which is currently scheduled for March 18, 2014.

Defendant also filed a motion to reserve the right to file additional pretrial motions with respect to any additional discovery provided by the Commonwealth either voluntarily or as ordered by the court. Rule 579 of the Pennsylvania Rules of Criminal Procedure state that the omnibus pretrial motion shall be filed within 30 days after arraignment, "unless opportunity therefor did not exist, or the defendant or defense attorney … was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown." The court will not issue a blanket order permitting additional pre-

trial motions. If new or additional discovery provides a basis for a motion that did not otherwise exist or of which defense counsel was unaware, such would fall within the express exceptions contained in Rule 579. Otherwise, Defendant must set forth good cause in a motion for leave of court to file an additional omnibus pretrial motion and attach a copy of the proposed omnibus motion.

Defendant also seeks habeas corpus relief with respect to Count 1, possession with intent to deliver a controlled substance or, in the alternative, an order precluding the Commonwealth from seeking a mandatory minimum sentence pursuant to 18 Pa.C.S. §6317, because the Commonwealth failed to present prima facie evidence of the "element" of a school zone/recreation area. In Alleyne v. United States, 133 S.Ct. 2151 (2013), the United States Supreme Court found that "[a]ny fact that, by law, increases the penalty for a crime is an 'element' that must be submitted to the jury and found beyond a reasonable doubt. Mandatory minimum sentences increase the penalty for a crime. It follows, then, that any fact that increases the mandatory minimum is an 'element' that must be submitted to the jury." 133 S.Ct. at 2155 (citation omitted).

Section 6317 provides for a mandatory minimum sentence of at least two years "if the delivery or possession with intent to deliver of the controlled substance occurred within $1,000 feet of the real property on which is located school, college or university or within 250 feet of the real property on which is located a recreation center or playground..." 18 Pa.C.S. §6317.

In light of the holding in Alleyne, the court finds that the Commonwealth also is required to present prima facie evidence of this "element" of the crime at Defendant's

preliminary hearing. While sufficient evidence was presented to establish a prima facie case that Defendant possessed a controlled substance with the intent to deliver it, no evidence was introduced at the preliminary hearing to establish Defendant's proximity to a school, college, university, recreation center or playground. Therefore, the court will grant Defendant's request to preclude the Commonwealth from seeking the "school zone" mandatory minimum sentence.

In the alternative, in accordance with the opinion and order in Commonwealth v. Shareaf Williams, Lyc. Cty. No. 1217-1013 (Feb. 6, 2103)(en banc), the court finds that section 6317 is unconstitutional.

ORDER

AND NOW, this ___ day of February 2014, in accordance with the foregoing Opinion, it is ORDERED and DIRECTED as follows:

1. At or before the time of the pretrial conference in this case, the Commonwealth shall provide notice to defense counsel of any wrongs, crimes or other bad acts evidence that it intends to introduce at trial pursuant to Pa.R.E. 404(b).
2. The Commonwealth is precluded from seeking a mandatory minimum sentence pursuant to 18 Pa.C.S. §6317 (related to drug-free school zones).
3. Defendant's motion to reserve right to file additional pretrial motions is granted, provided defense counsel receives new or additional discovery that provides a basis for an additional pretrial motion for which a previous opportunity did not exist or of which counsel was unaware.

4. In all other respects, Defendant's omnibus pretrial motion is denied.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Melissa Kalaus, Esquire (ADA)
Ronald Travis, Esquire
Work file