

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-1217-2014  
 :  
 ERICA LAMBERT, : Motion to Suppress; Motion in Limine  
 Defendant : Motion for Bail Modification

**OPINION AND ORDER**

Defendant Lambert is charged with two counts of hindering apprehension or prosecution, one count of false reports to law enforcement, and one count of tampering with physical evidence. Rashawn Williams, a defendant in another case is charged with criminal homicide and related matters. The charges against Mr. Williams arise out of an incident that occurred on June 1, 2014 at approximately 2:30 a.m. outside the Lamphouse Hookah Lounge in Williamsport, Pennsylvania during which Williams allegedly shot Aaron Lowrey and then fled at a high rate of speed in a gold, four-door sedan. Defendant's charges arise out of her allegedly helping Williams flee from the area by driving him to Danville, Virginia, making a false report to the police that Williams stole her vehicle, and deleting Williams' contact information from her phone.

Defendant filed three motions. The first is a motion to suppress seeking a court order precluding the Commonwealth from using a recorded interview of Defendant. The second is a motion in limine to preclude the Commonwealth from presenting any testimony or evidence concerning the homicide allegedly committed by Williams. The third is a motion for modification of bail. A hearing and argument on all three motions was held on March 19, 2015.

The bail motion was addressed following the hearing in a separate order. The parties attempted to reach a stipulation in connection with the motion in limine but were unsuccessful. Accordingly, this Opinion and Order will address first, Defendant's motion to suppress and then, the motion in limine.

As discussed during the hearing and argument in this matter, it is evident to the Court that Defendant's motion to suppress is more properly treated as a motion in limine. A motion in limine is a "pretrial request that certain inadmissible evidence not be referred to or offered at trial." BLACK'S LAW DICTIONARY 1109 (9<sup>th</sup> ed. 2009). A motion to suppress is a "request that the court prohibit the introduction of illegally obtained evidence at a criminal trial." *Id.* at 1110.

Defendant does not contend that the video tape of her interview with the police was illegally obtained in violation of any constitutional provision. Instead, Defendant contends that the evidence should be excluded as unfairly prejudicial under the Pennsylvania Rules of Evidence. Specifically, Defendant contends that pursuant to Rule 403 of the Pennsylvania Rules of Evidence, the Court may exclude relevant evidence if its probative value is outweighed by the danger of, among other things, unfair prejudice. Pa. R. E. 403. Accordingly, the Court will treat Defendant's motion to suppress as a motion in limine.

During the hearing the Commonwealth admitted, as Commonwealth's Exhibit 1, a copy of the videotaped interview with Defendant that took place at the Williamsport Bureau of Police (WBP) on June 4, 2014. The Court reviewed the videotape. At the very beginning of the video, Defendant is sitting in a chair next to a small desk in an interview room. The door to the

room is open. She is seen initially nodding her head up and down which is normally associated with a non-verbal “yes.” She then states: “I haven’t talked to him [Williams] since Sunday morning.” While she is saying this statement, her head is nodding back and forth which is normally associated with a non-verbal “no.” While the Court cannot tell if Defendant is visibly crying, her voice is somewhat shaken and emotional. One could interpret her demeanor as slightly crying. Soon thereafter it is evident that she was responding to either a question or a statement from a member of law enforcement who was also in the room, but could not be seen. He then makes a statement to her. She then notes that he parents will disown her and she wipes her eyes. Agent Raymond Kontz of the Williamsport Bureau of Police then enters the room. A discussion is held about the interview being recorded and Defendant agreeing to such. The apparent purpose of the interview was to respond to Defendant’s assertion that her vehicle was recently stolen.

The interview ends after approximately 26 minutes. It is apparent that Defendant was being questioned by both Agent Kontz and Lieutenant Arnold Duck of the Williamsport Bureau of Police. The interview ended by Defendant answering a particular question regarding her role in allegedly driving Williams. Defendant answered the question with a “no” and then got up out of her chair and walked out of the room with the law enforcement officers.

Defendant does not appear to argue that the videotape of her is not relevant. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.” Pa. R. E. 401; *Commonwealth v. Williams*, 91 A.3d 240, 242 (Pa. Super. 2014).

Much if not all of Defendant's statements during the interview are directly relevant to Count 3, false reports to law enforcement authorities. It is contended that Defendant lied during the interview when she claimed that her vehicle was stolen by Williams. As well, much of what Defendant asserts during the interview is relevant as circumstantial evidence with respect to the intent elements of Counts 1 and 2, and perhaps even Count 4. Specifically, the Commonwealth must prove that Defendant intended to hinder the apprehension, prosecution, conviction or punishment of Williams and, with respect to Count 4, tampered with physical evidence by impairing the availability of potentially inculpatory phone information. During the interview, Defendant made several statements that could be interpreted as proving that she was aware of the underlying conduct of Williams. She noted for example that she was informed that somebody was "shot" outside of the Hookah Lounge. She indicated that she was aware that Williams "was involved." She noted that she was concerned that she was involved with somebody who was "mixed up in trouble like this." She noted that she was concerned that she was seeing "somebody who could have possibly done something like this."

Moreover, actually viewing Defendant is also relevant. The jury can assess her demeanor as well as numerous other facts regarding Defendant's credibility and what weight, if any, should be given to her statements.

The Court finds, without any doubt, that the interview is highly probative.

Defendant argues that it should be excluded nonetheless, because its probative value is outweighed by the danger of unfair prejudice. Specifically, Defendant argues that there are portions of the interview that were not video/audiotaped; therefore, the jury would only see

“half the picture.” Defendant contends that when the audio/videotape began she was answering a question which was not depicted on the tape. Defendant contends that she was asked “when was the last time you spoke to him on the phone.” She argues that her answer to that question without the jury actually hearing the question would be misleading and could be interpreted by the jury differently than if the jury knew what question was asked.

The Court does not agree for several reasons.

First, approximately two minutes and forty seconds into the interview Defendant was asked specifically by Agent Kontz “when was the last time you talked to Dew [Williams]?” Defendant responds “not long after 4:00 a.m. on Sunday morning.” Defendant then goes into explaining certain aspects of her relationship with Williams and her contacts with him prior to her last contact. It is clear through what Defendant states, however, that after she saw Williams in person at the Hookah Lounge in the early morning hours, her conversations with him after that time were via phone calls and/or text messages. Accordingly, any alleged prejudice, mainly misleading or confusing the jury, is actually cured by Defendant’s own words through the remainder of the audio/videotape interview. Second, the Court fails to see how utilizing the audio-videotape constitutes unfair prejudice at all. Unfair prejudice means “an undue tendency to suggest a decision on an improper basis.” Pa.R.E. 403, comment; *Commonwealth v. Hairston*, 84 A.2d 657, 666 (Pa. 2014). It does not mean detrimental to the adverse party’s case. See *Commonwealth v. Rigler*, 488 Pa. 441, 412 A.2d 846 (1980)(“all of the prosecution’s evidence is intended to ‘prejudice’ the jury, and simply because it is damaging to the defense is no reason to exclude the evidence), *cert. denied*, 451 U.S. 1016 (1981). Harm alone does not justify the

exclusion of evidence at trial. *Commonwealth v. Kubis*, 978 A.2d 391, 395 (Pa. Super. 2009). Indeed, “[i]t will be difficult to conceive of a trial at which the prosecution’s evidence was not prejudicial to the defendant.” *Commonwealth v. Moore*, 389 Pa. Super. 473, 483, 567 A.2d 701, 706 (1989), *appeal denied*, 525 Pa. 597, 575 A.2d 563 (1990).

There is nothing about the audio/videotaped interview of Defendant which would, in the Court’s opinion, cause the jury to render a decision on an improper basis or to divert the jury’s attention away from its duty of weighing the evidence impartially.

Third, and as briefly referenced above, even if there was the danger of unfair prejudice, once the evidence is found to be relevant, it is inadmissible “only if its probative value is substantially outweighed by the danger of unfair prejudice or confusion.” *Commonwealth v. Lilliock*, 740 A.2d 237, 244 (Pa. Super. 1999), *appeal denied*, 568 Pa. 657, 795 A.2d 972 (2000). In balancing the probative value against any prejudicial effect, the Court does not find that the probative value is substantially outweighed by the danger of unfair prejudice but, to the contrary, the probative value is of such a weight that it is far more necessary than any danger at all of unfair prejudice.

In fairness to Defendant, who argued unfair prejudice during the argument in this matter, the Court notes that it may exclude relevant evidence as well, if its probative value is outweighed by the danger of confusing the issues or misleading the jury. Pa. R. E. 403. Defendant essentially argues confusion or misleading the jury under the umbrella of prejudice.

“The trial judge has broad discretion regarding the admission of potentially misleading or confusing evidence. *Sprague v. Walter*, 441 Pa. Super. 1, 39, 656 A.2d 890, 909 (1995), *app. denied* 543 Pa. 695, 670 A.2d 142 (1996).

Misleading or confusing the jury can best be described as presenting evidence with respect to the relevant issues which would require a significant digression or broach other unrelated issues. See *Commonwealth v. Thompson*, 93 A.3d 478, 493 (Pa. Super. 2014).

This is not a situation in which the Court is at all concerned that the presentation of the audio/videotape would confuse or mislead the jury. As referenced above, the audio/videotape statements of Defendant are extremely probative. Throughout the interview, Defendant explains in detail her alleged contacts with Williams such that her initial statement is explained. Indeed, the Court finds that the introduction of the audio/videotape would have no tendency to confuse or mislead the jury.

With respect to Defendant’s motion in limine regarding use of the word homicide, the parties presented to the Court their proposed versions of what would be acceptable. Defendant argues that informing the jury of a “homicide” unduly prejudices Defendant.

The Commonwealth proposal however does not reference any homicide and is different than Defendant’s in the amount of detail, including the use of the term “shooting” instead of “a felony offense.”

The Court will deny Defendant’s motion in limine, because the Commonwealth’s proposal is relevant and not unduly prejudicial. Further, the Court will instruct the jury at the appropriate time(s) as to the elements of the offenses against Defendant, distinguishing these

elements from the elements of any potential charges against Williams.

**ORDER**

**AND NOW**, this \_\_\_\_ day of March 2015, Defendant's motion to suppress filed on February 19, 2015, which the Court is treating as a motion in limine to preclude the Commonwealth from utilizing the partially recorded interview at trial, as well as Defendant's motion in limine with respect to using the word "homicide", are **DENIED**.

By The Court,

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Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)  
Jerry Lynch, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Work file