

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>COMMONWEALTH</b>	:	<b>No. CR-35-2013; CR-17-2013</b>
v.	:	<b>CR-63-2013; CR-1382-2013</b>
	:	
<b>REUBEN McDOWELL,</b>	:	<b>Omnibus Pretrial Motion</b>
<b>Defendant</b>	:	

**OPINION AND ORDER**

Before the Court are three motions filed by Defendant, who previously waived his right to counsel and is proceeding pro se. The first is Defendant's omnibus motion, the second is Defendant's motion in support of Defendant's omnibus motion, and the last is Defendant's amended omnibus motion.

Defendant faces numerous criminal charges contained in four separate Informations.

Information 17-2013 filed on January 31, 2013 charges Defendant with assault, burglary, robbery, criminal trespass, stalking, theft, receiving stolen property, simple assault, recklessly endangering another person and harassment. The crimes were alleged to have occurred on December 12, 2012. The criminal complaint was filed against Defendant on January 7, 2013.

The charges relate to an incident involving Jean Heller, an 86 year old female. On December 12, 2012, she went to the Giant Shopping Center in Loyalsock to buy groceries. She returned to her house at approximately 1:00 p.m. While in the process of bringing her groceries into the house from her car, she noticed the handle on the front door being moved. Thinking it was the mailman, she went to open the door, but was pushed back and fell on the floor. The intruder kicked the victim several times, located her purse, took her wallet and an envelope containing cash, and then left the home.

Information 35-2013 filed on February 8, 2013 charges Defendant with forgery, identity theft, theft from a motor vehicle, access device fraud and theft by unlawful taking. The crimes were alleged to have occurred as well on December 12, 2012.

Under this Information, Peggy Econumou, an 86 year old female, was grocery shopping at Aldi's in Loyalsock Township on December 12, 2012. While she was returning the shopping cart, Defendant allegedly stole her purse from her vehicle. Among the items taken from the purse was a credit card, which was subsequently used at Weis Markets. The surveillance video from Weis Markets showed an African American individual with sunglasses, a black hat and black coat. Similar clothing was eventually seized from a vehicle Defendant was operating. Furthermore, a subsequent search of Defendant's residence, pursuant to a search warrant, yielded items that were purchased on December 13 with the victim's credit card. Moreover, when Defendant was taken into custody, he admitted to the crimes. Specifically, he told police officers that while the victim was returning her cart, he saw an opportunity to take the purse. He removed it from the car and ultimately used the credit card at various locations.

Information 63-2013 filed on February 15, 2013 charges Defendant with robbery, theft by unlawful taking, receiving stolen property, recklessly endangering another person, simple assault and theft from a motor vehicle. These crimes were alleged to have occurred on December 7, 2012. The criminal complaint was filed against Defendant on January 22, 2013.

On December 7, 2012, while returning from grocery shopping, eighty-two year old Mary Mulauski stopped to check the movie times at the Williamsport Cinema Center. She

came in contact with an individual as she was getting into her car. She had thrown her purse on the other seat and a struggle ensued while her assailant was attempting to take the purse. The assailant eventually obtained the purse after pressing a pressure point on the victim's hand.

While subsequently in custody, Defendant admitted that he saw the victim in the parking lot area and acknowledged that she was older. He thought that he could take her purse without having to confront her but was surprised when she fought.

Information 1382-2013 filed on September 13, 2013 charges Defendant with robbery, stalking, theft by unlawful taking or disposition, receiving stolen property, harassment, burglary, criminal trespass, access device fraud, and theft from a motor vehicle. These crimes were alleged to have occurred between December 9, 2012 and December 16, 2012. The criminal complaint was filed against Defendant on August 27, 2013.

Under this Information, there were four alleged victims. The first was Alice Frei. In December of 2012 after returning to her home from the library and while trying to get into her apartment an individual grabbed her purse, stole it, ran to his car and drove away. Ms. Frei was 85 years old and resided in Williamsport. She had previously been shopping at the Wegman's grocery store in Williamsport.

On December 11, 2012 at approximately noon, Margaret Campbell, then 83 years old was unloading groceries. She had been previously shopping at the Giant in Loyalsock. While putting away her groceries, she placed her purse on a chair inside her front door. After she had put all of the groceries on the table, she started looking for her purse, but it was gone. It was eventually returned to her a few hours later by a third party who indicated that it was found on the road "not too far." The cash in the purse had been taken.

A few hours later, at approximately 4:30 in the afternoon, an assailant entered the residence of Marthena Edkin, an 84 year old female who also resided in the Loyalsock area, shortly after she returned home from the Giant food store. The assailant stole money from Ms. Edkin's purse, which was on the kitchen counter.

On December 16, 2012 at approximately 4:00 in the afternoon Delores Montgomery, an 82 year old female, had her purse stolen from out of her vehicle at the Aldi's parking lot. She was returning her cart to the designated cart collection area. She observed the actor removing her purse and fleeing in a vehicle. Her purse was found nearby her residence and returned to her. Her credit cards had been used.

By Order of Court dated January 8, 2014, the Court granted the Commonwealth's motion to consolidate the charges and in turn denied Defendant's oral motion to sever. It was directed that all of the Informations as docketed above be tried together. By Order of Court dated May 12, 2015, the Court denied Defendant's motion to dismiss on Rule 600 grounds.

Numerous hearings were held in connection with Defendant's motions. Hearings were held on November 17, 2014; December 30, 2014; February 6, 2015; March 25, 2015; May 4, 2015; and July 8, 2015.

Following the July 8, 2015 hearing, the record was closed. By Order of Court dated August 4, 2015, it was directed that the Commonwealth provide to Defendant copies of CD's referenced by Trooper Matthew Sweet during his testimony. The Court also set a briefing schedule.

By Order of Court dated August 21, 2015, the Court granted Defendant's

extension request until October 5, 2015 to file his brief. Defendant's brief was mailed prior to the October 5, 2015 deadline and filed on October 6, 2015.

The Court recognizes that the Commonwealth's brief is not due until December 5, 2015; however, after review of Defendant's brief and in the interest of avoiding any further delay, the Court is able to render a decision without the Commonwealth filing its brief.

While clearly Defendant has a right to waive counsel and proceed pro se, he is not adequately trained in the law and unfamiliar with the requirements of law needed to prove the case against him. He is also unfamiliar with the many procedural rules that must be followed. He lacks experience and training in communication and argumentation skills which further complicates his defense. Finally, due to Defendant's lack of training and experience, he does not have sufficient skills to either clarify the issues that he is raising on his behalf or to defend against claims that the issues lack merit. Indeed, this Court finds itself taking a more active role in the proceedings and relaxing strict procedural rules, all in an attempt to ensure fairness for Defendant.

Without overstepping its bounds, this Court has at the very least suggested to Defendant that counsel be appointed to represent him. This Court's greatest concern can best be set forth by repeating the words of Justice Sutherland in *Powell v. Alabama*, 287 U.S. 45 (1932):

Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding

hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

*Id.* at 69.

Defendant has raised numerous issues in his respective motions. The Court has attempted on the record to clarify the issues. Throughout the course of the many hearings, it was necessary for the Court to repeat its prior decisions regarding what issues would be heard and what issues were summarily denied.

Admittedly, the Court is far from certain that Defendant understands the Court's prior rulings in connection with the respective issues. Indeed, in reviewing the brief submitted by Defendant, the Court is even further confused. Nonetheless, the Court will set forth the specific issues as the Court understands them, and as at least acknowledged by Defendant as being raised.

First, and with respect to all four Informations, Defendant contends that there was insufficient probable cause to arrest him on December 20, 2012. As a result of his alleged illegal arrest, Defendant contends that all of the evidence against him should be suppressed and that all of the Informations against him should be dismissed.

Second, with respect to all four Informations, Defendant contends that an arrest warrant was needed to arrest him on December 20, 2012 and because no arrest warrant was issued, all of the evidence must be suppressed and the Informations be dismissed.

Third, under Information No. 17-2013, Defendant claims that after he was arrested on December 20, 2012 he was not brought before a Magisterial District Judge (MDJ) without unreasonable delay. Accordingly, Defendant claims that this Information must be

dismissed.

Fourth, under Information No. 17-2013, the police did not have the lawful authority to seize, impound and search the vehicle he was driving. Accordingly, Defendant claims that the evidence seized from the vehicle pursuant to the initial inventory search and subsequent search pursuant to a search warrant must be suppressed.

Fifth, under Information No. 63-2013, Defendant contends that the Municipal Police Jurisdiction Act was violated and, accordingly, all of the charges against him should be dismissed.

Sixth, and under Information No. 63-2013, Defendant contends that there was a “failure to provide warrants.” Specifically, he contends that he was taken into custody without any criminal complaint or arrest warrant and, accordingly, the charges against him must be dismissed.

Finally, Defendant alleges that his identification by Ms. Heller was tainted and unduly suggestive. He alleges that this applies to Information No’s. 17-2013 and 63-2013. As a result, he contends that her identification must be suppressed.

The Court will first address issues one and two together. Defendant contends that, with respect to all four cases, he was illegally arrested on December 20, 2012. Specifically, he claims that an arrest warrant was needed and that there was insufficient probable cause.

Although Defendant’s brief cites applicable case law, it is difficult to fully comprehend Defendant’s arguments. Defendant’s brief is confusing and indicative of Defendant’s lack of legal education, training and experience.

Defendant contends that his arrest was illegal because “there is no verifiable documentation supporting the arrest on Hidden Valley Drive.” Defendant stresses that probable cause to arrest cannot exist where “the alleged arrest is not verified by a file (sic) police report or affidavit of probable cause.” Defendant argues as well that his arrest was without probable cause, because he was never charged with a crime against the alleged victim for his conduct on December 20, 2012 on Hidden Valley Drive. Defendant argues further that Trooper Sweet did not have the authority to make the probable cause decision; rather it had to come from a senior law enforcement officer on the scene.

Defendant also claims for various reasons that Trooper Sweet’s testimony is not credible. Defendant cites allegedly inconsistent statements by Trooper Sweet regarding, among other things, the stop of Defendant by law enforcement, Defendant’s location when he was stopped, if Defendant was in fact stopped by law enforcement or stopped by himself, why Defendant was taken into custody, and if Defendant committed a crime or an attempt to commit a crime.

Defendant states, “in this case, the PSP has failed to provide specific articulable facts which would support the arrest of the Defendant on the alleged grounds for which the Defendant was taken into custody.” As Defendant noted during his cross-examination of Trooper Sweet on December 30, 2014, his challenge to his arrest constitutes “the heart of the matter.” (December 30, 2014 transcript, p. 43).

Trooper Matthew Sweet of the Pennsylvania State Police testified on five different occasions including November 17, 2014; December 30, 2014; February 6, 2015; March 23, 2015; and July 8, 2015. Much of his testimony was duplicative but in an effort to



ensure that Defendant be given the opportunity to develop the record by eliciting facts in support of his respective arguments, the Court permitted extensive questioning of Trooper Sweet. In retrospect, and after reviewing the transcripts, the Court believes that it erred and apologizes to Trooper Sweet in particular for subjecting him to continued cumulative questioning.

On or about December 12, 2012, Trooper Sweet was assigned to investigate several recent robberies. He reviewed reports of some of the incidents and actually responded to the Heller incident. He developed some leads regarding the suspect and his vehicle (black male driving a silver/goldish/beige mid-sized SUV). He further identified a modus operandi (MO) of the suspect (robbing elderly women coming from or participating in shopping).

On December 13, 2012, he along with several other troopers began a surveillance detail. The surveillance team conducted surveillance from December 13, 2012 to December 15, 2012 and from December 17, 2012 to December 20, 2012. As the investigation proceeded, more leads were developed. The description of the possible suspect became more defined (black male, stocky, broad chested, bald, middle aged or elderly, clean shaven). As well, it appeared that certain stores or shopping centers were targeted including the Giant Plaza, Loyalsock Plaza and Aldi's. Further, the crimes would "generally" occur when the victims were either returning to their vehicles after shopping or returning home. As well, the suspect had used force in at least some of the incidents. Some of the victims were "attacked" within a minute or two of returning home. Others were outside while some had actually been inside their homes. Most of the crimes occurred between the late morning and approximately 5:00 p.m. All of the alleged victims were in their 80's and were women. Videos and pictures

from surveillance cameras were obtained and viewed. A Lycoming College surveillance camera depicted the suspect vehicle as a gold colored SUV. A Weis Market surveillance camera depicted the suspect. A picture was obtained of a suspect using a victim's stolen credit card. The suspect as viewed matched the description as given by the victims.

On December 20, 2012 at approximately 2:00 p.m., Troopers Sweet and Holmes were conducting undercover surveillance at the Giant Plaza. They observed Defendant pull his vehicle, a gold/ beige colored SUV, in front of their vehicle. Defendant was "acting very suspicious." Defendant kept pulling in and out of various parking stalls. Defendant was looking around and appeared very nervous. It "appeared to [the troopers] that he was looking for a potential victim."

Defendant eventually pulled his vehicle in front of an elderly woman, later identified as Mrs. Bendorf, who was putting some of her "groceries or merchandise in her vehicle." As soon as Mrs. Bendorf got in her vehicle and pulled out of the parking lot, Defendant followed her. Defendant followed Mrs. Bendorf "up to basically her residence." According to Trooper Sweet, "every move she made, he made." As Mrs. Bendorf turned onto the roadway to her residence, Hidden Valley Drive, Defendant turned on an adjacent roadway, Fairview Drive, in "very close proximity to her residence" and backed into a driveway. Trooper Sweet opined that Defendant was observing Mrs. Bendorf. Defendant was parked in "a very close vicinity." "It's basically across a tree line up to a residential area." Defendant then left the area, drove a few miles away, and then immediately returned "within minutes" actually driving up Hidden Valley Drive. Hidden Valley Drive ends in a cul de sac.

Defendant went past Mrs. Bendorf's house. He turned around in the driveway of

a residence “one house” away and traveled back down toward Mrs. Bendorf’s house. Mrs. Bendorf was still carrying groceries into her house with her trunk “still open.” “Before he could even stop [the troopers] ordered him to stop.” The troopers had blocked the roadway, surrounded Defendant’s vehicle and with guns drawn ordered Defendant out of his vehicle. Defendant did as directed. He was removed from his vehicle and immediately taken into custody. He was handcuffed and placed in a patrol unit.

The troopers were concerned that Defendant was going to rob Mrs. Bendorf. The troopers believed that a crime was occurring at that point. “He was in the commission of a crime or attempting to commit a crime.”

Defendant was specifically taken into custody “based on probable cause of a felony.” Specifically, “for the Heller case, [and] for all the other additional cases” that Trooper Sweet was investigating. As well, there was probable cause to believe that with respect to Mrs. Bendorf there was criminal activity afoot, mainly an attempted robbery. According to Trooper Sweet, Defendant’s activities that day “caused his arrest.”

After being transported to the state police barracks, Defendant was held for processing and then brought to an interview room. While at the barracks and after being Mirandized, the troopers questioned Defendant regarding his conduct that day. The troopers did not believe that Defendant was being truthful. As well, Defendant was confronted with evidence linking him to some of the other incidents including the Lycoming College surveillance video and a printout of certain purchases made on a stolen credit card. Defendant “made no confessions so to speak.”

After Defendant was transported to the barracks, Trooper Sweet and others

continued their investigation. Among other things, they interviewed Defendant; typed up search warrants for the car, Defendant's residence and Defendant's phone; spoke with the some of the victims from the prior incidents; spoke briefly with Mrs. Bendorf; prepared photo arrays; met with at least two prior victims who viewed the photo arrays and identified the Defendant; reviewed the investigative reports from the other incidents; conducted an inventory search of the car; obtained and executed a search warrant at Defendant's residence; conversed with the assistant district attorney on call; and typed up charges.

The search warrant was executed on Defendant's residence at approximately 10:00 p.m. Numerous incriminating items were seized. Defendant's vehicle was towed to the PSP impound "for processing." A custodial inventory search was initially conducted. A search warrant for the vehicle was obtained that day but not executed until the following day. The two searches of the vehicle uncovered several items of significance incriminating Defendant.

During extensive cross-examination, Trooper Sweet clarified the probable cause to arrest Defendant on December 20, 2012. It was based on "everything that [they] gathered throughout the investigation, modus operandi." They "watched" Defendant "stalking an elderly woman and...followed her home." Trooper Sweet believed that an "attempted robbery was afoot." As well, Trooper Sweet testified that he had probable cause to arrest Defendant for the crimes that "occurred previous to the day in question." Those crimes occurred on December 7<sup>th</sup>, 9<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup>, and 16<sup>th</sup>.

According to Trooper Sweet, "there was probable cause based on all of the investigations that we had going on, ongoing investigations of several robberies that were occurring, in which we felt that [Defendant] was the gentlemen that was involved in the

robberies based on probable cause we gathered, based on what we observed at the Giant parking lot and we were able to take [Defendant] into custody based on the probable cause of a felony for those crimes that had occurred previous to the day in question.” As well, the troopers “observed [Defendant] following an elderly woman back from the grocery store. The fact that [Defendant] didn’t get out of the vehicle, [he] didn’t take a substantial step toward that actual crime...we probably could have charged stalking or something else, but we decided not to, because we had numerous other violations that we were dealing with.”

No charges were filed against Defendant with respect to Mrs. Bendorf because she did not want “to be a victim” and the District Attorney’s office “didn’t feel there was a substantial step taken...to approve a charge of attempted robbery.”

As previously noted, Defendant argues that Trooper Sweet’s testimony is not credible. Candidly, this is nothing more than splitting hairs on insignificant issues. For example, Defendant argues that Trooper Sweet is not credible because the affidavit of probable cause notes that Defendant was observed following Mrs. Bendorf to “the area of her residence” when in fact Defendant did not initially drive on Hidden Valley Road but on the adjacent roadway. The distinctions and differences that Defendant draws in connection with the statements by Trooper Sweet and others do not impact on this Court’s assessment of Trooper Sweet’s credibility. The Court finds the testimony of Trooper Sweet to be credible.

Defendant argues that probable cause did not exist to arrest him, because no criminal complaint was filed against him in connection with the Bendorf incident. Defendant has not, and cannot, however, point to any legal authority that vitiates probable cause to arrest when subsequent criminal charges are not filed via an affidavit of probable cause and criminal

complaint.

Defendant argues as well that he could not be subsequently detained after it was decided that charges would not be brought against him in connection with the Bendorf incident. Defendant's argument, however, is without merit. First, the decision not to charge the Defendant with any crimes associated with the Bendorf incident was not made until many days later. As Trooper Sweet testified, the decision not to file "on Bendorf" was made "later on down the road." He was still being detained on those potential charges. As well, he was being detained on the other charges as testified to by Trooper Sweet. Those charges were actually filed against him. He was subsequently charged and arraigned within approximately eight hours in connection with the Heller incident. Trooper Sweet decided to file the Heller charges first because she positively identified him.

Defendant's final argument is that when he was arrested on December 20, 2012, there was insufficient probable cause. Curiously, during the hearings in this case, Defendant argued that he was being detained on reasonable suspicion for an investigative detention. Obviously and apparently unknown to Defendant, the standard for detaining an individual for reasonable suspicion is less exacting than for probable cause. The Court will not entertain any argument that Defendant was being detained pursuant to an investigation. He was clearly placed in custody and being held on an arrest. The issue is whether at the time Defendant was arrested, was there was probable cause to believe that he was engaged in criminal activity with respect to Ms. Bendorf and whether there was probable cause to believe that he had committed the other crimes.

Probable cause to arrest exists when the facts and circumstances within the police officer's knowledge and of which the officer has

reasonably trustworthy information are sufficient in themselves to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested. Probable cause justifying a warrantless arrest is determined by the totality of the circumstances.

*Commonwealth v. Weaver*, 76 A.3d 562, 565 (Pa. Super. 2013), quoting *Commonwealth v. Williams*, 941 A.2d 14, 27 (Pa. Super. 2008).

The Court must view the totality of the circumstances as seen through the eyes of a trained officer, and not as an ordinary citizen would view them. *Commonwealth v. Nobalez*, 805 A.2d 598, 600 (Pa. Super. 2002), appeal denied, 835 A.2d 709 (Pa. 2003). It is only the probability, and not a prima facie showing of criminal activity that is the standard of probable cause. *Commonwealth v. Thompson*, 604 Pa. 198, 985 A.2d 928, 931 (2009). Probable cause exists when criminality is one reasonable inference; it need not be the only inference. *Commonwealth v. Burnside*, 625 A.2d 678, 681 (Pa. Super. 1993). “Furthermore, probable cause does not involve certainties, but rather the factual and practical considerations of everyday life on which reasonable and prudent persons act.” *Commonwealth v. Simmen*, 58 A.3d 811, 817 (Pa. Super. 2012), citing *Williams*, supra.

Contrary to what Defendant claims, Trooper Sweet had sufficient probable cause to arrest Defendant for the conduct involving Mrs. Bendorf.

Generally speaking, a burglary is an unauthorized entry with intent to commit a crime after that entry. *Commonwealth v. Alston*, 539 Pa. 202, 651 A.2d 1092, 1094 (1994). Like all other crimes, the elements of burglary may be proved by circumstantial evidence. *Commonwealth v. Tessel*, 347 Pa. Super. 37, 500 A.2d 144, 147 (1985).

Robbery generally consists of forcibly taking from another person money or goods of any value by means of force, violence or putting that other person in fear. See

*Commonwealth v. Natividad*, 565 Pa. 348, 773 A.2d 167, 176 (2001), cert. denied, 535 U.S. 1099, 122 S. Ct. 2300 (2002).

Theft generally is the unlawful taking or exercising control over the movable property of another person with the intent to deprive that person of said property.

*Commonwealth v. Crawford*, 285 Pa. Super. 169, 427 A.2d 166, 170 (1981).

An attempt generally is the intention to commit an offense and the taking of a substantial step toward completion of that offense. *Commonwealth v. Henley*, 504 Pa. 408, 474 A.2d 1115, 1118 (1984).

Clearly, Trooper Sweet had probable cause to believe that Defendant was in the course of committing a burglary, robbery, theft and/or attempt to commit any of those offenses against Mrs. Bendorf. Prior to the incident, a handful of elderly women were robbed, burglarized or stolen from while shopping or returning home from shopping. The MO of all of the crimes was the same. The perpetrator would identify the elderly woman and then either take the items immediately or follow the victim home and then take the items either surreptitiously or forcibly. The individual committing the crimes was identified at least by one or two individuals as a black male, stocky, middle-aged and clean shaven. The perpetrator was also driving a gold, tan, and/or beige mid-size SUV.

On the date Defendant was arrested, he was seen entering the parking lot of a shopping center. He was moving his vehicle to different stalls, looking around and acting suspiciously. At no time did he park his vehicle and go into a store.

As Mrs. Bendorf was arriving at her vehicle alone and obviously elderly, Defendant pulled his vehicle near her. He then followed her vehicle in his vehicle. The



Defendant and his vehicle matched the prior descriptions of the suspect's vehicle.

Defendant followed Mrs. Bendorf over different roadways eventually to the area of her home. He pulled off beforehand in a position which gave him an opportunity to notice where she lived and to observe what she was doing. He did not have any apparent reason to be in that area. He did not stop at any houses nor visit any businesses.

He then left the area, drove away, turned around in a few minutes and then returned. When he returned, he actually drove his vehicle on the roadway on which Ms. Bendorf's house was located. At the time, she was alone removing groceries from her vehicle with the trunk open. He passed her house and then turned around, at which time he was stopped and arrested.

Certainly, the totality of these circumstances as seen through the eyes of Trooper Sweet indicated the probability of criminal activity.

Additionally, the Court finds that there was probable cause to arrest Defendant in connection with the previous incidents. Prior to this incident, there were a handful of separate incidents involving seven separate victims of similar burglary/robbery/theft related crimes. There was a similar physical description of the perpetrator and a similar vehicle description. The MO was virtually identical. Defendant, as the perpetrator, identified an elderly woman and then perpetrated the crime on her by taking items either surreptitiously or by force. The police, as well, had at least partial identifying information from all of the victims, surveillance footage, still pictures and purchase receipts which all pointed to Defendant as the "probable" perpetrator.

The next issue that Defendant raised in his omnibus pretrial motion concerned

his contention that he could not be arrested without an arrest warrant. Defendant has failed to submit any written argument in connection with this contention. Regardless, Defendant's contention is wrong. A police officer is authorized to arrest without a warrant in many situations, including upon probable cause when the offense is a felony or when the offense is a felony or misdemeanor committed in the presence of the officer making the arrest. Pa. R. Crim. P. 502 (2). *Weaver*, supra.

Defendant next contends that he was not arraigned before an MDJ under Information No. 17-2013 without unreasonable delay. Rule 519 (A) of the Pennsylvania Rules of Criminal Procedure requires that a Defendant arrested without a warrant, be preliminarily arraigned without unreasonable delay. The purpose behind the Rule is to prevent coercive interrogation, protect a defendant's right to be free from unreasonable seizure of his person and ensure a defendant is afforded the constitutional rights protected by Rule 540. *Commonwealth v. Perez*, 577 Pa. 360, 845 A.2d 779, 782 (2004)

As Trooper Sweet testified, once Defendant was taken into custody "there were several things going on." Search warrants were being prepared, submitted for approval and then executed. Charges were being typed up, witnesses were being interviewed, Defendant was being interviewed, photo line-ups were shown to victims and eventually the charges were filed and Defendant was arraigned.

In this case, there was no unreasonable delay, no misconduct by the police, no coercion of Defendant, no dilatory conduct and no arbitrary delay. Defendant confuses the issues by claiming that, because a criminal complaint was not filed against him regarding the Bendorf matter, he was not arrested on the Bendorf matter. Thus, he argues that he was held

for an unreasonable amount of time before being charged and arraigned on the offenses involving Ms. Heller. Defendant was legally arrested with probable cause on all of the incidents that occurred prior to December 20, 2012.

Defendant argues next that there was “no legal justification to seize, impound or search the vehicle.” Defendant identifies this in his brief as the “illegal towing of Defendant’s vehicle.” Defendant argues that because there was “no lawful arrest” that the state police could not seize the vehicle. He also claims that the towing of the vehicle to the police barracks “without attempting to contact the owner” was in violation of “Mrs. McDowell’s personal effects.” The Court cannot agree.

In *Commonwealth v. Gary*, 625 Pa. 183, 91 A.3d 102 (2014), the Pennsylvania Supreme Court aligned Pennsylvania law regarding warrantless searches of automobiles with the federal law and held that the only prerequisite for a warrantless search of a motor vehicle is probable cause.

The police had probable cause to believe that Defendant was the individual who had been robbing elderly women and stealing their purses in December 2012. They also had probable cause to believe that evidence of those crimes could be found in the vehicle which Defendant was driving. Defendant and the vehicle he was driving matched the descriptions of the perpetrator and his vehicle given by the victims of the robberies and thefts. The victims described the perpetrator as a bald, middle-aged African American male who was driving a gold, tan or beige SUV. Defendant is a bald, middle-aged African American male who was driving a Hyundai Tuscon SUV. The prior offenses occurred between December 7<sup>th</sup> and December 16<sup>th</sup>, merely days before the police stopped Defendant’s vehicle. Defendant’s

conduct led the police to believe that he was about to rob or steal from his next victim when he went from one parking stall to another in the Giant parking lot, followed Ms. Bendorf home, watched her from a nearby street, left briefly and returned to her street. Under all the facts and circumstances of this case, it was reasonable for the police to believe that evidence of the prior offenses would be found within Defendant's vehicle.

Even if the search and seizure of the vehicle is analyzed under the law as it existed at the time of the stop, the seizure of the vehicle Defendant was driving was not illegal.

The authority of the police to impound vehicles comes from their reasonable community caretaking functions. Such functions include removing disabled or damaged vehicles from the highway, impounding automobiles which violate parking ordinances (thereby jeopardizing public safety and efficient traffic flow), and protecting the community's safety.

*Commonwealth v. Lagenella*, 623 Pa. 434, 83 A.3d 94, 103 (2013), citing *Commonwealth v. Henley*, 909 A.2d 352, 359 (Pa. Super. 2006)(en banc). A warrantless seizure of an automobile is permissible after the driver has been placed into custody, the vehicle is located on public property and where there exists probable cause to believe that evidence of the commission of a crime will be obtained from the vehicle. *Commonwealth v. Holzer*, 480 Pa. 93, 389 A.2d 101, 106 (1978); see also *Commonwealth v. Milyak*, 508 Pa. 2, 493 A.2d 1346, 1349 (1985).

In this particular case, all of those requirements have been met. Defendant was placed into custody, the vehicle was located on public property, and there existed probable cause to believe that evidence of a crime would be found in the vehicle. The vehicle had been probably utilized in connection with several prior incidents. Contrary to Defendant's assertion, there does not appear to be any requirement that the owner of the vehicle be contacted prior to the vehicle being towed.

Moreover, a valid search warrant was obtained and executed on the vehicle the following day. The evidence would have been lawfully seized pursuant to that search warrant. Accordingly, the evidence will not be suppressed pursuant to the “inevitable discovery” rule. *Commonwealth v. Anderson*, 40 A.3d 1245, 1249 n.6 (Pa. Super. 2012)(evidence is admissible under the inevitable discovery rule when the Commonwealth demonstrates that the evidence would have inevitably been discovered through lawful means).

In Defendant’s brief, he raises a series of arguments under a section of the brief entitled “the Subsequent Cases.” Under Information No. 35-2013, Defendant argues that the search warrant was “wrongfully issued” because the police lacked probable cause to arrest him on Hidden Valley Drive. Defendant contends that because there is “no record of the Defendant being arrested on December 20, 2012 for this case in either of the affidavits of probable cause” his arrest was “obviously not for this particular case.” The credible testimony of Trooper Sweet contradicts Defendant’s argument. Contrary to what Defendant contends, there need not be a warrant, an affidavit of probable cause or a criminal complaint in order to justify an arrest. As the Court found previously in this Opinion, Defendant’s arrest on December 20, 2012 was based on sufficient probable cause. Accordingly, Defendant’s argument fails.

Defendant further argues that the search warrant was issued prior to his arrest under Case No. 17-2013 and accordingly all evidence obtained as a result of it should be dismissed. There is no basis in law to support Defendant’s position.

Under Information No. 63-2013, Defendant also makes a series of different arguments. First, he claims that because he was unlawfully arrested on December 20, 2012 that any photo used by the State Police in their photo line-up should be suppressed. Because the

Court has found that Defendant was not unlawfully arrested, this claim fails.

Defendant next claims that when he was formally arrested by Agent Kontz and taken into custody to be charged and preliminarily arraigned, Agent Kontz was in violation of the Municipal Police Jurisdiction Act. The testimony however was undisputed. An arrest warrant was issued based upon Agent Kontz' complaint. Agent Kontz took the Defendant into custody and presented him for his preliminary arraignment. There was no violation whatsoever of the Municipal Police Jurisdiction Act.

Defendant also argues that because no complaint had been filed and no warrant had been issued, Agent Kontz was not legally permitted to "arrest" him and that his arrest violated his "rights to due process." The record belies Defendant's contentions.

Under Information No. 1382-2013, Defendant claims that he was arrested on the four cases encompassed under this Information "as a result of the confession made by the Defendant" on December 31, 2012. Defendant claims that he was unlawfully taken into custody at this time and therefore, his statement should be suppressed. There is no evidence whatsoever to support Defendant's contention and in fact the evidence is to the contrary. Defendant also claims that his confession was not voluntary. The testimony presented during the various hearings shows without question that once Defendant was taken into custody, he was Mirandized and there were no facts whatsoever using the totality of the circumstances analysis to show that his confessions were not voluntary. Indeed, Defendant never even raised this issue in his Omnibus Pretrial Motion.

Defendant's final argument is that his pretrial identification via the photo array should be suppressed. First, Defendant contends that it was the "fruit of the unlawful arrest."

Because this Court has held that Defendant's arrest was not unlawful, this claim by Defendant fails.

Defendant also claims that his arrest was "merely a subterfuge" in order to obtain evidence. The Court previously has concluded that Defendant's arrest was legal and proper and accordingly this claim fails as well.

Defendant argues further that the pretrial identification was "tainted with suggestiveness." Defendant argues that at no point did the police ever tell the alleged victim that the suspect may or may not be in the photos. Further, Defendant argues that the alleged victim was never advised that the investigation would continue whether or not an identification was made or that the alleged victim should not feel compelled to even make an identification.

A photo array 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, 112 (2004). Photographs used in line-ups are not unduly suggestive if the suspect's picture does not stand out more than those of others, and the people depicted exhibited similar facial characteristics. *Commonwealth v. Crork*, 966 A.2d 585, 589 (Pa. Super. 2009). "It is only where the identification procedure is so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification that suppression will result." *Commonwealth v. Burton*, 770 A.2d 771, 782 (Pa. Super. 2001).

Trooper Wool testified in depth regarding the photographic identification of Defendant via the array. The fact that he did not ask or address the victims per Defendant's contentions is not determinative. There was nothing about the photo arrays which were at all suggestive, let alone unduly suggestive. All of the individuals in the photo array were of the

same race, had similar coloring, had similar facial hair and other similar characteristics to those of Defendant. Nothing was said to the victims that suggested anything. Accordingly, Defendant's argument on this ground fails as well.

**ORDER**

AND NOW, this \_\_\_\_ day of November 2015, following a hearing, the submission of briefs and consideration by the Court, Defendant's omnibus pretrial motion is **DENIED.**

By the Court,

\_\_\_\_\_  
Judge Marc F. Lovecchio

cc: Melisa Kalas, Esquire (ADA)  
Reuben McDowell  
c/o Lycoming County Prison  
PD  
Gary Weber, Esquire (Lycoming Reporter)  
Work file