

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-433-2015  
 :  
 MELISSA WOLFGANG, :  
 Defendant : Motion to Dismiss

**OPINION AND ORDER**

By Information filed on April 2, 2015, Defendant was charged with one count of possession of drug paraphernalia, one count of possession of a controlled substance (heroin) and one count of public drunkenness.

On September 21, 2015, Defendant filed a motion to dismiss all of the charges pursuant to 35 P.S. § 780-113.7, commonly known as the “drug overdose immunity” statute. A hearing on Defendant’s motion was held on October 30, 2015.

Brandy Newcomer testified that on December 27, 2014, she was working at the McDonalds on East Third Street in Williamsport as the assistant manager. She had been employed at McDonalds for twelve years.

She first noticed Defendant at the front counter. Defendant was ordering food but in the middle of doing such started swaying back and forth, put her elbows on the counter with her chin on her hands, and then essentially toppled over unconscious onto the floor in front of the counter.

Ms. Newcomer along with the shift manager, Beth Miller immediately responded to assist Defendant.

Defendant was unresponsive. Another “young lady” with Defendant insisted

that Defendant was okay and did not need any medical assistance. This other “lady” actually attempted to pull Defendant out of the McDonalds.

A customer actually found a hypodermic needle near Defendant. Ms. Newcomer thought that Defendant had suffered a “diabetic event” but the “lady” with Defendant denied such and tried to “disassociate with the needle.”

Ms. Newcomer instructed Ms. Miller to immediately call 911. Ms. Miller did so. She identified herself and gave the location of the McDonalds. While the phone call was being made, the “lady” with Defendant left the restaurant.

Both Ms. Newcomer and Ms. Miller stayed with the Defendant the entire time. Medical personnel arrived, treated Defendant and then transported her in an ambulance from the McDonalds.

Ms. Newcomer was neither aware that Defendant had overdosed nor did she suspect an overdose situation. She suspected it was “a diabetic event.” In the past year, she had actually witnessed five or so individuals become ill while in her store. Three of these individuals had actually passed out. Two of the individuals were rendered unconscious as a result of a “drug” event.

The Commonwealth presented a DVD of the McDonalds surveillance camera depicting the incident. It accurately reflects the testimony of Ms. Newcomer.

The Commonwealth entered into evidence a condensed version of the 911 call entitled “CFS Report” as Commonwealth’s Exhibit 2. The document reflects that a call was made indicating that a female in her twenties was blue in color and unresponsive. While the

female was breathing, she remained unconscious for a handful of minutes apparently until she was revived by emergency personnel.

Defendant contends that she is immune from suit pursuant to § 780-113.7 (c) which notes as follows: “Persons experiencing drug overdose events may not be charged and shall be immune from prosecution as provided...if a person who transported or reported and remained with them may not be charged and is entitled to immunity under this section.”

Defendant claims that she experienced a drug overdose event and that Ms. Miller reported the event to emergency personnel and remained with her. Defendant claims that a reading of the statute clearly entitles her to immunity.

The Commonwealth, on the other hand, claims that both the language of the statute and purpose of the statute do not support immunity under the circumstances. The Commonwealth contends that Defendant did not experience a drug overdose event, because no one who called 911 reasonably believed that the condition of Defendant was in fact a drug overdose and required immediate medical attention.

While the court cannot find any court opinions relating to this issue, it appears to the court that the legislature in drafting and approving this statute was trying to strike a balance between the saving of lives and the prosecution of individuals involved in using controlled substances. It appears further that the balance was struck in favor of saving lives of those who have overdosed versus saving the individuals involved in the activity from prosecution. By providing immunity, lives are saved. Those lives might otherwise be lost due to individuals not contacting emergency responders to seek medical care.

It appears to the court that the intent of the law is to encourage individuals to cooperate with law enforcement to assist someone who is experiencing a drug overdose without fear of prosecution.

Furthermore, and according to the statute, a “drug overdose event” is specifically defined in the statute as follows: “A patient’s condition shall be deemed to be a drug overdose if a prudent layperson, possessing an average knowledge of medicine and health, would reasonably believe that the condition is in fact a drug overdose and requires immediate medical attention.” 35 P.S. § 780-113.7 (f).

Accordingly, via both the language and intent of the statute, the court disagrees with Defendant. Both the language of the statute and the purpose behind it support the Commonwealth’s position. While the McDonald’s employees realized that Defendant was in need of immediate medical attention, none of them reasonably believed that Defendant was experiencing medical problems due to a drug overdose. Indeed, the person who would have been afforded immunity and thus entitled Defendant to immunity actually tried to remove Defendant from McDonalds. That person, who apparently knew of Defendant’s condition and the reason therefore, tried initially to hide it and then left upon emergency personnel being summoned.

**ORDER**

**AND NOW**, this \_\_\_ day of November 2015, following a hearing and argument, the court DENIES Defendant's motion to dismiss.

By The Court,

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Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)  
Joshua Bower, Esquire (APD)  
Gary Weber, Esquire (Lycoming Reporter)  
Work file