

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1454-2014
 :
 JOSEPH JENNINGS, : Commonwealth's Motion
 Defendant : for Discovery

OPINION AND ORDER

Before the Court is the Commonwealth's Motion for Discovery in which argument was held on July 5, 2016.

The Commonwealth requests names and addresses of any eyewitnesses whom Defendant intends to call at trial. Defendant objects to the discovery request.

Pursuant to Rule 573 of the Pennsylvania Rules of Criminal Procedure, if the Commonwealth files a motion for pretrial discovery, the Court may allow the Commonwealth to obtain the names and addresses of eyewitnesses whom the defendant intends to call in its case in chief. Pa. R. Cr. P. 573 (C) (1) (b).

There are however, three prerequisites: (1) the defendant must have previously requested and received discovery of the names and addresses of the Commonwealth's eyewitnesses; (2) the Commonwealth's request must be reasonable; and (3) the Commonwealth must show "materiality to the preparation of the Commonwealth's case." Pa. R. Cr. P. 573 (C) (1).

Defendant contends that none of the prerequisites have been met. With respect to the Commonwealth's requirement to provide the names and addresses of eyewitnesses, Defendant's claim is without merit. Defendant previously requested and received from the

Commonwealth the name and address of the Commonwealth's sole eyewitness who allegedly observed Defendant operating the vehicle on the date in question.

Next, although Defendant is correct that eyewitness information is not an item of mandatory discovery, the court certainly has the discretion to permit such. Pa.R.Cr.P. 573(C)(1)(b); see also *Commonwealth v. Hood*, 872 A.2d 175 (Pa. Super. 2005), re-argument denied, appeal denied 585 Pa. 695, 889 A.2d 88 (2007).

Furthermore, "the purpose of the discovery rules is to permit the parties in criminal matters to be prepared for trial. Trial by ambush is contrary to the spirit and letter of these rules and should not be condoned." *Commonwealth v. Shelton*, 536 Pa. 559, 640 A.2d 892, 895 (1994).

It does not appear that the case law distinguishes between necessity and materiality. The mere possibility that an item of undisclosed information might have helped the opposing party does not establish materiality. *Commonwealth v. Chambers*, 570 Pa. 3, 807 A.2d 872 (2002). Rather, it appears that the definition of material under the applicable discovery standard pursuant to the cases means a "reasonable probability of a different result." *Commonwealth v. Johnson*, 572 Pa. 283, 815 A.2d 563 (2002); *Commonwealth v. Marinelli*, 570 Pa. 622, 810 A.2d 1257 (2002).

If a defendant intends to call an eyewitness, clearly that testimony would be elicited for the purpose of creating a reasonable doubt if not a completely different scenario of the alleged events. Thus, the Court agrees that the Commonwealth's request is reasonable, material and necessary to the preparation of the Commonwealth's case. Thus, all three of the

Rule 573 prerequisites have been satisfied.

ORDER

AND NOW, this ____ day of July 2016, following a hearing and argument on the Commonwealth's Motion for Discovery, the Court GRANTS said Motion. Within thirty (30) days of today's date, Defendant shall provide to the Commonwealth the names and addresses of all eyewitnesses whom Defendant intends to call in this matter.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Lori Rexroth, Esquire
Edward J. Rymysza, Esquire
Gary Weber, Esquire, Lycoming Reporter
Work file