

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : NO. CR-1790-2015
:
vs. :
:
:
TRAVIS L. MICHAEL, :
Defendant : Motion to Dismiss

OPINION AND ORDER

By Information filed on November 6, 2015, Defendant is charged with one count of possession of heroin and one count of drug paraphernalia.

On February 23, 2016, 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.” The Court held a hearing and argument on Defendant’s motion on April 21, 2016.

Defendant submitted to the Court and the Court accepted into evidence both a copy of the preliminary hearing transcript of October 20, 2015 marked as Defendant’s Exhibit 1 and the CD of the 911 call marked Defendant’s Exhibit 2.

According to the transcript, Lori Griffin was at the Wendy’s restaurant at 111 Maynard Street in Williamsport on Saturday, June 13, 2015. At approximately 7:14 p.m., she and her family were leaving Wendy’s when they noticed another vehicle parked approximately two spaces away.

The passenger in the parked vehicle was moving, but the driver was not. Ms. Griffin noticed the passenger “smacking the driver, not to be physically abusive but to more wake up the driver.”

As a result, Ms. Griffin told her husband that she was going to go in and talk

to the manager on duty. She went into the Wendy's and contacted the manager. As they were walking out toward the vehicle, the passenger from the vehicle ran out and said "we need help in here."

Ms. Griffin immediately called 911. She "wasn't really aware of what the emergency was except [she] knew the driver was not moving." While on the 911 call, she testified that the dispatcher asked her what happened. She said that she didn't know.

While on the call, the passenger who was near her said that the driver had taken heroin. Ms. Griffin immediately related this to the dispatcher.

On cross-examination, Ms. Griffin explained her conversation with the dispatcher further. The dispatcher asked her if she knew what was going on and she said no. The passenger was "there" and she asked him: "I said what was going on, what were you guys doing and he responded with he just did heroin." She believed that she "repeated it verbatim" to the dispatcher.

Ms. Griffin, the Wendy's Manager and the passenger stayed on the scene until emergency personnel arrived. Ms. Griffin provided her name to the 911 dispatcher and cooperated with police when they arrived.

When police responded to the Wendy's parking lot, they responded "for a report of an individual suffering a heroin overdose." Officer Brian McGee of the Williamsport Bureau of Police found Defendant "unresponsive in the driver's seat of the vehicle." Officer McGee subsequently searched the vehicle and found glassine bags containing a substance that field tested positive for heroin and a hypodermic needle. Based

on what he found, he filed the charges against Defendant.

The Court also listened to the 911 call. As soon as the 911 call was made, the dispatcher asked the caller the following: “Lycoming County 911, where is your emergency?” The caller, Ms. Griffin indicated that it was “at the Wendy’s on Maynard Street.” After providing the address which the caller got from another individual, the dispatcher asked “what’s the problem?” The caller explained that there was a vehicle in the parking lot and that the driver is totally passed out with the passenger saying “that he is wasted on drugs and he can’t wake him up.” The caller confirmed when asked, that the driver was “unresponsive.” She described the vehicle, and indicated that she was on the scene with the passenger. The dispatcher asked the caller if she knew what kind of drug the driver was using. The dispatcher specifically asked about heroin. The caller asked the passenger and then confirmed that it was heroin.

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

Defendant claims that he experienced a drug overdose event, and that Ms. Griffin reported the event to 911 (emergency personnel) and remained with him. Defendant claims that a reading of the statute clearly entitles him to immunity.

The Commonwealth, on the other hand, claims that Defendant is not entitled to immunity because when Ms. Griffin made the call, she did not know that Defendant was

experiencing a drug overdose event. Furthermore, the Commonwealth argues that in circumstances such as this, Defendant needs to face criminal charges and be placed on supervision in order to ensure that he “gets the help that he needs.”

According to the statute, a “drug overdose event” is specifically defined 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).

In drafting and approving this statute, the legislature was obviously trying to strike a balance between saving the lives of individuals and the prosecution of those individuals who are involved in using controlled substances. It appears 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.

In this particular case, contrary to the Commonwealth’s argument, at the time Ms. Griffin made the call, she reasonably believed that Defendant was experiencing a drug overdose event and required immediate medical attention. She was specifically asked about “the problem.” She responded that “the driver is totally passed out and that the passenger is saying that he is wasted on drugs.”

Furthermore, the Court believes that the drug overdose immunity statute must

be liberally construed. See 1 PA. CONS. STAT. ANN. §1928(Penal provisions, taxation provisions, retroactive provisions, eminent domain provisions, and certain jurisdiction provisions must be strictly construed; all other provisions must be liberally construed to effect their objects and to promote justice.).

Because the provisions of the statute control and because the elements as set forth in the statute have been satisfied, the Court will grant Defendant's motion to dismiss.

ORDER

AND NOW, this 27th day of April 2016, following a hearing and argument, the Court GRANTS Defendant's Motion to Dismiss. The Information against Defendant is dismissed pursuant to 35 P.S. §780-113.7

By The Court,

Marc F. Lovecchio, Judge

cc: DA (AB)
PD (JB)
Gary Weber, Lycoming Reporter
Work File