

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :  
 :  
 vs. : No. CR-44-2017  
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 LEON HALL, :  
 :  
 Defendant :  
 :  
 OPINION AND ORDER

This matter came before the court on March 20, 2018 for a hearing and argument on Defendant’s Omnibus Pretrial Motion. Defense counsel requested a continuance of the hearing because Defendant’s car broke down. The Commonwealth opposed the continuance request and indicated that it intended to make an argument that the motion should not be heard because it was untimely. The court heard argument on the timeliness issue, but otherwise continued the hearing on the motion. This Opinion addresses the Commonwealth’s timeliness objections.

By way of background, on November 22, 2016, Officer Clinton Gardner filed a criminal complaint against Defendant charging him with possession of a small amount of marijuana and possession of drug paraphernalia. A preliminary hearing was held on January 10, 2017, at which Defendant was represented by Greta Davis, an assistant public defender. The charges were held for court, and Defendant’s formal court arraignment was scheduled for January 30, 2017. Defendant waived his arraignment, and Ms. Davis entered her appearance of record in the Court of Common Pleas. The case was placed on the call of the list for April 18, 2017, and has been on the trial list since that date.

Ms. Davis left the Public Defender’s Office in the fall of 2017, and the case

was re-assigned to current counsel, Benjamin Green, another assistant public defender. Mr. Green entered his appearance as attorney for Defendant on October 17, 2017.

On February 20, 2018, Mr. Green filed an omnibus pretrial motion on Defendant's behalf. In the motion, Defendant seeks suppression of any and all evidence found in the vehicle in which Defendant was a passenger and requests a writ of habeas corpus on the ground that "the evidence of the Commonwealth was insufficient to establish a prima facie case that the Defendant committed the offenses charged."

The prosecutor objected to the court hearing the motion due to the fact that the motion was untimely by nearly a year.

Mr. Green argued that he was relatively new to the office and new to this case. He asserted that a valid issue was asserted in the motion and, if the issue was not heard now, it "could easily come up in a PCRA."

The prosecutor argued that it provided discovery to the defense on March 1, 2017, but the motion was not filed until 357 days after discovery was received. All the information in the motion was available to the defense no later than March 1. Current counsel had the case for approximately four months before he filed the motion. There were no facts to justify the late filing. The case had been on the trial list for ten months. To allow the motion to be heard at this late date would condone Defendant's complete disregard of the Rules of Criminal Procedure and allow defendants to file pretrial motions at their convenience.

## **DISCUSSION**

Rule 579 of the Pennsylvania Rules of Criminal Procedure, which governs the time for filing an omnibus pretrial motion, states:

Except as otherwise provided in these rules, the omnibus pretrial motion for relief shall be filed and served within 30 days after arraignment, unless opportunity therefor did not exist, or the defendant or defense attorney, or the attorney for the Commonwealth, was not aware of the grounds for the motion, or unless the time for filing has been extended by the court for cause shown.

PA. R. CRIM. P. 579(A).

Clearly, the motion was filed more than 30 days after arraignment. Defendant and his attorney were aware of the grounds for the motion by March 1, 2017, at the latest. Defendant did not seek leave of court to file his motion nunc pro tunc or state any grounds in his motion which would justify or excuse the late filing.

Defense counsel seems to be arguing that Defendant's motion should be heard in the interests of justice.

There is a separate rule governing suppression motions, Rule 581, that contains an "interests of justice" exception. Rule 581(B) states:

Unless the opportunity did not previously exist, or the interests of justice otherwise require, such motion shall be made only after a case has been returned to court and shall be contained in the omnibus pretrial motion set forth in Rule 578. If timely motion is not made hereunder, the issue of suppression of such evidence shall be deemed to be waived.

PA. R. CRIM. P. 581 (B). Whether the interests of justice require an untimely suppression motion to be heard is a matter for the discretion of the trial judge. *Commonwealth v. Long*, 753 A.2d 272, 279 (Pa. Super. 2000). In making this decision, the judge should consider

several factors including: (1) the length and cause of the delay; (2) the merits of the suppression claim; and (3) the court's ability, considering the complexity of the issues and the availability of the witnesses, to hold the hearing promptly. *Commonwealth v. Brown*, 378 A.2d 1262, 1266 (Pa. Super. 1977). A trial court should exercise discretion to hear an untimely motion where the merit of counsel's motion is so apparent that justice requires it to be heard. *Long*, 753 A.2d at 280; *Commonwealth v. Williams*, 323 A.2d 862, 866 (Pa. Super. 1974).

Under the circumstances of this particular case, the court declines to conclude that the interests of justice require that the suppression motion be heard at this time. The length of delay is significant. The motion was filed nearly one year late. Defendant has continued to be represented by the Public Defender's Office throughout. There are no good reasons for delay in this case. Defendant and his counsel had all the information needed to file a motion since March 1, 2017 at the latest.

The merits of the motion also are not readily apparent. The police stopped the vehicle in which Defendant was a passenger because the vehicle had no taillights and the driver made an unlawful right turn on red at an intersection where such was expressly prohibited. The police are permitted to remove the occupants of a vehicle during a routine traffic stop. *Maryland v. Wilson*, 519 U.S. 408, 415, 117 S.Ct. 882, 886 (1997); *Commonwealth v. Brown*, 654 A.2d 1096, 1102-1103 (Pa. Super. 1995).

Furthermore, Defendant's furtive movements gave the police reason to fear for their safety and examine the area where Defendant had been sitting. *See Commonwealth*

*v. Morris*, 537 Pa. 417, 644 A.2d 721, 723 (1994). Underneath Defendant's seat, the police found a baggie containing marijuana.

Finally, and perhaps most importantly, Defendant has not alleged any facts in his motion to support his assertion that he had a privacy interest in the vehicle. A suppression motion must "state specifically and with particularity the evidence sought to be suppressed, the grounds for suppression, and the facts and events in support thereof." PA. R. CRIM. P. 581(D). While a defendant charged with a possessory offense has automatic standing to file a suppression motion, he is only entitled to have the evidence suppressed if he has a reasonable expectation of privacy in the area searched. *Commonwealth v. Peterson*, 535 Pa. 492, 497, 636 A.2d 615, 617 (1993); *see also Commonwealth v. Hawkins*, 553 Pa. 76, 81, 718 A.2d 265, 267 (1998); *Commonwealth v. Burton*, 973 A.2d 428, 435 (Pa. Super. 2009)(en banc). The mere fact that Defendant was a passenger does not give him a reasonable expectation of privacy in the vehicle. *Commonwealth v. Powell*, 994 A.2d 1096, 1104-1105 (Pa. Super. 2010)(quoting *Commonwealth v. Viall*, 890 A.2d 419, 423 (Pa. Super. 2005)).

While the issues in the motion are not complex, this case has been on the trial list for approximately ten months. The court will not delay this case to hear this grossly untimely omnibus pretrial motion. The court agrees with the prosecutor that to permit Defendant to pursue an omnibus pretrial motion under the facts and circumstances of this case would allow an evisceration of the timeliness requirements of the Rules of Criminal Procedure and send the wrong message to future litigants.

The court also finds that Defendant waived his habeas corpus challenge to the sufficiency of the evidence presented at the preliminary hearing by asserting it in boilerplate fashion without specifying the element or elements of the offenses the Commonwealth's evidence failed to establish. *See Commonwealth v. Roche*, 153 A.3d 1063, 1072 (Pa. Super. 2017)(where an appellant wishes to preserve a claim that the evidence was insufficient, his Rule 1925(b) statement must specify the element or elements upon which the evidence was insufficient; failure to do so results in waiver of the sufficiency issue); *Commonwealth v. Tyack*, 128 A.3d 254, 260 (Pa. Super. 2015)(sufficiency claim waived where it was raised in boilerplate fashion).

**ORDER**

**AND NOW**, this \_\_\_ day of March 2018, following an argument, Defendant's omnibus pretrial motion filed on February 20, 2018 is **DISMISSED** as untimely.

By The Court,

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Marc F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)  
Benjamin Green, Esquire (APD)  
Work File