

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-2139-2017
 :
 KASAN SANDERS, : Motion in Limine re “plea negotiations”
 Defendant :

OPINION AND ORDER

This matter came before the court on October 8, 2018 for a hearing and argument on Defendant’s motion in limine.

By way of background, on December 12, 2017, Defendant was charged with four counts of persons not to possess firearms, two counts of possession with intent to deliver controlled substances, and two counts of possession of controlled substances as a result of a search of 513 High Street on November 9, 2017. A preliminary hearing was held on December 27, 2017, and all of the charges were held for court.

On April 17, 2018, the controlled substance charges in this case were consolidated with the charges filed in case 1972-2017, and the firearms charges in this case were severed for trial from the other charges. On September 27, 2018, a jury was selected for the trial of the firearms charges, and trial was scheduled for October 12, 2018.

On October 1, 2018, defense counsel received a supplemental police report dated December 4, 2017, regarding a statement Defendant allegedly made to the prosecuting attorney on November 30, 2017 at the time of his preliminary hearing in case 1972-2017. The supplemental report indicates that Defendant tried to get the attention of and speak to the prosecuting attorney at his preliminary hearing. The prosecuting attorney told Defendant

that she could not speak to him. Defendant then said, “Give me 2-4.”

On October 3, 2018, defense counsel filed a motion in limine to preclude the statement on the basis that it constituted a statement made during plea discussions or negotiations, which is inadmissible pursuant to Pa. R. E. 410(a)(4).

Defendant’s unsolicited request does not constitute “plea discussions” or “plea negotiations” under Pennsylvania law. Pennsylvania has adopted the following two-pronged analysis for determining whether plea negotiations are underway: (1) the accused must exhibit an actual subjective expectation to negotiate a plea at the time of the discussion; and (2) the accused’s expectation must be reasonable given the totality of the circumstances. *Commonwealth v. Burno*, 638 Pa. 264, 154 A.3d 764, 784 (2017). “Not every statement making reference to a deal ... is necessarily a plea discussion for purposes of this rule.” *Id.* Furthermore, “the very word ‘negotiation’ posits the participation of two parties and not unilateral conduct.” *Commonwealth v. Vandivner*, 599 Pa. 617, 962 A.2d 1170, 1181 (2009).

Of primary importance in assessing an accused’s subjective expectation of negotiating a plea is whether the Commonwealth showed an interest in participating in such discussions. In line with this reasoning, voluntary, unsolicited statements uttered by an accused to authorities cannot be said to be made in furtherance of striking a plea bargain.

Id.

Here, as in *Vandivner*, the Commonwealth never expressed any interest in engaging in plea discussions with Defendant. In fact, the prosecuting attorney told Defendant that she could not talk to him before he made any statements.¹ Nevertheless,

¹ The prosecuting attorney could not speak to Defendant because he was represented by counsel. Pa. R. Prof.

Defendant volunteered the statement “give me 2-4.” Since Defendant’s statement cannot be considered plea discussions or plea negotiations, his motion in limine based on Rule 410 must be denied.

ORDER

AND NOW, this ___ day of October 2018, the court DENIES Defendant’s motion in limine to preclude his statement “give me 2-4” based on Pa. R. E. 410(a)(4). This ruling is without prejudice to defense counsel asserting any other basis for objecting to this evidence at the trial scheduled for October 12, 2018.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Matthew Welickovitch, Esquire (APD)
Gary Weber, Esquire (Lycoming Reporter)
Work File