

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-2139-2017
 :
 KASAN SANDERS, : Motion in Limine re other crimes, wrongs
 Defendant : or bad acts evidence

OPINION and ORDER

This matter came before the court on October 8, 2018 for a hearing and argument on Defendant's motion in limine pursuant to Pa. R. E. 404(b) to exclude, from his trial on firearms offenses scheduled for October 12, 2018, any and all evidence concerning the narcotics investigation of Defendant, the four controlled buys the confidential informant (CI) allegedly made from Defendant, as well as the controlled substances obtained as a result of the execution of a search warrant at 513 High Street, which also resulted in the discovery of the firearms at issue in the upcoming trial.

By way of background, the affidavit of probable cause for the warrant to search 513 High Street indicates that a CI made four successful controlled buys from Defendant at 513 High Street on October 18, 2017; October 23, 2017; October 25, 2017; and November 7, 2017. Each controlled buy was conducted in the same manner. The CI met detectives from the Narcotics Enforcement Unit (NEU). The detectives strip searched the CI and searched his vehicle to negate the presence of controlled substances, contraband or currency. The detectives provided the CI with pre-recorded funds. The CI placed a call to Defendant to purchase controlled substances. Defendant directed the CI to 513 High Street. Detectives set up surveillance in the area of 513 High Street. They observed the CI enter the

premises. After a very short period of time, the CI exited that location and met the detectives at a pre-determined location. The CI provided bags of controlled substances to the detectives. The CI and the CI's vehicle were again searched and no controlled substance, contraband or currency was found. In the first controlled buy, the CI exited the residence with a black male identified as Defendant. After the fourth controlled buy, the CI stated that he had observed a chrome handgun while inside 513 High Street. Another confidential source also stated that Defendant had been seen with a firearm in his possession.

The detectives applied for and obtained the search warrant for 513 High Street on November 7, 2017, following the fourth controlled buy. The search was conducted on November 9, 2017.

Additionally, according to the Commonwealth's notice of intent to offer testimony of Defendant's prior bad acts, the CI will testify that Defendant called him on November 7, 2017 and requested ammunition for a .22 caliber firearm, a .38 caliber firearm, and a 9 mm firearm.

The search warrant inventory indicates that, among the items, a Ruger .22 caliber pistol, a Highpoint 9mm Luger black pistol with 9mm rounds inside it, a Taurus Ultra Light .38 caliber pistol and a Taurus .357 Magnum revolver with .38 caliber ammunition inside it were found and seized during the search of 513 High Street.

The charges with respect to the controlled buys were filed under Information 1972-2017. The charges related to the search warrant were filed under Information 2139-2017. The four counts of persons not to possess firearms are being tried separately on

October 12, 2018. All of the other charges were consolidated and are awaiting trial.

In his motion in limine, Defendant sought to preclude the Commonwealth from presenting any evidence even mentioning the narcotics investigation, the controlled buys, or controlled substances. Defendant argued that this evidence was not relevant to the firearm offenses and, even if the evidence was relevant, its probative value was outweighed by its potential for unfair prejudice. Defendant contended that due to the current heroin epidemic the introduction of evidence regarding Defendant's alleged deliveries of heroin, and even the mere mention of heroin and fentanyl in this case, would inflame the jury and impact the jurors' ability to weigh the evidence impartially.

The Commonwealth argued that the evidence was relevant and admissible under the res gestae exception as this evidence forms part of the history and natural development of the firearm charges. The evidence regarding the controlled buys explains why the detectives were searching the premises at 513 High Street. The Commonwealth submitted that without the evidence regarding the controlled substances, the jury would think that law enforcement was just harassing an African American. Furthermore, the Commonwealth noted that the CI would testify that he knows Defendant possessed a chrome firearm because the CI gave Defendant a chrome firearm in exchange for heroin. The Commonwealth also noted that during surveillance of the drug transactions Defendant was captured on video wearing sunglasses. These sunglasses were located and seized during the execution of the search warrant. The Commonwealth intends to utilize evidence regarding the sunglasses to establish that other items near where the sunglasses were found belonged to

Defendant.

The admission of evidence is within the discretion of the trial court and will be reversed on appeal only upon the showing of an abuse of discretion. *Commonwealth v. Woodward*, 634 Pa. 162, 129 A.2d 480, 494 (2015). An abuse of discretion is more than a mere error of judgment; rather, it only occurs where the court misapplies the law, or where the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will. *Id.*

“Evidence of a crime, wrong, or other act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” Pa. R. Evid. 404(b)(1). Such evidence may be admissible for another purpose such as motive, intent, identity, or common plan or scheme. Pa. R. Evid. 404(b)(2). The list of other purposes contained in Rule 404(b)(2) is not exhaustive. Pa. R. Evid. 404, comment. The Pennsylvania courts have also recognized the *res gestae* exception, which permits the admission of evidence of other crimes or bad acts to tell the complete story. *Commonwealth v. Hairston*, 624 Pa. 143, 84 A.3d 657, 665 (Pa. 2014); *Commonwealth v. Paddy*, 569 Pa. 47, 800 A.2d 294, 308 (2002). “In a criminal case this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice.” Pa. R. Evid. 404(b)(2). “‘Unfair prejudice’ means a tendency to suggest decision on an improper basis or to divert the jury’s attention away from its duty of weighing the evidence impartially.” Pa. R. Evid. 403, comment.

The court disagrees with the Commonwealth’s argument that the jury would

assume that the police were harassing an African American male if the Commonwealth was precluded from introducing evidence regarding Defendant's alleged deliveries of heroin. It is equally likely that the jury would not make any such assumptions. Furthermore, the Commonwealth could easily negate any assumptions and explain the reason why the detectives were there by having the detectives simply testify that a magistrate issued a warrant to search the premises at 513 High Street without going into the details about what precipitated the issuance of the warrant.

On the other hand, the court does not believe the trial can be completely sanitized of any and all references to Defendant's alleged drug activities. As previously noted, the Commonwealth intends to introduce testimony from the CI that he traded a chrome firearm to Defendant in exchange for controlled substances (heroin). A chrome in color Taurus .357 Magnum firearm was found and seized during the search of 513 High Street. This firearm is one of the four firearms that is the subject of the persons not to possess firearms charges. The Commonwealth intends to show the CI a photograph of the Taurus .357 Magnum firearm that was seized during the search of 513 High Street and ask the CI if the firearm in the photograph appears to be the same or is similar to the firearm that the CI gave to Defendant. The prosecutor indicated that she "imagines" that the CI cannot definitely say that it is the same firearm as it is unlikely that the CI memorized the serial number on the firearm but that he will say it is similar in nature. As long as the alleged trade was not too remote in time from the date of the search, this evidence would be relevant to show that Defendant possessed the chrome firearm, which is an element of the persons not to

possess charge.

The search warrant affidavit of probable cause indicates that the “CI stated that the CI has observed a chrome handgun while inside 513 High Street.” It does not mention any statements by the CI that he traded a chrome handgun for heroin or when any alleged trade occurred.

Defense counsel submitted that once the jury hears evidence that Defendant was delivering controlled substances and “buzz words” like heroin and fentanyl it would inflame the passions of the jury to convict Defendant and cause the jury not to weigh the evidence impartially. The inference from defense counsel’s argument was that he believed the jury would convict Defendant because he is allegedly a heroin and fentanyl dealer, not because he possessed the firearms in question. Given the societal problems associated with the “heroin epidemic” on both a local and national level, there is some merit to defense counsel’s argument, especially since the drug charges are not the subject of the upcoming trial, but rather will be tried at a later date.

The narcotics investigation and the controlled buys, however, explain how and why the CI was inside 513 High Street and the opportunity to allegedly observe the chrome firearm while inside the premises and why the detectives had Defendant under surveillance.

Therefore, the court will permit the Commonwealth to introduce some limited background evidence regarding the investigation and the controlled buys, but it will preclude the Commonwealth from introducing evidence regarding the specific controlled substances

and the amounts of the controlled substances, unless the defense opens the door to such evidence.

If Defendant wishes, he can request a cautionary or limiting instruction from the trial judge to explain to the jury the limited purposes and uses for this type of evidence.

ORDER

AND NOW, this ___ day of October 2018, the court GRANTS in part and DENIES in part Defendant's motion in limine. The court will permit the Commonwealth to introduce some limited background evidence regarding the investigation and controlled buys, but the court precludes the Commonwealth from introducing evidence regarding the specific controlled substances and the amounts of controlled substances, unless Defendant opens the door to such evidence. If Defendant wishes, he can request a cautionary or limiting instruction to explain to the jury the limited purposes and uses for this type of evidence.

By The Court,

Marc F. Lovecchio, Judge

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