

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
 :
 vs. : No. CR-1498-2017
 DAVID BEAN, :
 Defendant : Pretrial Motions

OPINION AND ORDER

By Information filed on September 15, 2017, Defendant is charged with two counts of aggravated assault, two counts simple assault and one count of aggravated harassment by a prisoner.

According to the Affidavit of Probable Cause, on May 30, 2017, at approximately 7:30 a.m., Lieutenant Entz was escorting Defendant to intake for a trial. Allegedly, Defendant became noncompliant in the elevator and had to be restrained. Defendant was escorted to the nurse's office in order to be evaluated. Defendant again became non-compliant and began to fight with officers. During this fight, Defendant allegedly kicked Officer Stutzman in the leg and allegedly bit him on the arm. Defendant was subsequently transported to the court.

Following the day of trial, Defendant was transported back to the Lycoming County Prison. At approximately 3:45 p.m., while in the sally port area, Defendant allegedly refused to get out of the police vehicle and had to be forcibly removed. Defendant struggled with the officers and allegedly kicked Lieutenant Rogers and attempted to hit him in the head with his elbow.

Defendant waived his right to a jury trial on May 9, 2019, but the trial scheduled for June 14 and 15, 2019, was continued at the request of defense counsel. Nevertheless, there

remain some outstanding discovery issues. Those issues shall be addressed in this opinion and order.

On February 25, 2019, Defendant filed a pretrial motion which included a motion to compel discovery. Defendant raised numerous discovery requests to the Commonwealth as well as Lycoming County Prison (Prison).

A hearing on Defendant's motion was held on February 26, 2019. As a result of the hearing, the court directed that the Commonwealth and the Prison provide certain items of discovery. Because, however, the Prison was not a participant in the hearing, the court permitted it to lodge objections to the February 26, 2019 Order. Those objections were filed on March 19, 2019.

In the interim, however, on March 14, 2019, Defendant filed another pretrial motion which included numerous discovery requests from the Commonwealth, the Prison and the Lycoming County Sheriff. In response to Defendant's more recent motion, the Sheriff filed objections on April 15, 2019.

An argument on Defendant's outstanding motions and the respective objections of the Prison and Sheriff was held before the court on May 10, 2019.

Prior to addressing the specific requests, which remain outstanding, the court will set forth the applicable legal standards governing the discovery issues.

Pretrial discovery and inspection in criminal matters is governed by Rule 573 of the Pennsylvania Rules of Criminal Procedure and, of course, the due process clauses of both the federal and state constitutions. If the defendant identifies specific evidence, it is within the

court's discretion to order that said evidence be produced if the defendant can establish that its disclosure would be in the interest of justice. Pa. R. Crim. P. 573(B)(2)(iv).

A trial court exercising its discretion to grant or deny a request for discretionary discovery should be guided by the principle to allow as much discovery prior to the trial as will, consistent with the protection of persons, effective law enforcement, the adversary system, and national security, provide adequate information for informed pleas, expedite trials, minimize surprise, afford opportunity for effective cross-examination and meet the requirements of due process. *Commonwealth v. Thiel*, 470 A.2d 145, 148 (Pa. Super. 1983).

Of many different cases addressing requests for discovery of specified items in the interests of justice, the cases distinguish materiality under a constitutional analysis and in the interests of justice under the discovery rules. Because Defendant's request is under the rubric of discretionary discovery, the defendant bears the burden of demonstrating that the disclosure is necessary to conduct his defense. *Commonwealth v. Rodriguez*, 674 A.2d 225, 229 (Pa. 1996), *cert. denied*, 117 S. Ct. 207 (1996).

Defendant argues that the Prison policies requested in both of his motions could provide him with evidence to support a self-defense claim or perhaps even to attack the credibility of the officers through a bias argument. Additionally, Defendant argues that the policies are relevant to whether he could raise reasonable doubt as to whether the officers were in the performance of their duties at the time of the alleged assaults.

The court cannot agree with Defendant regarding his claims that the requested policies could provide evidence to support a self-defense claim or to attack the credibility of the

officers. Defendant has not demonstrated that the reliability of the witnesses may well be determinative of Defendant's guilt or innocence. *Commonwealth v. Marinelli*, 810 A.2d 1257, 1273-1274 (Pa. Super. 2002). Additionally, even if the Defendant could prove that the officers were in violation of a policy, it would not justify or excuse an assault on them. See *Commonwealth v. Meoli*, 452 A.2d 1032, 1035 (Pa. Super. 1982)(even an unlawful arrest will not justify or excuse an assault upon an officer); 18 Pa. C.S.A. §505(b)(2.6).

On the other hand, the court concludes that the policies may contain information material to whether the correctional officers were in performance of their duties while the alleged incidents occurred. More specifically, depending upon the mandates set forth in the policies requested, Defendant may be able to raise reasonable doubt as to the required element for aggravated assault that the correctional officers were "in the performance of duty." 18 Pa. C.S.A. § 2702(a)(3); *Commonwealth v. Marti*, 779 A.2d 1177 (Pa. Super. 2001); *Commonwealth v. Stiver*, 13 Pa. D. & C. 4th 216 (Clinton County, 1992).

In objecting to Defendant's requests, the Prison counters that despite the arguable or marginal relevance of the policies, the interests of safety and security must prevail over disclosure. The Prison argues that even if there is some marginal relevance, "it falls woefully short of outweighing the confidentiality of the subject policies."

In connection with a discovery request, when there is an assertion that the requested information is confidential, the trial court must balance the relevant factors to determine whether the interest in protecting the confidentiality outweighs the defendant's need for the information as it relates to his ability to adequately defend against the pending criminal

charges. *Rodriquez, id.*

The court has reviewed the relevant policies in camera. The court has balanced the respective interests. The court will set forth below in its order, what portions of the policies and procedures, if any, shall be provided to Defendant.

Prior to doing so, the court has not ignored the argument of both the Prison and Sheriff that the discovery rule is not a tool to be used by defense to compel the Commonwealth to obtain evidence to which Defendant has equal access or for information which is not in the possession or control of the Commonwealth. *Commonwealth v. Gelormo*, 475 A.2d 765, 771 (Pa. Super. 1984); *Commonwealth v. Mejia-Arias*, 734 A.2d 870, 874 (Pa. Super. 1999). Clearly, in this case the documents requested from the Commonwealth or through the discovery rules are not within the possession or control of the Commonwealth. Nonetheless, and to the credit of the prison and sheriff, they agreed to expedite these matters and to not waste judicial resources or time by requiring Defendant to proceed in a different manner via a subpoena for documents to a particular hearing.

ORDER

AND NOW, this ___ day of June 2019, following a hearing and argument, the Court **DENIES** Defendant's request for the following policies and procedures:

1. Use of security restraints, Policy No. 9.18, Appendix A to 9.18 four point restraint system, Appendix B to 9.18-restraints policy and procedure and Appendix A-use of force continuum.

The court finds that the prison's interest in protecting the confidentiality

of these policies and procedures as set forth in its Memorandum and Legal Argument outweighs Defendant's interest as it relates to his ability to adequately defend himself against the charges. The court finds that the policies have no relevance to raising reasonable doubt and cannot be released in the interests of justice.

2. With respect to the policies and procedures titled Use of Force and Firearms, Policy No. 9.17, the court finds that the following portions are not confidential and will be provided to Defendant via this Order. The court finds that the defendant's interests outweigh the Commonwealth's interests and that disclosure is in the interest of justice.
 - (a) "There are times when prison personnel are confronted with situations requiring the use of force. The degree of force used depends on what the employee perceives as reasonable and necessary under the circumstances. Further, the employee may resort to more severe use of force to overcome either increasing resistance or an increasingly dangerous threat to his/her safety."
 - (b) "The prison expects that staff will only employ the minimum force necessary to accomplish legal purpose."
 - (c) "The use of force and restraints by members of the staff of Lycoming County Prison will be used to accomplish security objectives as set forth by the Lycoming County Prison."

(d) “Physical force shall not be used on prisoners unless necessary and then only the amount of physical force which is required to achieve the purpose is justified.”

(e) “An employee may not use force against an inmate for purposes of revenge or punishment.”

3. The court **DENIES** Defendant’s request for written copies of any and all Lycoming County Prison policies relating to “suicide watch” and/or that concern placing inmates on “suicide watch.” The prison’s interest in protecting the confidentiality outweighs Defendant’s interest as it relates to his ability to adequately defend against the charges. The court finds that the policies have no relevance to raising reasonable doubt and will not be released in the interests of justice. The court notes that the prison has provided documentation related to Defendant being placed on suicide watch as requested in Paragraph 3 of Defendant’s pretrial motion filed on March 14, 2019. The court also understands that the prison has provided the identity of those individuals employed by and/or contracted by and/or utilized by the prison who were involved in placing the defendant on “suicide watch.”

4. Defendant’s request to compel the Lycoming County Sheriff to disclose the identity of certain individuals is deemed moot. The identities have been disclosed by the Commonwealth.

5. The prison shall provide to Defendant the identity of all individuals who were present in Central Control at the Lycoming County Prison during the times and date of the alleged incidents on May 30, 2017.
6. With respect Paragraph 17, 18 and 19 of Defendant's pretrial motion filed on March 14, 2019, that request is deemed moot. The Prison has provided a full and complete copy of any and all video recordings in its possession and has indicated on the record that it has no further or additional video recordings from any other source and as well that there was no other source available at the times and date for which there would be any video recording.
7. Defendant's request for policies and information as set forth in Paragraphs 23, 24 and 25 of its March 14, 2019 pretrial motion is **DENIED**. The court finds that the requested information has absolutely no relevance whatsoever to raising reasonable doubt, would not at all be helpful in connection with Defendant's defense of the charges against him and will not be released in the interests of justice.
8. The court **DENIES** Defendant's request for policies, rules, guidelines and other written materials as requested in Paragraphs 28, 29 and 30 of its pretrial motion filed on March 14, 2019. The Prison's interest in protecting the confidentiality of this information outweighs Defendant's interest as it relates to his ability to adequately defend against the charges.

The court finds that the requested information has no relevance to raising reasonable doubt and that the information shall not be released in the interest of justice.

9. Defendant's motion to preclude as set forth in Paragraphs 31 through 34 of his pretrial motion filed on March 14, 2019 is deemed moot in that Defendant has waived a jury trial.
10. Defendant's motion to remand as set forth in Paragraphs 35 through 39 of his pretrial motion filed on March 14, 2019 is deemed withdrawn. Defense counsel withdrew said request upon the waiver of Defendant's right to a jury trial. To the extent the Prison has not already done so, it shall identify and disclose the full name of all individuals who appear in any of the audio/video recordings provided to the defense .
11. If there are any outstanding discovery requests or other pretrial requests which have not been addressed by this Order, Defendant shall immediately contact the court via an email carbon copied to counsel for the Commonwealth and the Lycoming County Prison.

By The Court,

Marc F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)
David Lindsay, Esquire
Brian Bluth, Esquire
Sheriff
Gary Weber, Lycoming Reporter

Work File