

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-565-2019**
 v. :
 :
 :
 JAHSAN TRUITT, : **OMNIBUS PRETRIAL**
 Defendant : **MOTION**
 :
 OPINION AND ORDER

Jahsan Truitt (Defendant) was arrested on March 26, 2019 on one count of Delivery of a Controlled Substance,¹ one count of Possession of a Controlled Substance with the Intent to Deliver,² one count of Criminal Use of a Communication Facility,³ and one count of Possession of a Controlled Substance.⁴ The charges arise from a controlled buy that occurred in the area of Academy St. and Church St. in Williamsport, PA 17701. Defendant filed this Omnibus Pretrial Motion on June 4, 2019. A hearing on the motion was held by this Court on August 1, 2019. The Court granted both Defendant and the Commonwealth time to submit briefs. Defendant submitted his brief on August 12, 2019 and the Commonwealth submitted its brief on August 20, 2019. In his Omnibus Pretrial Motion, Defendant challenges whether the photo array used by police was unduly suggestive and therefore the out of court identification obtained as a result should be suppressed. Additionally Defendant requests disclosure of criminal charges, promises of leniency, and/or immunity of any of the Commonwealth's witnesses.⁵

Background and Testimony

Detective Tyson Havens (Havens) of the Lycoming County Narcotics Enforcement Unit testified on behalf of the Commonwealth. Additionally, the Commonwealth provided the photo

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(30).

³ 18 Pa. C.S. § 7512.

⁴ 35 P.S. § 780-113(a)(16).

⁵ This issue was disposed of by this Court's Order dated August 1, 2019, which also established a briefing schedule for Defendant and the Commonwealth.

array circled and dated by the Confidential Informant (CI) as an exhibit. Defendant provided the Court with his picture from the Pennsylvania Bureau of Motor Vehicles and a disk marked “Surv. Videos and debriefs” as exhibits. Based on this evidence the following was established.⁶ On October 8, 2018, CI conducted a controlled buy in the area of Academy St. and Church St. under the surveillance of Havens. Havens was informed that the individual that sold the suspected heroin to CI was Defendant. Based on this information, Havens ordered that a photo array be prepared with Defendant in it. The array was constructed by Detective Cassandra McCormick (McCormick) and approved by Havens. Havens testified that he has worked with hundreds of confidential informants and has utilized dozens of photo arrays. On October 11, 2018, Havens showed CI the photo array, Commonwealth’s Exhibit #1. Havens told CI that just because he is showing him the array does not mean any of the individuals are involved. Havens showed CI the photo array in his vehicle during the daytime. Havens instructed CI to point out the individual that sold him the suspected heroin, if that individual was in the photo array. CI immediately picked out Defendant, at which time Havens had him circle the photo and put the date and time. The photo array is black and white showing six African American males roughly the same age and complexion. All six are wearing similar glasses, have a similar haircut, and similar facial hair. The photos are all the same size and none are uniquely bordered or outlined.

Whether the Photo Array is Unduly Suggestive

A court when reviewing the reliability of an out of court identification must examine the totality of the circumstances. *Commonwealth v. Johnson*, 139 A.3d 1257, 1278 (Pa. 2016). “A pre-trial identification violates due process only when the facts and circumstances demonstrate

⁶ The Court will provide only a brief background as a detailed depiction is not necessary to address the current legal issue.

that the identification procedure was so impermissibly suggestive that it gave rise to a very substantial likelihood of irreparable misidentification.” *Id.* A photo array is not unduly suggestive if the suspect’s photo does not stand out more than the other photos and the individuals in the photos “all exhibit similar facial characteristics.” *Commonwealth v. Fulmore*, 25 A.3d 340, 346 (Pa. Super. 2011).

Defendant claims that because Havens did not tell McCormick the description of the suspect as provided by CI and because the photo array does not comport with the description given by Defendant the array is unduly suggestive. This contention is in error. Case law is clear that police are not bound by an individual’s description of a suspect in creating a photo array. *See id.* at 346-47 (Officers were permitted to show a photo array that varied from the victim’s description); *see also Commonwealth v. Shaw*, -- A.3d --, 2019 WL 2864262 at *4 (Pa. Super. 2019) (“There was no evidence presented that the photo lineup shown to Victim was unduly suggestive. The fact that Victim's initial descriptions did not comport with his photo-array identification goes to the credibility, not the suggestiveness of the identification procedure.”). How Havens came up with Defendant’s name, who prepared the array, and whether the array matched the description given by CI are irrelevant to the suggestibility of the photo array, which was presented to CI and instead are issues of credibility, which is irrelevant to the present Motion. In addition, this Court disagrees with Defendant’s contention that the photos lack similarities. The Commonwealth provided an expansive list of similarities in support of its position:

The individuals in the photo array are all young black males similar in age. The heads of the males are similarly shaped. The males all have a similar complexion, and no one person is much darker than the others. All of the males have facial hair that is very similar, and several of the individuals have the same bushy facial hair in the area of the upper jaw. All of the males have haircuts that are short with well-defined hairlines on the forehead area. All of the males have

large foreheads. All of the males have pencil-thin mustaches on their upper lips. All of the males have blank expressions that are neither smiling nor frowning. All of the males appear to have dark eyebrows that are visible above the top rim of the eyeglasses. All of the males are wearing glasses, and the officer preparing the lineup was evidently careful enough to only select males wearing glasses with large geometric shapes. Many of the eyeglasses worn by the individuals pictured are nearly identical.

Brief in Opposition to Defendant's Omnibus Motion 8/20/19, at 3.

This Court finds that the photo array was not "so impermissibly suggestive that it gave rise to a very substantial likelihood of irreparable misidentification." *Johnson*, 139 A.3d at 1278. The suspect did not stand out more than any other photograph and all had similar characteristics. *Fulmore*, 25 A.3d at 346. Therefore the out of court identification shall not be suppressed.

ORDER

AND NOW, this 21st day of August, 2019, based upon the foregoing Opinion, Defendant's Omnibus Pretrial Motion, in the nature of a Motion to Suppress, is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MW)
Robert Hoffa, Esquire

NLB/kp