

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-1715-2020**  
 v. :  
 :  
 **ANTWAN MCCLAIN,** : **OMNIBUS MOTION**  
 **Defendant** :

**OPINION AND ORDER**

Antwan McClain (Defendant) was charged with Homicide<sup>1</sup>, two (2) counts of Aggravated Assault<sup>2</sup>, Firearms not to be Carried without a License<sup>3</sup>, Persons not to Possess a Firearm<sup>4</sup>, Discharge of Firearm into Occupied Structure<sup>5</sup>, Flight to Avoid Apprehension<sup>6</sup>, Recklessly Endangering Another Person<sup>7</sup>, and Possession of Weapon<sup>8</sup>. The charges arise from the shooting and subsequent death of Jimia Alston on October 15, 2020. Defendant filed an Omnibus Pretrial Motion on April 26, 2021 and an Amended Omnibus Pretrial Motion on July 29, 2021. This Court held an initial hearing on the motions on August 3, 2021. Following the determination that additional time was needed on the issues raised, a second hearing on the motions was held before this Court on December 13, 2021. In his Omnibus motions, Defendant first argues that the photograph array used was unduly suggestive and any identification of Defendant based on that array must be suppressed. Second, Defendant moved for the Commonwealth to disclose all evidence that may be admissible against him at trial pursuant to Pennsylvania Rule of Evidence 404(b).<sup>9</sup> Third, Defendant submits a motion for additional

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<sup>1</sup> 18 Pa.C.S. § 2501(a).

<sup>2</sup> 18 Pa.C.S. § 2702(a)(1), (a)(4).

<sup>3</sup> 18 Pa.C.S. § 6106(a)(1).

<sup>4</sup> 18 Pa.C.S. § 6105(a)(1).

<sup>5</sup> 18 Pa.C.S. § 2707.1(a).

<sup>6</sup> 18 Pa.C.S. § 5126(a).

<sup>7</sup> 18 Pa.C.S. § 2705.

<sup>8</sup> 18 Pa.C.S. § 907(b).

<sup>9</sup> At the conference held on December 12, 2021, the parties asked the Court to withhold a decision on this issue until a future conference because counsel believed they could come to an agreement and draft a stipulated order

discovery.<sup>10</sup> Fourth, Defendant requests the disclosure of any persons cooperating with the Commonwealth against Defendant in exchange for favorable consideration.<sup>11</sup> Lastly, Defendant moves to recuse the Lycoming County District Attorney's Office from this case.<sup>12</sup>

### **Background and Testimony**

At the hearing conducted on August 3, 2021, Daeemah Abdullah (Abdullah) testified on behalf of the Commonwealth. Abdullah testified that the victim in this case, Jimia Alston (Jimia), was her best friend. N.T. 8/3/2021, at 11. Prior to the shooting on October 15, 2020, Abdullah knew Defendant as "Lava" and only knew him "in passing." Id. at 10-11. Abdullah testified that the first time she "put a face to a name" for Lava was in May of 2020 when she was at Jimia's house getting her hair done. Id. at 12. Lava was at the threshold of the door to Jimia's home at 506 Louisa Street in the city of Williamsport. Id. Abdullah indicated that she had an unobstructed view of Lava and could see him clearly. Id. at 12-13. After establishing whom Lava was, Abdullah stated that she had seen him in the past various times while purchasing marijuana from a different individual. Id. at 13. Abdullah also noted that she had seen Lava in a fight with her cousin in 2016. Id. at 14. Abdullah's ex-boyfriend was painting

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for the Court's review. At a conference held on February 16, 2022, the Commonwealth agreed to provide all Rule 404(b) evidence at least thirty (30) days prior to jury selection.

<sup>10</sup> The Commonwealth agreed to provide the discovery as requested by defense counsel at the hearings on these motions. Following a conference on February 16, 2022, defense counsel indicated that all discovery issues had been resolved since the filing of these omnibus motions.

<sup>11</sup> At the hearings on this motion, the Commonwealth indicated that no individuals were cooperating with their office. However, at a conference held on February 16, 2022, a new issue was raised that requires the issuance of an additional order.

<sup>12</sup> Initially, Defendant's issue was with a paralegal who once worked for the Lycoming County Public Defender's Office. This paralegal was then employed by the Lycoming County District Attorney's Office. Following the hearing on August 3, 2021, Defendant withdrew this contention following an agreement that the former paralegal only performed secretarial duties and did not participate in any legal strategy discussions regarding the case against Defendant. This issue has been reignited following Defendant's previous defense counsel's employment with the District Attorney's Office. Defendant now wishes for the District Attorney's Office to be recused based on his prior counsel's current employment with that office.

Lava's home between 2019 and 2020, he showed her photographs of what he was painting, and Lava was in one of the photos. Id. at 15.

On the morning of the incident, Abdullah noted that Jimia was taking her to an interview at approximately 11:30 a.m. and was incredibly upset and crying. Id. at 21. It was not until later that Abdullah was told that Jimia had gotten into an argument with Lava's wife at the Family Dollar store. Id. Abdullah stated that she arrived at Jimia's house later that day at approximately five (5) p.m. and helped Jimia with her children and preparing dinner. Id. at 20. Abdullah said that Jimia and her husband were at the house the entire time she was there. Id. at 21. Jimia had agreed to take Abdullah to another friend's house on Tucker Street, so after Abdullah assisted for a little while, she began to feel overheated and wanted to go outside. On her way outside, she encouraged Jimia to take her to the other friend's house. Id. at 22. Abdullah stated that Jimia's husband said, "if he comes around here with the bullshit the police are already on their way. I said who? He said Lava. I said I wish you all would just leave that situation alone and I went outside on the porch." Id. Abdullah noted that Jimia had confided in her about the sexual relationship she was having with Lava. Id. at 23. She was also aware of the feud between them involving multiple incidents and verbal altercations all throughout the summer. Id. Abdullah admitted to using narcotics with Jimia in the past, but denied doing any narcotics on the night in question. Id. at 27. Abdullah indicated that she had smoked a blunt of marijuana several hours earlier that afternoon, but that was the extent of her drug usage that day. Id.

On the night Jimia was shot and killed, at approximately 6:40 p.m. on October 15, 2020, Abdullah was talking on the phone with her mother on the front porch of Jimia's home at 506 Louisa Street. Id. at 16. Abdullah testified that she was sitting on the top step when a person

dressed in all black approached the house. Id. at 17. Abdullah recognized this person to be Lava when he walked up to her. Id. at 16. She further stated, “I thought nothing of it because of what Jimia and [Jimia’s husband] said before I walked out of the door about him and so I just kinda expected him to come and have another verbal altercation like they had...been having over the last several months....” Id. at 17. Abdullah believed that Lava approached on a bicycle from the direction of Cherry Street because he appeared quickly. Id. at 30. Abdullah stated that, “he walked up, he stood in front of the porch and fired one shot over my head and walked away.” Id. at 17. Abdullah did not realize that Jimia and her husband were in the doorway behind her. Id. at 31. Abdullah saw Lava reach both hands to his right hip and before she knew it, he had fired his gun and walked away. Id. She noted that Lava was wearing a black facemask, “something on his head, a black sweatshirt, black jeans, black shoes.” Id. at 17. However, despite Lava’s attire, Abdullah testified that she was able to make a positive identification of Lava as the shooter that evening, namely because of his distinctive walk and unique eyes. Id. at 17-18.

Abdullah further testified that she was still on the phone with her mother when Lava fired his gun. Id. at 29. Abdullah attempted to get away from the shooter and ran in between the houses to the back yard in case additional shots were fired. Id. at 29. When she turned around to try to get back into the house, she saw Lava

turning the corner of Centre Street and I ran up the steps to make sure that none of the children were hit and [Jimia’s husband] slammed the door on me and I banged on the door, I said...it’s me open the door and when he opened the door Jimia was laying there.

Id. at 29-30. Abdullah stated that Lava was less than five (5) feet away from her at the time he fired his gun and they made eye contact before Lava discharged the weapon. Id. at 33.

Abdullah testified that she gave the police her head covering because she was close enough at the time of the shooting to feel the gunpowder. Id. at 35-36.

Abdullah provided information to police on the night of the shooting and told them that Lava was the person who shot Jimia. Id. at 19. Law enforcement presented her with a photo array for her to identify the shooter. Id. Abdullah stated that she was able to identify Lava from that photo array. Id. She noted that the police did not tell her Lava's real name at that time and only found out Defendant's name while watching a news report that Defendant had been arrested in connection with the Louisa Street shooting. Id. at 32. Abdullah indicated that law enforcement asked her to complete a photo array identification twice and that Defendant's photo was in each array. Id. at 45. The array was shown to her as individual photos. Id. Abdullah testified that, while looking through each photo array, she "was looking for the eyes of the person that I saw." Id. at 47. Abdullah did not hesitate to identify Defendant in the photo array because she was confident that Defendant was the shooter. Id. at 48. Abdullah signed the photograph of Defendant as part of her identification of him with police. Id. at 53. The Commonwealth entered the photo array as Commonwealth's Exhibit 2.

At the hearing conducted on December 13, 2021, Waties Alston (Alston) testified on behalf of the Commonwealth. Alston testified that Jimia was his wife and they had resided together at 506 Louis Street. Alston's first contact with Defendant was when Jimia bought marijuana from him on Market Street and Jimia told Alston who Defendant was. This initial encounter lasted approximately ten (10) to fifteen (15) minutes and occurred during the day. Alston was about twenty (20) feet away from Defendant and Defendant was not wearing a mask covering his face. Alston indicated that he and his wife bought drugs from Defendant more than twelve (12) times and Jimia was present each time. Each buy occurred in different

locations and Alston personally observed Defendant about seven (7) times during those drug buys. Defendant was initially introduced to Alston as “Lava”, and Alston only found out Defendant’s name several months later.

Alston testified that Jimia brought Defendant over to their home for the first time so he could befriend Defendant. Defendant was not wearing a face covering on this occasion either, smoked marijuana with the couple, and left after about fifteen (15) minutes. Defendant and Jimia spoke alone together outside following Defendant’s first visit to the house. They separated from each other when they realized Alston was watching them. This was the day that Alston realized Jimia and Defendant were having an affair. Alston confronted Jimia and she admitted to having an affair with Defendant. Not long after that visit, Alston confronted Defendant about the affair. Alston and Jimia went to Defendant’s home to talk about the situation and when Defendant opened the door, he attempted to hit Alston. On another occasion, Defendant brought his wife over to Alston’s home and they had a conversation on the porch. Alston could see Defendant very clearly. Alston also noted that Defendant used to ask for transportation to various places anywhere from five (5) to fifteen (15) minutes away. These rides took place approximately five (5) to ten (10) times.

On October 15, 2020 at approximately 6:40 p.m., Alston saw Defendant approaching their house. Defendant was walking aggressively, wearing a hoodie and mask, and had his hands in the hoodie pocket. Alston did not see Defendant pull the gun but saw the gun flash when it was fired. The bullet went directly through the midsection of the door. This door had a second bullet hole in it from a prior incident between Jimia and Alston from around 2018. Alston stated that he and Jimia were standing in the doorway with Jimia on his left side when he saw Defendant draw a weapon and shoot Jimia. Alston did not know if Defendant remained

nearby after firing his gun because he closed the door to their home. Alston testified that after sustaining a gunshot wound, his wife died at the hospital. Alston noted that their home has a front porch with steps attached to it. Alston was about one (1) foot from the door when he observed Defendant. Defendant was initially ten (10) feet away and continued closer to the porch until he was about three (3) to five (5) feet away from Alston.

Alston contacted the police and provided photographs of the people involved at the police station the same night as the shooting. The police asked Alston to identify the shooter and Alston identified Defendant and was able to select the photo of Defendant's face. The Commonwealth submitted the photo Alston signed following his positive identification of Defendant based on that photograph, marked as Commonwealth's Exhibit 3A. Alston indicated that the police laid the photos on the table in front of him one at a time. There were different people represented in the photographs and none of them were wearing facemasks.

Detective Steven Sorage (Sorage) of the Lycoming County District Attorney's Office also testified on behalf of the Commonwealth at the hearing in December 2021. Sorage became involved in an investigation when he received a phone call on October 15, 2020 regarding a shooting. His role was to assist with evidence and conduct interviews with witnesses. Sorage interviewed two (2) eyewitnesses at City Hall following the shooting. One such witness was Abdullah, whose interview was recorded and who was presented with a photo array. All of the photos depicted African American males. The police had prior knowledge of the shooter's name before compiling the photo arrays. Detective Peacock chose photographs reasonably close to the suspect that included similar facial features and skin tone. It is their practice to use the most recent photo in the array. The photos were presented to Abdullah one after another. Abdullah signed the photograph that she identified as the person who shot Jimia. Sorage

confirmed that Commonwealth's Exhibit 2 is the photo array shown to Abdullah. The second time the photographs were shown to Abdullah, the order of the photos was switched, but the same photos were used.

Sorage also interviewed Alston and presented him with a photo array as well. Alston was given the entire stack of photos to examine. Sorage testified that Alston quickly identified Defendant and did not look at the remaining pictures after picking Defendant's photo. The Commonwealth presented the photo array shown to Alston, marked as Commonwealth's Exhibit 3. Sorage stated that they did not include masks on the photographs in the photo array because both witnesses indicated that they could identify the shooter. Sorage further testified that it would have been inappropriate for them to alter the photographs to include masks because they did not know enough information about the type of mask worn by the shooter. Sorage said that, especially during the COVID-19 pandemic, people are still able to identify others even when that person is wearing a mask. Sorage also said that he did not recall altering any of the photos in the array nor did he remember anyone showing Abdullah pictures of the Defendant posted on Facebook. Sorage indicated that neither eyewitness appeared to be under the influence of anything, but were visibly upset.

The Commonwealth presented the video footage of Abdullah and Alston identifying Defendant in the photo array, marked as Commonwealth's Exhibit 1. This footage shows the following. Police inform Abdullah that they are going to show her a photo array and ask her if she knows the person who shot her friend by name. Abdullah replies that she only knows him as "Lava." The police tell Abdullah that they compiled a packet of photos of people who look similar to one another for her to examine and that she might recognize people in the array, but she is to pick out the person she recognizes as Lava. One officer flips through the photographs



with her and only moves onto the next picture until Abdullah responds to the photograph. Abdullah rejects the first four (4) photos and pauses on the fifth, stating that this photo looks like Lava. She rejects the remaining photos and reasserts that the photo she previously identified as the man she knows as Lava. When the officer asks if she saw this person tonight, Abdullah replied that she saw his eyes. When asked if this was the person who shot her friend, Abdullah immediately replied yes. Abdullah signs the photo after Sorage wrote additional information on the picture.

Detective Peacock (Peacock) speaks with Alston in an interview room and inquires if Alston knows the shooter by name and notified Agent Snyder of this name. Alston indicated Defendant's real name and stated that he saw Defendant that evening. Alston was also advised that he may recognize other individuals in these photos but the police wanted him to specifically identify Defendant. Alston is given a stack of photos that he flips through himself and pulls Defendant's photograph out of the stack within seconds without looking at the remainder of the pictures. He signs Defendant's picture and said that he saw Defendant right outside the door to his home right before Defendant shot and killed his wife. Alston also indicated that Defendant's street name is "Lava."

## **Discussion**

### ***Motion to Suppress Photo Array***

Defendant challenges the photo array shown to both witnesses as unduly suggestive, and therefore any identifications of Defendant should be suppressed. "Whether an out of court identification is to be suppressed as unreliable, and therefore violative of due process, is determined from the totality of the circumstances." Commonwealth v. Fulmore, 25 A.3d, 340, 346 (Pa. Super. 2011) (internal citations omitted). "We will not suppress such identification

unless the facts demonstrate that the identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.” Commonwealth v. Burton, 770 A.2d 771, 782 (Pa. Super. 2001) (citations and quotations omitted); *see also* Commonwealth v. Fisher, 769 A.2d 1116, 1126 (Pa. 2001). Variance between photos in an array “does not necessarily establish grounds for suppression of a victim’s identification. Id. “If a suspect’s photograph does not stand out from the others, and the people depicted all exhibit similar facial characteristics the photographs used are not unduly suggestive. Commonwealth v. Crock, 966 A.2d 585, 589 (Pa. Super. 2009). However, the defendant has the “initial burden of demonstrating the [photo array] procedure was impermissibly suggestive.” Reese v. Fulcomer, 946 F.2d 247, 259 (3rd Cir. 1991). “Only if the defendant meets this initial step will the court consider the admissibility of the identification under the totality of the circumstances.” Id. (quoting United States v. L’Allier, 838 F.2d 234, 239 (7th Cir. 1988)).

Defendant’s primary contention with the photo array shown to both eyewitnesses was that all individuals in the photographs did not have the lower portions of their face concealed “to more accurately approximate what the witnesses claimed to have seen.” Defense Omnibus Pretrial Motion, at 5. Since each witness told law enforcement that the shooter had a face covering on at the time Jimia was shot, Defendant’s position is that the array was unduly suggestive for failure to partially cover the faces of the individuals. This failure resulted in the witnesses identifying the shooter based upon their memory of the person they believed him to be rather than based upon the appearance of the person who acted that evening. In other words, rather than picking the true shooter out of the photos, the witnesses picked Lava. Defendant also argues that the witnesses were told to select Defendant out of the pictures. Additionally, Defendant believes the photo array was improper because it was manipulated by Sorage. More

specifically, Sorage assisted Abdullah in looking through the photos and Defendant claims that Sorage held onto the photo of Defendant when Abdullah hesitated to indicate Defendant was not the shooter. As a result, Defendant believes the identifications from the photo array were improper and should be suppressed.

The Commonwealth maintains that the photo array was fair, accurately depicted, and did not create impermissible suggestion. The police had a name for the suspected shooter prior to creating the photo array, so they created one out of people that resembled the primary suspect. The Commonwealth argues that if police are allowed to manipulate pictures to make them look like a suspect at the time the crime occurs, this practice would open the door to countless defenses. Each witness had prior contacts with Defendant and recognized his gait and his eyes. Lastly, the Commonwealth states that the photos shown to Abdullah were not coached or suggestive and that she made the selection of Defendant's photograph on her own.

This Court does not believe the Defendant has satisfied his initial burden in demonstrating the photo array was unduly suggestive. After a review of the photographs, all of the individuals presented are African American males with reasonably similar facial characteristics, backgrounds and clothing. Sorage testified that police believed it would have been inappropriate to alter the photographs in such a way to include masks because they did not know what type of mask the shooter wore at the time. In addition to the type of mask, the police would have had to consider where to place the mask on each face. As the Commonwealth asserted, each witness had prior contact with Defendant before the shooting and were wholehearted in their identification of Defendant as the shooter, either with his real name or as "Lava." It is important to note that, although the police asked each witness to identify "Lava" or Defendant, they only did so after asking each witness who shot Jimia. After

Abdullah said she only knew him as Lava, and Alston stated Defendant's real name as well as his street name did police tell the witness to find who that witness articulated in their own words who shot the victim.

This Court disagrees with Defendant that Sorage held onto any particular picture during Abdullah's photo array. The video footage demonstrates Sorage flipping through the photos with Abdullah and moving on to the next one once Abdullah says "no", which she is able to do very quickly for the first couple of pictures. Abdullah hesitates on the photo of Defendant and shortly thereafter identifies him as the shooter. Abdullah also testified that she was not merely looking to identify "Lava" from the pictures, but instead was looking for the eyes that she associated with the shooter. Both eyewitnesses were only a few feet from the shooter at the time of the incident. Additionally, Alston takes mere seconds to identify the shooter in the photo array suggesting that he was certain who he saw that day. None of the officers said anything that would suggest a specific picture presented to the witnesses.

The police were consistent in leaving a mask out of all the pictures in the photo array. Law enforcement is not required to recreate every aspect of a suspect's physical features at the time they purportedly committed a crime for a photo array to be appropriate. Instead, a proper photo array is one that includes people with similar facial characteristics and other physical demographics. A determination of an impermissible photo array for failure to attempt to recreate the appearance of a suspect at the time of the crime would be difficult to maintain, particularly in such early stages of an investigation. Since the men in the photos had similar facial features, skin tone, and approximate age, this Court finds no merit in Defendant's contention with the photo array. Therefore, the identification of Defendant by either witness shall not be suppressed.

## **Conclusion**

The Court finds that the photo array was not unduly suggestive for failure to include masks on the faces of the individuals depicted in the pictures. As a result, Defendant's Motion to Suppress is denied.

## **ORDER**

**AND NOW**, this 28th day of February, 2022, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that the Defendant's Motion to Suppress Evidence is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA  
Jeana Longo, Esq.  
Law Clerk (JMH)