

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:
	:
vs.	: No. CR-1656-2014
	:
JEFFREY S. LEWIS,	: Opinion and Order re:
Defendant	: Defendant's Motion in Limine

OPINION AND ORDER

Before the court is Defendant's motion in limine filed on May 5, 2015. In the motion, Defendant contends that the Commonwealth should be precluded from providing to the jury any information regarding the Defendant's prior felony convictions which would have precluded him from possessing firearms.

Defendant further contends in his motion in limine that the Commonwealth should be precluded from utilizing any portion of the videotaped interview of Defendant.

The argument in this matter was held on June 23, 2015. During the argument, the parties agreed that the Commonwealth would utilize a stipulation with respect to Defendant's prior record. Specifically, the parties agreed that the Commonwealth and Defendant would stipulate to the jury that Defendant was previously convicted of an offense that legally rendered him unable to possess a firearm.

In Commonwealth v. Jemison, 98 A.3d 1254 (Pa. 2014), the Court addressed the specific issue raised by Defendant. The Court concluded that one element of the crime of persons not to possess firearms is a prior conviction of a specific, enumerated offense. Under the circumstances, a prosecutor is not required to accept a stipulation which acknowledges

that a prior conviction satisfies this element, but does not name or identify the specific prior offense. Further, the Court concluded that any possibility of unfair prejudice would be greatly mitigated by the use of a proper cautionary instruction.

Nonetheless, the parties have agreed to the aforesaid stipulation.

With respect to the videotaped interview of Defendant, the court notes that Defendant is charged, by Information filed on October 31, 2014, with one count of persons not to possess firearms, one count of firearms not to be carried without a license and one count of receiving stolen property.

In arguing against the admissibility of the videotape, Defendant reiterates its position that the Commonwealth has failed to establish a corpus delicti with respect to the charges. This objection, however, was addressed by the court in its February 27, 2015 opinion and order, which denied Defendant's motion to dismiss and his motion to suppress.

The testimony as presented by Agent Trent Peacock from the Williamsport Bureau of Police, indicated that he was working on September 4, 2014 and he was called to a reported carjacking and a shooting. Dallas Dunston reported that earlier that day when he got out of his car at the Dunkin Donuts parking lot, Defendant, among others, took off in his car. Officers eventually located and stopped the car. It was being driven by Defendant. Mr. Dunston subsequently signed a consent to search the car and in the glovebox, the officers found a pistol. Mr. Dunston related that while he, Defendant and others were driving around previously, the pistol was passed back and forth between Defendant and another individual. As well, an independent check of the serial number of the gun revealed that it was stolen

from 1238 Ann Street in the city of Williamsport in January of 2014.

After Defendant was arrested, he was brought to the Williamsport Bureau of Police station. Defendant was read a Williamsport Bureau of Police Miranda Waiver form. Once it was read to Defendant, he initialed and signed it.

The Court reviewed the videotape in connection with Defendant's motion to dismiss and motion to suppress. The Court again reviewed the videotape in connection with Defendant's motion in limine.

Evidence that is relevant is admissible. Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action. Pa. R. E.401.

The questioning of Defendant over a substantial period of time related to his background, his reasons for being in Williamsport and the details of what happened in Williamsport on the date in question including who he was with, where he and others went and what he and others did.

While many portions of the videotape concern evidence that is not relevant to the charges, there are several portions of the tape that are relevant. Defendant admitted, for example, that he lied about his identity and who he was because he was not supposed to be in Lycoming County. Defendant admitted that he touched the gun in question and that his DNA would be on the gun. Defendant admitted that he and others "checked" the gun out. Defendant admitted that "everybody touched the gun." Defendant admitted, more than once, that he was not allowed to have a gun and that he was a "felon not to possess."

Clearly, there are many portions of the videotape that are relevant and accordingly admissible. As a result, Defendant's motion in limine shall be denied. Nonetheless, prior to trial, the Commonwealth will be required to disclose to Defendant those portions of the videotape that the Commonwealth intends to introduce. This order will be without prejudice to Defendant to argue that the disclosed portions are not relevant or that, if they are relevant, their probative value is outweighed by the risk of undue prejudice.

ORDER

AND NOW, this ____ day of July 2015, following a hearing and argument on Defendant's motion in limine, Defendant's motion is **DENIED**. Thirty (30) days prior to jury selection, the Commonwealth shall provide to Defendant a list of those portions of the videotape that the Commonwealth intends to introduce at trial. Defendant may file an appropriate motion in limine as set forth in this order.

By The Court,

Marc F. Lovecchio, Judge

cc: Aaron Biichle, Esquire (ADA)
Robert A. Hoffa, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work file