IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**CR-206-2013**
	:	**CR-292-2013**
v.	:	
	:	
RICHARD JOHNSON, JR.,	:	
JAYSON R. JOHNSON,	:	**CRIMINAL DIVISION**
Defendants	:	

OPINION AND ORDER

On July 11, 2013 and July 12, 2013, Defendants filed Omnibus Pre-trial Motions. A hearing on the motions was held on December 17, 2013, December 19, 2013, and July 7, 2014.

I. Background

In July of 2012, Pennsylvania State Police (PSP) Trooper Samuel Fishel (Fishel) and PSP Trooper Brett Herbst (Herbst)[1] applied for an authorization to intercept the communications of the phone used by Khalil Fulks (Fulks). On July 23, 2012, the Honorable Sallie Updyke Mundy of the Superior Court of Pennsylvania authorized the interception of communications of the phone.

A. Communications and Surveillance of Defendant Richard Johnson

During the preliminary hearing for the instant cases, Fishel testified to the following. On August 1, 2012, Fulks called a phone used by Defendant Richard Johnson and Darron Hunter (Hunter). Hunter answered the phone, and Fulks told him that another person had seven or eight ounces of cocaine. Fulks said that he was going to meet the person and get three ounces. Hunter told Fulks to tell Rich about the cocaine. Fishel testified that Richard Johnson was often referred to as Rich in phone conversations. Defendant Richard Johnson then got on the phone, and Fulks told Johnson about the cocaine that he was getting. Johnson asked Fulks for the price of the

[1] Both Fishel and Herbst are members of the PSP Vice and Narcotics Unit.

cocaine, and Fulks replied that he did not know the price. Johnson asked if the person with the cocaine was going to stay "while he put it together," and Fulks replied that the person would stay. Johnson then told Fulks that he would be over with his jar.

Approximately four hours later, Fulks called the phone used by Richard Johnson and Hunter. Fulks told Hunter to get utensils ready so they could cook cocaine when the person arrived. Fulks said that he was going to try to get nine ounces from the person.

On August 8, 2012, Fulks answered a call from the phone used by Richard Johnson and Hunter. Fulks asked Hunter when the person who had earlier brought the cocaine was coming back. Hunter answered that he did not know. Hunter said that Rich had given the person money to get cocaine, and they were waiting for the person to come back.

On August 9, 2012, Fulks answered a call from the phone used by Richard Johnson and Hunter. Johnson asked Fulks what Fulks wanted Johnson to do with the cocaine. Fulks told Johnson to make the cocaine weigh four and a half ounces. Approximately 49 minutes later, Fulks called Richard Johnson. Johnson said that he was in the process of checking the purity of the cocaine. Fulks then asked Johnson if the cocaine would cost $2,800. Johnson told Fulks that he was going to test the other nine ounces and figure it out. Johnson then told Fulks that he would call Fulks when he was done but he was definitely going to split the cost of the cocaine with Fulks. Approximately 69 minutes later, Fulks called the phone used by Richard Johnson and Hunter. Johnson told Fulks that he had returned the cocaine because its purity was low. Johnson then told Fulks that he was trying to get his money back. Approximately 26 minutes later, Fulks called Richard Johnson. Johnson told Fulks that he got some of his money back and was going to get the rest of it the next day. Fulks then said that he needed to get cocaine quickly. Johnson said he would call Fulks back and let Fulks know how much cocaine he had.

Approximately 62 minutes later, Fulks answered a call from the phone used by Richard Johnson and Hunter. Fulks told Johnson that the cocaine was fake. Johnson told Fulks that he bought four ounces of the cocaine. Fulks then told Johnson that the person who had sold the cocaine was not answering his phone.

On August 15, 2012, Fulks called the phone used by Richard Johnson and Hunter. Fulks asked if they had gotten anything good. The person on the phone said that they had. Fulks then asked to speak to Rich, and the person responded, "This is Rich." Fulks then asked if he could get an ounce or half an ounce and pay Johnson back later. After some discussion, Johnson agreed to give Fulks an ounce. Approximately 48 minutes later, Fulks called the phone used by Richard Johnson and Hunter. Fulks asked if Johnson and Hunter were still coming to see him. Hunter responded that they were. Approximately 69 minutes later, Fulks called the phone used by Richard Johnson and Hunter. Fulks asked if Johnson was coming over to see him. Johnson replied that he and Hunter were in the middle of something but would be over as soon as they finished. Surveillance members observed Richard Johnson and Hunter arrive at Fulks' residence. They observed Fulks and Johnson make an exchange.

On August 18, 2012, Fulks called the phone used by Richard Johnson and Hunter. Fulks asked Hunter if he could get an ounce of cocaine. Hunter said that Fulks could but it would cost him $1,000. Approximately three minutes later, Richard Johnson called Fulks. Johnson asked Fulks if he had $900. Fulks said that he did, and Johnson told Fulks that he would be right over.

B. Communications and Surveillance of Defendant Jayson Johnson

During the preliminary hearing, Fishel testified to the following. On August 21, 2012, Fulks called Defendant Jayson Johnson. Fulks said he wanted an ounce of cocaine. Johnson told Fulks that an ounce would cost $1,000. Fulks said that he had to go to his house to get money.

Approximately 24 minutes later, Fulks again called Jayson Johnson. During that conversation, Johnson told Fulks that he would be at Fulks' residence in five to ten minutes. Approximately 18 minutes later, Jayson Johnson called Fulks. Johnson told Fulks that he was about to pull up to Fulks' residence. Johnson asked Fulks if he wanted powder cocaine or crack cocaine. Fulks said that he wanted crack cocaine.

After this conversation, Herbst and PSP Corporal Ryan Maxwell (Maxwell) observed Fulks' residence. During the preliminary hearing, Maxwell testified that he saw Fulks exit the residence and look up the street. Fulks then motioned for somebody to come to him. Moments later, Maxwell saw a man approach Fulks. The man was later identified as Frankie Burwell (Burwell). Fulks and Burwell went into Fulks' residence. Maxwell then saw a white Cadillac coup make a three-point turn on the street where Fulks' residence is located. The Cadillac parked in front of Fulks' residence. Less than two minutes after Burwell entered Fulks' residence, he exited the residence and got into the passenger side of the Cadillac. The car then left the area.

Maxwell and other surveillance units followed the Cadillac. The Cadillac stopped at a mini-mart. The driver exited the vehicle and began pumping gasoline. Burwell entered the mini-mart. The driver then walked to a Ford truck and leaned through the open passenger window. Maxwell observed a transaction between the driver of the truck and the driver of the white Cadillac. It was later determined that the Cadillac was registered to Jayson Johnson. By comparing photographs of the driver of the Cadillac to the photograph on Jayson Johnson's driver's license, Maxwell was able to identify the driver of the white Cadillac as Jayson Johnson.

During the preliminary hearing, Fishel testified to the following. On August 22, 2012, Fulks called Jayson Johnson and told Johnson that he wanted an ounce of cocaine. Johnson said

that he would bring an ounce to Fulks' residence. Approximately 30 minutes later, Jayson Johnson called Fulks and said that he had only seven grams on him. Johnson said he could deliver the seven grams immediately and bring the rest of the ounce later or wait and deliver the entire ounce later. Fulks told Johnson to wait and deliver the ounce all at once.

On August 23, 2012, Fulks called Jayson Johnson and asked if Johnson had "another jawn." Fishel testified that from other conversations, he was able to identify "jawn" as meaning an ounce of cocaine. Johnson said that he had an ounce for Fulks. Fulks told Johnson that the last ounce he got from Johnson was "light," meaning that it weighed less than an ounce. Johnson said that he did not bag the cocaine. Johnson then said that he would take care of Fulks and call Fulks in twenty minutes.

On August 24, 2012, Fulks called Jayson Johnson. Johnson told Fulks that he was not supposed to do any deals without first contacting Rich. Fishel testified that from his investigation, he identified Rich as Richard Johnson, Jayson Johnson's brother.[2] Fulks asked Jayson Johnson if Fulks could get cocaine and owe $250. Johnson told Fulks to hold on, and the call then ended. Approximately four minutes later, Fulks again called Jayson Johnson. Johnson again told Fulks that he was not supposed to do any deals without first contacting Rich. Johnson then told Fulks that Rich told him that he could sell an ounce of cocaine for $1,200. Johnson said that he would sell Fulks an ounce for $1,000. Fulks asked if he could buy a half an ounce for $500, and Johnson agreed. Fulks said he would meet Johnson at the intersection of High Street and Locust Street in Williamsport.

On August 26, 2012, Fulks called Jayson Johnson. Fulks asked Johnson if they were good, and Johnson responded they were not good. Johnson said that they would be good when Rich got back. Johnson told Fulks that Rich would be getting back that night.

[2] Fishel testified that Richard would often instruct Jayson, and Jayson would do deals in Richard's absence.

On August 28, 2012, Jayson Johnson called Fulks. Johnson asked Fulks if he wanted any. Fulks replied that he wanted 63 grams. Johnson said that he had at least 62 grams and would sell it to Fulks for $3,000. Johnson then said that he could give Fulks 62 grams of crack cocaine for $1,900. Fulks agreed and told Johnson that he would call Johnson when he got back to his house. Johnson told Fulks that he would begin packaging the cocaine.

On August 31, 2012, Fulks called Jayson Johnson. Fulks asked Johnson if he had anything, and Johnson responded that he did. Fulks asked Johnson for two "jawns" for $1,800. Johnson said that $1,800 would be fine. Fulks then told Johnson that he would call Johnson soon. Approximately three minutes later, Fulks called Jayson Johnson. Fulks asked Johnson where he was. Fulks and Johnson decided to meet at a bar near Fulks' residence. Approximately 13 minutes later, Fulks called Jayson Johnson. Johnson told Fulks that he was leaving the bar to get the cocaine. Johnson then said that he would meet Fulks at Fulks' residence. Approximately 17 minutes later, Fulks called Jayson Johnson. Fulks asked Johnson how long he was going to be. Johnson told Fulks that he was waiting for his cousin. Johnson then told Fulks to unlock the door. Johnson said he would be over. Approximately 18 minutes later, Fulks called Jayson Johnson. Fulks asked Johnson how long he would be. Johnson told Fulks that he would be five minutes. Approximately nine minutes later, Jayson Johnson called Fulks. Johnson told Fulks that he was ready and they agreed to meet on Elizabeth Street, near Fulks' residence.

During the preliminary hearing, Maxwell testified to the following. On August 31, 2012, Maxwell saw Fulks step off the porch of his residence and walk on Elizabeth Street. Maxwell observed Fulks walk to a white Cadillac that was on Elizabeth Street. Maxwell testified that the Cadillac was the same car that he saw park in front of Fulks' residence on August 21, 2012.

Fulks entered the passenger side of the Cadillac. The Cadillac then left the area, and Maxwell followed it. At some point, Maxwell lost sight of the Cadillac. When Maxwell regained sight of the Cadillac, he saw Officer Paulhamus of the Williamsport Bureau of Police beside the car and talking to the driver. Moments later, Paulhamus told another surveillance member that he identified the driver of the white Cadillac as Jayson Johnson.

During the preliminary hearing, Fishel testified to the following. On September 3, 2012, Fulks called Jayson Johnson. Fulks asked Johnson if Rich had made it back yet. Johnson responded that he had not. Fulks then asked Johnson for two ounces of cocaine for $1,800. Johnson responded that he could sell it for $1,900. Fulks told Johnson that he had $1,600 and could give him the rest of the $1,900 later. Johnson agreed and asked Fulks if he was home. Approximately 36 minutes later, Fulks called Jayson Johnson. Johnson told Fulks that he had a ride and would be there soon. Approximately 14 minutes later, Jayson Johnson called Fulks. Johnson said that he had only an ounce. Fulks told Johnson that he wanted to buy the ounce and the two agreed on a price of $950. Johnson asked Fulks if he was home, and Fulks responded that he was.

C. Charges

Defendant Richard Johnson was charged with three counts of Conspiracy to Deliver a Controlled Substance (Counts 1, 4, and 16),[3] six counts of Conspiracy to Possess a Controlled Substance with Intent to Deliver (Counts 2, 5, 7, 10, 17, 20),[4] six counts of Conspiracy to Possess a Controlled Substance (Counts 3, 6, 8, 11, 18, 21),[5] four counts of Criminal Use of a

[3] 18 Pa. C.S. § 903(a)(1) and 35 P.S. § 780-113(a)(30).
[4] 18 Pa. C.S. § 903(a)(1) and 35 P.S. § 780-113(a)(30).
[5] 18 Pa. C.S. § 903(a)(1) and 35 P.S. § 780-113(a)(16).

Communication Facility (Counts 9, 12, 19, 22),[6] one count of Delivery of a Controlled Substance (Count 13),[7] one count of Possession of a Controlled Substance with Intent to Deliver (Count 14),[8] one count of Possession of a Controlled Substance (Count 15),[9] and one count of Corrupt Organizations (Count 23).[10]

Defendant Jayson Johnson was charged with one count of Conspiracy to Delivery a Controlled Substance (Count 1),[11] four counts of Conspiracy to Possess a Controlled Substance with Intent to Deliver (Counts 2, 5, 9, 16),[12] four counts of Conspiracy to Possess a Controlled Substance (Counts 3, 6, 10, 17),[13] six counts of Criminal Use of a Communication Facility (Counts 4, 7, 8, 11, 15, 18),[14] one count of Delivery of a Controlled Substance (Count 12),[15] one count of Possession of a Controlled Substance with Intent to Deliver (Count 13),[16] one count of Possession of a Controlled Substance (Count 14),[17] and one count of Corrupt Organizations (Count 19).[18]

D. Defendants' Arguments

In his motion, Defendant Richard Johnson argues that Fishel did not have a sufficient basis to identify the Defendant's voice as being the voice on the intercepted calls. The Defendant argues that Fishel should, therefore, be precluded from testifying.

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[6] 18 Pa. C.S. § 7512.
[7] 35 P.S. § 780-113(a)(30).
[8] 35 P.S. § 780-113(a)(30).
[9] 35 P.S. § 780-113(a)(16).
[10] 18 Pa. C.S. § 911(b)(4).
[11] 18 Pa. C.S. § 903(a)(1) and 35 P.S. § 780-113(a)(30).
[12] 18 Pa. C.S. § 903(a)(1) and 35 P.S. § 780-113(a)(30).
[13] 18 Pa. C.S. § 903(a)(1) and 35 P.S. § 780-113(a)(16).
[14] 18 Pa. C.S. § 7512.
[15] 35 P.S. § 780-113(a)(30).
[16] 35 P.S. § 780-113(a)(30).
[17] 35 P.S. § 780-113(a)(16).
[18] 18 Pa. C.S. § 911(b)(4).

Defendant Richard Johnson argues that Counts 13, 14, 15, and 23 should be dismissed because the Commonwealth has failed to establish a prima facie case. Specifically, Defendant Richard Johnson argues that the evidence is insufficient to establish that he delivered cocaine to Fulks on August 15, 2012. Defendant Richard Johnson also argues that the evidence is insufficient to establish that he was part of an enterprise and engaged in a pattern of racketeering.

Defendant Richard Johnson argues that the conspiracy counts should be consolidated to avoid multiplicity.

Defendant Richard Johnson argues that evidence derived from the intercept of the phone Fulks was using should be suppressed for the following reasons. (1) The affidavit of probable cause supporting the application for the intercept fails to establish probable cause for the belief that particular communications concerning the offenses alleged in the application would be obtained through the intercept. (2) The affidavit of probable cause supporting the application for the intercept fails to establish probable cause to believe that normal investigative procedures had been tried or were too dangerous to employ or were unlikely to succeed. (3) The order authorizing the intercept did not sufficiently describe how to minimize or eliminate the interception of non-relevant communications. (4) The interceptions materially deviated from the requirements of the order authorizing the surveillance. (5) The orders authorizing the use of the pen register and the track and trace devices were not issued upon probable cause, and the orders authorized the use of the devices for fewer days than they were used. When the information derived from the devices is removed from the affidavit of probable cause supporting the application for the intercept, the affidavit of probable cause is insufficient.

Finally, Defendant Richard Johnson requests that the Court permit him to file any pre-trial motions which may arise upon receipt of additional discovery.

Throughout his motion, Defendant Jayson Johnson argues that the evidence was insufficient to meet the prima facie standard that he was indeed the person speaking on the intercepted calls.

Defendant Jayson Johnson argues that Commonwealth has not presented sufficient evidence to establish a prima facie case for any of the counts. According to Defendant Jayson Johnson, the following are the reasons that the evidence is insufficient. For Count 1, the Commonwealth presented no evidence of an agreement between the man who exited Fulks' residence and the Defendant. Additionally, the Commonwealth presented no evidence that the man or the Defendant took an overt act in furtherance of a conspiracy. For Count 2, the Commonwealth failed to present evidence of an agreement or an overt act. For Count 3, the Commonwealth failed to present evidence of an agreement or an overt act. For Count 4, the Commonwealth failed to present evidence that a delivery of cocaine occurred. For Count 5, the Commonwealth presented no evidence of an overt act in furtherance of a conspiracy. For Count 6, the Commonwealth presented no evidence of an overt act. For Count 7, the Commonwealth presented no evidence of a delivery of cocaine. For Count 8, the Commonwealth failed to present any evidence of a delivery of cocaine. For Count 9, the Commonwealth presented no evidence of an overt act in furtherance of a conspiracy. For Count 10, the Commonwealth presented no evidence of an overt act. For Count 11, the Commonwealth presented no evidence of an exchange of cocaine. For Count 12, the Commonwealth presented no evidence of an exchange of cocaine. For Count 13, the Commonwealth presented no evidence that Defendant Jayson Johnson possessed cocaine. For Count 14, the Commonwealth presented no evidence that Defendant Jayson Johnson possessed cocaine. For Count 15, the Commonwealth presented no evidence of a delivery of cocaine. For Count 16, the Commonwealth presented no evidence

of an overt act in furtherance of a conspiracy. For Count 17, there was no seizure of a substance identified as cocaine, and the Commonwealth presented no evidence of a physical interaction between Fulks and Defendant Jayson Johnson. For Count 18, the Commonwealth presented no evidence that Defendant Jayson Johnson delivered cocaine. For Count 19, the Commonwealth presented no evidence that defendant committed two or more crimes called acts of racketeering. Additionally, the Commonwealth failed to present evidence that Defendant Johnson committed two crimes as pattern of racketeering activity. Finally, the Commonwealth failed to identify the alleged enterprise.

Defendant Jayson Johnson joins in Defendant Richard Johnson's argument that the evidence derived from the interception of phone communications should be suppressed.

II. Discussion

A. Defendant Richard Johnson's Arguments

1. There was a Sufficient Basis to Identify Defendant Richard Johnson's Voice.

Defendant Richard Johnson argues that Fishel did not have a sufficient basis to identify the Defendant's voice as being the voice on the intercepted calls. Under Pa. R.E. 901(b)(5), a person can be identified as the speaker through "[a]n opinion identifying a person's voice – whether heard firsthand or through mechanical or electronic transmission or recording – based on hearing the voice at any time under circumstances that connect it with the alleged speaker." Fishel testified that he spoke with Defendant Richard Johnson two to three years before the start of the investigation. Fishel testified that this conversation lasted a few minutes. In addition, Fishel testified that he briefly spoke with Defendant Richard Johnson following the Defendant's arrest in this case. Furthermore, on August 15, 2012, the speaker on a phone call says, "This is Rich." The same person who said "this is Rich" told Fulks that he would be over to Fulks'

residence. Surveillance members then saw two men arrive at Fulks' residence. They were able to identify one of these men as Richard Johnson. Therefore, the Commonwealth has presented sufficient evidence to meet the prima facie standard that Defendant Richard Johnson was the speaker on the intercepted calls.

2. The Evidence is Sufficient to Establish a Prima Facie Case of Counts 13, 14, and 15.

Defendant Richard Johnson argues that the Commonwealth has not presented sufficient evidence to establish a prima facie case of Counts 13, 14 and 15. These counts are Delivery of a Controlled Substance, Possession of a Controlled Substance with Intent to Deliver, and Possession of a Controlled Substance. Specifically, Defendant argues that the Commonwealth has not presented sufficient evidence of a delivery of cocaine on August 15, 2012.

"A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes sufficient probable cause to warrant the belief that the accused committed the offense. Notably, the Commonwealth does not have to prove the defendant's guilt beyond a reasonable doubt. Further, the evidence must be considered in the light most favorable to the Commonwealth so that inferences that would support a guilty verdict are given effect." Commonwealth v. Santos, 876 A.2d 360, 363 (Pa. 2005).

On August 15, 2012, Johnson agreed to give Fulks an ounce of cocaine and have Fulks pay him later. Approximately 117 minutes after this agreement, Fulks asked Johnson if he was coming to see him. Johnson said that he was in the middle of something but would be over as soon as he was done. Later on August 15, surveillance members observed Johnson make an exchange with Fulks at Fulks' residence. Johnson arriving at Fulks' residence and making an exchange after agreeing to deliver an ounce of cocaine is sufficient evidence to establish a prima facie case of Counts 13, 14, and 15.

Defendant Richard Johnson argues that the evidence is not sufficient since the officer who conducted the surveillance on August 15 did not testify at the preliminary hearing. "Although 'hearsay evidence alone may not be the basis for establishing a prima facie case in a preliminary hearing,' hearsay evidence may be admitted in a preliminary hearing." Commonwealth v. Jackson, 849 A.2d 1254, 1257 (Pa. Super. 2004) (quoting Commonwealth v. Tyler, 587 A.2d 326, 328 (Pa. Super. 1991)). Instantly, hearsay evidence is not the only basis for establishing a prima facie case of Counts 13, 14, and 15. The statements of Defendant Richard Johnson support the allegation that he delivered cocaine on August 15, 2012. Johnson agreed to give Fulks an ounce of cocaine and said that he would be over to Fulks' house.

3. The Evidence is Sufficient to Establish a Prima Facie Case of Corrupt Organizations.

Defendant argues that the Commonwealth has not presented sufficient evidence to establish a prima facie case for Corrupt Organizations, Count 23. 18 Pa. C.S. § 911 (b)(3) provides, "It shall be unlawful for any person employed by or associated with any enterprise to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." 18 Pa. C.S. § 911 (b)(4) provides, "It shall be unlawful for any person to conspire to violate 18 Pa. C.S. § 911 (b)(3)." "'Enterprise' means any individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity, engaged in commerce and includes legitimate as well as illegitimate entities and governmental entities." 18 Pa. C.S. § 911(h)(3). "Pattern of racketeering activity" is "a course of conduct requiring two or more acts of racketeering activity . . . ." 18 Pa. C.S. § 911(h)(4). An offense or a conspiracy to commit an offense indictable under the Controlled Substance, Drug, Device and Cosmetic Act is "racketeering activity." 18 Pa. C.S. §§ 911(h)(1)(ii), (iii).

For Corrupt Organizations, the Commonwealth must present evidence that (1) an enterprise existed, (2) the Defendant was associated with the enterprise, and (3) the Defendant engaged in a pattern of racketeering activity. *See* Commonwealth v. Dellisanti, 876 A.2d 366, 370 (Pa. 2005). Defendant Richard Johnson argues that the Commonwealth has not presented sufficient evidence that he was associated with an enterprise. In Commonwealth v. McCurdy,[19] the defendant cooperated and coordinated activities with other drug dealers. 943 A.2d at 302-03. The Superior Court of Pennsylvania held that the "evidence was sufficient to establish that [the defendant] was involved in an enterprise." Id. at 303.

Here, the Commonwealth presented evidence that Fulks and Defendant Richard Johnson worked together to purchase cocaine. On August 1, 2012, Fulks notified Johnson that a person was coming to sell Fulks cocaine. Johnson asked Fulks about the price of the cocaine and whether the person was going to stay "while he put it together." Fulks responded that he did not know the price, but the person would stay. Johnson then said that he would be at Fulks' house with his jar. Additionally, on August 9, 2012, Johnson asked Fulks what Fulks wanted Johnson to do with the cocaine. Fulks told Johnson to make it weigh four and a half ounces. Johnson later told Fulks that he would split the cost of the cocaine with Fulks.

The Commonwealth also presented evidence that Defendant Richard Johnson and Fulks worked together to sell cocaine. On August 15, 2012, Johnson told Fulks that Fulks could get an ounce and pay Johnson back later. This is evidence of cooperation because under the arrangement, Johnson would not receive money until Fulks sold cocaine. Since the Commonwealth presented evidence that the Defendant cooperated with Fulks in the purchase and selling of cocaine, it has presented sufficient evidence to show that the Defendant was associated with an enterprise.

[19] 943 A.2d 299 (Pa. Super. 2008).

Defendant Richard Johnson argues that the Commonwealth has not presented sufficient evidence that he engaged in a pattern of racketeering activity. The Commonwealth presented sufficient evidence to establish a prima facie case that a conspiracy involving Defendant Richard Johnson and Fulks occurred on August 9, 2012. Johnson asked Fulks what Fulks wanted Johnson to do with the cocaine. Fulks told Johnson to make the cocaine weigh four and a half ounces. This is evidence of an agreement between Fulks and Johnson to purchase cocaine. Approximately 49 minutes later, Johnson told Fulks that he was going to test the purity of the cocaine. Approximately 69 minutes later, Johnson told Fulks that the cocaine had a low purity. This is evidence that Johnson tested the cocaine and, therefore, took an overt act in furtherance of the agreement to purchase cocaine.

As discussed above, the Commonwealth presented sufficient evidence to establish a prima facie case that Defendant Richard Johnson delivered cocaine to Fulks on August 15, 2012. Since the Commonwealth has established prima facie cases of a conspiracy to purchase cocaine on August 9, 2012 and a delivery of cocaine on August 15, 2012, it has presented sufficient evidence that the Defendant engaged in a pattern of racketeering activity.

Because the Commonwealth presented sufficient evidence that Defendant Richard Johnson was associated with an enterprise and engaged in a pattern of racketeering activity, it has established a prima facie case of Count 23.

4. Single Conspiracy v. Multiple Conspiracies

The issue of whether there is a single conspiracy or multiple conspiracies exists "should be submitted to the jury . . . together with an appropriate instruction." Commonwealth v. Andrews, 768 A.2d 309, 314 (Pa. 2001). At this point, the Court must decide whether the Commonwealth has established a prima facie case of multiple conspiracies. In Andrews, the

Court held that there was adequate support for the jury's finding of multiple conspiracies since "the crimes involved different victims, were carried out at different apartment buildings, in different parts of the city, and were separated by three hours . . . . [and] the crimes were not interdependent, as where one offense is a 'necessary intermediate step' to committing a later offense." 768 A.2d at 335. Here, the alleged drug deals occurred in different areas of Williamsport.[20] The Commonwealth has presented evidence of deals occurring over the course of approximately five months. In addition, one deal was not a necessary intermediate step to later deals. Therefore, the Commonwealth has established a prima facie case of multiple conspiracies.

5. The Interception of Phone Communications was Lawful.

Defendant Richard Johnson argues that the order authorizing the interception of communications was not issued upon probable cause that communications involving Fulks' suppliers would be obtained through the interception requested. The affidavit of probable cause supporting the application describes the investigation of Fulks. It describes numerous instances when informants obtained drugs from Fulks or people associated with Fulks. It describes surveillance of Fulks and people associated with Fulks. The affidavit establishes probable cause that Fulks was selling a significant amount of drugs. It, therefore, establishes probable cause that Fulks was obtaining drugs from at least one person. Since Fulks had to be obtaining drugs from somebody, there was probable cause to believe that the interception of communications on the phone that Fulks was using would reveal information about the identity of Fulks' supplier and the method by which Fulks obtained drugs.

[20] The Commonwealth alleges that drug deals occurred at a Choice Tobacco Outlet and at Fulks' residence.

Defendants and the Commonwealth are well aware of the requirements that must be met before an order authorizing the intercept of wire communications can be granted:

> A condition precedent to the issuance of an order authorizing an intercept is a determination by a judge of the Superior Court that "normal investigative procedures with respect to such offense have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous to employ . . . ." This is an objective standard; reliance cannot be placed solely upon a subjective belief by the Attorney General or District Attorney that normal investigative procedures will not likely succeed . . . . [The standard] is designed to guarantee that wiretapping will not be resorted to in situations where traditional investigative techniques are adequate to expose crime. The requirement also suggests that a wiretap should not be employed as the initial step in a police investigation. However, the Commonwealth is not required to show that all other investigative methods have been exhausted. In making this determination, moreover, the issuing authority may consider and rely upon the opinions of police experts. In reviewing the adequacy of the application to support the issuance of an order of authorization, [the Superior Court] will interpret the application in a common sense manner, not overly technical, with due deference to the findings of the issuing authority.

Commonwealth v. Doty, 498 A.2d 870, 880-81 (Pa. Super. 1985) (citations omitted).

Beginning in July of 2011, investigators used informants to purchase cocaine from Fulks and Fulks' dealers. Defendant Richard Johnson argues that the informants had not failed since they bought drugs from Fulks and his dealers. The informants, however, were unable to discover Fulks' suppliers, which was the aim of the intercept. Fishel and Herbst (affiants) asserted that police investigators were unlikely to be able to discover Fulks' supplier through infiltration since, in their training and experience, a supplier limits the amount of people with which he or she deals. Investigators conducted surveillance of Fulks' residence, but the affiants asserted that surveillance could not identify the suppliers since the purpose of meetings could not be determined through surveillance alone. The affiants asserted that a warrant to search Fulks' residence was unlikely to shed light on the identity of the suppliers since, in their training and experience, suppliers change their procedures or stop dealing all together with customers who have been subjects of warrants. Investigators used pen registers, but the affiants asserted that

investigators could not identify the suppliers since suppliers often use phones subscribed to by other people. Finally, the affiants asserted that a Grand Jury would not be effective in identifying the suppliers since police had no reason to believe that Fulks and Fulks' dealers would cooperate with the investigation even with grants of immunity. After considering the above facts and the opinions of the affiants, this Court finds that the Commonwealth showed that normal investigative procedures had failed or reasonably appeared unlikely to succeed.

Defendant Richard Johnson argues that the order authorizing the intercept did not sufficiently describe how to minimize or eliminate the interception of non-relevant communications. "[T]he Pennsylvania statute [does not] require[] that the means for minimizing be enumerated in each order authorizing an intercept." Doty, 498 A.2d at 879. Every order authorizing an intercept "shall require that such interception begin and terminate as soon as practicable and be conducted in such a manner as to minimize or eliminate the interception of such communications not otherwise subject to interception . . . by making reasonable efforts, whenever possible, to reduce the hours of interception authorized by said order." 18 Pa. C.S. § 5712(b).

Paragraph 3 of Judge Mundy's Order provides, "Such interception shall begin and terminate as soon as practicable and be conducted in such a manner as to minimize or eliminate the interception of such communications not otherwise subject to interception . . . by making reasonable efforts, whenever possible, to reduce the hours of interception authorized by this Order."

In Doty, the Superior Court of Pennsylvania discussed the requirements of the interception of phone communications:

> Intrinsic minimization . . . is . . . required. Intrinsic minimization is most frequently achieved by a pre-set plan, with court approval and supervision. One of the factors to

> consider in reviewing the reasonableness of the monitor's minimization is the extent of judicial supervision. An initial minimization plan depends upon information known at the time of the application, and usually is less stringent. Where it is a course of conduct embracing multiple parties and extending over a long period of time that is being investigated, the initial plan may properly authorize interception of all communications during their entire durations or for substantial portions thereof. This is especially so where coded or guarded language is used, or where information concerning the extent of a conspiracy, the identity of the conspirators, and other details of the conspiracy are sought. If information obtained during the course of surveillance allows a more restrictive interception of communications, subsequent plans should be modified accordingly. If a pattern of nonpertinent communications develops, maximum minimization becomes necessary.

498 A.2d at 883 (citations omitted).

As discussed above, the aim of the intercept was to discover the identity of Fulks' drug suppliers. Judge Mundy's Order authorized the interception of communication for only twelve hours per day. District Attorney Linhardt (Linhardt) testified that the minimization plan was attached to the application for the interception. On July 23, 2012, Linhardt explained the minimization plan to investigators who were going to monitor the calls. Part of Linhardt's instruction was that the monitors read the minimization plan before every shift to determine whether the plan had been revised, amended, or altered. Judge Mundy's Order required the submission of progress reports every ten days, and Linhardt complied with the requirement. During the period of interception, Linhardt communicated daily with either the affiants or the agent supervising the interception. He also submitted a final report as required by 18 Pa. C.S. § 5712(e).

"The Commonwealth has the burden of proving at a suppression hearing that the manner in which the wiretap was conducted did not impose a greater invasion of privacy than was reasonably necessary under the circumstances. Circumstances to be considered include, but are not limited to, the nature of the investigation, the length of calls, the percentage of pertinent calls, whether calls are repeatedly between the same parties, whether the contents of calls are

ambiguous, whether coded or guarded language is used, and whether patterns develop during the surveillance." Doty, 498 A.2d at 883.

Here, the Commonwealth has shown that the interception of phone communications was conducted in a manner that did not impose a greater invasion of privacy than was reasonably necessary under the circumstances. Under the minimization plan, monitors had to determine whether a call was pertinent within two minutes. During the interception period, the phone used by Fulks was involved in 3,468 calls. Fishel testified that most of the calls were under a minute, and about 95% of calls were under two minutes. Thirty-four percent of the calls were pertinent. Fishel testified that 103 calls were minimized. Defendant argues that the minimization of only 103 calls establishes that calls were not intercepted according to the minimization plan. The minimization of 103 calls does not establish divergence from the minimization plan since only calls over two minutes were minimized. A non-pertinent call under two minutes would not be minimized; monitors just would not listen to it. Since the vast majority of calls were under two minutes, the vast majority of calls were not subject to minimization. All calls were, however, subject to the pertinent/non-pertinent determination.

Fishel testified that coded language was used in the calls. For example, "squirrel nut" was used to refer to an eighth of an ounce of cocaine and "onion" was used to refer to an ounce of cocaine. In addition, patterns developed during surveillance. For example, Fulks and Defendants would agree on an amount and price of cocaine, and then establish a meeting place. On August 21, 2012, Judge Mundy granted the affiants a 30-day extension on the intercept, but monitors stopped intercepting communications on September 7, 2012, before the expiration of the extension. After considering the circumstances surrounding the interception, this Court finds that the Commonwealth adequately minimized the interception.

Defendant Richard Johnson argues that the orders authorizing the pen registers and the track and trace devices permit use of the devices for only ten days. Defendant argues that the information derived from the devices should be removed from the affidavit of probable cause supporting the application for communication interception since the Commonwealth used the devices for more than ten days. As the Commonwealth argues, paragraphs 1 and 9 of the orders show that the devices were authorized for 30 days. Defendant's argument is based on the construction of the first sentence of paragraph 6 of the orders. The first sentence of paragraph 6 provides, "This authorization shall be for a period of thirty (30) days from either the date of installation and/or use or ten (10) days from the date of this Order, whichever is earlier." Defendant argues that the sentence provides that the devices are authorized for the shorter of (A) ten days from the date of the order or (B) 30 days from the date of either installation or use.

Defendant's reading of the sentence is flawed for two reasons. First, if the sentence truly provided what the Defendant contends, the devices would of course be authorized for ten days from the date of the order. Any mention of 30 days would be, in a word, ridiculous. Second, the "either" must be attributed to the stand alone "or" rather than the "and/or" since "either the date of installation and the date of use" makes no sense. Therefore, the devices were authorized for 30 days from the earlier of either (A) ten days from the date of the order or (B) the date of installation and/or use. During the preliminary hearing, Fishel testified that the devices were not used passed the 30-day period. Therefore, the information derived from the devices should not be removed from the affidavit of probable cause supporting the application for interception.

B. Defendant Jayson Johnson's Arguments

1. The Evidence is Sufficient to Meet the Prima Facie Standard that Defendant Jayson Johnson was the Speaker on the Intercepted Calls.

Throughout his motion, Defendant Jayson Johnson argues that the evidence was insufficient to meet the prima facie standard that he was the person speaking on the intercepted calls. Under Pa. R.E. 901(b)(5), a person can be identified as the speaker through "[a]n opinion identifying a person's voice – whether heard firsthand or through mechanical or electronic transmission or recording – based on hearing the voice at any time under circumstances that connect it with the alleged speaker." Fishel had a 15 to 20 second conversation with Defendant Jayson Johnson after he was arrested. Fishel testified that from this conversation, he was able to identify the voice on the calls as the voice of Defendant Jayson Johnson. In addition, on August 21, 2012, the speaker of a call said that he was about to pull up to Fulks' house. Surveillance members saw Defendant Jayson Johnson pull up to the house. Furthermore, on August 31, 2012, the speaker said that he would meet Fulks on Elizabeth Street. Later, surveillance members observed Johnson meet Fulks on Elizabeth Street. Therefore, the Commonwealth has presented evidence sufficient to meet the prima facie standard that Defendant Jayson Johnson was the person speaking on the intercepted calls.

2. The Evidence is Sufficient to Establish Prima Facie Cases of the Conspiracy Counts.

For conspiracy, "the Commonwealth must establish a defendant entered into an agreement to commit or aid in an unlawful act with another person or persons, with a shared criminal intent, and an overt act was done in the conspiracy's furtherance. The overt act need not accomplish the crime – it need only be in furtherance thereof." Commonwealth v. Weimer, 977 A.2d 1103, 1105-06 (Pa. 2009) (citations omitted).

The evidence is sufficient to establish a prima facie case of Counts 1-3, which allege the occurrence of a conspiracy between Defendant Jayson Johnson and Burwell on August 21, 2012. "[A] conspiracy may be inferred where it is demonstrated that the relation, conduct, or circumstances of the parties, and the overt acts of the co-conspirators sufficiently prove the formation of a criminal confederation." Commonwealth v. Woodward, 614 A.2d 239, 243 (Pa. Super. 1992). Here, the circumstances show that Johnson and Burwell conspired to sell cocaine to Fulks. Johnson agreed to sell Fulks cocaine. Burwell entered Fulks' residence shortly after Johnson told Fulks that he was about to pull up. Burwell was in Fulks' residence for less than two minutes. After Burwell exited the residence, he entered Johnson's car. Johnson was later seen at a mini-mart making an exchange with someone in another vehicle. Since the circumstances show that Burwell and Johnson conspired to sell Fulks an ounce of cocaine, the Commonwealth has established a prima facie case of Counts 1-3.

The Commonwealth has presented sufficient evidence to establish a prima facie case of Counts 5 and 6, which allege the occurrence of a conspiracy between Defendant Jayson Johnson and Fulks on August 22, 2012. On August 22, 2012, Jayson Johnson agreed to sell Fulks an ounce of cocaine. Approximately 30 minutes later, Johnson told Fulks that he had only seven grams on him. Johnson changing the amount of cocaine is evidence that he took an overt act in furtherance of the agreement to sell Fulks cocaine. Therefore, the Commonwealth has established a prima facie case of Counts 5 and 6.

The Commonwealth has presented sufficient evidence to establish a prima facie case of Counts 9 and 10, which allege the occurrence of a conspiracy involving Defendant Jayson Johnson and Fulks on August 24, 2012. "The essence of a criminal conspiracy is a common understanding, no matter how it came into being, that a particular criminal objective be

accomplished." Commonwealth v. Johnson, 719 A.2d 778, 784 (Pa. Super. 1998). During the first call of August 24, 2012, Fulks asked Johnson for cocaine, but Johnson said he could not sell without first contacting Rich. There was not a common understanding that Jayson Johnson would sell cocaine to Fulks. A common understanding was, however, reached during the second call of August 24 as there was an agreement to the amount of cocaine and the price. After the agreement, Fulks and Johnson arranged a meeting place.

The Commonwealth argues that the arrangement of a meeting place is circumstantial evidence of an overt act on August 24 since on August 21 and August 31, Defendant Jayson Johnson and Fulks arranged a meeting site, and surveillance members observed Johnson and Fulks at the meeting site. "Evidentiary inferences, like criminal presumptions, are constitutionally infirm unless the inferred fact is 'more likely than not to flow from the proved fact on which it is made to depend.'" Commonwealth v. Wojdak, 466 A.2d 991, 996 (Pa 1983) (quoting Turner v. United States, 396 U.S. 398, 404-05 (1970)). "This 'more-likely-than-not' test, which must be applied to inferences already enjoying judicial or legislative sanction, must be viewed as a minimum standard in assessing the reasonableness of inferences relied upon in establishing a prima facie case of criminal culpability." Id. Given that Johnson and Fulks went to the arranged meeting sites on August 21 and August 31, it is more likely than not that they went to the meeting site on August 24. Therefore, the Commonwealth has shown sufficient evidence of an overt act to establish a prima facie case of Counts 9 and 10.

The Commonwealth has presented sufficient evidence to establish a prima facie case of Counts 16 and 17, which allege the occurrence of a conspiracy between Defendant Jayson Johnson and Fulks on September 3, 2012. On September 3, Fulks asked Johnson for two ounces of cocaine. They agreed on a price of $1,900. This is evidence of an agreement to commit an

unlawful act. Approximately 50 minutes later, Johnson told Fulks that he had only an ounce, and they agreed on a price of $950. Johnson changing the amount of cocaine is evidence that he took an overt act in furtherance of the agreement to sell Fulks cocaine. Therefore, the Commonwealth has established a prima facie case of Counts 16 and 17.

3. The Evidence is Sufficient to Establish a Prima Facie Case of Counts 12, 13, and 14.

The Commonwealth presented sufficient evidence to establish a prima facie case of Counts 12, 13, and 14. These counts allege that Defendant Jayson Johnson possessed cocaine with intent to deliver and delivered cocaine to Fulks on August 31, 2012. "It is . . . well-established in this Commonwealth that the identity of illegal narcotic substances may be established by circumstantial evidence alone, without any chemical analysis of the seized contraband. Such a policy indicates that the courts will not, in cases involving the sale or use of illegal drugs, constrict their fact-finding function in regard to the identity of drugs to a strict scientific analysis, but will rather permit the use of common sense and reasonable inferences in the determination of the identity of such substances." Commonwealth v. Minott, 577 A.2d 928, 932 (Pa. Super. 1990) (citations omitted). In Commonwealth v. Marcos,[21] detectives intercepted communications of a person's phone and discovered that the person intended to buy marijuana. Surveillance members observed the defendant pull up to the person's residence. The person removed a package from the defendant's vehicle. No marijuana was seized following the transaction. The Honorable James M. Bucci of the Berks County Court of Common Pleas found that "[t]he surrounding facts and circumstances of [the] matter . . . clearly demonstrate[d] the defendant was delivering marijuana." 2005 Pa. Dist. & Cnty. Dec. LEXIS 423, 15.

[21] 2005 Pa. Dist. & Cnty. Dec. LEXIS 423.

Here, the circumstances show that Defendant Jayson Johnson was delivering cocaine to Fulks on August 31, 2012. Johnson told Fulks that he would sell Fulks two ounces of cocaine for $1,800. Johnson and Fulks agreed to meet on Elizabeth Street, near Fulks' house. Surveillance members observed Fulks get into a car on Elizabeth Street. A police officer identified Johnson as the driver of the car. Therefore, the Commonwealth has established a prima facie case of Counts 12, 13, and 14.

4. Criminal Use of Communication Facility Counts

For criminal use of a communication facility, the Commonwealth must prove "(1) [a defendant] knowingly and intentionally used a communication facility; (2) [the defendant] knowingly, intentionally or recklessly facilitated an underlying felony; and (3) the underlying felony occurred." Commonwealth v. Moss, 852 A.2d 374, 382 (Pa. Super. 2004).

The Commonwealth has presented sufficient evidence to establish a prima facie case of Count 4, which alleges criminal use of a communication facility on August 21, 2012. On August 21, 2012, Defendant Jayson Johnson used a phone to set up a drug deal with Fulks. After Johnson's conversations with Fulks, Burwell entered Fulks' residence. Burwell was in the residence for less than two minutes. After Burwell exited the residence, he got into Johnson's car. This is evidence that a drug deal occurred and that Johnson facilitated it through the use of a phone. Therefore, the Commonwealth has established a prima facie case of Count 4.

The Commonwealth has presented sufficient evidence to establish a prima facie case for Count 7, which alleges criminal use of a communication facility on August 22, 2012. "The Commonwealth may not obtain a conviction [of criminal use of a communication facility] based solely on evidence that [a defendant] engaged in drug-related telephone conversations with a known drug trafficker. The Commonwealth must prove beyond a reasonable doubt that the

telephone conversations facilitated the commission of a specific underlying felony." Moss, 852 A.2d at 384. While the Commonwealth needs not prove the occurrence of a drug deal beyond a reasonable doubt at this point, it must present evidence that a drug deal occurred or there was an attempt to carry out a deal on August 22, 2012.

On August 22, Defendant Jayson Johnson agreed to bring an ounce of cocaine to Fulks' residence. Approximately 30 minutes later, Johnson told Fulks that he only had seven grams on him. Fulks told Johnson to wait and bring the ounce all at once. On August 23, Fulks asked Johnson for another ounce of cocaine. The Commonwealth argues that because Fulks asked for another ounce of cocaine on August 23, it can be reasonably inferred that Johnson delivered an ounce on August 22. At this stage, "the evidence must be considered in the light most favorable to the Commonwealth so that inferences that would support a guilty verdict are given effect." Santos, 876 A.2d at 363. Viewing the evidence in the light most favorable to the Commonwealth, this Court finds that the evidence is sufficient to establish a prima facie case of Count 7. Since Fulks asked for another ounce of cocaine on August 23, Johnson more likely than not delivered the ounce asked for on August 22.

The Commonwealth has not presented sufficient evidence to establish a prima facie case of Count 8, which alleges criminal use of a communication facility on August 23, 2012. On August 23, Fulks asked Defendant Jayson Johnson for another ounce of cocaine. Johnson said that he had an ounce. Johnson said that he would take care of Fulks and call him back in 20 minutes. The Commonwealth presented no evidence of further conversation between Johnson and Fulks on August 23. The Commonwealth presented no evidence that Johnson and Fulks arranged a meeting site on August 23. Therefore, the Commonwealth has not established a prima facie case of Count 8.

The Commonwealth has presented sufficient evidence to establish a prima facie case of Count 11, which alleges criminal use of a communication facility on August 24, 2012. On August 24, Defendant Jayson Johnson, through a phone conversation, agreed to sell Fulks half an ounce of cocaine. Johnson and Fulks then set up a meeting site. As discussed above, Johnson more likely than not went to the meeting site on August 24 since on August 21 and August 31, Johnson and Fulks met after setting up a meeting place. This evidence is sufficient to establish a prima facie case that Johnson, at the very least, took a substantial step in delivering drugs to Fulks on August 24.

The Commonwealth has presented sufficient evidence to establish a prima facie case of Count 15, which alleges criminal use of a communication facility on August 31, 2012. On August 31, 2012, Defendant Jayson Johnson, through phone conversations, agreed to sell Fulks two ounces of cocaine. Johnson agreed to meet Fulks on Elizabeth Street. Surveillance members observed Fulks get into Johnson's car on Elizabeth Street. This is evidence that a drug deal occurred and that Johnson facilitated it through the use of a phone. Therefore, the Commonwealth has established a prima facie case of Count 15.

The Commonwealth has presented sufficient evidence to establish a prima facie case for Count 18, which alleges criminal use of a communication facility on September 3, 2012. On September 3, Defendant Jayson Johnson, through a phone conversation, agreed to sell Fulks cocaine. Johnson said that he had a ride to Fulks' house and would be at Fulks' house soon. Approximately 14 minutes later, Johnson asked Fulks if he was home, and Fulks responded that he was. Johnson more likely than not went to Fulks' residence on September 3 since on August 21 and August 31, Johnson and Fulks met after setting up a meeting place. This evidence is

sufficient to establish a prima facie case that Johnson, at the very least, took a substantial step in delivering drugs to Fulks on September 3.

5. The Evidence is Sufficient to Establish a Prima Facie Case of Corrupt Organizations

The Commonwealth has presented sufficient evidence to establish a prima facie case of Corrupt Organizations, Count 19. The Commonwealth has presented evidence that Defendant Jayson Johnson and Fulks worked together to sell cocaine. On August 28, 2012, Johnson notified Fulks that Johnson had cocaine. On September 3, 2012, Fulks told Johnson that he did not have enough money to purchase the cocaine. Johnson agreed to let Fulks pay some of the amount at a later time. This is evidence of cooperation since Johnson would not receive money until Fulks sold cocaine.

The Commonwealth also presented evidence that Richard Johnson and Defendant Jayson Johnson worked together to sell cocaine. On August 24, 2012, Jayson Johnson told Fulks that he could not sell cocaine without first contacting Rich. On August 26, 2012, Jayson Johnson told Fulks that he would let Fulks know when Rich got back. This is evidence of an association between Jayson Johnson and Richard Johnson. Since the Commonwealth presented evidence that Defendant Jayson Johnson cooperated with Fulks and Richard Johnson, it presented sufficient evidence that Jayson Johnson was associated with an enterprise.

The Commonwealth presented sufficient evidence that Defendant Jayson Johnson engaged in a pattern of racketeering activity. As discussed above, the Commonwealth presented evidence that Defendant Jayson Johnson conspired to deliver cocaine on August 21, August 22, August 24, and September 3. It also presented evidence that Defendant Jayson Johnson delivered cocaine on August 31. Therefore, the Commonwealth has presented sufficient evidence that Defendant Jayson Johnson engaged in a pattern of racketeering activity.

Because the Commonwealth presented sufficient evidence that Defendant Jayson Johnson was associated with an enterprise and engaged in a pattern of racketeering activity, it has established a prima facie case of Count 19.

III. Conclusion

Fishel had a sufficient basis to identify Defendant Richard Johnson as a speaker on the intercepted calls. The evidence is sufficient to establish a prima facie case that Defendant Richard Johnson possessed cocaine with intent to deliver and delivered cocaine on August 15, 2012. The evidence is sufficient to establish a prima facie case that Defendant Richard Johnson was associated with an enterprise and engaged in a pattern of racketeering activity. The issue of whether there is a single conspiracy or multiple conspiracies will be submitted to the jury, along with appropriate instruction. The interception of phone communications was lawful. Pursuant to Pennsylvania Rule of Criminal Procedure 579, if Defendant Richard Johnson receives new information providing grounds for another pre-trial motion, he may file a motion.

The evidence is sufficient to meet the prima facie standard that Defendant Jayson Johnson was the speaker on the intercepted calls. The evidence is sufficient to establish prima facie cases of the conspiracy counts regarding Defendant Jayson Johnson. The evidence is sufficient to establish a prima facie case that Defendant Jayson Johnson possessed cocaine with intent to deliver and delivered cocaine on August 31, 2012. With the exception of Count 8, the Commonwealth has presented sufficient evidence to establish prima facie cases of the counts alleging that Defendant Jayson Johnson criminally used a communication facility. The evidence is sufficient to establish a prima facie case that Defendant Jayson Johnson was associated with an enterprise and engaged in a pattern of racketeering activity.

ORDER

AND NOW, this _____ day of November, 2014, based on the foregoing opinion, Defendant Richard Johnson's Pre-trial Motion is hereby DENIED. Defendant Jayson Johnson's Pre-trial Motion is GRANTED in part and DENIED in part. Defendant Jayson Johnson's request for a Writ of Habeas Corpus with respect to Count 8 is hereby GRANTED. Defendant Jayson Johnson's motion is DENIED in all other respects.

By the Court,

Nancy L. Butts, President Judge