IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	
	:	
vs.	**:**	**No. CR- 568-2015**
	:	
SHARONDA WALKER,	**:**	
Defendant	**:**	**Omnibus Pretrial Motion**

OPINION AND ORDER

Defendant is charged by Information filed on April 17, 2015 with conspiracy to commit aggravated assault, riot, firearms and related charges. These charges arise out of an incident that allegedly occurred on January 5, 2015 at 2510 Linn Street in the city of Williamsport. Defendant is alleged, along with several others, to have driven to the residence of Cheyanne Taylor's mother. At this residence, Defendant is alleged to have brandished a handgun and made threatening remarks. An alleged accomplice is alleged to have fired one round from a different handgun, almost striking another person and entering an occupied residence.

On June 25, 2015, Defendant filed an omnibus pretrial motion. The hearing and argument were held on August 14, 2015. In an order entered on August 18, 2015, the court disposed of all of the motions set forth in the omnibus pretrial motion except for Count 1, a petition for writ of habeas corpus; Count 2, a motion to suppress; and Count 5, a request for a *Brady* colloquy of the prosecutor. With respect to these counts, the court requested the filing of briefs. The briefs have now been submitted to the court and the matter is ripe for a decision.

In Defendant's petition for writ of habeas corpus, Defendant first submits that there is insufficient evidence to hold Defendant for court on any of the charges, because the evidence fails to identify Defendant as the perpetrator of any crime.

The proper means to attack the sufficiency of the Commonwealth's evidence pretrial is through the filing of a petition for writ of *habeas corpus*. ***Commonwealth v. Marti***, 779 A.2d 1177, 1178 n.1 (Pa. Super. 2001). At a habeas corpus hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a prima facie case against the Defendant. ***Commonwealth v. Williams***, 911 A.2d 548, 550 (Pa. Super. 2006). A prima facie case, "consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime." ***Commonwealth v. Packard***, 767 A.2d 1068, 1070 (Pa. Super. 2001). "Stated another way, a prima facie case in support of an accused's guilt consists of evidence that, if accepted as true, would warrant submission of a case to a jury." Id. at 1071.

In reviewing a petition for habeas corpus, the court must view the evidence and all reasonable inferences to be drawn from the evidence in a light most favorable to the Commonwealth. ***Commonwealth v. Santos,*** 583 Pa. 96, 101, 876 A.2d 360, 363 (2005). A prima facie case merely requires evidence of each of the elements of the offense charged; not evidence beyond a reasonable doubt. ***Marti,*** 779 A.2d at 1180 (citations omitted).

Contrary to Defendant's assertions, the evidence is sufficient for prima facie purposes to identify Defendant as the perpetrator of the alleged offenses. At the preliminary hearing held on March 24, 2015, the Commonwealth introduced the testimony of two

eyewitnesses, Jerrill Buxton and Ms. Taylor. While the testimony of one may not be sufficient to establish identity, the testimony of both when read together does.

Mr. Buxton testified that on January 5, 2015, he was at his mother's house on Linn Street. Three vehicles pulled up "altogether." The third vehicle was a Jeep. As the occupants of the first two vehicles approached the porch, one of the occupants of the Jeep rolled down the window and yelled out "we don't fight, we shoot." After this statement, one of the occupants of the Jeep got out of the driver's side door and "reached like the motion of a gun from the waistband area."

Soon afterward, Mr. Buxton pulled out his own gun after which all of the actors fled the scene. Those from the Jeep returned to it. The Jeep, however, did not leave. It backed up and sat at the corner. Shortly thereafter, it came back down the street, "the back window rolled down," the witness saw a "gun flash" and a bullet went "right past [his] right ear, passed [his] head into the window" of the residence.

He identified the occupants of the Jeep as two men and one female. It was the female voice that made the statement "we don't fight; we shoot." He observed all of the occupants of the Jeep both initially exit and then return to the vehicle.

Ms. Taylor testified that on January 5, 2015, she also was at her mother's house at 2510 Linn Street. She was present when the three vehicles approached the residence.

She saw Defendant get out of the driver's side door of the Jeep. She specifically heard Defendant say "we don't fight; we gun play." She witnessed Defendant get

out of the vehicle with the others. She then saw Defendant return to the driver's side of the vehicle and enter it. Ms. Taylor then went inside the residence and that's when she heard gunshots.

The evidence establishes, for prima facie purposes, the identity of Defendant as the actor.

Alternatively, Defendant asserts that there is insufficient evidence to prove that she possessed or fired a gun. Defendant argues that all of the charges related to the possession or firing of a gun must be dismissed on these grounds.

With respect to possessing a gun, Mr. Buxton stated that he saw "a motion of pulling out a firearm from their waistband." He elaborated that he saw "a motion and the arm come down so it looked like they was holding a firearm." He could not describe the gun, he "just seen…the motion of it." He confirmed that he did not "actually see the firearm."

He thought the person from the Jeep had a gun because when he saw "the motion from the waistband", he saw "just a shadow of a gun like you would see a barrel of it, that's it, but it's, like I said, it was dark so I couldn't draw it out for you." He thought it "was probably a gun" because he "seen the motion and the way they kept it down by their hip." He believes he "seen the barrel by the hip."

The barrel was black but he would not be able to tell whether it was a pellet gun, a sports gun or even chrome. It was dark outside and "it looked black" to him.

Ms. Taylor testified that Defendant had something in her hand. "It looked like a gun but you couldn't see it because it was dark." She could not see any detail. Defendant

was “holding it down.” Ms. Taylor believed it was a gun because of what Defendant said and although she did not actually see a gun, the “configuration…looked like a gun.”

While it is certainly a very close call, the court finds that the evidence is sufficient for prima facie purposes to prove that Defendant possessed a gun. All of the evidence must be considered together. Defendant possessing a gun is consistent with her statement, consistent with her movement shortly before or after the statement was made, consistent with the conduct of the others, consistent with how the gun was being hidden on the side of her body, and consistent with the partial description of a barrel by Mr. Buxton and the “configuration that looked like a gun” of Ms. Taylor.

With respect to the firing of the weapon, however, the court agrees with Defendant. There is absolutely no evidence whatsoever that Ms. Walker fired any firearm. The evidence from both witnesses placed her as the driver of the vehicle. She exited the vehicle from the driver’s side and reentered the vehicle from the driver’s side. As well, the vehicle backed up and waited. Defendant would have been facing the victim from the driver’s side, but further away than the passenger side. As the car drove past Mr. Buxton, the shot came from the back passenger side after the window was rolled down. The evidence is clear that two other individuals were with Defendant in the Jeep.

Despite the fact that there is insufficient evidence to prove for prima facie purposes that Defendant actually fired the weapon, the Commonwealth argues that for prima facie purposes, the charges against Defendant related to the shooting of the weapon have been proven under the theory of accomplice liability. In other words, the Commonwealth

argues that with the intent of promoting or facilitating the commission of these offenses, Defendant aided or agreed or attempted to aid another in planning or committing of those offenses. 18 Pa. C.S.A. § 306.

The court agrees that, for prima facie purposes, Defendant is liable as an accomplice with respect to the charges related to the shooting of the gun. Defendant facilitated the shooting by driving to the residence, threatening to use a gun, stepping out of the vehicle in support of the others, returning to the vehicle, as the driver of the vehicle backing up and waiting and then driving slowly by the residence while a backseat passenger in her vehicle fired the weapon.

Defendant next argues that the evidence was insufficient to prove for prima facie purposes the conspiracy count. Defendant asserts that "there was no evidence to establish an agreement and/or any overt act between Ms. Walker and anyone else, other than the allegation that Ms. Walker was there." Defendant argues that her alleged mere presence at the scene does not establish a conspiracy.

To prove a conspiracy, "the Commonwealth must establish that the defendant: 1) entered into an agreement to commit or aid in an unlawful act with another person or persons; 2) with a shared criminal intent; and 3) an overt act was done in furtherance of the conspiracy." ***Commonwealth v. Devine***, 26 A.3d 1139, 1147 (Pa. Super. 2011)(citations omitted).

Proving an explicit or formal agreement between two parties can seldom be done through direct proof. Accordingly and consistent with proof of other matters, it can be

done circumstantially. ***Commonwealth .v Roux***, 465 Pa. 482, 350 A.3d 867, 870 (1976).

"An agreement sufficient to establish a conspiracy can be inferred from a variety of circumstances, including but not limited to, the relation between the parties, knowledge of and participation in the crime, and the circumstances and conduct of the parties surrounding the criminal episode." ***Commonwealth v. Saunders***, 946 A.2d 776, 781 (Pa. Super. 2008), quoting ***Commonwealth v. Geiger***, 944 A.2d 85, 90 (Pa. Super. 2008). "Given the surreptitious nature of conspiracy, the existence of a formal agreement is often proven circumstantially, such as the by the relations, conduct, or circumstances of the parties or overt acts on the part of co-conspirators." ***Commonwealth v. Jacobs***, 614 Pa. 664, 39 A.3d 977, 985 (2012).

The circumstances surrounding the incident sufficiently prove the existence of the conspiracy for prima facie purposes. The three vehicles pulled up together. All of the occupants of the first two vehicles exited those vehicles and approached the residence. As an argument ensued, Defendant got out of her vehicle with two others and made a threatening remark with respect to guns. Once all of the actors were forced to flee, she returned to her vehicle. Instead of driving away, she backed up the Jeep and waited. She then drove slowly past the residence giving her backseat passenger the time and opportunity to roll down the window and fire a shot at the residence. Under all of these circumstances, and contrary to the argument of Defendant, she was not a mere spectator. The circumstances prove for prima facie purposes an agreement to commit or aid in an unlawful act, shared criminal intent, and an overt act in furtherance of the conspiracy.

Turning to the aggravated assault charges, Defendant argues that there "was no specific intent to cause serious bodily injury to Cheyanne Taylor as alleged in the Information." It is correct that Cheyanne Taylor is listed as the alleged victim in the Information. The criminal complaint and supporting affidavit, however, list Mr. Buxton as the alleged victim and intended target of the firing.

Clearly, Defendant acted as an accomplice for prima facie purposes with respect to attempting to cause serious bodily injury under circumstances manifesting extreme indifference to the value of human life or attempting to cause bodily injury to another with a deadly weapon, as set forth above. The intended target may have in fact been Cheyanne Taylor as she was walking into the residence or Mr. Buxton. Regardless and for prima facie purposes, Defendant was an accomplice in the shooting. Accordingly, Defendant's argument on the aggravated assault charges fails.

Defendant further argues that the evidence is insufficient to hold the riot, recklessly endangering another person and stalking charges. Defendant argues that there "was no evidence of any intent to commit or facilitate the commission of a felony or misdemeanor", that there was no evidence "that Ms. Walker knew that a firearm would be used", that there is no "evidence that Ms. Walker fired a gun" and that there was "no evidence of any course of conduct or any kind of predatory behavior."

The court disagrees for the reasons set forth above. Defendant, in concert with others, drove to the residence, threatened the occupants with gun violence, approached the residence together and in mass, and essentially straight out of far too many movies, waited at

the corner, drove by the residence, slowed down giving the passenger enough time to roll the window down and fire at others.

Accordingly, Defendant's petition for writ of habeas corpus shall be denied.

Count 2 of Defendant's omnibus pretrial motion consists of a motion to suppress. Defendant submits that the two firearms seized from Defendant's residence should be suppressed, because the search warrant and affidavit of probable cause did not establish probable cause to support that she committed any offense.

Specifically, Defendant argues that there was no probable cause that she committed any offense, no nexus between the crime that Defendant allegedly committed and the place to be searched, no evidence that Defendant stored a firearm in her residence or that any criminal activity occurred in her residence and no evidence which "demonstrates the process by which the agents were able to determine that Ms. Walker possessed a firearm at her residence in Montour County on January 9 for a crime allegedly committed outside on the streets of Williamsport on January 5."

Rule 203 of the Pennsylvania Rules of Criminal Procedure provides in pertinent part: "(B) No search warrant shall issue but upon probable cause supported by one or more affiants sworn to before the issuing authority in person or using advanced communication technology. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits." PA. R. CRIM. P. 203(B).

In analyzing whether a warrant is supported by probable cause, the

court is confined to the four corners of the affidavit. ***Commonwealth v. Coleman***, 574 Pa. 261, 830 A.2d 554, 560 (2003).

The test for determining whether a search warrant is supported by probable cause is the totality of the circumstances.

> Pursuant to the 'totality of the circumstances' test…the task of an issuing authority is simply to make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. …It is the duty of the court reviewing an issuing authority's probable cause determination to ensure that the magistrate had a substantial basis for concluding that probable cause existed. In so doing, the reviewing court must accord deference to the issuing authority's probable cause determination, and must view the information offered to establish probable cause in a common sense, non-technical manner….
>
> [Further,] a reviewing court [is] not to conduct a de novo review of the issuing authority's probable cause determination but [is] simply to determine whether or not there is substantial evidence in the record supporting the decision to issue the warrant.

Commonwealth v. Jones, 605 Pa. 188, 988 A.2d 649, 655 (Pa. 2010), quoting ***Commonwealth v. Torres***, 564 Pa. 86, 764 A.2d 532, 537-38, 540 (2001); see also ***Commonwealth v. Martinez***, 69 A.3d 618, 623-24 (Pa. Super. 2013).

Further, case law recognizes that: "[Search warrants] are normally drafted by nonlawyers in the midst and haste of criminal investigation. Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place in this area." ***Commonwealth v. Jones***, 229 Pa. Super. 224, 323 A.2d 879, 882 (1974), *quoting* ***United States v. Ventresca***, 380 U.S. 102, 108 (1965).

Contrary to Defendant's assertions, in reviewing the affidavit of probable cause as well as the application itself, the court finds that there is both probable cause as well as a sufficient nexus.

As the Commonwealth notes cogently in its Brief:

> The Defendant was identified as being the driver of a vehicle that a bullet was fired out of on January 5, 2015. The Defendant was also identified by a witness as being in possession of a firearm at the time of the incident. The Defendant was identified by her landlord as the tenant of the home in question. It was her home, and not just a place she visited or used incidentally. Defendant also owns a black Pontiac that was parked in the driveway of said home. A black Pontiac was present at the scene of the shooting on January 5, 2015, and two of the occupants of that vehicle along with the Defendant were seen together at the residence on January 7, 2015.

See also the cases cited by the Commonwealth including ***Commonwealth v. Davis***, 351 A.2d 642, 645-46 (Pa. 1976) and ***Commonwealth v. Hutchinson*** 434 A.2d 740, 742-43 (Pa. Super. 1981).

Accordingly, Defendant's motion to suppress will be denied.

Defendant's final argument concerns what is termed as a *Brady* colloquy of the Commonwealth. Defendant argues that "to ensure that the prosecution is compliant with its *Brady* obligations, academics and judges alike have encouraged the use of a *Brady* colloquy." Defendant asserts that "such a colloquy would ensure that the prosecutor is carefully reviewing all of its information and its agent's information thereby fulfilling its due process disclosure obligations." Defendant suggests that the colloquy is necessary so that it is impressed upon the prosecutor the need to scrupulously comply with "their professional obligations."

In this case, the Commonwealth does not argue that the court does not have

the authority to order a *Brady* colloquy. The Commonwealth simply argues that there is no reason for the court to order it "to affirm that it is doing something that it is already obligated to do." The Commonwealth argues as well that Defendant has not alleged any facts to support his argument that a *Brady* colloquy is necessary in this case.

As the Supreme Court noted in ***Commonwealth v. Weiss***, 81 A.3d 767 (Pa. 2013): "Pursuant to Brady and its progeny, the prosecutor has a duty to learn of all evidence that is favorable to the accused which is known by others acting on the government's behalf in the case, including the police. …'the prosecutor's Brady obligation clearly extends to exculpatory information in the files of the police agencies of the same government bringing the prosecution.'" ***Id.*** at 783 (citations omitted).

Obviously, due process requires prosecutors to disclose favorable evidence to defendants. This favorable evidence includes exculpatory and impeachment evidence. The failure to disclose *Brady* evidence violates due process "irrespective of the good faith or bad faith of the prosecution." ***Brady v. Maryland,*** 373 U.S. 83, 87 (1963).

Contrary to what the Commonwealth claims, the colloquy itself does not amount to an accusation. A *Brady* colloquy as proposed by Defendant has the potential to increase disclosures and compels a prosecutor to investigate more closely what can and should be disclosed.

Nevertheless, in the majority of cases, all of the relevant information is disclosed through informal discovery between the parties without a *Brady* colloquy or any other court intervention. In the court's experience, the prosecuting attorneys generally

provide defense counsel with the inculpatory and exculpatory information in their files. The difficulties arise on occasions when the police or other agencies possess information that, for a variety of reasons, is inadvertently not disclosed to the prosecuting attorney until trial or immediately prior to trial. For example, late disclosures have occurred because the prosecutor's file or the police investigative file did not include a traffic or accident report, a supplemental report from an officer other than the affiant, or a report from a separate but related criminal investigation (such as an investigation of a co-defendant or witness or an investigation of a theft offense when one of the charges is receiving stolen property), or because a statement or information was contained in the files of other agencies, such as Children and Youth or the probation and parole office. Therefore, the court finds it advisable to require a defendant to show some type of suspected violation or other facts and circumstances such as an investigation that involves multiple agencies or the potential for multiple types of reports for the same incident before the court will order a *Brady* colloquy.

In this case, it appears that the incident may have arisen out of some prior altercation or disagreement between Ms. Taylor and Defendant or the other individuals who were in the vehicles that came to Ms. Taylor's mother's residence.

Accordingly, the court will conduct a *Brady* colloquy of the Commonwealth on the record immediately prior to jury selection. The *Brady* colloquy will consist of the following questions:

(1) Have you requested and reviewed the information that law enforcement associated with this case either directly or indirectly

possesses, including information that may not have been reduced to a formal written report, to determine if it contains information that is favorable to the defense?

(2) Have you reviewed your file, and the notes and files of any prosecutors who have handled this case in connection with any other aspect of it, to determine if these files and the materials included in them, include information that is favorable to the defense?

(3) Have you identified information that is favorable to the defense but nonetheless elected not to disclose this information because you believe the defense is already aware of the information or the information is not material?

(4) Have you disclosed all of the information known to you and the Commonwealth that tends to be favorable to the defense regardless of whether the material meets the *Brady* materiality standard?

(5) Given at this stage what you anticipate the defense will present as the theory of their defense, have you reviewed your file and have you disclosed to the defense any additional information that is favorable to the defense?

Prior to *Brady* colloquy, the prosecutor should inquire of its witnesses and the police to determine if there are any reports, statements or other information related to this incident **or the circumstances giving rise to it** and provide any *Brady* material or other discoverable

information to the defense.

ORDER

AND NOW, this __ day of October 2015 following a hearing, argument and the submission of briefs and for the reasons set forth in the foregoing opinion, the court DENIES Defendant's motion for habeas corpus, DENIES Defendant's motion to suppress and GRANTS Defendant's motion for a *Brady* colloquy.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Edward J. Rymsza, Esquire
Gary Weber, Esquire
Work file