

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1877-2017;
	:	CP-41-CR-1878-2017
v.	:	
	:	
KADEEN D. CRAWFORD,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1880-2017
v.	:	
	:	
MARKEL M. RICHARDSON,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1881-2017
v.	:	
	:	
DANIEL L. SHANK,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION AND ORDER

Kadeen Crawford (Crawford), Markel Richardson (Richardson), Daniel Shank (Shank), and Khayree Jackson¹ were arrested by the Lycoming County Narcotics Enforcement Unit (LCNEU) on September 21, 2017. Crawford has been charged under two separate dockets with four counts of Conspiracy to Manufacture, Deliver, or Possession of a Controlled Substance with the Intent to Manufacture or Deliver,² ten counts of Manufacturing, Delivering, or Possession of a Controlled Substance with the Intent to Manufacture or Deliver,³ three counts

¹ Khayree Jackson is a co-defendant in the present matter, but has not filed omnibus pretrial motions.

² 18 Pa. C.S. § 903.

³ 35 P.S. § 780-113(a)(30).

of Possession of a Controlled Substance,⁴ three counts of Possession of Drug Paraphernalia,⁵ and three counts of Criminal Use of a Communication Facility.⁶ Both Richardson and Shank are charged with four counts of Conspiracy to Manufacture, Deliver, or Possession of a Controlled Substance with the Intent to Manufacture or Deliver,⁷ four counts of Manufacturing, Delivering, or Possessing of a Controlled Substance with the Intent to Manufacture or Deliver,⁸ four counts of Possession of a Controlled Substance,⁹ and four counts of Possession of Drug Paraphernalia.¹⁰ The charges arise from nine controlled buys and the subsequent execution of a search warrant on 1545 Northway Rd. Apartment #7. Crawford, Richardson, and Shank all filed timely pretrial motions. Two hearings on the motions were held by this Court on August 9, 2018 and November 8, 2018.

Crawford filed an Omnibus Pretrial Motion seeking severance, of his two cases as well as from his co-defendants, petitioning for Writ of Habeas Corpus, and suppression of the evidence as a result of the search of a backpack.¹¹ Richardson filed an Omnibus Pretrial Motion seeking Writ of Habeas Corpus or in the Alternative Motion to Quash the Criminal Information, to Quash Count 11 of the Information, to Sever from his co-defendants, to Preclude Prior Evidence of Alleged Prior Bad Acts, Wrongs or Crimes Pursuant to P.A.R.E.

⁴ 35 P.S. § 780-113(a)(16).

⁵ 35 P.S. § 780-113(a)(32).

⁶ 18 Pa. C.S. § 7512.

⁷ 18 Pa. C.S. § 903.

⁸ 35 P.S. § 780-113(a)(30).

⁹ 35 P.S. § 780-113(a)(16).

¹⁰ 35 P.S. § 780-113(a)(32).

¹¹ Crawford additionally filed to join in co-counsel's motions regarding Richardson's Supplemental Omnibus Motion to suppress evidence gathered from testing of DNA and to suppress evidence recovered from any of cellphones. As indicated by the defendants' attorneys and the Commonwealth at the hearing on November 8, 2018 this is no longer at issue.

404(B), the implementation of the Fair Scope Rule.¹² Finally, Shank filed a Motion to Suppress the evidence resulting from the search of the apartment, a Motion to Sever, and a Petition for Writ of Habeas Corpus.

Background

Agent Trent Peacock (Peacock) and Officer Jeremy Brown (Brown) of the Williamsport Bureau of Police testified on behalf of the Commonwealth at the hearing held on August 9, 2018. In addition, a number of exhibits were submitted including the transcript of the defendants' preliminary hearing conducted on November 13, 2017 and a copy of the search warrant.

At the Preliminary hearing on November 13, 2017, Brown and Mitchell Pope (Pope) testified that prior to each controlled buy, Pope would meet up with officers at a specified location and he would conduct a call to set up the controlled buy. P.H. 11/13/17, at 10, 46-47. Each time prior to going to the buy location, Pope was strip searched and his vehicle was searched. *Id.* at 10. Pope would then be given prerecorded currency and go to the specified location. *Id.* at 10, 16. Once there, he would call the number back and someone would leave Northway Apartments, Apartment #7, meet Pope, and give him the suspected heroin. *Id.* at 10. Pope would then return to a predetermined location where officers would search him again and he would relinquish the suspected heroin from the controlled buy. *Id.*

On August 14, 2017 Pope called the number to set up a buy. *Id.* at 11. He recognized the voice as Crawford's from over thirty buys he had conducted with Crawford in the previous year. *Id.* at 11-12. Pope was told to go to the Stopper Apartments, which he did followed by officers. *Id.* at 13-14. He called the number back and Crawford came out and gave him the

¹² Richardson also filed a Motion for Bail Modification, which has since been addressed and no longer needs a determination.

suspected heroin in exchange for the prerecorded currency. *Id.* at 14. He then relinquished the suspected heroin to officers at the predetermined location following the exchange. *Id.* at 15. The heroin was stamped “The Fenix.” *Id.* at 51. On August 18, 2017, another controlled buy occurred in a similar fashion, utilizing the same number. *Id.* at 16. Pope cannot recall if Crawford was the individual that he spoke to on that day, but typically when he called that number Crawford answered. *Id.* at 17-19. This time an unidentified male, later identified as Mr. Rojas, came out and gave Pope the suspected heroin. *Id.* at 21-23, 55. On August 21, 2018, Pope again contacted the number and this time Crawford made the hand-to-hand delivery.¹³ *Id.* at 23. On the dates of August 28th, 29th, 31st, and September 5th of 2017, Pope conducted buys in the same manner from Mr. Rojas. *Id.* at 21-28. All bags bought in August were similarly stamped “The Fenix,” and the bags bought on September 5, 2017, were stamped “Star.” *Id.* 66-70. On September 19, 2017, Pope conducted another controlled buy in the same fashion this time receiving the heroin from an unidentified individual stamped with a Mercedes symbol. *Id.* at 72. Finally, the last controlled buy occurred on September 20, 2017. *Id.* Crawford pulled up in a black Infiniti sedan and conducted the last hand to hand transaction with Pope. *Id.* at 72-73. Half the bags were stamped with the Mercedes symbol and half were stamped “The Line.” *Id.* at 73.

Detective David Burns (Burns) testified at the preliminary hearing as one of the individuals who executed the search warrant on 1545 Northway Rd., Apartment #7. *Id.* at 78. Upon entry into the apartment, Jackson and Richardson were lying on the couches playing video games. *Id.* at 123. Richardson was not wearing pants. *Id.* at 81. In the living room, a

¹³ There is a discrepancy between Pope and Brown’s testimony. Pope states Crawford conducted the hand to hand on the third controlled buy, August 21st, and Brown states Crawford conducted the controlled buy on August 31st. But both consistently testify to Crawford personally conducting three out of the nine controlled buys.

small bag of marijuana was found on the coffee table closest to Jackson. *Id.* at 84. \$305 was found in a pair of pants that had Richardson's identification in the pocket. *Id.* at 85. In that same pile of clothes was a Phillies jacket with 5.4 grams of cocaine in the pocket. *Id.* at 86. Taped to the underside of a corner table, between the two men, was a black bag containing 1,371 bags of heroin stamped with the Mercedes symbol and 702 bags of heroin stamped "The Line." *Id.* at 86. A black iPhone was found charging on the couch where Richardson was located. *Id.* at 87. In the kitchen cupboards, Burns located a plastic bag, which contained a sandwich bag of 3.5 grams of loose crack cocaine, a bag containing 4.3 grams worth of prepackaged purple baggies of crack cocaine, and a bag containing several clear baggies containing 4.6 grams of crack cocaine in total. *Id.* at 87-88. Also in the left kitchen cabinet was a box containing several empty baggies marked with the Mercedes symbol, a box of double sealed baggies containing no stamp, and a box containing sandwich bags of small rubber bands. *Id.* at 88. On the kitchen counter, out in the open, was 6 grams of suspected crack cocaine and a small black digital scale. *Id.* Under the stovetop were four sandwich bags containing 1,431 blue waxen baggies of heroin stamped "POLO" with the Ralph Lauren Polo logo, a plastic bag containing 17.9 grams of cocaine, and a plastic bag containing 1.2 grams of crack cocaine. *Id.* at 89. Underneath the stove and behind the bottom drawer was a plastic bag marked "Vision" with approximately 17 ounces of Crystal Methamphetamine. *Id.* In the stove was a red plate of 4 grams of raw heroin with a straw cut so it could be used to shovel the heroin into baggies. *Id.* at 91. Also in the kitchen was indicia for Khalid Harrison, \$270, and 98 OxyContin pills under the drying rack near the sink. *Id.* at 90.

Shank at the time of the execution of the search warrant was found in the bedroom on an air mattress "dressed for bed." *Id.* at 90, 131. On the television stand near the bed was a

wallet with \$351 and Shank's identification. *Id.* at 91. Four phones were also located in the back bedroom, two of which were presently operable. *Id.* at 90-91. When searching the bedroom Burns located an XXL Yankees jacket in the closet, which had 19 bags of heroin in the pocket stamped "Polo" with the Ralph Lauren Polo logo. *Id.* at 90. Upon searching Jackson, Police found 53 bags of heroin, 27 with the Mercedes symbol and 26 stamped "The Line." *Id.* at 92. In sum 3,504 bags of suspected heroin, 37 grams of crack cocaine, 17 ounces of Crystal Methamphetamine, and 98 OxyContin pills were recovered. *Id.* at 93-94. The substances with the exception of the heroin were field tested and tested positive. *Id.* at 89-90.

During the execution of the search warrant officers were watching Apartment #6, believed to be Crawford's residence. *Id.* at 111-12. Crawford was stopped in a red sedan, which his girlfriend was driving outside of the apartments. *Id.* at 112. At the time of the stop Crawford took the battery out of his phone, but it was recovered and verified to be the same number from the previous nine controlled buys. *Id.* at 112-13. Brown was given consent to search the vehicle by the female and her mother, the owner of the vehicle. *Id.* at 113. During the course of the search in a backpack, Brown found a key fob to the black Infiniti Crawford had used in the prior controlled buy. *Id.* at 113. The woman stated the backpack and books belonged to her, but the keys belonged to Crawford. *Id.* at 127. That vehicle was seized and a search warrant was executed on the vehicle. *Id.* at 113. In the black Infiniti Brown found a case containing multiple boxes of blue waxen baggies, totaling thousands of unused baggies, which were consistent with the ones used in packaging heroin. *Id.* at 118. The key fob also had a key on it, which operated the locks to Apartment #7 where the original search warrant was executed. *Id.* at 116. The Infiniti was not registered to Crawford. *Id.* at 127. Brown based on his training, knowledge, and experience reached the conclusion that the amount of drugs present in Apartment #7, the

multiple individuals seen exiting and entering the apartment, the number of individuals conducting the controlled buys, the multiple cellphones, the fact the individual renting the house was not seen or found during the course of the investigation, the fact the apartment had little evidence of being lived in as a residence, and the lack of paraphernalia for personal use was indicative that this residence was a stash house. *Id.* 115-17.

Whether Sufficient Evidence was Presented to Establish a *Prima Facie* Case Against the Defendants

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient evidence to establish a *prima facie* case of guilt. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. *Id.* Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and also may submit additional proof. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. *Commonwealth v. Wojdak*, 466 A.2d 991, 997 (Pa. 1983); *see also Commonwealth v. Kohlie*, 811 A.2d 1010, 1014 (Pa. Super. 2002). Moreover, “inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case.” *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003).

Actual or constructive possession may be proven by the Commonwealth to establish the underlying charges.

Constructive possession is the ability to exercise conscious control or dominion over the illegal substance and the intent to exercise that control. Two actors may have joint control and equal access and thus both may constructively possess the contraband. The intent to exercise conscious dominion can be inferred from the totality of the circumstances.

Commonwealth v. Jones, 874 A.2d 108, 121 (Pa. Super. 2005) (internal citations omitted).

Alternatively the Commonwealth need not show actual or constructive possession if it can show a *prima facie* case of a defendant's involvement in the conspiracy charged.

Commonwealth v. Perez, 931 A.2d 703, 709 (Pa. Super. 2007). For the Commonwealth to establish conspiracy they must show "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. Murphy*, 795 A.2d 1025, 1037-38 (Pa. Super. 2002). "Circumstantial evidence may provide proof of the conspiracy. The conduct of the parties and the circumstances surrounding such conduct may create a web of evidence linking the accused to the alleged conspiracy." *Jones*, 874 A.2d at 121. The agreement can be demonstrated in a variety of ways including "the relation between the parties, knowledge of and participation in the crime, and the circumstances and conduct of the parties surrounding the criminal episode." *Id.* at 122. Possession with the Intent to Deliver may be established by circumstances in the case and factors such as packaging, form of the drug, behavior of the defendant, lack of consumption paraphernalia, and quantity. *Id.* at 121.

Upon entry into the residence, Richardson was found on the far couch not wearing pants. P.H. 11/13/17, at 123. This, in conjunction with the fact it was between seven and eight

in the morning, creates a reasonable inference that Richardson was staying at the residence. Contraband found in plain view was a small amount of Marijuana in the living room, 6 grams of crack cocaine, a small black electric scale, and a bag containing cocaine residue. *Id.* at 84, 88. In addition, evidence that would have been easily assessable to Richardson and not secreted was three differing baggies of crack cocaine, blue waxen baggies stamped with the Mercedes symbol consistent with the packaging of the drugs found under the table between Richardson and Jackson and used in some of the controlled buys, plain bags, and small rubber bands all of which was found in the cupboards. *Id.* at 87-88. Defense attorneys for the defendants argued that it is common for a scale and baggies of white powder to be in the kitchen, but based on the cocaine that was found in a Phillies jacket with the pants containing Richardson's identification, it would not be an unreasonable inference that Richardson would be aware of what the substances actually were. *Id.* at 85-86. Also a substantial amount of cocaine was found under the top part of the stove in the kitchen, similarly unmarked and packaged. *Id.* at 89. One of the larger stashes of stamped heroin matching the unused baggies in the cupboards was also found under the table between Richardson and Jackson. *Id.* at 86. Richardson's presence also aligns with the testimony provided by Brown stating Apartment #7 was being used as a "stash house." *Id.* at 116.

Q. Now, you said stash house. Can you explain more specifically what encompasses a stash house?

A. Everything I just explained in itself, the fact that very little personal as you would find in a place where someone resides and lives full-time.

Q. What about the rotating individuals?

A. Rotating individuals, as I said before, the fact that we had several dealers, different dealers, coming and going out of the apartment, different individuals inside the apartment. Those individuals not being from here is an indicator. It's common for them to rotate.

Q. Why would it be common to rotate?

A. To make it more difficult to get caught in, one, a conspiracy and, two, tie them specifically to a place. I mean, if you're coming out of Philadelphia and

you're in for a week and out for a week or in for a week and to come back, it's hard to identify that person if they're not local. You do a buy off of them and all of a sudden they disappear and you've got somebody else, now you got a bunch of John Doe warrants.

Id. at 117-18.

Brown also testified that the secreting of the drugs, the fact individuals were seen leaving prior to the controlled buys, the fact the leaseholder was never there, only money was recovered, as opposed to money and weapons, that the individuals in the house were not local, and the number of individuals in the house at the time of the search warrant was all consistent with Apartment #7 being a "stash house." *Id.* As weight and credibility are not at issue for a Petition for Writ of Habeas Corpus at this juncture, Brown's testimony must be taken as is. *Wojdak*, 466 A.2d at 997.

The role of this Court when determining a Petition for Writ of Habeas Corpus is to reach a conclusion whether the Commonwealth satisfied their burden of establishing a *prima facie* case. Here the Court must establish whether the Commonwealth has shown probable cause that Richardson was/is a member of what Brown described is as a "drug ring," that could be found guilty of conspiracy and therefore the underlying charges. *Id.* at 121. Richardson's presence early in the morning, not wearing pants and the accompanying explanation of a "stash house" provided by Brown, allows this Court to reach the reasonable inference that Richardson at a minimum occasionally stays at the residence and probably that day/night. The openness of the kitchen area and the living room area allowed Richardson to view the drugs on the countertop and potentially the drugs and packaging paraphernalia in the cupboard. This in addition to the cocaine found in a pile of clothes containing his identification is enough for the Commonwealth to establish a *prima facie* case through circumstantial evidence and reasonable

inferences. *See Jones*, 874 A.2d at 121-22. Therefore Richardson's Petition for the Writ of Habeas Corpus or in the Alternative Motion to Quash the Criminal Information is denied.

Upon entry into Apartment #7, Shank was in the back bedroom in bed and "dressed for bed." P.H. 11/13/17, at 131. Near Shank, on the bed and on the television stand near him were four phones, two of which were presently operable. *Id.* at 90-91. Also found on the television stand was a wallet containing Shank's identification and \$351. *Id.* at 91. Found in a closet located within the bedroom was a XXL Yankees jacket with 19 baggies of heroin stamped POLO with the Ralph Lauren Polo symbol. *Id.* at 90. Shank was lying in the only bed within the residence, much like Richardson "dressed for bed," leads to a reasonable inference that Shank was staying at the residence for at least the day/night. In order to enter the back bedroom, Shank at a minimum had to walk past the open area of the living room and kitchen and therefore the narcotics and packaging paraphernalia, lying out in the open. The jacket was found within a bedroom where only Shank was located and from the description Burns gave was generally the same size as Shank would have worn. *Id.* at 107. The bags found within that jacket matched the bags secreted under the top of the stove, which Burns testified as the area where the heroin was being packaged. *Id.* at 91. Based on this circumstantial evidence and Brown's description of a "stash house" the Commonwealth has met their burden of establishing a *prima facie* case of Shank's involvement in this "drug ring." Therefore, Shank's Petition for Writ of Habeas Corpus is denied.

During the execution of the search warrant on Apartment #7, Crawford was stopped in a red sedan that a female was driving. *Id.* at 111-12. After receiving consent from the woman to search, officers found a key FOB in a backpack to the black Infiniti Crawford had been seen using on previous controlled buys. *Id.* at 113. The woman also stated that the books were hers

and the keys belonged to Crawford. *Id.* at 127. Within the black Infiniti, Brown found thousands of unused blue waxen baggies consistent with the ones used in the controlled buys and located in the residence. *Id.* at 120. Attached to the key FOB was a key giving Crawford access to Apartment #7. *Id.* at 113-14. Additionally, prior to the execution of the search warrant Crawford was witnessed conducting three controlled buys. *Id.* at 13-14, 23, 72-73. The number used in each of the controlled buys was found on Crawford's person on the day of the execution of the search warrant. *Id.* at 112-13. The last buy Crawford conducted also included baggies stamped "The Line" and others stamped with the Mercedes symbol. *Id.* at 73. This is consistent with the heroin found under the table between Richardson and Jackson, the empty baggies found in the cupboard, and the heroin found on Jackson's person. *Id.* at 86, 88, 92. On each of the buys he conducted, Crawford is also seen by surveillance leaving from the second floor of the 1545 Northway Rd. where Apartment #7 is located. *Id.* at 51-52. The Commonwealth has provided more than enough direct and circumstantial evidence to prove a *prima facie* case of Conspiracy of Possession with the Intent to Deliver and his involvement in the "drug ring." Crawford contends that a key to the apartment is not by itself enough, *Commonwealth v. Rodriguez*, 618 A.2d 1007 (Pa. Super. 1993), and that the Commonwealth needs to show constructive possession. *Commonwealth v. Johnson*, 26 A.3d 1078 (Pa. 2011). The Court agrees that the key to the apartment is not on its own enough to establish a link to Apartment #7 to establish conspiracy with the other individuals, but the totality of the above stated facts in conjunction with the key do. Also the Commonwealth is not required to establish constructive possession if conspiracy of Possession with the Intent to Deliver can be established. *Perez*, 931 A.2d at 709. Therefore Crawford's Petition for Writ of Habeas Corpus is denied.

Whether the Affidavit of Probable Cause was Sufficient for the Search of Apartment #7

Shank implores this Court to suppress the evidence of the search of the apartment claiming that the Affidavit of Probable Cause for the search warrant did not establish a sufficient nexus between the controlled buys and Apartment #7. “The ultimate issue in a suppression hearing is whether the police officer affiants had probable cause at the time they applied for a search warrant.” *Commonwealth v. Luton*, 672 A.2d 819, 821 (1996). The Commonwealth has the burden of demonstrating that the facts before the magistrate support a finding of probable cause with deference given to the issuing magistrate. *Id.* at 821-22. The standard for evaluating probable cause for the issuance of a search warrant is the “totality of the circumstances” test established in *Illinois v. Gates*, 462 U.S. 213 (1983). *Commonwealth v. Gray*, 503 A.2d 921, 925 (1985). In making their evaluation a magistrate must make a “practical, common-sense decision whether, given all 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.” *Id.* at 925.

In a similar case, in which less controlled buys were conducted, the Pennsylvania Supreme Court found that

after the controlled buy was arranged, the police observed Appellee leave his residence in his vehicle, as precisely described by the CI, drive to a location, conduct the transaction, and immediately return to his residence. This fact certainly connected the illegal transaction to Appellee's residence, in a common sense, non-technical way, and permitted the issuing authority to conclude that drugs would likely be found in the residence.

Commonwealth v. Clark, 28 A.3d 1284, 1291 (Pa. 2011).

Although the drugs may have been stored in the defendant’s vehicle the court recognized that the law pertaining to the obtaining of search warrants “does not require that the information in a

warrant affidavit establish with absolute certainty that the object of the search will be found at the stated location, nor does it demand that the affidavit information preclude all possibility that the sought after article is not secreted in another location.” *Id.*

In every control buy that occurred, an individual was seen leaving Apartment #7 to meet with the confidential informant. P.H. 11/13/17, at 46-49; Application for Search Warrant 9/20/17, at 3-6. In many of those buys that same individual was then seen returning to Apartment #7 after conducting the controlled buy. As in *Clark* this was enough for “the issuing authority to conclude that drugs would likely be found in the residence” and it was not required to “preclude all possibility that the sought after article is not secreted in another location.” *Clark*, 28 A.3d at 1291.

Shank’s counsel also argued at the hearing on August 9, 2018 that the evidence should be suppressed due to a lack of field testing conducted on the suspected heroin from the controlled buys. He claims there was not probable cause to execute a search warrant because it was not confirmed the suspected heroin was heroin. Counsel for Richardson and Crawford joined in this argument. Brown explained the decision to not field test the suspected heroin from the controlled buys at the preliminary hearing:

Q. Was the heroin field-tested?

A. I don’t recall specifically. I know that – I don’t believe so. All the heroin involved in the case was packaged as such as heroin. It was identical in color, shape, size, consistency as heroin.

However, due to the unknown fentanyl contained in some of the bags, and the probability of an overdose while testing it, there was not a field test done; and it was sent to the labs.

Q. So none of the heroin in this particular matter was field-tested based on the risk due to fentanyl and carfentanyl?

A. Correct. And all of the bags, all of the heroin, purchased and located was packaged as such. And based on my training and experience of myself and other officers it was obviously believed to be heroin on all of those factors.

P.H. 11/13/17, at 49-50.

Probable cause for the obtaining of a search warrant is established by a “totality of the circumstances.” *Commonwealth v. Watson*, 724 A.2d 289, 292 (Pa. 1988). Due to the ongoing issue with fentanyl laced narcotics many law enforcement agencies have discontinued the use of field testing. *See* Jim Salter, *Opioids Dangers Force Police to Abandon Drug Field Tests*, US NEWS, Feb. 21, 2018 (“field testing has been banned by the DEA, state police in Oregon, Arizona, Michigan and Missouri, and several big-city departments, including New York and Houston”). At the preliminary hearing it was stipulated that Brown is an expert in the field of possession with the intent to deliver and sale of illegal narcotics. P.H. 11/13/17, at 110. He testified that based on his training and experience he was fairly certain the substance was heroin. *Id.* at 49-50. Based on his testimony, the testimony of the confidential informant believing the substance to be heroin, the way the controlled buys were conducted, and the need to discontinue field testing for officer safety, probable cause has been established by a “totality of the circumstances.” Therefore Shank’s Motion to Suppress is denied.

Whether the Search of the Backpack was Permissible

Crawford argues evidence as a result of the search of the backpack found within the car should be suppressed. He bases this argument on either the stop being illegal or the backpack exceeding the scope of consent. The Commonwealth argues he does not have a privacy interest to bring forward a claim. Crawford’s argument that the search exceeded the scope of consent requires this privacy interest and “a defendant cannot prevail upon a suppression motion unless he demonstrates that the challenged police conduct violated his own, personal privacy interests.” *Commonwealth v. Millner*, 888 A.2d 680, 692 (Pa. 2005). The woman driving the vehicle indicated the backpack was hers and it had her school work inside it. P.H. 11/13/17, at 126-27. Crawford has failed to demonstrated or to argue what personal privacy interest he

maintained in the backpack, therefore the Court will not entertain that the search exceeded the scope of the consent. But, if the stop was illegal Crawford may still be granted suppression. *See Commonwealth v. Shabazz*, 166 A.3d 278, 280 (Pa. 2017) (“contested evidence, tainted by the initial illegality, must be suppressed, even absent a demonstrable expectation of privacy in the locations where the evidence was found”). For the stop to have been illegal it must have been made without reasonable suspicion that criminal activity was afoot. *Commonwealth v. Hughes*, 908 A.2d 924 (Pa. Super. 2006). Crawford was a party to three of the controlled buys and was identified as the individual whose phone number was being contacted. On the date of the stop Peacock had the description of Crawford, was shown his picture, and was given details as to his involvement in the operation. Upon execution of the search warrant, Crawford was seen leaving with a female in her vehicle. The stop was therefore for the legal apprehension of Crawford. The female gave consent, was not arrested, and was never placed in handcuffs or detained. After Crawford was taken into custody Brown spoke with the woman and gained both her and her mother’s consent to search the vehicle. The initial stop was not illegal and even if so, the consent is far enough attenuated from the brief seizure of the woman to detain Crawford. Therefore there are no grounds for the suppression of the search of the backpack.

Whether Severance of the Cases is Necessary under the Law

Crawford, Richardson, and Shank all filed Motions to Sever from one another based on prejudice. Additionally Crawford filed a motion to sever the two cases pending against him.

Joinder is permissible under Pennsylvania Rules of Criminal Procedure Rule 582:

(A) Standards

(1) Offenses charged in separate indictments or informations may be tried together if:

(a) the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion; or

- (b) the offenses charged are based on the same act or transaction.
- (2) Defendants charged in separate indictments or informations may be tried together if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.

Pa. R. Crim. P. 582(A)(1), (2).

Additionally a defendant may seek severance and “[t]he court may order separate trials of offenses or defendants, or provide other appropriate relief, if it appears that any party may be prejudiced by offenses or defendants being tried together.” Pa. R. Crim. P. 583. When evaluating whether severance shall be granted the court should consider “whether the evidence of each of the offenses would be admissible in a separate trial for the other; whether such evidence is capable of separation by the jury so as to avoid danger of confusion; and . . . whether the defendant will be unduly prejudiced by the consolidation of offenses.”

Commonwealth v. Collins, 703 A.2d 418, 422 (Pa. 1997). Prejudice can be determined through the following factors:

- (1) Whether the number of defendants or the complexity of the evidence as to the several defendants is such that the trier of fact probably will be unable to distinguish the evidence and apply the law intelligently as to the charges against each defendant;
- (2) Whether evidence not admissible against all the defendants probably will be considered against a defendant notwithstanding admonitory instructions; and
- (3) Whether there are antagonistic defenses.

Commonwealth v. Tolassi, 392 A.2d 750, 753 (Pa. Super. 1978).

“The law favors a joint trial when criminal conspiracy is charged.” *Commonwealth v. Housman*, 986 A.2d 822, 835 (Pa. 2009). The burden is therefore on a defendant to show “real potential for prejudice rather than mere speculation.” *Commonwealth v. Colon*, 846 A.2d 747, 753-54 (Pa. Super. 2004).

The charges here are similar among the three defendants and “arose from the same course of events.” *Commonwealth v. Serrano*, 61 A.3d 279, 286 (Pa. Super. 2013). If three

separate trials were held each would involve the same witnesses giving the same testimony three times, greatly cutting down on judicial efficiency. When establishing criminal conspiracy involving an alleged drug organization, previous controlled buys are admissible to show the “chain or sequence of events which became a part of the history of the case and formed a part of the natural development of the facts.” *Commonwealth v. Childress*, 680 A.2d 1184, 1188 (Pa. Super. 1996); *see also Serrano*, 61 A.3d at 286 (denial of severance for two co-defendants in criminal conspiracy to distribute heroin case when only defendant conducted the controlled buys). The defendants also fail to establish clear probability of prejudice due to the continued joinder of the cases. Mere speculation of “conflicting or antagonistic defenses” is not enough to meet the burden and as for Shank and Richardson their defense thus far seems to be an argument of mere presence, which would not put them at odds with the other defendants. The defendants’ Motions for Severance are hereby denied.

Whether Richardson’s Count 11 Should be Quashed

Richardson’s Count 11 in his information has Possession of a Controlled Substance listed as a felony as opposed to being properly listed as a misdemeanor. A court shall allow an amendment to fix clear typographical errors as long as a defendant is not prejudiced on the merits. *Commonwealth v. Zeigler*, 63 A.2d 128, 128-29 (Pa. Super. 1949). The mistake here is clearly typographical in nature and Richardson is still on notice of the proper charges, which are being brought against him. Therefore Richardson’s Motion to Quash Count 11 of the Information is denied. As for the remainder of Richardson’s motions, they are premature at this time. The Court takes notice that they have been raised and can be addressed closer to the time of trial.

ORDER

AND NOW, this _____ day of December, 2018, based upon the foregoing Opinion, the Court rules as follows:

1. Crawford's Omnibus Pretrial Motion is hereby DENIED in its entirety.
2. Shank's Motion to Suppress, Petition for Writ of Habeas Corpus, and Motion to Sever are hereby DENIED.
3. Richardson's Motion for Bail Modification has already been addressed.
4. Richardson's Motion for the Writ of Habeas Corpus or in the Alternative Motion to Quash the Criminal Information, Motion to Quash Count 11 of the Information, and Motion to Sever are hereby DENIED.
5. Richardson's Motion to Preclude Evidence of Alleged Prior Bad Acts, Wrongs, or Crimes Pursuant to Pa.R.E. 404(B) and Fair Scope Rule are noted, but will not be addressed at this time.

By the Court,

Nancy L. Butts, President Judge

cc: Nicole Ippolito, Esquire, ADA
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