

COMMONWEALTH :  
 :  
 vs. : No. CR-631-2018  
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 AMY MORGRET, :  
 :  
 Defendant : Omnibus Pretrial Motion

**OPINION AND ORDER**

By Information filed on May 4, 2018, Defendant is charged with, among other things, six counts of possession with intent to deliver various controlled substances. The Commonwealth contends that pursuant to a search of Defendant's residence on October 27, 2017, law enforcement officers found numerous controlled substances, contraband, derivative contraband and other evidence that Defendant possessed the controlled substances for the purpose of delivering them.

Defendant filed a petition for writ of habeas corpus and motion to suppress which were heard by the court at a hearing on September 20, 2018.

With respect to Defendant's habeas petition, Defendant argues that the evidence is insufficient for *prima facie* purposes to establish that the defendant intended to deliver any controlled substances.

A pretrial habeas corpus motion is the proper means for testing whether the Commonwealth has sufficient evidence to establish a *prima facie* case. To demonstrate that a *prima facie* case exists, the Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant's complicity therein. To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and also may submit additional proof.

*Commonwealth v. Starry*, 2018 PA Super 266, 2018 WL 4560457 at \*4-5 (September 24, 2018)(quoting *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016) (en banc));

see also *Commonwealth v. Predmore*, 2018 PA Super 313, 2018 WL 618215 at \*2 (Nov. 27, 2018).

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. The Commonwealth need not prove the defendant's guilt beyond a reasonable doubt. Rather, the Commonwealth must show sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury. In determining the presence or absence of a prima facie case, inferences reasonably drawn from the evidence of record that would support a verdict of guilty are to be given effect, but suspicion and conjecture are not evidence and are unacceptable as such.

*Starry*, at \*5, (quoting *Commonwealth v. Hendricks*, 927 A.2d 289, 291 (Pa. Super. 2007)); see also *Predmore*, *id.*

To sustain a conviction for possession with intent to deliver a controlled substance, the Commonwealth must prove both the possession of the controlled substance and the intent to deliver the controlled substance. *Commonwealth v. Roberts*, 133 A.3d 759, 767 (Pa. Super. 2016), *appeal denied*, 145 A.3d 725 (Pa. 2017).

All the facts and circumstances surrounding possession of controlled substances are relevant in making a determination of whether the substance was possessed with the intent to deliver. The intent to deliver may be inferred from an examination of the facts and circumstances surrounding the case. *Commonwealth v. Griffin*, 804 A.2d 1, 15 (Pa. Super. 2002), *appeal denied*, 868 A.2d 1198 (Pa. 2005).

Intent to deliver may be inferred from possession of a large quantity of controlled substances, the lack of personal consumption, the method of packaging, the form of the drug, the behavior of the defendant, the lack of drug use paraphernalia, inordinately large sums of cash, possession of contraband, possession of derivative contraband and other

circumstances. *Commonwealth v. Roberts*, 133 A.3d 759, 768 (Pa. Super. 2016)(other factors to consider include the method of packaging, the behavior of the defendant, the sums of cash and expert testimony), *appeal denied*, 145 A.3d 725 (Pa. 2017); *Commonwealth v. Lee*, 956 A.2d 1024, 1028 (Pa. Super. 2008)(large quantity of cocaine and lack of personal use paraphernalia), *appeal denied*, 964 A.2d 894 (Pa. 2009); *Commonwealth v. Perez*, 931 A.2d 703, 708 (Pa. Super. 2007)(factors to consider include the particular method of packaging, the form of the drug, and the behavior of the defendant); *Commonwealth v. Aviles*, 615 A.2d 398, 403 (Pa. Super. 1992)(quantity of drugs, large sums of cash and paraphernalia used in the narcotics trade), *cert. denied*, 513 U.S. 819, 115 S. Ct. 78 (1994); *Commonwealth v. Stasiak*, 451 A.2d 520, 525 (Pa. Super. 1982)(large quantity of drugs).

To support its claim that sufficient evidence was presented, the Commonwealth introduced a transcript of the preliminary hearing as well as additional testimony and evidence during the hearing held on September 20, 2018.

Joshua Bell of the Williamsport Bureau of Police testified as an expert. He has had experience and training with the Lycoming County Drug Task Force, the Lycoming County Narcotics Enforcement Unit and previously, with the Attorney General's Bureau of Narcotics Enforcement.

According to Officer Bell, on October 27, 2017, he was contacted by Agent Jason Lamay of the Pennsylvania Board of Probation and Parole. He was informed by Agent Lamay that they had taken the defendant into custody as they had located controlled substances in her residence. Agent Lamay met Officer Bell at the Board offices in Williamsport at which time Officer Bell spoke with the defendant. According to Officer Bell, he asked the defendant for her consent to search the residence. He explained to her that if she did not want to consent,

she did not have to, but that law enforcement would obtain a search warrant for the residence. The defendant agreed and signed a Williamsport Bureau of Police consent to search form marked and introduced as Commonwealth's Exhibit 6 at the hearing, authorizing the police and their agents to conduct a complete search of her residence.

A search was subsequently conducted of Defendant's residence. In reviewing his Affidavit of Probable Cause, Tramadol, Alprazolam, Methylfentanyl, Amphetamine, Oxycodone and Buprenorphine were found. \$7,120 of US currency was also found. This currency was "bundled up, that is, it was separated into wads of \$1,000 each and then it was rubber banded together in a large wad." The denominations were "mostly 20's and 10's."

The controlled substances found in Defendant's home, according to Officer Bell in his expert opinion, were possessed with the intent to deliver based on "a couple factors." First, there were multiple different schedules and types of narcotics within the house "that were found together." Secondly, there was the "simultaneous presence of... [a] large amount of currency." As well, there was "the lack of presence of any ingestion paraphernalia."

Based on the testimony at the preliminary hearing as well as the evidence produced at the habeas hearing, it is unclear as to exactly where the controlled substances were located. Officer Bell testified that the Oxycodone tablets, for example, were found in the master bedroom "along with the other substances." He testified that he believed that all of the substances were "found in the same place." According to Officer Bell, some of them were in bags but none of them were in marked prescription bottles which had the defendant's name on it. He believed that some of them were found in a purse.

During the habeas corpus hearing, Agent Lemay testified. Prior to arriving at the residence of the defendant and after speaking with the defendant to obtain consent, he was

told that agents found a bottle with a powdery substance as well as two unmarked prescription bottles of pills. He also found a digital scale on a coffee table in the living room area of the home. He discovered that the powdery substance was in an "Equate" bottle and that the two unmarked prescription bottles were all located in the master bedroom, room 3, in a nightstand next to the bed. These bottles were photographed and the photographs were marked and admitted into evidence as Commonwealth Exhibits 3 and 5. The scale was photographed and the photograph was marked and admitted as Commonwealth Exhibit 7.

At the habeas corpus hearing, Officer Bell again took the stand and testified regarding what was found pursuant to the search.

The orange powder located in the Equate bottle was photographed and the photograph was marked and introduced as Commonwealth Exhibit 4.

One "zip bag" containing a Suboxone strip was found in the master bedroom but no evidence was presented as to where it was found. This was photographed and the photo was marked and admitted as Commonwealth's Exhibit 10. One Altoid tin container containing several pills was found in the master bedroom in a purse. This Altoid tin was photographed and the photo was marked and introduced as Commonwealth's Exhibit 14. One orange pill was found wrapped up in a Newport cigarette box. It is unknown where this Newport cigarette box was found except in the master bedroom. It was photographed and the photo was marked and admitted as Commonwealth's Exhibit 11. Two pills were found in a zip bag in the master bedroom. These pills were photographed and the photo was marked and admitted as Commonwealth's Exhibit 16. The court has no idea where these pills were found.

While the Commonwealth could have done a better job detailing where in the master bedroom each of the controlled substances were found and while the court will not

consider the alleged lack of ingestion paraphernalia to be a factor in that pills do not need any specific drug paraphernalia to be ingested but can simply be swallowed, the court nevertheless finds, based on the totality of the circumstances, that the Commonwealth presented prima facie evidence that Defendant possessed the controlled substances with the intent to deliver them. Six different controlled substances, primarily in pill form, were found in the master bedroom of Defendant's residence. None of those substances were found in valid prescription bottles bearing Defendant's or any other household member's name. A large quantity of cash (specifically \$7,120) was found in a purse in the master bedroom. The cash was "bundled" with rubber bands into wads of \$1,000 each and then rubber banded into one large wad. The cash consisted mostly of tens and twenty dollar bills. A digital scale was also found in the living room. In light of the number of different controlled substances found, the lack of a valid prescription for those substances, the large amount of cash, the manner in which the cash was bundled, and the digital scale, the evidence was sufficient for prima facie purposes to establish intent to deliver.

Although Defendant's mother testified that she gave Defendant approximately \$8,000 in cash so that Defendant could obtain a different vehicle, the court cannot make credibility determinations at this stage of the proceedings. *Commonwealth v. Ouch*, 2018 PA Super 314, 2018 LW 6177291 at \*3 (Nov. 27, 2018)(the weight and credibility of the evidence are not factors at this stage). Whether the cash was the proceeds of drug sales or funds from Defendant's mother is a factual issue for the jury to decide. At this stage of the proceedings, the court must view the facts in the light most favorable to the Commonwealth. The jury may find that Defendant did not intend to deliver the controlled substances based on the limited quantities of controlled substances and the testimony of Defendant's mother. However, at this

stage of the proceedings, the court cannot because to do so would be to view the evidence in the light most favorable to Defendant, not the Commonwealth.

With respect to Defendant's motion to suppress, Defendant argues that the search was unlawful because it was conducted without a search warrant or any recognized exception. While Defendant advanced different arguments in her written motion to suppress, at the hearing in this matter Defendant made only two arguments. First Defendant argued that the search by the parole agents was "a scam" and that a search warrant was required. Secondly, Defendant argued that the consent signed by her as a condition of parole was invalid or forced and did not authorize a search of the premises by the parole agents.

Defense counsel indicated at the hearing in this matter that there were cases to support his position regarding the "forced consent" on a parolee. Defense counsel indicated that it would forward said cases to the court but said cases were never forthcoming.

The testimony was clear that prior to being paroled, Defendant met with the Board Agent at the Williamsport offices and signed the written conditions regarding parole/re-parole. Those conditions included a paragraph which indicated as follows:

"I expressly consent to the search of my person, property and residence, without a warrant by agents of the Pennsylvania Board of Probation and Parole." Defendant signed these conditions on June 29, 2016. She was paroled on June 30, 2016 the day after signing the conditions.

While a parolee has limited Fourth Amendment rights because of the diminished expectation of privacy, a parolee's signing of a parole agreement giving his parole officer consent to conduct a warrantless search does not mean either that the parole officer can conduct a search at any time and for any reason, or that the parolee relinquishes his Fourth

Amendment right to be free from unreasonable searches. *Commonwealth v. Coleman*, 130 A.3d 38, 45 (Pa. Super. 2015)(citing *Commonwealth v. Williams*, 547 Pa. 577, 692 A.2d 1031, 1035-36 (1997)).

An agent of the Board may conduct a warrantless property search “if there is reasonable suspicion to believe that the real or other property in the possession of or under the control of the offender contains contraband or other evidence of violations of the conditions of supervision.” 61 Pa. C.S. § 6153(d)(2); *Commonwealth v. McClellan*, 178 A.3d 874, 881 (Pa. Super. 2018). The following factors, where applicable, may be considered in determining whether reasonable suspicion exist: (1) the observations of the agent; (2) information provided by others; (3) the activities of the offender; (4) information provided by the offender; (5) the experience of agents with the offender; (6) the experience of agents in similar circumstances; (7) the prior criminal and supervision history of the offender; and (8) the need to verify compliance with the conditions of supervision. 61 Pa. C.S. §6153(d)(6).

During the hearing on the Motion to Suppress, Board Agent Josh Kriger testified. He was supervising the defendant on October 27, 2017. He had been supervising Defendant since she was released on June 30, 2016. Among Defendant’s conditions of supervision, she was prohibited from directly or indirectly having contact or associating with persons who “sell or use drugs, outside a treatment setting or possessed drug paraphernalia.” (Commonwealth Exhibit 2).

Agent Jason Lamay also testified at the hearing. Agent Lamay testified that on October 27, 2017, he searched Defendant’s residence because Defendant had “contact with a known drug dealer.”



According to Agent Lamay, he supervised an individual by the name of Caran Getty. He arrested Getty a few days earlier on October 25, 2017, at Getty's residence. A violation was filed against him as well as new charges. The new charges related to possession of controlled substances and paraphernalia. He went to Defendant's residence to specifically look for contraband in relation to Getty.

When Agent Lemay showed up at Defendant's residence, Defendant and her daughter were present. He informed them that he was "there to conduct a parole search."

Prior to conducting the search, he obtained approval from his supervisor. Getty was a "drug seller" who had a "habit of leaving substances in other's residences", particularly those of "girlfriends." Agent Lamay had known that Defendant's daughter, who lived in the residence, was in a relationship with Getty and possibly pregnant by him.

In arguing that the search was appropriate, the Commonwealth indicated that there was reasonable suspicion to believe that Defendant violated the conditions of her parole by associating with a known individual who possessed and sold drugs. Additionally, the Commonwealth argued that agents knew that Getty had been at the home and that he was known to leave drugs in other homes.

Neither of the Commonwealth's proffered reasons is sufficient to establish reasonable suspicion to support the search of the residence. First, there was no condition whatsoever which precluded Defendant from associating with an individual who was a "known drug dealer." The condition precluded Defendant from having contact or associating with persons who sell or use drugs or possess drug paraphernalia. The Commonwealth did not present any evidence whatsoever that demonstrated Getty was a person who sold or used drugs or possessed drug paraphernalia. More importantly, there was no evidence that was produced

that demonstrated Defendant knew that Getty sold or used drugs or possessed drug paraphernalia. Furthermore, the Commonwealth did not present any evidence that Defendant had contact with or was associating with Getty. The parole agent never stated that he had any information that Defendant and Getty were ever seen together or that Getty was even at the residence at a time when Defendant was also present. Instead, the only evidence was that Defendant's *daughter* was associating with Getty. Moreover, Agent Lamay knew he would not find Getty having contact or associating with Defendant on the day of the search because Agent Lamay had participated in taking Getty into custody two days prior to the search of Defendant's residence.

As for the Commonwealth's second reason, it is clear that the address searched was Defendant's address of 1418 West Fourth Street. Conducting a warrantless search of Defendant's home to determine if Getty left controlled substances or paraphernalia was not a sufficient reason established by reasonable suspicion. The only testimony was from a Board Agent who testified that Getty was known to have left controlled substances or paraphernalia in the homes of his girlfriends. No other evidence whatsoever was presented in support of this bald assertion. No evidence was provided regarding how the agent "knew" Getty was known to leave drugs in the homes of his girlfriends, the reliability of this information, or whether this information was recent or stale. No evidence was presented regarding when Getty was allegedly at Defendant's residence or the proximity of that date to the date of Getty's detention by parole agents or the search of Defendant's residence. Finally, Defendant was not Getty's girlfriend.

The Commonwealth also did not present any evidence regarding the statutory factors to be considered in determining reasonable suspicion. Noticeably absent from the

record is any information regarding the activities of Defendant, the criminal and supervision history of Defendant, any personal observations of any of the agents, or the experience of any of the agents with Defendant.

Accordingly, the court finds that the parole search of Defendant's residence was without reasonable suspicion; therefore, it was unlawful.

Defendant's alleged "consent" to search given to Officer Bell after parole agents searched her home and she was detained is invalid, because it is a fruit of the unlawful search by parole agents.

Accordingly, Defendant's Motion to Suppress shall be granted.

### **ORDER**

**AND NOW**, this \_\_\_\_ day of November 2018, following a hearing and argument, Defendant's Petition for Habeas Corpus is **DENIED**. Defendant's Motion to Suppress is **GRANTED**, The Commonwealth is precluded from utilizing any of the evidence seized from Defendant's residence against her during the trial in this matter.

By The Court,

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Marc F. Lovecchio, Judge

cc: Michael J. Rudinski, Esquire  
Nicole Ippolito, Esquire, ADA  
Gary Weber, Lycoming Reporter  
Work File