

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1565-2019
	:	
v.	:	
	:	
KENNETH BONAPARTE,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION AND ORDER

Kenneth Bonaparte (Defendant) was arrested by the Lycoming County Narcotics Enforcement Unit (NEU) on October 2, 2019 for eight counts of Criminal Conspiracy to Possess a Controlled Substance with the Intent to Deliver,¹ seven counts of Possession of a Controlled Substance with the Intent to Deliver,² one count of Possession of a Controlled Substance,³ one count of Recklessly Endangering Another Person,⁴ and one count of Fleeing or Attempting to Elude a Police Officer.⁵ The charges arise from officers attempting to serve an arrest warrant on Adrian Harry (Harry) and the subsequent motor vehicle pursuit of Defendant and Harry in Williamsport, Pennsylvania. Defendant filed an Omnibus Pretrial Motion on November 21, 2019. In his Motion, Defendant alleges the Commonwealth has failed to demonstrate a *prima facie* case that Defendant conspired to possess the drugs, constructively possessed the drugs, or fled and/or attempted to elude police.⁶ A hearing on the Motion was scheduled for January 17, 2020, but in lieu of the hearing the parties agreed to submit the issue on briefs. Defendant submitted his brief on January 28, 2020 and the Commonwealth submitted

¹ 18 Pa. C.S. § 903(a)(1).

² 35 P.S. § 780-113(a)(30).

³ 35 P.S. § 780-113(a)(16).

⁴ 18 Pa. C.S. § 2705.

⁵ 18 Pa. C.S. § 3733(a).

⁶ Defendant also filed a Motion for Additional Discovery requesting discovery of any motion video recording from the motor vehicles. This portion of the Motion has been resolved as the Commonwealth has represented to Defendant that no such motion video recordings exist.

its brief on January 31, 2020. For the subsequent reasons Defendant's Omnibus Pretrial Motion is denied.

Background

The Commonwealth submitted a copy of the preliminary hearing transcript, upon which both parties rely. Detective Tyson Havens (Havens) of the NEU testified at the preliminary hearing on October 8, 2019. His testimony established the following. On October 2, 2019 at approximately 11:00 a.m., Havens was assisting the United States Marshalls Fugitive Unit with executing an arrest warrant on Harry. P.H. 10/8/19, at 1, 5. While assisting, Havens observed Harry walking North on Kaupp Place.⁷ *Id.* at 2. As Harry was walking, he entered into a backyard and then a white Jeep pulled out of the same area and headed down the alley. *Id.* at 2, 5. As the vehicle continued, Havens verified the passenger was Harry and driver was Defendant. *Id.* at 2, 6. While following the vehicle it began accelerating at a high rate of speed and Havens observed Harry throw a black bag out of the passenger side window. *Id.* at 3. Havens stopped and grabbed the black bag, but continued to listen to the pursuit of the vehicle over the pursuing officers' line of communication. *Id.* at 3. The vehicle continued through a closed construction site by driving up on a curb, at which time Trooper DiNucci activated his vehicle's lights. *Id.* at 7. Defendant's vehicle continued travelling at a high rate of speed on Park Ave, running through multiple stop signs. *Id.* at 3. Trooper DiNucci estimated the vehicle's speed at eight miles per hour. *Id.* The pursuit finally came to an end when Defendant crashed into a pole while trying to navigate a turn and came to rest on a side walk and in the front yard of a residence. *Id.* at 3. Both Harry and Defendant fled the vehicle on foot as soon as it came to a stop and both were apprehended shortly thereafter. *Id.* Havens upon examining the

⁷ At the preliminary hearing, Havens referred to Kaupp Place as Knapp Alley, but based on the description it is clear that he was referring to Kaupp Place.

contents of the bag located over one hundred grams of crack and powder cocaine, a half ounce of methamphetamine, over a dozen Buprenorphine strips, approximately one hundred Oxycodone, Hydrochloride tablets, Clonazepam, and approximately two hundred bags of heroin. *Id.*

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove 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). "A *prima facie* case in the criminal realm is the measure of evidence, which if accepted as true, would warrant the conclusion that the crime charged was committed." *Commonwealth v. MacPherson*, 752 A.2d 384, 391 (Pa. 2000). While the weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense, the absence of evidence as to the existence of a material element is fatal. *Commonwealth v. Ripley*, 833 A.2d 155, 159-60 (Pa. Super. 2003). 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).

Whether the Commonwealth Established its Prima Facie Burden for Conspiracy

Defendant contends that the Commonwealth failed to establish a *prima facie* case, for Conspiracy to Possess with the Intent to Deliver and Possession with the Intent to Deliver because it failed to prove Defendant entered an agreement with Harry and it failed to demonstrate Defendant constructively possessed the controlled substances. The Commonwealth need not show actual or constructive possession to establish Possession with the Intent to Deliver if it can show a *prima facie* case of Defendant's involvement in the conspiracy charged. *Commonwealth v. Perez*, 931 A.2d 703, 709 (Pa. Super. 2007); *see Commonwealth v. Irvin*, 134 A.3d 67, 77 n. 13 (Pa. Super. 2016) ("Successful proof of a conspiracy makes each co-conspirator fully liable for all of the drugs recovered, without the necessity of proving constructive possession."). Therefore the only issue to address is whether the Commonwealth met its burden in establishing Conspiracy to Possess with the Intent to Deliver.

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." *Commonwealth v. Jones*, 874 A.2d 108, 121 (Pa. Super. 2005). 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; *see Commonwealth v. Feliciano*, 67 A.3d 19 (Pa.

Super. 2013) (individual stating “[h]e’s bagging it up” and “[h]e will be out” to an undercover officer prior to a male bringing the undercover a baggie of cocaine was sufficient to establish the two individuals were co-conspirators).

The Court finds that the Commonwealth established a *prima facie* showing that Harry and Defendant were co-conspirators. Harry was seen walking and then next seen with Defendant in a white Jeep. At that time, either Defendant had the bag of controlled substances that based on Havens testimony were possessed with the intent to deliver, or Harry got into the vehicle carrying the large amount of controlled substances. P.H. 10/8/19, at 3-4. Then Defendant was noted as accelerating when he was being followed by officers. *Id.* at 2. Harry then throws the bag containing the controlled substances from the vehicle, presumably to distance them from it. *Id.* at 3. It can reasonably be inferred from Defendant’s reckless attempts to elude officers, before and after any lights were activated, that he was aware of what was in the bag. *Id.* at 2-3. Based on Havens observations viewed in a light most favorable to the Commonwealth, it is reasonable to believe both individuals in the vehicle were aware of what was in the bag, regardless of which individual brought the bag into the Jeep, and that upon being followed by officers Defendant attempted to elude police for that reason. Harry attempted to separate them from the controlled substances by throwing it out the window, while Defendant played his part in attempting to elude the officers. Therefore the Commonwealth presented enough evidence to establish Defendant and Harry had an agreement as to possess the contents of the black bag with the intent to deliver the controlled substances.

Whether the Commonwealth Established its Prima Facie Burden for Fleeing/Eluding

A person violates 18 Pa. C.S. § 3733 whenever he or she “willfully fails or refuses to bring his vehicle to a stop, or who otherwise flees or attempts to elude a pursuing police officer,

when given a visual and audible signal to bring the vehicle to a stop.” 18 Pa. C.S. § 3733(a). A violation will constitute a felony of the third degree whenever he or she does so while “committ[ing] a violation of section 3802 (relating to driving under influence of alcohol or controlled substance); cross[ing] a State line; or endanger[ing] a law enforcement officer or member of the general public due to the driver engaging in a high-speed chase.” 18 Pa. C.S. § 3733(a.2)(2). An officer may signal an individual to stop “by hand, voice, emergency lights or siren.” 18 Pa. C.S. § 3733(b).

The Court finds that sufficient evidence was provided to establish that Defendant violated 18 Pa. C.S. § 3733. Havens testimony established that Trooper DiNucci activated his lights and after the fact, Defendant continued to accelerate at high speeds. Additionally, the grading requirement for a felony three by “endanger[ing] a law enforcement officer or member of the general public due to the driver engaging in a high-speed chase” is also satisfied for a *prima facie* burden. 18 Pa. C.S. § 3733(a.2)(2)(iii). On a Wednesday at 11:00 a.m., Defendant was driving a vehicle throughout the city at speed approximated near eighty miles per hour. *Id.* at 3. Defendant drove up on a curb through a road closed construction area and sped through multiple stop signs for a distance of approximately one mile, while attempting to elude officers. *Id.* Finally, the chase came to an end when at a high-rate of speed Defendant lost control of the vehicle and his vehicle came to rest on the side walk and in a resident’s front yard. *Id.* Defendant’s actions easily constitute endangering himself, his passenger, the community, and the officers involved in the pursuit. Therefore Defendant’s Petition for Writ of Habeas Corpus for Fleeing or Attempting to Elude a Police Officer is denied.

Conclusion

The Commonwealth satisfied its *prima facie* burden by showing that it can reasonably be inferred Defendant was acting in agreement with Harry to possess the controlled substances with the intent to deliver them, thereby establishing a conspiracy. Additionally, the Commonwealth satisfied its *prima facie* burden by demonstrating Defendant failed to stop at the officer's signaling and did so while endangering the general public and pursuing officers. Therefore Defendant's Omnibus Pretrial Motion is hereby denied.

ORDER

AND NOW, this 5th day of February, 2020, based upon the foregoing Opinion, Defendant's Omnibus Pretrial Motions is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (LF)
Robert Hoffa, Esquire

NLB/kp