

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-1178-2019**
 v. :
 :
 DARNELL COTTON, : **OMNIBUS PRETRIAL**
 Defendant : **MOTION**

OPINION AND ORDER

Darnell Cotton (Defendant) was arrested by the Lycoming County Narcotics Enforcement Unit (NEU) on July 30, 2019. Defendant was arrested for one count of Criminal Conspiracy,¹ two counts of Delivery of a Controlled Substance,² three counts of Possession of a Controlled Substance with the Intent to Deliver,³ two counts of Criminal Use of a Communication Facility,⁴ three counts of Possession of a Controlled Substance,⁵ one count of Corruption of Minors,⁶ one count of Tampering with Physical Evidence,⁷ one count of Endangering the Welfare of Children,⁸ and one count of Recklessly Endangering Another Person.⁹ The charges arise from two controlled purchase and police subsequently conducting an arrest warrant for Defendant, followed by a search warrant executed on 411 Louisa St., Williamsport, Pennsylvania. Defendant filed this Omnibus Pretrial Motion on October 29, 2019. The Motion alleges the Commonwealth has failed to demonstrate a *prima facie* case for a number of the above charges, the affidavit in support of the search warrant for the residence was factually insufficient to establish probable cause, and Defendant's arrest must to be

¹ 18 Pa. C.S. § 903(a)(1).

² 35 P.S. § 780-113(a)(30).

³ 35 P.S. § 780-113(a)(30).

⁴ 18 Pa. C.S. § 7512.

⁵ 35 P.S. § 780-113(a)(16).

⁶ 18 Pa. C.S. § 6301(a)(1)(i).

⁷ 18 Pa. C.S. § 4910(1).

⁸ 18 Pa. C.S. § 4304(a)(1).

⁹ 18 Pa. C.S. § 2705.

quashed due to the lack of a valid search warrant.¹⁰ Additionally, the Motion requests disclosure of criminal charges, promises of leniency and/or immunity of the confidential informant (CI), additional discovery, and the right to reserve additional pretrial motions.¹¹ A hearing on the Motion was set for January 3, 2020. At that time the Commonwealth presented copies of the arrest warrant, search warrant, and preliminary hearing transcript as exhibits, upon which both parties agreed to rely. By Order of this Court on January 3, 2020, the Commonwealth was given an opportunity to either disclose the criminal charges, promises of leniency and/or immunity of the confidential informant or file a memorandum of its opposition. The Commonwealth filed its opposition to that portion of the Motion on January 13, 2020. Both parties were also granted the opportunity to brief the remaining issues. Defendant submitted his brief on January 29, 2020 and the Commonwealth submitted its brief on February 14, 2020.

Preliminary Hearing Testimony

Detective Tyson Havens (Havens) of the NEU testified at the preliminary hearing on August 8, 2019. His testimony established the following. On March 15, 2019, Havens met with CI to arrange a controlled buy for heroin. P.H. 8/8/19, at 1. CI contacted an individual he/she knew as “Mug” to buy heroin. *Id.* Havens had identified “Mug” to be Quran Geddy (Geddy) through CI showing him Facebook pictures. *Id.* Upon calling Geddy, he set up a three way call and made arrangements for CI to go to 419 Louisa St. *Id.* at 1-2. Approximately an hour later, Havens took CI to that location where he/she purchased suspected heroin from an individual. *Id.* at 2, 7. Havens identified that individual as Defendant through Facebook pictures. *Id.* at 2.

¹⁰ Defendant’s Motion to Quash Arrest was withdrawn at the time of the hearing on the Omnibus Pretrial Motion as the Commonwealth presented the Arrest Warrant at issue.

¹¹ Defendant’s Motion for Additional Discovery was satisfied at the time of the hearing and/or the Commonwealth represented that any pending issues would be resolved shortly thereafter.

Havens knew Defendant to reside at 411 Louisa St, which is one house over from where the transaction took place. *Id.* at 2. Again on May 24, 2019, Havens met with CI to arrange another controlled buy for heroin. *Id.* CI called an individual he/she knew as “Nell,” which Havens confirmed was Defendant through the use of Facebook pictures. *Id.* CI was directed to the 400 block of Louisa St., where he/she purchased suspected heroin. *Id.* CI gave the suspected heroin to Havens and verified he/she met with the individual he/she knows as “Nell.” *Id.* at 2-3. On July 30, 2019, Havens obtained an arrest warrant for Defendant. *Id.* at 3. Surveillance was then established at 411 Louisa St., where Defendant was observed entering and exiting multiple times. *Id.* When Defendant was inside the residence, the City of Williamsport Special Emergency Response Team (SERT) was summoned to execute the arrest warrant. *Id.* Individuals surrounded the residence as SERT made entry. *Id.* Havens observed Defendant opening a second floor window “his arm went out the window as if throwing something out the window and then the window slammed shut.” *Id.* Detective John Rachel observed Defendant throwing several plastic bags of suspected heroin out the second story window. *Id.* at 4. Some of the bags’ contents dispersed while in the air, covering the shrubbery and weeds outside the window. *Id.* The suspected heroin that dispersed was not recovered from the bushes and shrubs for officer safety reasons due to the potential presence of Fentanyl. *Id.* at 13. At least two of the bags of suspected heroin that were thrown from the window made it to the ground without their contents spilling out. *Id.* at 4. Defendant was taken out of the residence and additionally an eleven year old child was found on the second floor of the residence. *Id.* While clearing the second floor SERT members observed “bulk heroin laying on [a] plate, a razor blade, blue glassine bags that were in the process of being packaged, there was already 278 glassine bags that were packaged.” *Id.* Similar packaging materials and heroin was found in all three of the

second floor bedrooms. *Id.* Packaging materials, which appeared to contain heroin, were also found in the bathroom and in the toilet. *Id.* at 5. Based on the observations of the SERT, Havens applied for a search warrant for the residence. *Id.*

Search Warrant

The search warrant, entered as Commonwealth's Exhibit #2, was obtained by Havens on July 30, 2019. It was the result of two controlled purchase of suspected heroin from Defendant. Havens also knew Defendant and two others to reside within the residence. Commonwealth's Exhibit #2, at 5. In addition to the two controlled purchases as described by Havens at the preliminary hearing, the pertinent portion of the search warrant outlining the events on July 30, 2019 states:

On 07/30/19, I obtained an arrest warrant ofr [sic] [Geddy] and [Defendant] and established surveillance of 411 Louisa St. While watching the residence, I observed a B/M exit and serve one known heroin addict in the "cut" and one unknown heroin addict in the "cut." The B/M then left. Approximately 30 minutes later, I observed [Defendant] exit the front door of the residence and then re-enter. A perimeter was established and [SERT] was summoned to attempt warrant service. [SERT] ultimately made entry into the residence. When SERT forced entry into the residence, I observed [Defendant] open the 2nd floor northeast window and throw something outside. SERT moved through the residence and held the first floor attempting to hail the occupants down, at which time they could hear movement on the second floor back and forth. When they finally made their way to the second floor and took [Defendant] into custody, they found a broken window in the bathroom. Outside, below the window was a large bag of suspected heroin. Also inside the second floor bathroom, they observed numerous blue glassine bags, consistent with the packaging of heroin, in the toilet. Inside the northern bedroom, they found a new box glassine bags scattered on the floor, with a trail of the same bags leading to the bathroom. In the southern bedroom, they found in plain view, marijuana on a TV stand. [SERT] then turned the cleared residence over to members of the [NEU] to hold pending a search warrant application.

Id. at 6.

Whether the Commonwealth Established a *Prima Facie* Case

Defendant contends that the Commonwealth failed to establish a *prima facie* case for a number of charges. 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).

Criminal Conspiracy

Defendant contends the Commonwealth failed to establish the elements of Criminal Conspiracy. For the Commonwealth to establish conspiracy it 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.

The Court finds that the Commonwealth has satisfied its *prima facie* burden on Criminal Conspiracy to Deliver of a Controlled Substance. Havens testified that on March 15, 2019, CI spoke with who he knew as “Mug” later identified as Geddy. P.H. 8/8/19, at 1. Geddy setup a three-way call and instructed CI to go to a specific location. *Id.* at 1-2. Once at that location, CI was met by Defendant, whom he/she purchased suspected heroin off of. *Id.* at 2. Enough evidence is established by Geddy receiving the call from CI, giving CI a location to purchase the heroin, and Defendant showing up at the predetermined location and delivering the suspected heroin to reasonably infer that Geddy and Defendant were in agreement to deliver the heroin. Geddy fielding the call from CI and arranging the location of the buy, as well as, Defendant then providing the suspected heroin to CI are all overt acts, which establish a *prima facie* showing of the elements of the charge of Criminal Conspiracy.

Criminal Use of a Communication Facility

Defendant next argues that insufficient evidence was presented to establish a *prima facie* case for Criminal Use of a Communication Facility. The Commonwealth has charged

Defendant with two counts of Criminal Use of a Communication Facility, but Defendant more specifically argues that only the one charge be dismissed as no evidence was presented that Geddy called Defendant. The Commonwealth is required to prove that Defendant used “a communication facility to commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony under this title or . . . The Controlled Substance, Drug, Device and Cosmetic Act. Every instance where the communication facility is utilized constitutes a separate offense under this section.” 18 Pa. C.S. § 7512(a).

Although the Commonwealth argues that it can be reasonably inferred that Defendant was the individual Geddy contacted in the three-way call, this Court does not believe such reasonable inferences are a necessary jump to make. Since a *prima facie* case was established for Criminal Conspiracy, Defendant is liable for Geddy’s phone call with CI under the theory of conspiratorial liability. “Once the trier of fact finds that there was an agreement and the defendant intentionally entered into the agreement, that defendant may be liable for the overt acts committed in furtherance of the conspiracy regardless of which co-conspirator committed the act.” *Commonwealth v. Murphy*, 844 A.2d 1228, 1238 (Pa. 2004). Therefore, Defendant is liable for Geddy’s act of Criminal Use of a Communication Facility on March 15, 2019, as it was done in furtherance of the objective to Deliver a Controlled Substance.

Possession of a Controlled Substance

Defendant next contends that the Commonwealth failed to demonstrate that he possessed the heroin found during the search of the residence on July 30, 2019, to substantiate the charge of Possession of a Controlled Substance with the Intent to Deliver and Possession of a Controlled Substance. When contraband is not found on a defendant's person, the Commonwealth must establish “constructive possession,” that is, the “power to control the

contraband and the intent to exercise that control.” *Commonwealth v. Valette*, 613 A.2d 548, 550 (Pa. 1992). As with any other element of a crime, constructive possession may be proven by circumstantial evidence. *Commonwealth v. Macolino*, 469 A.2d 132, 134-35 (Pa. 1983). The requisite knowledge and intent necessary for constructive possession may be inferred from a totality of the circumstances. *Commonwealth v. Parker*, 847 A.2d 745, 750 (Pa. Super. 2004).

The Court finds that the Commonwealth established a *prima facie* showing for constructive possession. Upon executing the arrest warrant on 411 Louisa St., to obtain Defendant, he was the only adult individual within the residence. His presence alone with an eleven year old child reasonably infers it was Defendant’s residence when viewed in a light most favorable to the Commonwealth. P.H. 8/8/19, at 4. Havens observed Defendant throwing something out the window, which Detective Rachel verified was heroin as he also observed it. *Id.* at 3-4. Inside the residence was a large amount of heroin that was being packaged for distribution. *Id.* at 4-5. This, in conjunction with Defendant conducting two controlled buys right outside of the residence, reasonably infers that Defendant possessed the heroin being packaged for sale within the residence when viewed in a light most favorable to the Commonwealth. Therefore the Court finds the totality of the evidence establishes Defendant possessed the heroin at least to the extent to satisfy a *prima facie* burden.

Corruption of a Minor¹²

Defendant next argues the Commonwealth failed to establish its *prima facie* burden for Corruption of a Minor. Corruption of a Minor occurs when a defendant, “being of the age of 18 years and upwards, by any act corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of

¹² Defendant failed to brief this issue, but it was originally raised in Defendant’s Omnibus Pretrial Motion therefore the Court will briefly address it.

any crime.” 18 Pa. C.S. § 6301(a)(1)(i). In *Commonwealth v. Barnette*, a panel of the Pennsylvania Superior Court held that “asking a young man to sign for delivery of a package that [the defendant] knew contained drugs . . . [was] sufficient to support the corruption of minors conviction” as the “conduct offends the common sense of the community, as well as the sense of decency, propriety and the morality that most people entertain.” 760 A.2d 1166, 1173 (Pa. Super. 2000). The conviction was upheld although the minor was told that the package contained knick-knacks and he was never apprised of the true nature of the package. *Id.* at 1172.

In the present case, a large amount of suspected heroin and packaging materials were found in all three bedrooms of the second floor. P.H. 8/8/19, at 4. Additionally, a trail of bags of heroin was found leading to the bathroom and in the bathroom of the residence. *Id.* The eleven year old child was also found on the second floor of the residence. *Id.* Although, Defendant contends that no evidence was presented that the minor was being used to package the drugs, under the holding in *Barnette* this Court finds it is irrelevant. Based on the minor being found upstairs and drugs and packaging materials being found in every room of the second floor, there is no way the minor was not exposed to the suspected heroin, which was being packaged for distribution. Therefore the Court finds the Commonwealth has satisfied its *prima facie* burden on Corruption of a Minor.

Recklessly Endangering Another Person

Finally, Defendant contends that the Commonwealth failed to present sufficient evidence that Defendant recklessly endangered officers present during execution of the search warrant. A defendant recklessly endangers another person “if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.” 18 Pa.

C.S. § 2705. Detective Rachel witnessed Defendant throwing mass quantities of suspected heroin out of the second floor window. P.H. 8/8/19, at 4. At least one of the bags was not securely closed as it dispersed through the air as it was thrown from the window. *Id.* For officer safety reasons, the heroin that dispersed covering the trees, shrubs, and leaves was not recovered due to potential presence of Fentanyl. *Id.* at 13. The Court finds that the Commonwealth satisfied a *prima facie* burden by demonstrating that Defendant threw heroin, which could contain Fentanyl, out of a second story window. He committed this action recklessly after officers entered the residence with disregard for who may be below the window and without securing the bags so that the contents would not disperse, potentially causing death or serious bodily injury.

Whether the Search Warrant Established Probable Cause

Defendant also challenges the issuance of the search warrant of the residence claiming the results of search of the residence needs to be suppressed because the search warrant did not allege sufficient facts to establish probable cause. When evaluating the probable cause of a search warrant this Court's determination is whether there was "substantial evidence in the record supporting the decision to issue a warrant" by giving deference to the issuing magistrate's probable cause determination and "view[ing] the information offered to establish probable cause in a common-sense, non-technical manner." *Commonwealth v. Jones*, 988 A.2d 649, 655 (Pa. 2010). Probable cause is established by a "totality of the circumstances." *Commonwealth v. Gray*, 503 A.2d 921, 925 (Pa. 1985) (adopting *U.S. v. Gates*, 462 U.S. 213 (1983)). The Court "must limit [its] inquiry to the information within the four corners of the affidavit submitted in support of probable cause when determining whether the warrant was issued upon probable cause." *Commonwealth v. Arthur*, 62 A.3d 424, 432 (Pa. Super. 2013). It

is “not require[d] 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.” *Commonwealth v. Forster*, 385 A.2d 416, 437-38 (Pa. Super. 1978). A magistrate must simply find that “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Commonwealth v. Manuel*, 194 A.3 1076, 1081 (Pa. Super. 2018).

Defendant asserts the search warrant does not contain enough information to demonstrate a fair probability that drugs would be found within the residence. Specifically, Defendant asserts that it contains no information concerning the reliability of the CI and the information that is included in the application for the search warrant is stale. The facts presented in the affidavit of the search warrant demonstrate sufficient evidence to establish probable cause to search 411 Louisa St. On March 15, 2019, Havens took CI to 419 Louisa St. for a controlled buy. Commonwealth’s Exhibit #2 at 5. CI after sometime returned to Havens vehicle, handed over suspected heroin, and showed Havens a Facebook picture of the individual he/she purchased heroin from. *Id.* Havens knew this individual as Defendant and knew him to reside at 411 Louisa St. *Id.* On May 24, 2019, Havens took CI to the site of a controlled buy, this time the rear of 411 Louisa St. *Id.* CI left the vehicle and returned shortly afterward, handed over suspected heroin, and showed Havens a Facebook picture of the individual he/she purchased heroin from, whom CI knew as Nell. *Id.* Havens knew this individual as Defendant. *Id.* at 5-6. Based on these controlled buys, Havens obtained an arrest warrant for Defendant. *Id.* at 6. Defendant was observed within the residence and SERT was called to execute the arrest warrant. *Id.* At the time of the execution of the arrest warrant, large

amounts of heroin and packaging materials were observed at 411 Louisa St. *Id.* This information provided was sufficient as Defendant's identity was independently verified by Havens to substantiate the arrest warrant, Defendant was observed at residence prior to calling for execution of the arrest warrant at 411 Louisa St., and evidence in plain view observed by SERT officers on the day the search warrant was issued substantiated probable cause for such issuance. Therefore Defendant's argument fails, the four corners of the affidavit of the search warrant establish sufficient probable cause.

Whether Defendant is Entitled to Information Regarding CI

Defendant's last claim presented is that he is entitled to information regarding the CI, including how the CI became an informant, whether he/she was making purchases prior to these interactions, the CI's criminal history, and any preferential treatment being offered to the CI in exchange for his/her cooperation. Under Pennsylvania Rules of Criminal Procedure 573, the trial court has discretion to require the Commonwealth to reveal the names and addresses of confidential informants when the defendant shows a material need and reasonableness. Pa. R. Crim. P. 573(B)(2)(a)(i). Typically, "[t]he Commonwealth enjoys a qualified privilege to withhold the identity of a confidential source." *Commonwealth v. Koonce*, 190 A.3d 1204, 1209 (Pa. Super. 2018). When evaluating the "burden of proving the requested information is material and reasonable, a defendant must show a reasonable probability that the information gained from the discovery would lead to evidence that would exonerate him. More than a mere assertion that the information disclosed might be helpful is necessary." *Commonwealth v. Garcia*, 72 A.3d 681, 684 (Pa. Super. 2013).

In the present case, Defendant has failed to establish the CI's information is material at this juncture. As is common practice in this county, the Commonwealth needs not to present

information regarding CI until pretrials. The importance of confidentiality until a time closer to trial has been stressed by the Commonwealth as the use of confidential informants may often extend to multiple ongoing cases. The Court by this Order does not hinder Defendant from re-raising the issue at a later time, but presently the Commonwealth shall not be required to disclose the requested information until pretrials and/or until Defendant shows the information requested is material and reasonable.

Conclusion

The Commonwealth satisfied its *prima facie* burden for all of the above challenged charges. The affidavit of the search warrant of the residence provided sufficient evidence to establish probable cause for officers to search. Lastly, Defendant failed to establish that the requested information regarding CI was material.

ORDER

AND NOW, this 2nd day of March, 2020, based upon the foregoing Opinion, the Court rules as follows:

1. Defendant's Petition for Writ of Habeas Corpus is hereby **DENIED** in its entirety.
2. Defendant's Motion to Suppress Evidence is hereby **DENIED**.
3. Defendant's Motion to Quash Arrest was orally **WITHDRAWN** by Defendant at the hearing on January 3, 2020.
4. The Commonwealth shall be required to provide the information requested in Defendant's Motion for Disclosure of Criminal Charges, Promises of Leniency and/or Immunity at the time of pretrials.
5. Defendant's Motion for Additional Discovery was satisfied by the Commonwealth at the time of hearing on January 3, 2020 and/or shortly thereafter.

By the Court,

Nancy L. Butts, President Judge

cc: DA (DW)
Robert Hoffa, Esquire

NLB/kp