

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-429-2019
v.	:	
	:	
MARIA SWEETING,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1420-2019
v.	:	
	:	
GRANT WRIGHT,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION AND ORDER

Maria Sweeting (Sweeting) and Grant Wright (Wright), hereafter collectively referred to as Defendants, were arrested by the Williamsport Bureau of Police (WBP) on March 1, 2019 and September 10, 2019, respectively. Sweeting has been charged with Persons Not to Possess a Firearm,¹ Receiving Stolen Property,² Possession of a Controlled Substance with the Intent to Deliver,³ Possession of a Controlled Substance,⁴ Possession of Drug Paraphernalia,⁵ Criminal Conspiracy to Tamper with Physical Evidence,⁶ Recklessly Endangering Another Person,⁷ and Endangering the Welfare of a Child.⁸ Wright has been charged with one count of Persons Not to Possess a Firearm,⁹ three counts of Aggravated Assault,¹⁰ one count of Receiving Stolen

¹ 18 Pa. C.S. § 6105(a)(1).
² 18 Pa. C.S. § 3925(a).
³ 35 P.S. § 780-113(a)(30).
⁴ 35 P.S. § 780-113(a)(16).
⁵ 35 P.S. § 780-113(a)(32).
⁶ 18 Pa. C.S. § 903.
⁷ 18 Pa. C.S. § 2705.
⁸ 18 Pa. C.S. § 4304(a)(1).
⁹ 18 Pa. C.S. § 6105(a)(1).
¹⁰ 18 Pa. C.S. § 2702(a)(8), (9).

Property,¹¹ two counts of Possession of a Controlled Substance with the Intent to Deliver,¹² one count of Recklessly Endangering Another Person,¹³ two counts of Possession of a Controlled Substance,¹⁴ and one count of Possession of Drug Paraphernalia.¹⁵ The charges arose from the execution of a search warrant on 503 Brandon Ave, Williamsport, Pennsylvania 17701. Both Wright and Sweeting filed timely pretrial motions. Defendants filed Omnibus Pretrial Motions seeking Writ of Habeas Corpus and suppression of the evidence as a result of the search of a black safe located outside of the residence. A hearing on the motions was scheduled for December 16, 2019. At the time of the hearing the parties agreed to rely on the transcript from Sweeting's preliminary hearing (Commonwealth's Exhibit #1), a supplemental report from Officer Tyson Minier (Minier) of the WBP (Commonwealth's Exhibit #2), and a copy of the search warrant for 503 Brandon Ave obtained by Agent Jason Bolt (Bolt) of the WBP (Commonwealth's Exhibit #3) and to submit briefs for argument. Defendants submitted their briefs on January 6, 2020 and the Commonwealth submitted its brief on January 29, 2020.

Background

Justin Snyder (Snyder) of the WBP, Bolt, and Melissa Strieby (Strieby) testified on behalf of the Commonwealth at the preliminary hearing for Sweeting, which was held on March 21, 2018. Their testimony established the following. Bolt was contacted by Children and Youth (C&Y) on February 7, 2019 regarding Sweeting's daughter, a one month old infant, that had been admitted to the hospital with a fractured femur and high levels of cocaine metabolites in her system. P.H. 3/21/19, at 2. Sweeting had told C&Y that she had used cocaine the day

¹¹ 18 Pa. C.S. § 3925(a).

¹² 35 P.S. § 780-113(a)(30).

¹³ 18 Pa. C.S. § 2705.

¹⁴ 35 P.S. § 780-113(a)(16).

¹⁵ 35 P.S. § 780-113(a)(32).

before the child had sustained the injuries. *Id.* at 4. Based on this information, in addition to checking the criminal history of Sweeting and other sources of information, Bolt obtained a search warrant for 503 Brandon Ave, where both Sweeting and Wright resided. *Id.* at 2-3. At approximately 9:26 p.m. on February 8, 2019, Bolt and other officers executed the search warrant on the residence. *Id.* at 3. As officers were executing the search warrant, they intercepted a female, later identified as Sweeting's roommate Strieby, exiting the rear of the residence with a large black safe and was attempting to put it under the back porch. *Id.* at 4-5. Strieby prior to officers' arrival had been given a safe by Sweeting to hold on to. *Id.* at 7, 22. Then just as officers were arriving, Sweeting had called Strieby to get rid of the safe. *Id.* at 7, 19. When Bolt viewed Strieby's cellphone, he observed a call from Sweeting that occurred at 9:26 p.m. *Id.* at 11. Officers then returned the safe to the residence and opened it with a crowbar. *Id.* at 6, 10. Inside the safe officers recovered a stolen handgun and approximately 58.26 grams of cocaine. *Id.* at 6. From within the residence the officers recovered indicia that both Sweeting and Wright lived at the residence. *Id.* at 5. Additionally paraphernalia, such as scales and packaging materials, and marijuana was recovered from the attic of the residence. *Id.* at 5-6, 9. Sweeting arrived while the search warrant was being executed and agreed to speak with Bolt. *Id.* at 6. During that interview, Sweeting confirmed this was her residence and admitted to cocaine use over the weekend and stated that perhaps the child had incidental contact with cocaine that was leftover on her person. *Id.* at 7-8. She also confirmed her telephone number. *Id.* at 11. During his investigation, Bolt checked Sweeting's records, which indicated she may not possess a firearm *Id.* at 8.

Minier's supplemental report established the following. Minier, while guarding the perimeter during the execution of the search warrant, witnessed Strieby exit the rear of the

residence with a black box in her arms. She then placed the box under the stairs and attempted to return inside. After officers made contact with Strieby, Minier approached the porch and observed the box that he then determined was a safe.

Whether the Commonwealth Established *Prima Facie* Burden of Constructive Possession

At the onset, this Court denied Wright's Petition for Habeas Corpus outright at the hearing on December 16, 2019. Wright waived his preliminary hearing and therefore "is precluded from raising the sufficiency of the Commonwealth's *prima facie* case unless the parties have agreed at the time of the waiver that the defendant later may challenge the sufficiency." Pa. R. Crim. P. 541(a)(1). At the hearing, the Commonwealth indicated no such agreement was entered into with Wright, which defense counsel conceded, therefore his Petition for Habeas Corpus is denied.

Sweeting contends that the Commonwealth failed to establish a *prima facie* case, because it failed to prove she constructively possessed the safe. Specifically, Sweeting alleges the only evidence presented is the self-serving testimony of Strieby and therefore it is not sufficient to establish a *prima facie* case against her.

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).

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).

Sweeting’s argument is meritless as weight and credibility are not considered for purposes of a *prima facie* case. *See Ripley*, 833 A.2d at 159. Strieby’s testimony establishes that Sweeting gave her the safe for the purposes of keeping it from C&Y. Then when she realized police were arriving she called Strieby and asked her to discard the safe. Additionally, Bolt verified that Sweeting called Strieby around the same time that the search warrant would have been executed. Therefore the evidence is sufficient to show Sweeting constructively

possessed the safe and the contents within the safe and her Petition for Writ of Habeas Corpus is denied.

Whether the Search of the Safe was Permitted by the Search Warrant

Defendants' argue that since the safe was secured outside of the residence, it was not included in the search warrant and exigent circumstances were not present to justify its search without procuring a second search warrant. Therefore the evidence obtained as a result of the search of the safe must be suppressed. As Defendants concede, Pennsylvania case law is clear that when a search warrant authorizes a search of a residence for controlled substances, funds derived from the sale of those controlled substances, and documents relating to their sale, "a search of a safe located among Appellant's belongings in the residence, as it represented a container in which money and contraband may have been secreted" is within the fair scope of a search warrant of the residence. *Commonwealth v. Irvin*, 134 A.3d 67, 75 (Pa. Super. 2016). Since the present search warrant included in items to be seized "[a]ny narcotics or drug paraphernalia to include any items that could be used to contain, transport, or administer cocaine," the search warrant reasonably included any safes found within the residence, as they would be containers in which contraband could be secreted. Commonwealth's Exhibit #3.

The Fourth Amendment of the United States Constitution requires a valid search warrant to specify with particularity "the place to be searched and the persons or things to be seized." U.S. Const. amend. IV. This requirement is meant to deter general searches and instead the "scope of a lawful search is defined by the object of the search and the places in which there is probable cause to believe that it may be found." *Commonwealth v. Turpin*, 216 A.3d 1055, 1063-64 (Pa. 2019). Pennsylvania courts have held that the "meaning of 'premises' in a search warrant is not confined to the building(s) specified in the description[,] . . . [and] also

includes all property necessarily a part of the premises or so inseparable as to constitute a portion thereof.” *Commonwealth v. Eckert*, 368 A.2d 794, 797 (Pa. Super. 1976). The term ‘premises’ has been extended to include a shed approximately five to ten feet from the defendant’s trailer. *Id.* at 797-98. Similarly ‘premises’ has been found to include an attached basement, and “a back storage room or an enclosed porch,” if the items being searched for would likely be found in those areas. *Commonwealth v. Aponte*, 690 A.2d 1189, 1191 (Pa. Super. 1997). Bolt obtained a search warrant stating: “Specific description of premises and/or person to be searched . . . : The residence located at 503 Brandon Ave, which is the west side of a double occupancy multi-story brick structure Williamsport PA 17701 (See Attachment A).” Commonwealth’s Exhibit #3 (Attachment A is a picture of the residence). Prior to executing the search warrant, Sweeting instructed Strieby to discard the safe because she was aware that officers were arriving to search the residence. Strieby was then observed by Minier, at the time the search warrant was being executed, exiting the rear of the residence with the safe in her hands and then depositing it under the back porch. *See* Commonwealth’s Exhibit #2. Before Strieby could return back into the residence she was detained by officers. Officers then returned the safe back into the residence and searched it. In this situation, the safe is clearly in the purview of items to be searched listed within the search warrant. Allowing a defendant to avoid police searches by intentionally placing items outside of the physical residence due to their incriminating nature would frustrate the purpose of the Fourth Amendment, especially in circumstances such as this when officers take the proper precautions and obtain a valid search warrant. It is clear that a back porch is part of the curtilage or an inseparable portion of the residence that would be included in the definition of ‘premises,’ such as a nearby shed or attached basement. Therefore, Defendants’ motions to suppress are denied.

ORDER

AND NOW, this 3rd day of February, 2020, based upon the foregoing Opinion, the Court rules as follows:

1. Sweeting's Omnibus Pre-trial Motion is hereby **DENIED** in its entirety.
2. Wright's Omnibus Pre-trial Motion is hereby **DENIED** in its entirety.

By the Court,

Nancy L. Butts, President Judge

cc: DA (JR)
Paul Petcavage, Esquire