

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-615-2019
	:	CR-802-2019
v.	:	
	:	
AARON WILLIAMS,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION AND ORDER

Aaron Williams (Defendant) was arrested by the Lycoming County Narcotics Enforcement Unit (NEU) on April 11, 2019. Defendant was arrested on the two above cases for one count of Delivery of a Controlled Substance,¹ four counts of Possession of a Controlled Substance with the Intent to Deliver,² one count of Possession of a Controlled Substance,³ and one count of Criminal Use of a Communication Facility.⁴ The charges arise from a controlled purchase and police subsequently conducting a search on 610 W Fourth St., Apt. 1E, Williamsport, PA in Lycoming County pursuant to a search warrant. Defendant filed an Omnibus Pretrial Motion in CR 615-2019 on June 12, 2019 and his Omnibus Pretrial Motion in CR 802-2019 on July 1, 2019. The Motions allege the Commonwealth has failed to demonstrate a *prima facie* case that Defendant possessed the drugs found within the residence, the affidavit in support of the search warrant for the residence was factually insufficient, Defendant did not receive the proper *Miranda* warnings prior to his statements being given, and the search of Defendant's person incident to arrest was illegal.⁵ Three hearings on the motions

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(30).

³ 35 P.S. § 780-113(a)(16).

⁴ 18 Pa. C.S. § 7512.

⁵ Each Motion included a Motion for Disclosure of Criminal Charges, Promises of Leniency and/or Immunity, which was already addressed by this Court's Order dated August 1, 2019. As outlined in that Order, the Commonwealth agreed to provide information to Defendant.

were conducted by this Court on August 1, 2019, September 16, 2019, and November 22, 2019.⁶ Both parties were granted the opportunity to brief the issues. Defendant submitted his brief on December 20, 2019 and the Commonwealth submitted its brief on January 3, 2020. For the subsequent reasons Defendant's Omnibus Pretrial Motions are denied.

Background and Testimony

As exhibits, the Commonwealth submitted copies of the preliminary hearing transcript, the receipt of seized property from the residence, the search warrant, a secured magisterial docket of an arrest warrant issued and then withdrawn, and the arrest warrant for Defendant. Defendant entered a copy of the original criminal complaint as an exhibit. At the hearing on August 1, 2019, Detective Curtis Loudenslager (Loudenslager) of the NEU testified on behalf of the Commonwealth and Defendant briefly testified on his own behalf. On September 16, 2019, Detective Tyson Havens (Havens) of the NEU testified on behalf of the Commonwealth. Amanda Best (Best), a clerk IV in Magisterial District Judge Frey's office, testified on behalf of the Commonwealth on November 22, 2019.

Preliminary Hearing

Loudenslager and Havens testified at the preliminary hearing on March 23, 2019. Their testimony established the following. On April 11, 2019, a search warrant was executed on 610 West Fourth St., Apt. 1E in Williamsport at approximately noon, 1:00 p.m. P.H. 4/23/19, at 1, 11.⁷ While performing a "knock and announce" Havens witnessed Defendant attempting to flee out of the East side door, but he was apprehended. *Id.* at 6. The apartment was a small

⁶ After the first hearing, the Commonwealth filed a Motion to Re-Open Record of Suppression Hearing on August 2, 2019, which was permitted by the Court and the record was reopened on September 16, 2019. *See* N.T. 9/16/19, at 2-4.

⁷ At subsequent hearings, it was unequivocally determined that the search warrant was executed at 3:00 p.m.

efficiency with a kitchenette, small bedroom, and bathroom and Defendant was the only individual present within the residence. *Id.* at 7. Upon executing the search warrant, a scale with suspected cocaine on it and plastic baggies were found in the kitchen. *Id.* at 2. In the bedroom, detectives located marijuana, MDMA tablets, and a plastic baggie of suspected cocaine. *Id.* at 7. Plastic fold-over baggies were found throughout the residence. *Id.* at 8. Approximately two grams of suspected cocaine, 200 grams of marijuana, and 20 MDMA tablets were retrieved from the apartment. *Id.* at 3, 8. Mail was retrieved from the residence with the name Lucky Bess on it. *Id.* at 13. A firearm was also found lying on top of the bed. *Id.* at 10. Havens testified as a Possession with the Intent to Deliver expert, for the purposes of the preliminary hearing, that the marijuana, cocaine, and MDMA was all possessed with the intent to deliver. *Id.* at 5, 8-10. Havens reached this conclusion as it pertained to the Marijuana based on the amount and the separate packaging. *Id.* at 9. As for the MDMA, the conclusion was reached due to the amount of pills and that this drug is not typically used on a daily basis. *Id.* at 9. Finally, Havens reached his conclusion on the cocaine based on finding an amount on a scale and packaging materials being nearby. *Id.* at 9-10. Additionally, Havens testified that the presence of a firearm was indicative of possessing with the intent to deliver. *Id.* at 10. While Defendant was being taken into custody, Loudenslager “did offer him his *Miranda* warnings” and Defendant stated that he “did not wish to put this on anybody else and made the statement that he had those items because he likes to party.” *Id.* at 4.

August 1, 2019 Hearing

Loudenslager testified at the hearing on August 1, 2019. His testimony established the following. Prior to Loudenslager arriving at the residence, Defendant was already apprehended and handcuffed. N.T. 8/1/19, at 4. Defendant was then taken back to City Hall for processing,

which Loudenslager was present for. *Id.* at 5. Defendant was advised by Loudenslager that Defendant

was currently under arrest for violations of Title 35 of the Crimes Code and that he had Miranda rights and those rights were that he had the right to remain silent, anything he says can and will be used against him in a court of law. He has a right to an attorney, if he cannot afford one, one will be provided to him at no cost and if he decides to start answering questions he could stop answering questions at any time.

Id. at 5-6.

Defendant indicated that he understood. *Id.* at 6. During the transport from the police station to Magisterial District Judge Frey's office, Defendant was asked about the firearm, which he stated was his and legally purchased. *Id.* at 7. Following his arraignment, Defendant told Loudenslager the apartment did not belong to him and it belonged to Lucky. *Id.* at 8-9. Defendant testified on his own behalf stating he does not live at that residence, he has no personal items there, and he does not stay there.

September 16, 2019 Hearing

Havens testified at the hearing on September 16, 2019. His testimony established the following. The search warrant for the residence was issued at 2:30 p.m. on April 11, 2019. *See* Commonwealth's Exhibit #3. The search of the residence occurred at 3:00 p.m. *See* Commonwealth's Exhibit #2. Loudenslager informed Havens and the task force via text message that the search warrant and arrest warrant were secured prior to the search warrant being executed. N.T. 9/16/19, at 20. During the execution of the search warrant, Havens witnessed Defendant fleeing out of the Northeast door of the residence. *Id.* at 7. Havens took Defendant to the ground and he was secured in handcuffs. *Id.* at 8. Defendant was then stood up and his person was searched, which resulted in officers recovering eighty dollars from his front pants pocket. *Id.* at 8, 22. There was a warrant for Defendant's arrest at the time of the search

warrant. *Id.* at 11. That arrest warrant, Commonwealth's Exhibit #4, was obtained on April 11, 2019, and then withdrawn on the same day at 5:13 p.m. *See* Commonwealth's Exhibit #4. Additionally, Havens was part of a controlled purchase earlier in the day involving Defendant. *Id.* at 22.

November 22, 2019 Hearing

Best testified at the hearing on November 22, 2019. Her testimony established the following. The arrest for Defendant was entered into the court system on April 11, 2019 at 2:56 p.m. It was then issued at 2:58 p.m., before being printed at 3:00 p.m. N.T. 11/22/19, at 5.

Search Warrant

The search warrant, entered as Commonwealth's Exhibit #3, was obtained by Loudenslager on April 11, 2019. It was the result of a controlled purchase of suspected cocaine from Defendant. In the search warrant it indicates the CI has been used on three prior occasions and he or she demonstrated their reliability by providing information, which was corroborated by law enforcement. *See* Commonwealth's Exhibit #3 at 3. The pertinent portion of the search warrant outlining the events that took place on April 11, 2019 states:

[A] CI was used to purchase cocaine from a person they know to be Aaron Williams; and that they know to live in an apartment at 610 West Fourth St Williamsport. The CI provides investigators with a picture of Williams and also advises that he has a telephone number of 973 489-5747. Aaron William's is a person the CI admits they have bought cocaine from in the past at his apartment at 610 West Fourth St Williamsport. Based upon information provided by the CI, Williams is believed to be Aaron Yarnell Williams.

During the course of this first controlled purchase the following events took place

- (1) CI arrives to meet with members of the LCNEU at a predetermined location.
- (2) CI is strip searched by S. Johns of the county Adult Probation Office and found to be free of contraband or funds.
- (3) CI contacts Williams using phone number 974 489-5747 and arranges throught [sic] phone conversation and text messages to purchase cocaine from him and is directed to his apartment.
- (4) I

provide the CI with \$80 of pre-recorded currency and travel with them from the predetermined location and park my vehicle in front of 610 West Fourth St; the CI exits the vehicle and enters the front door. (5) The CI exits a short time later through a door on the east side of the building and walks directly to my vehicle. (6) The CI enters my vehicle and immediately surrenders to me a plastic bag containing suspected cocaine. (7) The CI is taken to a predetermined location and searched by S Johns of the county Adult Probation Office and again found to be free of contraband or funds. (8) The CI informs me that inside the apartment she encounters Williams and a heavier black male in a white T-shirt and heavier white female. (9) The CI observes an estimated ounce of cocaine, a scale, a significant amount of marijuana and a black handgun. (10) The CI provides Williams with \$80 and he/she is provided with suspected cocaine.

Id.

Whether the Commonwealth Established Constructive Possession

Defendant first contends that the Commonwealth failed to establish a *prima facie* case, because it failed to prove Defendant constructively possessed the controlled substances. 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).

The Court finds that the Commonwealth established a *prima facie* showing for constructive possession. Upon executing the search warrant on 610 West Fourth St., Apt 1E, Defendant was the only individual within the residence, which reasonably infers it was Defendant's residence when viewed in a light most favorable to the Commonwealth. P.H. 4/23/19, at 6. While being taken into custody, Defendant also admitted to Loudenslager that the drugs were his. *Id.* at 4. Additionally, the CI, who established the probable cause for the search warrant, knew the residence to belong to Defendant, on that same day the search warrant was executed Defendant directed him to the residence to purchase cocaine, and the CI did enter the residence, purchased suspected cocaine from Defendant, and then left the residence in the presence of Loudenslager. Commonwealth's Exhibit #3 at 3. Therefore the Court does not

believe the testimony of Defendant, as the totality of the evidence establishes he possessed the cocaine at least to the extent to satisfy a *prima facie* burden.

Whether the Search Warrant Established Probable Cause

Defendant's second contention is that 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, as it contains no

information concerning the reliability of the CI. Additionally, Defendant relies on *Commonwealth v. Baker*, to bolster his argument. This Court disagrees with Defendant's conclusion and agrees with the Commonwealth that *Baker* does not stand for the legal principle presented by Defendant and instead cuts in favor of the Commonwealth's position.

In *Baker*, the search warrant was based on the CI making controlled buys, indicating he purchased from the defendant on prior occasions, and an officer observing the CI entering and leaving the residence before turning over a controlled substance to him. *Commonwealth v. Baker*, 615 A.2d 23, 24 (Pa. 1992). The defendant argued in *Baker* (similar to Defendant) that a *prima facie* case was not established as the search warrant did not discuss the CI's reliability, the alleged exchanged occurred out of the sight of officers, and the officers failed to include what the CI was receiving in return for his or her cooperation. *Id.* at 25. The Pennsylvania Supreme Court disagreed with the defendant finding that the CI's admissions as a participant in a crime bolstered his reliability, the consideration he or she was receiving without more could only explain why the CI was working with the officers and did not affect credibility, and the probable cause was established through the officer's independent observations. *Id.* at 27.

The facts presented in the affidavit of probable cause for the search warrant demonstrate more evidence to establish probable cause than that in *Baker*. The CI was used on three prior occasions and demonstrated his or her reliability by providing information which was corroborated by law enforcement. *See* Commonwealth's Exhibit #3 at 3. As in *Baker*, the CI admitted to purchasing cocaine from Defendant on prior occasions from that address. *Id.* The CI was searched prior to conducting the controlled buy and was given the prerecorded currency. *Id.* Loudenslager then observed the CI enter the residence, then shortly thereafter leave the residence, and return to the vehicle handing Loudenslager the suspected cocaine. *Id.*

This all occurred on the same date the search warrant was executed. Therefore Defendant's argument fails, the four corners of the affidavit of the search warrant establish sufficient probable cause.

Whether Defendant Received Adequate *Miranda* Warnings

Third, Defendant alleges that his statements made following his detention need to be suppressed because Defendant was not properly Mirandized. The Commonwealth does not contend that Defendant was in custody at the time of his statements, so that issue need not be addressed. Statements made during custodial interrogation are presumptively involuntary unless given *Miranda* warnings prior. *Commonwealth v. Williams*, 941 A.2d 14, 30 (Pa. Super. 2008). An individual must be informed the following rights prior to interrogation: his right to an attorney; that one will be appointed if he cannot afford one; if he desires an attorney, interrogation will cease until one can be consulted; he has the right to remain silent; and if he does choose to speak, anything he says can and will be used against him in court. *Miranda v. Arizona*, 384 U.S. 436, 471-74 (1966). A defendant need not have those right read to him verbatim. See *Commonwealth v. Spriggs*, 344 A.2d 880, 882-83 (Pa. 1975); *California v. Prysock*, 453 U.S. 355, 359-61 (1981).

Defendant was advised that he had a "right to an attorney, if he [could not] afford one, one [would] be provided to him at no cost." N.T. 8/1/19, at 6. Additionally, Defendant was informed what he was being arrested for and that "he had the right to remain silent, anything he [said] [could] and [would] be used against him in a court of law . . . and if he decide[d] to start answering questions he could stop answering questions at any time." *Id.* at 5-6. The above warnings satisfy the requirements of *Miranda*. Defendant was apprised of what rights he had, most importantly his right to remain silent and his right to an attorney at no cost. Therefore the

statements made by Defendant following his arrest shall not be suppressed as Defendant was aware of his rights when the statements were made.

Whether Search of Defendant, Incident to Arrest, was Permissible

Defendant's finally contends that because officers did not have a physical arrest warrant at the time of his apprehension both the search of the residence and the search of his person should be suppressed. The Commonwealth at the outset requests this Court to find that the issue has been waived due to a lack of legal citation, which this Court will deny. Regardless, Defendant's contention is otherwise meritless. The testimony is clear that arrest warrant was issued at 2:58 p.m. on April 11, 2019. N.T. 11/22/19, at 5. The group executing the search warrant was informed by Loudenslager via text message the arrest warrant was obtained. N.T. 9/16/19, at 18. Then the search of the residence and subsequent arrest of Defendant occurred at 3:00 p.m. on April 11, 2019. *Id.* at 18-19. "The fact that the arrest was made by a police officer who had knowledge of the arrest warrant, but did not have physical possession of it at the time of arrest would not affect its validity." *Commonwealth v. Blakney*, 396 A.2d 5, 7 (Pa. Super. 1978). Therefore the evidence obtained as a result of a search of Defendant's person and the residence shall not be suppressed.

Conclusion

The Commonwealth satisfied its *prima facie* burden by showing Defendant constructively possessed the controlled substances within the residence. The affidavit of probable cause for the search warrant of the residence provided sufficient evidence. Although *Miranda* warnings given to Defendant were not verbatim, the warnings were sufficient and therefore Defendant's statements were given after he was apprised of his rights. Lastly, officers did not need a physical copy of the arrest warrant on their persons to effectuate a valid arrest of

Defendant when the officers had knowledge that a valid arrest warrant existed. Therefore the outstanding motions in Defendant's Omnibus Pretrial Motions under CR 615-2019 and CR 802-2019 are hereby denied.

ORDER

AND NOW, this 3rd day of February, 2020, based upon the foregoing Opinion, the remainder of Defendant's Omnibus Pretrial Motions are hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (DW)
Robert Hoffa, Esquire

NLB/kp