

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1314-2020
	:	
vs.	:	
	:	CRIMINAL DIVISION
MINDY BERGER,	:	
Defendant	:	

OPINION

This matter is before the Court on the Commonwealth’s Application to Revoke Bail filed on April 16, 2021. On August 17, 2020, Mindy Berger was charged with several drug related counts and was placed on Supervised Bail on February 12, 2021. On February 26, 2021, after several violations, Defendant was detained and made Jail to Treatment eligible. A urinalysis obtained that date came back positive for cocaine and suboxone. On March 5, 2021, Defendant was released from prison to inpatient rehab treatment and placed on Intensive Supervised Bail. Defendant was successfully discharged from rehab on March 30, 2021 and a drug patch was placed on Defendant on April 1, 2021. The drug patch showed a positive test result for cocaine on April 15, 2021. The cutoff value for cocaine is 10 ng/mL and Defendant’s test results showed 107 ng/mL of cocaine. The following day, Defendant submitted an independent urine sample through The WorkCenter, which came back negative.

Defendant is not challenging the fact that the sweat test showed a positive status for cocaine. Rather, she is contesting the accuracy and reliability of the test itself and asserts that the test result shows a false positive. Defendant testified that she has not done cocaine since February 26, 2021. She states that shortly after she was released from inpatient

treatment, which was March 30, 2021, she inadvertently touched a red baggie that had once contained cocaine. Additionally, she states that at some point between April 1, 2021 and April 15, 2021, she inadvertently came into contact with beer. Finally, she argues that she is on medications that could trigger a false positive. However, she did not identify those medications.

In reliance on her position, Defendants cites to three cases: *U.S. v. Meyer*, 483 F.3d 865 (U.S. 2007); *U.S. v. Snyder*, 187 F.Supp.2d 52 (N.D.N.Y. 2002); and *Com. v. Hall*, 2019 WL 1579630 (Pa. Super. 2019). It is important to note that *Hall* is a Lycoming County Court of Common Pleas case that was appealed to the Superior Court. *Hall*, 2019 WL 1579630 at *1. The trial court had conducted a *Frye* hearing “to determine whether drug patch testing is generally accepted in the field of toxicology.” *Id.* The trial court found that the testimony of Dr. Kadehjian, a known expert in the field, established that the sweat patch technology satisfied the *Frye* standards and the issue was not challenged on appeal. *Id.*

Meyer and *Snyder* are federal court cases that specifically discuss the reliability of sweat patches. Generally, sweat patches are a reliable device. *Meyer*, 483 F.3d at 869. These cases identify two instances where the reliability of the sweat patch could be challenged. The first is the reconciliation between a positive sweat patch and a negative urine sample. Dr. Kadehjian testified that a urinalysis “will not reveal a drug if there is less than 300 nanograms [ng] of the drug per milliliter (mL) of urine” and therefore, if a test comes back negative, it does not necessarily mean that the drug is not present. *Id.* at 867. Additionally, Dr. Kadehjian explained that urine tests can only detect cocaine for about two days after use where sweat patches monitor drug usage twenty-four hours per day. *Id.*

The second instance is when the Defendant shows that there was a possibility of

“exterior contamination . . . due to exposure to a basic solution containing drugs.” *Snyder*, 187 F.Supp.2d at 60. For example, the District Court found that sweat patch results were unreliable where Defendant lived with his mother who smoked crack cocaine with her friends in the home and where Defendant had a job where he would sweat profusely and rub the sweat patch to relieve his discomfort. *Id.* at 61.

Based on the above case law, this Court finds that the sweat patch is generally reliable. The question is whether Defendant has proven that her particular sweat patch test result could not be relied upon due to exterior contamination or as shown by her negative urine test result. The Court finds Defendant’s arguments unpersuasive. Even if Defendant did accidentally come into contact with cocaine residue, that contact occurred at least several days prior to April 15, 2021, when the sweat patch detected the cocaine. Additionally, the sweat patch showed 107 ng/mL of cocaine which is significantly higher than the 10 ng/mL cutoff. Defendant also argues that she came into contact with some spilled beer. However, Defendant failed to explain how coming into contact with *beer* would trigger a positive *cocaine* result. Next, Defendant states that the sweat patch detected cocaine due to the medications she is taking. Again, Defendant has wholly failed to even identify those medications let alone present to the Court competent testimony establishing that Defendant’s medication could trigger a positive cocaine result.

Finally, Defendant argues that her negative urine sample given the following day proves that the sweat patch result is a false positive. However, as explained by Dr. Kadehjian, there are several variables to consider when relying on a urine sample. For example, when there are less than 300 nanograms per milliliter, a urine test will come back as negative. According to the PharmChem laboratory report, the sweat patch detected 107

nanograms of cocaine in Defendant's system the day before the urine test. It is unknown what volume of urine was given for the test and the Court was not presented with any additional testimony regarding the accuracy of the urine sample. For these reasons, the Court cannot rely solely on the negative urine test when there are too many unknown variables.

For all the reasons set forth above, the Court will grant the Commonwealth's motion.

ORDER

AND NOW, this 27th day of **April, 2021**, for reasons set forth above, the Commonwealth's Application to Revoke Bail is hereby **GRANTED**. The Defendant shall remain the custody of the Lycoming County Prison until further Court Order.

By the Court,

Ryan M. Tira, Judge

RMT/ads

CC: DA (EW)
Peter Campana, Esq.
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