

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1122-2020
v.	:	
	:	
HARRY DELONG,	:	OMNIBUS MOTION
Defendant	:	

OPINION AND ORDER

Harry Delong (Defendant) was charged with two counts of Delivery of a Controlled Substance¹ and two counts of Criminal Use of a Communication Facility². The charges arise from two controlled purchases of methamphetamine between a confidential informant and Defendant. Defendant filed this Omnibus Pretrial Motion on November 5, 2020. This Court held a hearing on the motion on January 19, 2021. In his Omnibus motion, Defendant argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing and the charges should be dismissed.

Background and Testimony

At the preliminary hearing, Detective Curt Loudenslager (Loudenslager) and Officer Michael Caschera (Caschera) of the Lycoming County District Attorney’s Narcotics Enforcement Unit testified on behalf of the Commonwealth. On February 11, 2020, a confidential informant (CI) notified Loudenslager that they could purchase methamphetamine from Defendant. N.T. 9/2/2020, at 7. Loudenslager instructed the CI to arrange a controlled buy with Defendant. Id. The CI and Defendant were familiar with each other prior to this date so the CI was able to contact Defendant through Facebook Messenger to set up the exchange. Id. at 7-8. The profile the CI contacted had Defendant’s picture and name attached to the account. Id. at 11. Loudenslager and the CI met up with each other prior to the controlled buy

¹ 35 Pa.C.S. § 780-113(a)(30).

² 18 Pa.C.S. § 7512(a).

whereupon Loudenslager was able to view the conversation between the CI and Defendant and the CI was strip searched. Id. at 8. No contraband or money was found as a result of this search. Id. Loudenslager provided one hundred fifty (150) dollars of pre-recorded funds to the CI to facilitate the transaction. Id. at 9. Defendant had instructed the CI to meet him at his trailer located at 1920 Lycoming Road, Lot 25 in Williamsport in order to purchase the drugs. Id. Loudenslager notified other law enforcement officers of the location of the controlled buy so they could conduct surveillance of the house during the exchange. Id. Upon arrival at Defendant's trailer, Loudenslager and Caschera were able to verify that this was Defendant's residence by the black truck with a "unique" paint job parked out front. Id. at 10. The CI left Loudenslager's vehicle and entered Defendant's residence while other officers kept the trailer and the CI under surveillance. Id. at 11. After a short period of time, the CI exited Defendant's home and returned immediately to Loudenslager's vehicle where they surrendered approximately one (1) gram of suspected methamphetamine to Loudenslager. Id. The CI was strip-searched again and nothing was found on their person following the controlled buy. Id. at 13. A debrief between Loudenslager and the CI occurred and the CI informed him that upon entering Defendant's home, they met with Defendant who gave them methamphetamine in exchange for the pre-recorded funds. Id. Following the first controlled buy, Caschera confirmed that the trailer located on Lot 25 was Defendant's residence by seeing "DeLong" on the mailbox for that lot. Id. at 25.

On February 18, 2020, the CI once more communicated to Loudenslager that they could purchase methamphetamine from Defendant. Id. at 14. Loudenslager told the CI to set up the deal again. Id. The CI utilized Facebook Messenger to contact Defendant as they had done the first time. Id. at 18. Prior to traveling to Defendant's residence, the CI was strip searched and

no contraband was found. Id. at 15. Following the search, Loudenslager provided the CI with one hundred fifty (150) dollars of pre-recorded funds. Id. Loudenslager informed other officers of the controlled buy and they set up surveillance of Defendant's home while Loudenslager transported the CI. Id. at 16. The surveillance team was able to observe the CI enter Defendant's trailer. Id. After a few minutes, the CI left Defendant's building and returned to Loudenslager's vehicle. Id. The CI handed over approximately one gram of methamphetamine and was subjected to another strip search. Id. Video was taken of the CI entering and exiting Defendant's home on both occurrences. Id. at 11, 14. A few minutes after the execution of the second controlled purchase, Caschera personally observed the Defendant exit his trailer and enter his truck. Id. at 27.

Discussion

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove a 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). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v. Dantzler, 135 A.3d 1109, 1112 (Pa. Super. 2016). "The Commonwealth may sustain its burden of proving every element of the crime...by means of wholly circumstantial evidence." Commonwealth v.

DiStefano, 782 A.2d 574, 582 (Pa. Super. 2001); *see also* Commonwealth v. Jones, 874 A.2d 108, 120 (Pa. Super. 2016). The weight and credibility of the evidence may not be determined and are not at issue in a pretrial habeas proceeding. Commonwealth v. Wojdak, 466 A.2d 991, 997 (Pa. 1983); *see also* Commonwealth v. Kohlie, 811 A.2d 1010, 1014 (Pa. Super. 2002). 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).

Defendant challenges the sufficiency of the evidence on all of the charges brought against him. To begin, Defendant argues that the Commonwealth failed to show a *prima facie* case for Counts 1 and 3, Delivery of a Controlled Substance. Pursuant to 35 Pa.C.S. § 780-113(a)(30), the “manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act...” is considered a crime. Next, Defendant argues that the Commonwealth did not present enough to satisfy their burden on Counts 2 and 4: Criminal Use of a Communication Facility. This crime occurs when a “person uses a communication facility to commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony under this title....” 18 Pa.C.S. § 7512(a). For all of the charges listed above, Defendant argues that the Commonwealth’s *prima facie* burden was not met because the confidential informant did not testify as to the events of the drug deals. Defendant takes issue with the fact that the Commonwealth supposedly presented no evidence to verify that the person responding to the CI’s messages on Facebook Messenger was, in fact, Defendant. Defendant asserts that the Commonwealth failed to show Defendant was in the residence at the time of each controlled buy. Therefore, Defendant argues, the Commonwealth

failed to present their *prima facie* burden at the preliminary hearing and all charges should be dismissed.

This Court disagrees with Defendant on this issue for the following reasons. The Commonwealth verified that the account the CI was messaging included Defendant's name and photograph. Those messages detailed how the drug transactions were to occur. Additionally, the surveillance team was able to observe Defendant leaving the residence following the second controlled buy. No other person was seen leaving the trailer at that time other than Defendant. Defendant's truck with a distinctive paint job was parked in front of the residence on both occasions and Defendant's last name was written on the mailbox. Though there is testimony that there was one other person besides Defendant on the first controlled buy, the CI indicated this person had no involvement in the drug exchange. The lab results came back as positive for methamphetamine from both controlled buys.

Despite their reluctance and intimidation from the Defendant during the hearing on this motion, the CI did testify as to the controlled purchases during this hearing. Defense counsel takes issue with the section of the CI's testimony that indicated they had used some of the drugs prior to handing them over to Loudenslager. However, Loudenslager testified at the preliminary hearing that this CI has proven to be reliable despite their drug addiction at the time of these controlled buys. The CI's testimony was very clear that Defendant was the one who gave them methamphetamine in exchange for cash on both days. Defendant's argument that the Commonwealth relied on hearsay as to what transpired during the controlled buys once the CI entered the home is no longer relevant. Even without the CI's testimony, the Court is of the opinion that the Commonwealth presented enough additional testimony that was not based on hearsay. Though Commonwealth v. McClelland held that it is insufficient to rely solely on

hearsay at the preliminary hearing, it does not identify how much additional evidence is required. The Commonwealth testified that Loudenslager was able to view the messages that set up both controlled buys and the surveillance team was able to see the CI enter and exit the Defendant's trailer on both days. Caschera also testified that he witnessed the Defendant himself leave the residence following one of the controlled buys. This Court believes that the Commonwealth has provided sufficient additional evidence, albeit circumstantial, to support the hearsay from the witness at the scene. Commonwealth v. McClelland, 233 A.3d 717 (Pa. 2020). Therefore, the Court believes the *prima facie* burden was satisfied for the elements of each charge and the Defendant's motion to dismiss Counts 1 through 4 is denied.

Conclusion

The Court finds that the Commonwealth presented enough evidence at the preliminary hearing to establish a *prima facie* case for all counts against Defendant. Therefore, Defendant's Petition for Writ of Habeas Corpus is denied.

ORDER

AND NOW, this 4th day of May, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus in his Omnibus Pretrial Motion is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Tyler Calkins, Esq.
Law Clerk (JMH)