

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-354-2021**  
 v. :  
 :  
 **NATHANIEL HILL,** : **OMNIBUS MOTION**  
 **Defendant** :

**OPINION AND ORDER**

Nathaniel Hill (Defendant) was charged with Possession of Firearm<sup>1</sup> and Possession with Intent to Deliver a Controlled Substance<sup>2</sup>. The charges arise from a search of an apartment wherein narcotics and a firearm were discovered. Defendant filed a timely Omnibus Pretrial Motion on April 29, 2021. This Court held a hearing on the motion on July 8, 2021. In his Omnibus motion, Defendant first argues that the search warrant obtained for the home was not supported by sufficient probable cause and any evidence seized pursuant to the warrant should be suppressed. Secondly, Defendant contends that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing and the charges should be dismissed.

**Preliminary Hearing Testimony**

Detective Tyson Havens (Havens) of the Lycoming County Narcotics Enforcement Unit (NEU) testified on behalf of the Commonwealth. The Commonwealth presented an audio of the preliminary hearing that occurred on March 11, 2021, marked as Commonwealth's Exhibit 1. On September 23, 2019, law enforcement had the occasion to observe an Instagram live video of Tahjair Dorsey (Dorsey) and Rosellus Carter (Carter) with a red Glock pistol. In the video, it appeared that the two individuals were standing on the front porch of 804 Hepburn Street in the city of Williamsport. Following the viewing of this video on social media, Havens established

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<sup>1</sup> 18 Pa.C.S. § 6105(a)(1).

<sup>2</sup> 35 Pa.C.S. § 780-113(a)(30).

surveillance on 804 Hepburn Street. Upon Havens' arrival at the residence, he was able to see Dorsey and Carter on the front porch. Havens' entire unit was there with him during surveillance as well as Williamsport City officers and officers from the Probation office. Havens also indicated that members of a gang known as the "400 Gang" liked to frequent these particular houses, including 804 Hepburn Street. At 11:10 A.M., Havens observed Defendant and two others exit the residence and depart in a Chevy Malibu. Havens was familiar with Defendant prior to surveilling this residence in September of 2019. Another individual departed the house on a bicycle and Dorsey and Carter followed off the porch. Havens testified that the plan was to approach Dorsey and Carter after they exited the porch in order to investigate the firearm violation observed on Instagram. An attempt was made to detain Dorsey and Carter for such an investigation but they fled on foot. Dorsey discarded a firearm that was later identified as stolen and Carter was found to be in possession of a firearm with obliterated serial numbers.

Following these events, Havens compiled a search warrant for 804 Hepburn Street that was authorized by Judge Marc Lovecchio. This search warrant was provided by the Commonwealth and marked as Commonwealth's Exhibit 2. The search warrant was served approximately an hour or two later by Williamsport City Police. No one was home at the time the warrant was executed, but the house was discovered to belong to a woman named Nykia Coleman who was Defendant's mother. Once the residence had been cleared, Havens and other NEU members entered the residence and began to search for the items requested, namely firearms and drugs. Havens entered the residence and found a bedroom that he believed belonged to Defendant. Havens testified that he found approximately eleven (11) articles of clothing in that bedroom that he was able to match with pictures of Defendant wearing those items on Instagram or Facebook. A credit card was also found in the bedroom with Defendant's

name in a dresser drawer. In the same dresser drawer, Havens found a large amount of suspected heroin inside a Polaroid jacket. There is a photo of Defendant wearing this jacket on social media. Havens also located a loaded Glock pistol and a Glock box. After being sent for testing, the drugs found in the house tested positive for various illegal narcotic substances. A cardboard box with glassine bags was found that Havens, in his experience, believed was consistent with packaging heroin for resale. Plastic straws cut on an angle were also found in the house consistent with packaging drugs. Havens testified that, in his experience, the evidence found in the house is consistent with a drug seller and were not for personal use. Havens further testified that, following a search into Defendant's criminal history, he is a person not to possess a firearm. The firearm was sent for DNA testing which came back showing the DNA of three (3) different individuals on the gun, but at the time of the preliminary hearing, no DNA testing of Defendant had been completed so confirmation of his ties to the gun could not be drawn until Defendant's DNA had been tested.

Jahnice Williams (Williams) testified on behalf of the Defendant at the hearing on this motion conducted on July 8, 2021. She testified that Defendant had been her boyfriend at the time in September of 2019. N.T. 7/8/2021, at 10. Williams stated that Defendant had sent her a video of him travelling alone to Lancaster on September 23, 2019 around 7:46 A.M. to prove that he was not spending time with another woman. Id. However, this video was not submitted into evidence. Williams also testified that Defendant's mother lived at 804 Hepburn Street and that Defendant shared a room in her house with his brother. Id. 14. Williams noted that Defendant spent a lot of time at her house and at his grandmother's house on Washington Boulevard. Id. at 12. Williams admitted that Defendant's approximate location during the video would have permitted him to return to Williamsport around 11 A.M. Id. at 17.

## Discussion

### *Habeas corpus Motion*

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 Commonwealth's evidence on both charges against him. Defendant first asserts that the Commonwealth failed to establish their *prima facie* burden on Count 1: Possession of Firearm. This offense occurs when

A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth.

18 Pa.C.S. § 6105(a)(1). Defendant also challenges the Commonwealth's evidence on Count 2: Possession with Intent to Deliver 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. Defendant argues that the Commonwealth failed to establish their *prima facie* burden because they did not present evidence to establish that Defendant transferred a controlled substance or received any money for a controlled substance despite Defendant only being charged with possession. Defendant alleges that the Commonwealth did not establish his possession of the firearm or the controlled substance. Defendant believes that no DNA evidence connects him to either the gun or the narcotics. Furthermore, Defendant contends that since he was not present at the residence at the time the firearm or drugs were found, he cannot be liable for their discovery. Defendant states he was never seen with the gun that was found and argues that the mere presence in a location where drugs are seized is not sufficient to establish a *prima facie* case of the charge. The Commonwealth relies on the transcript of the preliminary hearing and believes that they have presented enough evidence to satisfy their burden.

The Court agrees with the Commonwealth on this issue. Havens presented testimony that he was able to establish the bedroom in question as Defendant's room because of various clothing items Defendant was seen wearing on social media and a credit card with Defendant's name. The firearm and the narcotics were found in the bedroom believed to be occupied by Defendant. Williams testified that Defendant had a room at 804 Hepburn Street and Havens testified that he saw Defendant on the porch of the residence the day the warrant was executed. Although none of the items were found specifically on Defendant's person, he would certainly have constructive possession and control over the items in his own room. At this point in the proceedings, the Court chooses to accept Havens' testimony under oath that he saw Defendant on September 23 at 804 Hepburn Street. Viewing the evidence in the light most favorable to the Commonwealth as required, this Court agrees that the Commonwealth has satisfied their *prima facie* burden on both charges against Defendant. However, the Commonwealth's ability to satisfy their burden of beyond a reasonable doubt at trial with this evidence is less convincing. Nevertheless, that is not the question presented to the Court at this time. Therefore, the Defendant's argument fails on this issue and the charges against Defendant shall not be dismissed.

***Motion to Suppress***

Defendant also challenges the issuance of the search warrant of the residence claiming the results of search of the residence needs to 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).

The search warrant, entered as Commonwealth’s Exhibit 2, was obtained by Havens on September 23, 2020. It was the result of surveillance conducted on the residence at 804 Hepburn Street in addition to recent shootings and drug deals lead by the “400 Gang” and their recent fraternization with 804 Hepburn Street. The pertinent portion of the search warrant outlining the events leading up to the application of the search warrant states:

On 9/13/19, I was advised by a confidential informant that a number of the 400 gang members...have been staying with and frequently [sic] 804 Hepburn Street, 1<sup>st</sup> floor apartment...On 9/20/19, there was a drive-by shooting that occurred on Wildwood Blvd near High St in the City of Williamsport...According to Agent BOLT, among the apparent intended targets was Tahjair DORSEY...I viewed Khyree CARTER’s Instagram account...where he posted a live video. During that video Tahjair DORSEY joined him and both could be seen talking back and forth regards “the op” or operation that they were going to partake in. The conversation was clear in that they were talking about retaliation...On 9/23/19 at approximately 1036

hrs, Lycoming County APO Jerod CORMAN observed that DORSEY go live on his Instagram account along with Racellus CARTER...(brother of 400 gang members Khyree and Aushay CARTER). APO CORMAN notified NEU members that the live video appeared to be recording at 804 Hepburn St. Surveillance was established at 804 Hepburn St by me and other members of NEU shortly after being notified of the live feed. In driving past the residence, I observed Tahjair DORSEY, Kwary ALFORD, Damien BETHEA and Nathan HILL on the porch. At 1042 hours APO CORMAN advised that DORSEY just showed that he had a Glock pistol with a red slide concealed (no holster) in the waistband of his pants. Shortly thereafter, I established stationary surveillance on the front of 804 Hepburn St. I could see that all the listed individuals, including DORSEY were walking in and out of the front door of 804 Hepburn St. On 9/23/19 at approximately 1110 hrs, I observed Nathan HILL, Kwary ALFORD and Damien BETHEA exit 804 Hepburn St and depart in a dark colored Chevy Malibu. A few minutes later, I watched Tyshawn BOWERY exit the front door of 804 Hepburn St and depart north on a bicycle. Shortly after BOWERY departed, I watched DORSEY and Racellus CARTER exit 804 Hepburn St and walk north on Hepburn St. Williamsport PD...attempted to make contact with both on Louisa St near Hepburn St. DORSEY immediately fled on foot. Cpl. DERR observed that DORSEY ran while holding his waistband. Cpl. DERR believed that DORSEY was in possession of a firearm based on the way he was running and holding his waistband, and his training and experience. DORSEY was ultimately arrested and found to be in possession of the same red Glock pistol...The pistol appears to be the same as the pistol with red slide from the video DORSEY posted on 9/21/19. CARTER is then detained and patted down and found to be in possession of a fully loaded Ruger LC 9mm pistol in his waistband. This pistol also appears to be one of the pistols pictured in the video with DORSEY. 804 Hepburn St Apt#2, second floor, is the listed apartment for Nykia COLEMAN, the mother of Nathan HILL. The address was confirmed by APO MAZZANTE and being Nathan HILL's listed address.

Id. at 11-12.

Defendant asserts the search warrant does not contain enough information to establish probable cause. Defendant also argues that the information provided to obtain the search warrant was fabricated and misleading. Therefore, the search pursuant to the warrant was in violation of Defendant's constitutional rights. For the following reasons, this Court disagrees with Defendant on this issue. The application for the search warrant explains several instances



of gang violence, drug deals with suspected heroin, locations where the “400 Gang” would meet and specific names of several gang members. The application also included multiple references to photos and videos on social media that catalogued many different firearms and signaled the planning of a shooting for purposes of revenge. Havens knew from a confidential informant that gang members spent time at 804 Hepburn Street and also knew that this address belonged to Defendant’s mother and was listed for Defendant as his approved address with the probation office. Defendant was seen at that location with members of the “400 Gang” during surveillance conducted by Havens and the NEU. Although Defendant asserts the information was misleading or false, he failed to provide evidence to support that assertion or counterpoint the information in the search warrant. At the hearing on this motion, defense counsel presented argument about selective pieces of the application for the search warrant. *See* N.T. 7/8/2021, at 18-21. This Court believes that the argument expects the Commonwealth to have made a full and complete investigation into Defendant without the benefit of a search warrant. The totality of the facts alleged in the application sufficiently establish probable cause. For these reasons, the Defendant’s argument fails and the evidence seized pursuant to the search warrant will not be suppressed.

### **Conclusion**

The Court finds that the Commonwealth did present enough evidence at the preliminary hearing to establish a *prima facie* case for the counts against Defendant. Therefore, Defendant’s Petition for Writ of Habeas Corpus is denied. The Court also finds that the affidavit of probable cause for the search warrant of 804 Hepburn Street provided sufficient evidence to establish probable cause for law enforcement to search. As a result, Defendant’s Motion to Suppress the evidence seized pursuant to the search warrant is also denied.

**ORDER**

**AND NOW**, this 3rd day of September, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus is hereby **DENIED**. The Defendant's Motion to Suppress Evidence is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA (MS)  
Andrea Pulizzi, Esq.  
Law Clerk (JMH)