

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1482-2020**
 v. :
 :
 TYMIR OMAR MARTIN, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Tymir Martin (Defendant) was charged with one count of Delivery of a Controlled Substance—Fentanyl¹, one count of Possession with Intent to Deliver², and one count of Delivery of a Controlled Substance—Heroin³. The charges arise from a controlled purchase of suspected narcotics between a confidential informant and Defendant. Defendant filed this Omnibus Pretrial Motion on December 15, 2020. This Court held a hearing on the motion on February 9, 2021. In his Omnibus motion, Defendant first argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing and Count 3, Delivery of a Controlled Substance—Heroin, should be dismissed⁴. Secondly, Defendant submits a motion for disclosure of criminal charge, promises of leniency and/or immunity⁵. Thirdly, Defendant submits a motion in limine to preclude the video recording from the confidential informant. Fourthly, Defendant argues that photographs taken from the video cannot be authenticated and therefore must be suppressed. Lastly, Defendant submits a motion for additional discovery⁶.

Background and Testimony

¹ 35 Pa.C.S. § 780-113(a)(30).

² 35 Pa.C.S. § 780-113(a)(30).

³ 35 Pa.C.S. § 780-113(a)(30).

⁴ Count 3 was dismissed on February 9, 2021 upon agreement of the parties. The habeas motion is no longer at issue.

⁵ This request was addressed at the time of the hearing and has been satisfied.

⁶ The request for additional discovery was addressed at the time of the hearing and has been satisfied.

Trooper Robert Williamson (Williamson) of the Pennsylvania State Police (PSP) testified on behalf of the Commonwealth. On August 8, 2019, a confidential informant (CI) possessed a phone number to contact in order to purchase narcotics. The CI called the number and ordered heroin. At approximately 3:54 p.m., the CI and Williamson were preparing to meet Defendant to buy drugs. Williamson had been given a recording device that same day by the Lycoming County District Attorney's office to assist in gathering evidence during the controlled buy. Williamson testified that the only manipulation he did to the camera was to check for the presence of a memory card in the device. Williamson began the recording by identifying himself, the date and time, and got consent from the CI to be recorded. The CI then took the recording device with them to meet Defendant to make the drug transaction. The footage from the device used shows the CI exiting Williamson's car, walking for a few blocks, meeting up with Defendant, then leaving and entering Williamson's car. However, the footage also includes the incorrect date and is marked as August 9, 2019 instead of August 8th. Williamson testified that he only found out at a later time that the date on the recording was incorrect and stated that he did not change the date prior to, during, or after the recording was created. Williamson agreed that the date is wrong on the footage but does not know why and also does not know if the device time stamps immediately upon being powered on.

Discussion

Motion to Suppress

Defendant argues the Commonwealth's failure to authenticate the video for the incorrect date necessarily requires the photographs taken from the video recording must be suppressed. Under the Pennsylvania Rules of Criminal Procedure, a "defendant's attorney, or the defendant if unrepresented, may make a motion to the court to suppress any evidence

alleged to have been obtained in violation of the defendant's rights." Pa.R.Crim.P. Rule 581(A). However, the Court does not believe the video nor the stills taken from the video were obtained in such a way as to violate Defendant's rights. Instead, the Court finds that the incorrect timestamp goes to the weight of the video and the photographs as evidence for a jury rather than their admissibility at trial. For instance, the Pennsylvania Commonwealth Court held that a defendant's challenge to a Department of Transportation machine that frequently stamped documents with an incorrect date should be viewed as "one of the factors which the factfinder considers when assigning weight to the testimony of a witness in his effort to determine credibility." Ernest Sunday Chrysler Plymouth, Inc. v. Com., Dep't. of Transp., 558 A.2d 921, 924 (Pa. Cmwlth. Ct. 1989). Therefore, the Court holds that the Defendant's argument is without merit and the photograph shots of the video shall not be suppressed.

Motion in limine

Defendant argues that, since the recording displays August 9, 2019 instead of August 8, 2019, there is no way to authenticate that the video recording was accurately created. Furthermore, Defense claims that because the majority of the recording is upside down, it does not show a credible view of what the Commonwealth is alleging took place. For the following reasons, the Court disagrees with Defendant on this issue. As articulated in the Pennsylvania Rules of Evidence, "to satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Pa.R.E. Rule 901(a). Evidence that satisfies this requirement includes testimony of a witness with knowledge that "an item is what it is claimed to be." Pa.R.E. Rule 901(b)(1). Williamson testified as to the authenticity of the video and his procedures with the camera at the hearing on this motion. He further testified that he did not

manipulate the video nor is he responsible for ensuring that the camera receives software updates. He affirmed the contents of the video as the person who began the recording as seen on the video itself. The Court accepts Williamson's testimony as accurate and truthful and the video will not be precluded.

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. The Court also finds that the warrant was supported by probable cause and a credible informant. The evidence seized because of the warrant issued in this case shall not be suppressed.

ORDER

AND NOW, this 25th day of June, 2021, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Motion to Suppress is hereby **DENIED**. The Defendant's Motion in Limine to Preclude the video recording is also **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Helen A. Stolinas, Esq.
Law Clerk (JMH)