

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CP-41-CR-798-2020**  
 v. :  
 :  
 **DARVEN MOORE,** : **OMNIBUS MOTION**  
 **Defendant** :

**OPINION AND ORDER**

Darven Moore (Defendant) was charged on July 16, 2020 for Possession with Intent to Deliver,<sup>1</sup> Possession of Firearm Prohibited,<sup>2</sup> Possession of Drug Paraphernalia,<sup>3</sup> and other related offenses<sup>4</sup>. The charges arise from police responding to a 911 call that expressed concern over an open door at Defendant's residence that resulted in the discovery of drugs and a firearm inside the house after entering to see if anyone inside required aid. Defendant filed this timely Omnibus Pre-trial Motion on September 10, 2020. This Court held a hearing on the motion on December 29, 2020.

In his Motion, Defendant raises two issues. The first issue Defendant asserts is that the Commonwealth did not have sufficient evidence to establish the *prima facie* burden to hold the charges for court and believes that all charges should be dismissed. Defendant's second issue is that the entry of police into the home and their subsequent search were a violation of his rights under the Fourth Amendment of the United States Constitution and Article 1, Section 8 of the Pennsylvania Constitution. As such, Defendant believes all evidence found because of this search should be suppressed.

**Background and Testimony**

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<sup>1</sup> 35 Pa. C.S. § 780-113(a)(30).

<sup>2</sup> 18 Pa. C.S. § 6105(a)(1).

<sup>3</sup> 35 Pa. C.S. § 780-113(a)(32).

<sup>4</sup> 18 Pa. C.S. § 903; 35 Pa. C.S. § 780-113(a)(16)

Officer Robert Mosteller (Mosteller) of the Old Lycoming Township Police Department testified on behalf of the Commonwealth. On March 26, 2020, Mosteller was dispatched to 1994 Misner Road in Old Lycoming Township following a 911 call alerting police that the door to this residence had been left open for approximately thirty (30) minutes. N.T. 7/1/2020, at 4. The caller expressed concern because they knew that a mother, Alyssa Carpenter, and her small child lived in that home. Id. Upon his arrival, Mosteller saw that the door was open and approached the house. Id. at 7. He announced “police” several times but no one came to the door. Id. Mosteller testified that after he waited for someone to respond, he entered the house to check to see if anyone needed emergency assistance. Id. While checking the house for people in distress, Mosteller was able to observe a large glass mason jar containing bud marijuana sitting on top of a dresser in the bedroom in plain view. Id. at 2. Next to the jar, he noticed a small digital scale and money. Id. Following these discoveries, the police obtained a search warrant to search the home for evidence pertaining to drugs. Id. at 10. After the warrant was issued later that same day, police found a black wallet containing Mr. Moore’s identification next to the night stand in the bedroom. Id. at 2. They also found men’s clothing consistent with Defendant’s size in the bedroom and in the dryer, as well as another scale located near Defendant’s wallet. Id. In the middle of a bedroom dresser police found numerous Ziploc bags of various sizes—such as a large bag containing marijuana residue consistent with drug packaging, two different stacks of clean unused bags, and a loaded firearm. Id.

## **Analysis**

### ***Motion for Writ of Habeas Corpus***

The first issue presented is whether the Commonwealth established the *prima facie* burden on the charges against Defendant. 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 charges brought against him. First, Defendant argues that the Commonwealth failed to establish the *prima facie* burden on Count 1, Possession with Intent to Deliver. 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. Secondly, Defendant challenges Count 2, Criminal Conspiracy. An individual commits this offense when he

agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

18 Pa.C.S. § 903. Thirdly, Defendant contests the sufficiency of Count 3, Persons not to Possess Firearms. This crime occurs when a person has been convicted of an offense "within or without this Commonwealth" and subsequently is not to "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). Additionally, Defendant challenges Count 4, Possession of a Controlled Substance. This crime is defined as "[k]nowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act..." 35 Pa.C.S. § 780-113(a)(16). Lastly, Defendant challenges Count 5, Possession of Drug Paraphernalia. This offense occurs when

[t]he use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

35 Pa.C.S. § 780-113(a)(32). For all of the charges listed above, Defendant asserts that the Commonwealth did not show that he had possession of any controlled substances nor constructive possession of any drugs, drug paraphernalia, or the firearm. Defendant believes that there was nothing to connect him permanently to the residence where the evidence was

found. Defendant also argues that the men's clothes found in the house were not tied specifically to him. Defendant believes that the Commonwealth only showed a few instances of his presence in the home that belonged to Alyssa Carpenter (Carpenter). On the other hand, the Commonwealth argues that all evidence was within Defendant's control and since Carpenter was also charged, Defendant had constructive possession of the drugs and firearm.

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); *see also* Commonwealth v. Gutierrez, 969 A.2d 584, 590 (Pa. Super. 2009). 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). Based on the totality of the circumstances, the Court agrees with the Commonwealth on this issue for the following reasons. Testimony at the preliminary hearing indicated that the Old Lycoming Township Police were aware that Defendant and Carpenter had resumed their relationship and were living together at 1994 Misner Road. The clothes found in the bedroom and the dryer were consistent with Defendant's size and can establish defendant's residency at the house in question. Additionally, his wallet containing his identification was present near where the marijuana and other paraphernalia were found and all would have been within Defendant's control. The presence of Defendant's clothes and other personal items indicate that he was treating Carpenter's home as his own. The drugs and firearm were found in the same room as Defendant's personal items. Viewing the evidence in the light most favorable to the

Commonwealth as required, the Court believes that the Commonwealth satisfied their *prima facie* burden on all charges to be held for court against Defendant. Therefore, Defendant's claim fails on this issue.

### ***Motion to Suppress***

The remaining contention Defendant has concerns law enforcement's entrance into the home as well as the search pursuant to the warrant. The Fourth Amendment to the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution protect citizens against unreasonable searches and seizures. U.S. Const. amend. IV; P.A. Const. art. 1, § 8. Warrantless searches are unreasonable per se, "subject only to a few specifically established and well-delineated exceptions." Katz v. United States, 389 U.S. 347, 357 (1967). One such exception arises when "the exigencies of the situation" make it reasonable for police to conduct a warrantless search. Mincey v. Arizona, 437 U.S. 385, 393 (1978). An exigency of this kind occurs when "the need to assist persons who are seriously injured or threatened with such injury." Brigham City v. Stuart 547 U.S. 398, 403 (2006). Police "may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." Id. The emergency aid exception "does not depend on the officers' subjective intent or the seriousness of any crime they are investigating when the emergency arises." Id. at 404-05. The only requirement for this exception to apply is that the officer has "an objective reasonable basis for believing" that someone inside the house requires immediate medical assistance or is in danger. Id. at 406; *see also* Commonwealth v. Silo, 502 A.2d 173, 175 (Pa. 1985); Commonwealth v. Maxwell, 477 A.2d 1309 (Pa. 1984); Commonwealth v. Norris, 446 A.2d 246 (Pa. 1982). Additionally, "[o]fficers do not need ironclad proof of a likely

serious, life-threatening injury to invoke the emergency aid exception.” Michigan v. Fisher, 558 U.S. 45, 49 (2009) (internal quotations omitted).

In the case *sub judice*, Defendant alleges that police entered the house without consent or any other exception to the warrant requirement. He argues that the only surrounding circumstances creating suspicion or potential for danger was the open door that showed no evidence of forced entry or violence requiring law enforcement to enter without a warrant. Defendant believes that prior incidents gave police a pre-textual reason for wanting to go inside the house and conduct a search. Defendant also asks for the search warrant to be invalidated because the information is allegedly misleading. Specifically, Defendant takes issue with the language involving the substance in the Mason jar. The affidavit of probable cause included in the search warrant delineates the substance as marijuana but Defendant believes it should also have clarified that the material could have been CBD and failure to include this possibility is misleading. The Commonwealth argues that, based on the surrounding circumstances, the test for executing the emergency aid exception was met and Mosteller was entitled to enter the home to ensure no one inside was in need of aid. He did not open anything while inside and only looked for other occupants. As for the search warrant, the Commonwealth believes that the language is accurate and supports what was found when looking at the Mason jar’s contents in the context of its location next to a scale and a wad of cash.

The Court agrees with the Commonwealth on this issue. As articulated by Brigham City, the test for the emergency aid exception does not rely on the seriousness of any potential crime police investigate, but merely requires the objective reasonable basis to believe that someone may be in danger or in need of assistance. In the case at hand, a call was placed to 911 by a concerned neighbor who stated that the front door had been open for an extended period of

time. Brigham City v. Stuart, 547 U.S. 398 at 406. When no one answered his numerous calls alerting those inside of police presence, this provided a reasonable basis to believe that someone may be unconscious or otherwise unable to call for help. This Court does not believe that this entry was pretext to investigate the residence without the need for a search warrant. Therefore, the police did not violate the Defendant's constitutional rights. Additionally, we do not agree with Defendant's argument regarding the language of the search warrant. The language used was direct, accurate, and supported by the context in which the Mason jar was found. Thus, Defendant's claim on this issue is unsuccessful.

### **Conclusion**

The Court finds that the Commonwealth did establish their *prima facie* burden at the preliminary hearing and the charges brought against Defendant will not be dismissed. The Court also finds that the objective reasonable basis existed to support the use of the emergency aid exception to the warrant requirement and justified a search of the Defendant's home. Therefore, the evidence obtained shall not be suppressed.



**ORDER**

**AND NOW**, this 26th day of March, 2021, based upon the foregoing Opinion, Defendant's Motion for Writ of Habeas Corpus is **DENIED**. The Defendant's Motion to Suppress Evidence is **DISMISSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA  
Michael C. Morrone, Esq.  
Law Clerk (JH)