

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA	: No. CR-395-2021
vs.	:
	:
	:
	:
JUSTIN SIMMONDS	:
Defendant	: Omnibus Pretrial Motion

OPINION AND ORDER

Defendant is charged by Information filed on March 13, 2021, with one count of possession with intent to deliver, one count of possession of a controlled substance and one count of possession of drug paraphernalia. The charges arise out of a traffic stop that occurred on February 26, 2021 involving Defendant and his passenger, Selina Yingling.

On April 20, 2021, Defendant filed an Omnibus Pre-Trial Motion (OPTM) containing a petition for writ of habeas corpus, a motion to suppress, a motion to disclose, a motion for a 404 (b) notice, a motion for discovery and a motion to reserve right.

A hearing was held on July 7, 2021. At said hearing, the Commonwealth introduced as Commonwealth's Exhibit A, a transcript of the preliminary hearing held on March 16, 2021 before MDJ Christian Frey as well as a copy of an Application for Search Warrant containing an affidavit of probable cause, admitted as Commonwealth's Exhibit B. The Commonwealth also presented the testimony of Officer Gino Caschera of the Williamsport Bureau of Police. Finally, upon agreement of the parties, the Commonwealth subsequently provided to the court for review three copies of MVR

recordings related to the incident from Units 61 (PO Garbrick), 67 (PO Caschera) and 72 (PO Caritas).

The court will first address Defendant's petition for habeas corpus. Defendant argues that the Commonwealth has failed to establish either actual or constructive possession of the controlled substances or that he intended to deliver any controlled substances.

The court notes that the possession with intent to deliver charge relates to methamphetamine concealed within the engine compartment of the vehicle Defendant was driving, while the possession charges relate respectively to the methamphetamine and an Alprazolam pill, and the plastic bags containing the methamphetamine as well as "several unused clear plastic bags." (See criminal complaint, filed on February 26, 2021).

Where a defendant seeks to challenge the sufficiency of the evidence presented by the Commonwealth, he may do so by the filing of a writ of habeas corpus. *Commonwealth v. Landis*, 48 A.3d 432, 444 (Pa. Super. 2012) (en banc). At a habeas corpus hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a prima facie case against the defendant. *Commonwealth v. Hilliard*, 172 A.3d 5, 10 (Pa. Super. 2017).

The definition of prima facie is not precise or without difficulty. On the one hand, it has been described as evidence, read in a light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime. *Commonwealth v. Packard*, 767 A.2d

1068, 1070 (Pa. Super. 2001), abrogated on other grounds by *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 n. 5 (Pa. Super. 2016).

On the other hand, it has been defined as evidence, that if accepted as true, would warrant submission of a case to a jury. *Packard*, 787 A.2d. at 1071; *Commonwealth v. Caretny*, 880 A.2d 505, 514 (Pa. 2005); *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2001); *Commonwealth v. Wroten*, 2021 PA Super 124, 2021 WL 2460790, *4 (June 17, 2021).

The Commonwealth meets its burden when it produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused committed the offense. *Wroten*, at *4. It is inappropriate for the court to make weight or credibility determinations. *Id.* at *5. 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 a light most favorable to the Commonwealth's case. *Wroten, Id.*

The Commonwealth may satisfy its burden of proof “by introducing the preliminary hearing record and/or by presenting evidence as the *habeas corpus* hearing.” *Commonwealth v. Lambert*, 244 A.3d 38, 42 (Pa. Super. 2020).

To sustain a conviction for possession with intent to deliver a controlled substance, the Commonwealth must prove both the possession of the controlled substance and the intent to deliver the controlled substance. *Commonwealth v. Bostick*, 958 A.2d 543, 560 (Pa. Super. 2008). To sustain a conviction for possession of a controlled

substance and possession of drug paraphernalia, the Commonwealth must prove possession as well. *Commonwealth v. Macolino*, 469 A.2d 132, 134 (Pa. 1983).

Possession of controlled substances can be proven by showing actual possession, that is, controlled substances found on a defendant's person or by showing that the defendant constructively possessed the drugs. *Macolino*, 469 A.2d at 134. Constructive possession of a controlled substances requires proof of the ability to exercise conscious dominion over the substance, the power to control the substance, and the intent to exercise such control. *Commonwealth v. Perez*, 931 A.2d 703, 708 (Pa. Super. 2007). Constructive possession may of course be established by the totality of the circumstances. *Id.* In other words, the Commonwealth meets its burden at this stage if it proves prima facie through a review of the totality of circumstances that Defendant intended to exercise conscious dominion and control over the substances located in the vehicle he was driving.

The totality of circumstances read in a light most favorable to the Commonwealth and as garnered through the MVR tapes, transcript of the preliminary hearing and testimony of Officer Caschera, establish that Officer Caschera was on duty on February 26, 2021. Around 6:00 p.m. that evening, he received a phone call from Detective Tyson Havens of the Lycoming County NEU. Detective Havens informed Officer Caschera, that a reliable Confidential Informant (CI) contacted Havens and advised him that Salina Yingling and a male had traveled to the Williamsport area from Florida to deliver methamphetamine to a residence located in the 1200 block of Park Avenue.

According to the CI, they were driving a dark colored SUV with Florida tags and were trafficking a large amount of methamphetamine. Detective Havens asked Officer Caschera to be on the lookout for the vehicle.

Subsequently, while patrolling the area of Grier Street and Park Avenue in a fully marked unit, Officer Cashera observed a vehicle that matched the description. The vehicle was being operated by an unidentified individual and contained a passenger who he recognized as Ms. Yingling from her “OLN photo” that he recently “pulled up.”

As the vehicle turned from Freed Place onto Grier Avenue, it did not use its turn signal. Officer Cashera traveled behind the vehicle. The vehicle turned onto Park Avenue with Officer Caschera following it. The vehicle started to slow down, “almost to a halt in the middle of traffic” at which time Officer Cashera turned on his lights to conduct a traffic stop. The vehicle eventually pulled over in front of the ABC Bowling Lanes on Park Avenue.

Upon making contact with the vehicle, Officer Caschera identified Defendant as the driver and Ms. Yingling as the passenger. Officer Caschera observed Defendant to be “apparently nervous.” According to Officer Caschera, Defendant had shallow quick breaths and he was shaking. According to Officer Caschera, Defendant appeared as if he was shivering or chattering somewhat. As well, his hands were shaking.

Moreover, while he was talking to Defendant in the vehicle, Defendant turned his entire body as if not wanting Officer Caschera to look in the vehicle.

Officer Caschera eventually removed Defendant from the vehicle and they spoke at the rear. Defendant admitted to possessing a Percocet although Officer Caschera noted that he might have admitted to having an Alprazolam “or whatever the generic name is for it.” He believed that Alprazolam and Percocets were the same controlled substance.

While speaking outside, Defendant verified that he was from Florida and not used to the cold weather. He was driving a vehicle that was rented by a third party. The third party was his “friend in Florida.” He provided a phone number to Officer Caschera for the individual who rented the vehicle but the individual “did not answer.”

The defendant and Ms. Yingling were taken into custody. Officer Caschera obtained a search warrant and executed the search warrant.

While executing the search warrant, he observed a plastic container stuck to the interior wall of the engine compartment. When he opened it up, he discovered 90 .8 grams of methamphetamine along with several packaging plastic baggies.

The search of the vehicle also resulted in the seizure of six phones found in the passenger compartment, one of which Defendant admitted belonged to him. Also found in the passenger compartment were “indicia” including several pieces of mail for both the defendant and Ms. Yingling. He also found “a few hundred dollars” that was seized directly from the defendant.

In considering the totality of the circumstances, the court concludes that the Commonwealth has established for prima facie purposes that the defendant possessed

not only the Alprazolam but also methamphetamine. He was not merely present at a scene where controlled substances were located. For prima facie purposes, Defendant had the ability to exercise conscious dominion over the substance, the power to control the substance, and the intent to exercise such control.

While the forced interaction with the police officer is not an everyday occurrence and it is a rare person who would not be nervous, *Commonwealth v. Cartagna*, 63 A.3d 294, 305-06 (Pa. Super. 2013), Defendant's conduct demonstrated a consciousness of guilt. Not only was he nervous but he was extraordinarily so. Moreover, he apparently tried to hide from the officer's view the interior of the vehicle. He also was driving a vehicle that was rented and had Florida tags, and he gave an utterly nonsensical reason for being in the Williamsport area. As well, the controlled substances were found in the vehicle he was operating and he was stopped under circumstances that corroborated the CI's information. The court cannot ignore where the defendant was stopped and how soon he was stopped after the information was provided.

As to the intent element of the possession with intent to deliver charge, that too has been established via prima facie evidence.

Intent may be inferred from an examination of the facts and circumstances surrounding the case. *Commonwealth v. Kirkland*, 831 A.2d 607, 610 (Pa. Super. 2003).

In this case, there were numerous circumstances evidencing intent at least for prima facie purposes. In addition to the circumstances set forth above, the vehicle contained six cell phones, the methamphetamine was secreted in the engine compartment,

Defendant possessed cash, the packaging of the methamphetamine demonstrated an intent to distribute and Defendant was in the company of a known drug dealer.

The court will next address Defendant's motion to suppress.

Defendant first argues that the stop of his vehicle was without reasonable suspicion or probable cause.

As the Pennsylvania Supreme Court explained in *Commonwealth v. Chase*, "a vehicle stop based solely on offenses not investigable cannot be justified by a mere reasonable suspicion because of the purposes of a *Terry* stop do not exist—maintaining the *status quo* while investigating is inapplicable while there is nothing further to investigate. An officer must have probable cause to make a constitutional vehicle stop for such offenses." 960 A.2d 108, 118 (Pa. 2008).

"It is incumbent upon the officer to articulate specific facts possessed by him, at the time of the questioned stop, which would provide probable cause to believe that the vehicle or the driver was in violation of some provision of the [Motor Vehicle] Code." *Commonwealth v. Feczko*, 10 A.3d 1285, 1291 (Pa. Super. 2010), quoting *Commonwealth v. Gleason*, 785 A.2d 983, 989 (Pa. 2001). "Probable cause does not require certainty, but rather exists when criminality is one reasonable inference, not necessarily even the most likely inference." *Commonwealth v. Lindblom*, 854 A.2d 604, 607 (Pa. Super. 2004).

In this case, Officer Caschera had probable cause to stop Defendant's vehicle because Officer Caschera observed a traffic violation. Specifically, Defendant

failed to use a turn signal as required. *Commonwealth v. Gurung*, 239 A.3d 187, 191 (Pa. Super. 2020).

Defendant next asserts that the search of his vehicle was improper as the search was conducted for criminal investigatory purposes and that he had a privacy interest in the vehicle at the time. This argument fails because the search was a valid search conducted pursuant to a search warrant.

Finally, Defendant argues that the search warrant was “improper” for a variety of reasons. The crux of Defendant’s argument is that the search warrant failed to set forth sufficient probable cause to search the vehicle.

Search warrants may only issue upon probable cause and the issuing authority may not consider any other evidence outside of the affidavits. Pa. R. Crim. P. 203(B). The affidavit of probable cause must provide the magistrate with a substantial basis for determining the existence of probable cause. *Commonwealth v. Leed*, 186 A.3d 405, 413 (Pa. 2018)(quoting *Illinois v. Gates*, 462 U.S. 213, 239 (1983)).

“Probable cause exists where the facts and circumstances within the affiant’s knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a search can be conducted.” *Leed*, supra. (quoting *Commonwealth v. Johnson*, 42 A.3d 1017, 1031 (Pa. 2012)). In other words, the “task of the issuing magistrate is simply to make a practical, common sense decision whether, given all of the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons

supplying hearsay information, there is a fair probability that contraband or evidence of crime will be found in a particular place.” *Commonwealth v. Clark*, 28 A.3d 1284, 1288 (Pa. 2011) (quoting *Commonwealth v. Gray*, 503 A.2d 921, 925 (Pa. 1985)). The Commonwealth bears the burden of establishing that probable cause existed by a preponderance of the evidence. *Leed*, 186 A.3d at 413.

The task is to make a practical, common sense determination, whether given all of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in the particular place. *Commonwealth v. Clark*, 28 A.3d 1284, 1288 (Pa. 2011). The inquiry is limited to the four corners of the affidavit. *Commonwealth v. Arthur*, 62 A.3d 424, 432 (Pa. Super. 2013). Probable cause is based on the finding of the probability, not a prima facie showing of criminal activity. *Id.*

The issuing authority may rely on hearsay evidence to establish probable cause as long as the hearsay is reliable. See *Commonwealth v. Torres*, 764 A.2d 532, 537-38 (Pa. 2011). Further, the Commonwealth may rely on information from anonymous or confidential sources that is corroborated by independent police investigations. *Id.*

The uncorroborated hearsay of an unidentified informant may be accepted as a credible basis for issuing a search warrant if the affidavit of probable cause avers circumstances that support the conclusion that the information was credible. *Commonwealth v. Huntington*, 924 A.2d 1252, 1255 (Pa. Super. 2007). Contrary to Defendant’s argument, the averments set forth in the affidavit of probable cause read in a

practical, common sense manner, indicate that there is a fair probability that contraband or evidence of a crime would be found in the automobile. Not only was there information from a CI who was reliable, but there was also information from a CI that was corroborated by subsequent observations and investigations by law enforcement. Moreover, the information provided by the CI was corroborated almost immediately by Officer Caschera who viewed the described vehicle, one of the described occupants and the vehicle being located in the exact area where the delivery was to take place. In addition, the driver of the vehicle admitted that there was a controlled substance in the vehicle.

In connection with Defendant's Motion to Disclose set forth in III, it shall be GRANTED as set forth below.

With respect to Defendant's Motion for Rule 404 (b) Disclosure, it too shall be GRANTED as set forth below.

With respect to Defendant's Motion for Discovery, Defendant first requests the name of the CI. The Commonwealth enjoys a qualified privilege to withhold the identity of a confidential source. *Commonwealth v. Roebuck*, 681 A.2d 1279, 1283 n.6 (Pa. 1996). In order to overcome this qualified privilege and obtain disclosure of a confidential informant's identity, a defendant must first establish that the information sought is material to the preparation of the defense and that the request is reasonable. *Id.* at 1283. Only after the defendant shows that the identity of the confidential informant is material to the defense is the trial court required to exercise its discretion to determine

whether the information should be revealed by balancing relevant factors, which are initially weighted toward the Commonwealth. *Commonwealth v. Watson*, 69 A.3d 605, 607 (Pa. Super. 2013).

A further limitation on the applicability of the privilege arises from the fundamental requirements of fairness. Where the disclosure of an informant's identity or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way. *Commonwealth v. Marsh*, 997 A.2d 318, 321-22 (Pa. 2010)(quoting *Commonwealth v. Carter*, 233 A.2d 284, 287 (Pa. 1967)).

There is no fixed rule with respect to disclosure. The problem is one that calls for balancing the public interest in protecting the flow of information against the individual's right to prepare his defense. Whether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance of the informant's testimony, and other relevant factors. *Carter*, supra. The court has a difficult time accepting that Defendant could overcome the Commonwealth's qualified privilege not to disclose the identity. The informant's account afforded no more than evidence of probable cause for the issuance of the search warrant. Moreover, the informant was not present during the incident nor when the search warrant was executed. *Commonwealth v. Withrow*, 932 A.2d 138, 141 (Pa. Super. 2007).

Nonetheless, the court will give Defendant fourteen (14) days from the date of this Order to provide to the court a written Brief in Support of its motion. The Commonwealth shall then have fourteen (14) days after receipt of the Brief to file any Brief in Opposition. Following the submission of the Briefs, the court will render a decision.

With respect to Defendant's Motion for Discovery relating to MVR's, they have all been provided as set forth above. Specifically, the court is aware that the MVR's were provided to defense counsel on July 23, 2021.

The court will GRANT Defendant's Motion for any other reports or statements that have not yet been provided.

Finally, with respect to Defendant's Motion to Reserve Right, that shall be GRANTED as set forth below.

ORDER

AND NOW, this _____ day of September 2021, following a hearing and argument, the court DIRECTS as follows:

- (1) Defendant's Petition for Writ of Habeas Corpus is DENIED.**
- (2) Defendant's Motion to Suppress is DENIED.**
- (3) Defendant's Motion to Disclose is GRANTED.** Defendant shall be provided with the names and addresses of all person who have been offered immunity, favorable consideration, leniency or favorable

treatment, express or tacit in this case. As well, the Commonwealth shall provide all evidence in its possession or available to it of any prior arrests or convictions of all persons the Commonwealth intends to call as a witness at trial in this matter. This information must be provided to Defendant within sixty (60) days of today's date.

- (4) The court **GRANTS** Defendant's Motion for a Specific Written 404(b) Notice. No later than sixty (60) days from today's date, the Commonwealth shall provide to Defendant a specific 404(b) written notice setting forth the general nature of any evidence of a crime, wrong or other act that the Commonwealth intends to introduce at trial with respect to the defendant. Defendant shall then have fourteen (14) days from receipt of the notice to file any motion in limine.
- (5) The court **GRANTS** in part Defendant's Motion to Compel Discovery. The Commonwealth shall provide to Defendant within thirty (30) days of today's date all reports or statements required by the Pennsylvania Rules of Criminal Procedure that have not yet been provided.
- (6) Defendant's Motion for MVR Recordings is **MOOT** as those recordings were previously provided.
- (7) Defendant's Motion for Information regarding the CI is subject to further decision by the court following the submission of Briefs as set forth above.

(8) Defendant's Motion to Reserve Right is **GRANTED** but only to the extent that any motion is based on information or discovery provided by the Commonwealth after July 7, 2021.

By The Court,

Marc F. Lovecchio, Judge

cc: Eric Williams, Esquire (ADA)
Trisha Hoover Jasper, Esquire
Gary Weber, Esquire
Judge Marc F. Lovecchio