

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-120-2021**
 v. :
 :
 :
 BRUCE WHITE, : **OMNIBUS PRETRIAL**
 Defendant : **MOTION**
 :
 OPINION AND ORDER

Bruce White (Defendant) was arrested on December 14, 2020, for one count of Delivery of a Controlled Substance¹, one count of Possession of a Controlled Substance with the Intent to Deliver², and one count of Criminal Use of a Communication Facility³. These charges arise from the sale of fentanyl by Defendant to a confidential informant in the 1000 block of Baldwin Street, City of Williamsport, Pennsylvania. Defendant filed this Omnibus Pretrial Motion on April 5, 2021. A hearing on the motion was held by this Court on May 11, 2021. At the hearing, both the Commonwealth and Defendant agreed to the admission of the transcript of the preliminary hearing held on January 21, 2021. The Commonwealth did present the confidential informant used in this case as an additional witness at the hearing in front of this Court after they had the opportunity to speak with their attorney.

In his Omnibus Pretrial Motion, Defendant challenges whether a *prima facie* case was established at the preliminary hearing. Specifically, Defendant believes the Commonwealth has failed to establish that Defendant sold, transferred to the CI or even possessed a controlled substance, or used a communication facility to facilitate a drug transaction because the only testimony presented by the Commonwealth at the preliminary hearing was the hearsay

¹ 35 Pa.C.S. § 780-113(a)(30).

² 35 Pa.C.S. § 780-113(a)(30).

³ 18 Pa.C.S. § 7512(a).

testimony of the prosecuting officer. Defense also requests the identity of the CI and any *Brady*⁴ information related to the CI.

Background and Testimony

At the hearing on this motion, the Commonwealth submitted a copy of the preliminary hearing transcript, marked as Commonwealth's Exhibit 2, from January 21, 2021 before the Honorable Aaron Biichle, Magisterial District Judge. Detective Jonathan Rachel (Rachel) of the Narcotics Enforcement Unit (NEU) testified on behalf of the Commonwealth at the preliminary hearing. On September 16, 2020, Rachel participated in a narcotics investigation regarding the controlled purchase of what the NEU believed to be fentanyl. N.T. 1/21/21, at 4. He met with a confidential informant (CI) at a predetermined location, later identified as a residence on the 1000 block of Baldwin Street in Williamsport. *Id.* at 6. Rachel strip searched the CI and searched the downstairs floor of the agreed location. *Id.* He then directed the CI to reach out to the Defendant to attempt to purchase the fentanyl. *Id.* Rachael testified that Defendant had previously agreed to sell one (1) gram of fentanyl to the CI for one hundred sixty (160) dollars. *Id.* The CI then made a phone call to the Defendant to arrive at that location. *Id.* Rachel testified that a few minutes later the Defendant appeared because he could hear the CI having a conversation with someone. *Id.* at 5. He testified that he heard the rustling of a bag and "what not". *Id.* A few minutes later, the Defendant left and Rachel went downstairs to de-brief the CI. *Id.* Rachel further testified that the CI communicated with the Defendant both through text and phone call. *Id.* at 6. The Commonwealth attempted to call the CI to testify, but he advised the Court that he was reluctant because he had not spoken with his lawyer. Over the objection of the Defense, the Court granted a two-day continuance to enable the CI to speak with counsel. On May 13th, 2021, the CI testified about his role in the delivery.

⁴ *Brady v. Maryland*, 373 U.S. 83 (1963).

He identified Rachel as the officer that he worked with on September 16, 2020 to make narcotics purchases. N.T. 5/13/2021, at 3. He testified that he purchased fentanyl from the Defendant for one hundred sixty (160) dollars on September 16th. *Id.* The CI explained that the Defendant came to his house that day in order to make the sale. *Id.* at 6. He described that the transaction took about twenty (20) minutes and was “very frustrating” because Defendant was under the influence of PCP. *Id.* at 7.

Whether the Commonwealth has satisfied a *Prima Facie* Case of Probable Cause

At the preliminary hearing stage of a criminal prosecution, the Commonwealth does not need to prove 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). *Prima facie* in the criminal realm is the measure of evidence, which if accepted as true, would warrant the conclusion that the crime charged was committed. While the weight and credibility of the evidence are not factors at this stage and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense, the absence of evidence as to the existence of a material element is fatal. *Commonwealth v. Ripley*, 833 A.2d 155, 159-60 (Pa. Super. 2003). 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).

For the charges of Delivery of a Controlled Substance and Possession of a Controlled Substance with the Intent to Deliver, the Commonwealth is required to prove that the Defendant manufactured, delivered, or possessed with the intent to manufacture or deliver, a controlled substance by a person not registered under this Act. 35 Pa.C.S. § 780-113(a)(30). For the charge of Criminal Use of a Communication Facility, the Commonwealth must prove that Defendant used a communication facility to commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony under the Controlled Substance Drug, Device and Cosmetic Act. 18 Pa.C.S. § 7512(a). The Commonwealth, through the testimony of their CI, showed that the CI arranged to purchase fentanyl by calling the Defendant on the phone. Shortly after the call, the Defendant appeared at the CI’s location and provided the corresponding quantity of drugs to the CI for the agreed upon amount of one hundred sixty (160) dollars. Based upon the testimony of the CI, the Commonwealth has established a *prima facie* case for all offenses.

Conclusion

The Commonwealth has provided sufficient evidence to establish a *prima facie* case that Defendant committed the offenses of Delivery of a Controlled Substance, Possession of a Controlled Substance with the Intent to Deliver, and Criminal Use of a Communication Facility. Therefore, there has been no violation of Defendant’s constitutional rights and the charges against Defendant shall not be dismissed. Since the CI testified at the hearing, the Defendant has been provided with the CI’s identity and the request to disclose is dismissed as moot.

ORDER

AND NOW, this 16th day of August 2021, based upon the foregoing Opinion, Defendant's Omnibus Pretrial Motion, in the nature of a Petition for Writ of Habeas Corpus, is hereby **DENIED**. Although Defendant's motion to obtain the CI's identity is moot, the Commonwealth is reminded that it has a continuing obligation to provide the Defense any additional *Brady* information.

By the Court,

Nancy L. Butts, President Judge

cc: Joseph Ruby, Esquire, ADA
Howard Gold, Esquire
Law Clerk (JMH)