

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CP-41-CR-1653-2020**
 v. :
 :
 KIJIFA ANDERSON, : **OMNIBUS MOTION**
 Defendant :

OPINION AND ORDER

Kijifa Anderson (Defendant) was charged on December 14, 2020 with Possession with Intent to Deliver¹, Criminal Use of Communication Facility², and Drug Delivery Resulting in Death³. The charges arise from the death of Dacia Stewart purportedly caused by an overdose of pills provided to Ms. Stewart by Defendant. Defendant filed an initial Omnibus Pretrial Motion on April 30, 2021 by the Public Defender’s Office on behalf of Defendant. This Court held a hearing on the motion on July 2, 2022. However, following the discovery of a conflict of interest, new counsel was appointed to represent Defendant on August 11, 2021. An additional hearing on the initial Omnibus Motion was held on September 28, 2021 with new counsel.

At this hearing, defense counsel informed this Court that they would not be pursuing the suppression relief requested in the initial Omnibus and requested permission to file a supplemental Omnibus Motion seeking habeas corpus relief. This Court issued an order granting defense counsel’s request. Defendant’s Supplemental Omnibus Motion was timely filed on October 14, 2021. In her supplemental Omnibus motion, Defendant argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing on Count 1: Drug Delivery Resulting in Death, and the charge should be

¹ 35 Pa.C.S. § 780-113(A)(30).

² 18 Pa.C.S. § 7512(a).

³ 18 Pa.C.S. § 2506(a).

dismissed. A briefing schedule was requested by defense counsel and Defendant subsequently filed her brief on February 28, 2022. The Commonwealth failed to file a brief by the deadline.

Preliminary Hearing and Background

At the preliminary hearing held on December 10, 2020, Agent Brittany Alexander (Alexander) of the Williamsport Bureau of Police testified on behalf of the Commonwealth. Alexander testified that she was on duty on July 22, 2020 when she was called to investigate a death from a suspected overdose. N.T. 12/10/2020, at 3-4. Alexander responded to Eldred Street in the City of Williamsport around midnight and proceeded to the residence's backyard. Id. at 4. Once there, she observed Dacia Stewart (Stewart) deceased on a gurney. Id. Alexander initially spoke with Stewart's mother, Belda, who informed her that Stewart "had been acting funny" so Belda took Stewart outside, brought Stewart's young child inside the house, and when Belda returned outside, Stewart was unconscious. Id. at 4-5.

Eventually, Courtney Ross (Ross) contacted Agent Justin Snyder (Snyder) stating that she had information about Stewart's death. Id. at 5. Snyder accompanied Alexander to meet with Ross who informed them that she was with Stewart when she purchased narcotics and was the person who took Stewart home prior to her death. Id. Ross also stated that Stewart had purchased these narcotics from Defendant. Id. at 6. Alexander further testified that she conducted an interview with Defendant following her arrest. Id. at 7. Alexander noted that Defendant, "did acknowledge that she and Dacia knew each other previously through the use of narcotics and then ultimately did admit to providing two fake Percocet to Dacia Stewart." Id. Defendant confessed to supplying the Percocet to Stewart at Choice around 7:30 p.m. on July 22nd. Id.

An autopsy was conducted on Stewart following her death that pronounced Stewart's time of death at approximately 11:18 p.m. Id. at 9. This report also determined the cause of Stewart's death was "fentanyl toxicity complicated by blunt force head injuries." Id. Alexander stated that Stewart had fallen multiple times while in the backyard, "even hitting a rock at one point with her head." Id. at 12. Alexander noted that 10 nanograms per milliliter is the fatal dose of fentanyl and the autopsy report showed Stewart had 28.4 nanograms per milliliter in her system. Id. at 13. Alexander admitted to not being able to conduct tests on a sample of the pills Stewart consumed because she did not have a pill sample. Id. at 12.

Courtney Ross (Ross) also testified on behalf of the Commonwealth. Ross stated that she and Stewart had been friends since they were in middle school. Id. at 14. On July 22, 2020, Stewart went to Ross' home to get her nails done. Id. After completing Stewart's nails, Ross offered to give her a ride home. Id. During the drive, Stewart asked Ross, "if we could stop somewhere to meet with Kijifa for the Percocet." Id. at 14-15. Ross positively identified Kijifa as Defendant at the time of the preliminary hearing. Id. at 15. Ross was able to see Stewart communicating with Defendant via phone call and text messaging while in the car. Id. at 17. On their way to meet Defendant, Stewart informed Ross that Defendant told Stewart that the Percocet was fake. Id. at 16. Ross cautioned Stewart to "be careful because I know of other people overdosing on them." Id.

Ross stopped at Choice on Washington Boulevard in the city of Williamsport. Id. at 15. Stewart exited Ross' vehicle and approached the gas pump occupied by Defendant. Id. Both women went towards Ross' car and they all spoke to each other for a few minutes before Ross ultimately took Stewart home at approximately eight (8) p.m. Id. at 15-16. Ross never saw Stewart consume any narcotics in her presence on that date. Id. at 16. However, Ross admitted

to being aware that Stewart struggled with narcotic usage. Id. at 18. Ross believed Percocet to be Stewart's "drug of choice" but was not sure of the manner in which she ingested them. Id. at 18, 20.

At the hearing on this motion, the Court took judicial notice of the transcript of the Omnibus Pretrial Motion that occurred on July 2, 2021. Additionally, the Commonwealth presented the transcript of the preliminary hearing, marked as Commonwealth's Exhibit 3. The Commonwealth also showed Stewart's autopsy report, marked as Commonwealth's Exhibit 4, and an audio recording of an interview with Ross conducted by Alexander on July 24, 2020, marked as Commonwealth's Exhibit 5.

Discussion

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 Commonwealth’s evidence on Count 1: Drug Delivery Resulting in Death. Pursuant to 18 Pa.C.S. § 2506(a), an individual commits this offense when “the person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance...and another person dies as a result of using the substance.” Defendant’s primary argument is that the Commonwealth failed to establish the “but for” causation required to show that Stewart passed away because of narcotics allegedly given to her by Defendant. *See* Commonwealth v. Nunn, 947 A.2d 756, 760 (Pa. Super. 2008). Defendant cites to Commonwealth v. Kakhankham where the Superior Court concluded that 18 Pa.C.S.A. § 302(c) provides the mens rea requirement for the second element of Section 2506 as death must be the result of reckless conduct. Commonwealth v. Kakhankham, 132 A.3d 986, 995 (Pa. Super. 2015). Defendant asserts that Kakhankham reiterated the standard of proof at this stage when recklessly causing a particular result is an element of an offense,

the element is not established if the actual result is not within the risk of which the actor is aware or, in the case of negligence, of which he should be aware unless:

(1) the actual result differs from the probable result only in the respect that a different person or different property is injured or affected or

that the probable injury or harm would have been more serious or more extensive than that caused; or
(2) the actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a bearing on the liability of the actor or on the gravity of his offense.

Id. (quoting 18 Pa.C.S.A. § 303(c)).

Defendant further contends that the Commonwealth is required to have evidence that the Percocets were laced with fentanyl and that Stewart died as a result of ingesting fentanyl-laced Percocet. Defendant believes that no such evidence was presented at the preliminary hearing. Defendant argues that testimony showed that pills were not available to test and therefore no indication to suspect that the Percocets were laced with fentanyl exists. Defendant argues that the autopsy report showed various drugs in Stewart's system and also indicated that Stewart suffered from multiple head injuries. Defendant believes that the Commonwealth has not excluded the other drugs or the head injuries as her cause of death and therefore, but for causation and reasonable foreseeability have not been established as required and Count 1 should be dismissed. The Commonwealth relies on the transcript of the preliminary hearing.

Based on the totality of the circumstances and viewing the evidence in the light most favorable to the Commonwealth as is required at this stage, the Court believes that the Commonwealth has established the causation and mens rea needed for *prima facie*. Evidence was presented that Defendant advised Stewart that the Percocet was "fake" but sold the pills to Stewart anyway. Fentanyl and Percocet are Schedule II controlled substances and fentanyl in particular is extremely lethal to ingest. The Crimes Code defines recklessly as "consciously disregards a substantial and unjustifiable risk that the material element exists or will result from this conduct." 18 Pa.C.S.A. § 302(b)(3). "The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to

him, its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe....” Id. Defendant was aware that the pills were doctored and it is therefore reasonably foreseeable that a drug as dangerous and prevalent as fentanyl could be included in the unknown concoction created in the pills Stewart ingested. Furthermore, Defendant admitted to providing the fake Percocet pills to Stewart.

Additionally, testimony at the preliminary hearing revealed that Ross was able to see Stewart and Defendant interacting with one another and knew that the purpose of this interaction was for Defendant to sell Stewart narcotics. Testimony also showed that Stewart was stumbling, falling, and disoriented. Additionally, the toxicology report noted that Stewart had nearly three (3) times the fatal limit of fentanyl in her system at her time of death. It is reasonable to believe that but for Stewart consuming the pills provided by Defendant, Stewart would not have died. However, the Commonwealth may need to present additional evidence to satisfy their burden of beyond a reasonable doubt at trial. Nevertheless, this is not the question the Court is presented with today. As such, in consideration of the totality of the evidence and the Commonwealth’s considerably lesser burden of proof at this stage, the Court finds that the Commonwealth established a *prima facie* case for the contested charge and Count 1 shall not be dismissed.

Conclusion

The Court finds that the Commonwealth has met its *prima facie* burden and therefore Count 1: Drug Delivery Resulting in Death shall not be dismissed.

ORDER

AND NOW, this 6th day of May, 2022, based upon the foregoing Opinion, it is
ORDERED AND DIRECTED that the Defendant's Motion for Habeas Corpus is **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Robert Hoffa, Esq.
Law Clerk (JMH)