

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-883-2021
	:	
vs.	:	
	:	CRIMINAL DIVISION
JEREMY WILLIAM NEWMAN,	:	
Defendant	:	

OPINION

This matter is before the Court on Defendant’s Omnibus Pretrial Motion filed September 1, 2021. For the reasons set forth below, the Motion is denied.

I. Factual and Procedural Background

On May 24, 2021, Defendant was charged with one (1) count of Possession with Intent to Deliver (F); one (1) count of Possession of a Controlled Substance (M); and one (1) count of Possession of Drug Paraphernalia (M). Defendant filed his Omnibus Motion on September 1, 2021, containing a Petition for a Writ of Habeas Corpus, a Motion to Suppress Evidence, and a Motion to Dismiss Counts two (2) and (3) pursuant to Pennsylvania’s Drug Overdose Immunity Act.

A hearing and argument was held February 8, 2022, at which time Michael Sullivan, Esquire, appeared on behalf of the Commonwealth and Defendant appeared via Polycom and was represented by Tyler Calkins, Esquire. At the start of the hearing, Attorney Calkins withdrew his Motion to Dismiss Counts two (2) and three (3) under Pennsylvania’s Drug Overdose Immunity Act. The Commonwealth introduced as Commonwealth’s Exhibit 1, a

transcript of the preliminary hearing held on July 6, 2021, before MDJ Christian Frey. At the time of the hearing, Officer Thad Trafford of the Williamsport Bureau of Police testified regarding the following events which occurred on May 14, 2021:

Officer Trafford was working in full duty uniform and was dispatched at approximately 8:06 p.m. to 2327 Newberry Street in the City of Williamsport for a report of an unresponsive male. When he arrived on the scene, EMS was already providing medical attention to the Defendant, who was lying on his back on the sidewalk in front of the residence at 2331 Newberry Street. Officer Trafford testified that he offered assistance to EMS, who informed him they believed it was an overdose due to narcotic usage, and that they had administered Narcan to the Defendant.

As Officer Trafford did not recognize the Defendant, he began to search his pockets. The very first pocket he searched contained a large plastic bag that had a black hair tie around it with numerous narcotics inside. The contents of the bag included approximately 50 waxen bags of suspected heroin, eight small Ziploc bags containing powder cocaine, three plastic bags that contained approximately 21 grams of methamphetamine, and three plastic bags that contained approximately 5.5 grams of amphetamine. Additionally, there were unused clear plastic Ziploc bags inside the larger bag found in the Defendant's pocket. With the exception of the suspected heroin, all of the substances were field tested and produced positive results for the respective drug testified to by Officer Trafford. The suspected heroin was not field tested due to officer safety concerns. There were no means of ingestion for the narcotics located on the Defendant.

In addition to the narcotics, Officer Trafford did locate the Defendant's wallet on his

person, which contained his identification. Additionally, the wallet contained \$645, the majority of which consisted of \$20 bills.

Officer Trafford also testified at the hearing on February 8, 2022. He identified several photographs he took of items he found on the Defendant on May 14, 2021. These photographs were admitted as Commonwealth's Exhibits 2A-2G. Officer Trafford reiterated his opinion that the Defendant possessed the narcotics with the intent to deliver as opposed to possessing them for personal use due to (1) the amount and variety of drugs he found, (2) the amount and type of currency he found, and (3) the unused packaging material. While it is possible that the Defendant is both a drug user and a drug seller, there was no means of ingestion or used drug packaging found on or around him.

Officer Trafford further testified that the Defendant received Narcan because he was unresponsive; however, it can take 2-4 minutes for a person to "wake up" after receiving Narcan, and Narcan is not successful/effective in all circumstances. Those who do "wake up" after receiving Narcan are not always coherent. Officer Trafford testified that he had not been trained to wait until a person wakes up after receiving Narcan before taking action to obtain an identification. Similarly, Officer Trafford testified that he has received no specific training as to which pocket to search first when attempting to locate identifying information on a person. He chose the front left pocket as that was the closest in proximity to him and the Defendant was lying face up at the time. He was not certain which pocket the wallet was located, but believes it was the front right pocket.

The Defendant's counsel called Tara Sunday as a witness. Ms. Sunday is the Defendant's brother's fiancé, and a resident of 2331 Newberry Street. Ms. Sunday testified

that the neighbors called 911 and when EMS arrived she told them the name of the Defendant. When the police arrived, she also told the officers the Defendant's name. However, she testified that there was more than one officer at the scene and while she remembers Officer Trafford's face, she could not confirm with certainty that he was the officer to whom she spoke.

II. Discussion

Defendant's arguments can be categorized as follows: one, that the Commonwealth failed to meet its *prima facie* burden at the date and time of the Defendant's preliminary hearing for Count one (1), Possession with the Intent to Deliver, and that Officer Trafford was on a fishing expedition disguised as an attempt to search for identification.

a. Petition for a Writ of Habeas Corpus

When a Defendant chooses to test whether the Commonwealth has sufficient evidence to establish a *prima facie* case that he or she has committed a crime, the proper means is a motion for habeas corpus. *Com. v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016), citing *Com. v. Carroll*, 936 A.2d 1148, 1152 (Pa. Super. 2007). "To demonstrate that a *prima facie* case exists, the Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant's complicity therein" and may do so by utilizing evidence presented at the preliminary hearing as well as submitting additional proof. *Id.*

It is well settled that the preliminary hearing is not a trial and the Commonwealth need not establish Defendant's guilt beyond a reasonable doubt at that stage. *Com. v. McBride*, 595 A.2d 589, 591 (Pa. 1991). Rather, the Commonwealth bears the burden of

establishing a *prima facie* case “that a crime has been committed and that the accused is probably the one who committed it.” *Id.*; Pa.R.Crim.P. 141(d). Additionally, the weight and credibility of the evidence are not factors for the Court to consider. *Com. v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001); *see also Com. v. Huggins*, 836 A.2d 862, 866 (Pa. 2003) (holding that “[t]he evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury”). “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.” *Com. v. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990). A *prima facie* case merely requires evidence of each of the elements of the offense charged, not evidence beyond a reasonable doubt. *Marti*, 779 A.2d at 1180.

The Defendant contends that the Commonwealth failed to meet its *prima facie* burden at the preliminary hearing for Count One (1) Possession with Intent to Deliver. 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. *Com. v. Bostick*, 958 A.2d 543, 560 (Pa. Super. 2008). 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. *Com v. Macolino*, 469 A.2d 132, 134 (Pa. 1983). Here, Officer Trafford, while attempting to obtain the Defendant's identification, pulled a clear plastic bag with a hair tie wrapped around it out of the Defendant's front left pants pocket. (Com Ex. 2A). In that bag was found a brick of heroin, which Officer Trafford recognized

based on training and experience; 5.5 grams of amphetamine in a bag; 4 bags totaling approximately 21 grams of methamphetamine; 8 bags of powdered cocaine; and several unused bags of packaging material. (Com Ex. 2B-G). As they were found on his person, there is no question of whether the Defendant possessed the controlled substances and drug paraphernalia.

Possession with Intent to Deliver (PWID) is defined as follows:

Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.

35 P.S. § 780-113(a)(30).

Possession with intent to deliver can be inferred from the quantity of the drugs possessed along with the other surrounding circumstances. *Com. v. Little*, 879 A.2d 293, 297 (Pa.Super. 2005) (internal citations omitted). Moreover,

“[w]ith regard to the intent to deliver, we must examine the facts and circumstances surrounding the possession. The intent to deliver may be inferred from possession of a large quantity of controlled substances. It follows that possession of a small amount of a controlled substance supports the conclusion that there is an absence of intent to deliver. If the quantity of the controlled substance is not dispositive as to the intent, the court may look to other factors. Other factors to consider when determining whether a defendant intended to deliver a controlled substance include the manner in which the controlled substance was packaged, the behavior of the defendant, the presence of drug paraphernalia, and the sums of cash found in possession of the defendant.”

Com. v. Roberts, 133 A.3d 759, 768 (Pa.Super. 2016) (internal citation omitted), *appeal denied*, 636 Pa. 675, 145 A.3d 725 (Pa. 2016). Officer Trafford testified that, due to the amount and variety of controlled substances found on the Defendant's person, he believed the Defendant possessed them with the intent to deliver rather than for personal use. Additionally, there was no means of ingestion found on or around Defendant's person; however, there was unused packaging materials located on the Defendant. Finally, Officer Trafford testified that the Defendant had a large amount of cash in his pocket, mostly in \$20 denominations. In his experience, most narcotic sales are in intervals of \$20.

A reasonable inference can be drawn from the totality of these circumstances that the Defendant possessed the controlled substances not for personal use, but rather with the intent to deliver them. Accordingly, the Court will deny Defendant's petition for writ of habeas corpus.

a. Motion to Suppress

Next, the Defendant argues that Officer Trafford's discovery of the controlled substances and drug paraphernalia was the result of a fishing expedition and not an effort to obtain his identification and therefore the evidence obtained from his pockets should be suppressed.

It is well-settled that exigent circumstances excusing the warrant requirement arise where the need for prompt police action is imperative. *Com. v. Flowers*, 735 A.2d 115, 119 (Pa. Super. 1999). In Pennsylvania, the need to identify an unresponsive victim has been ruled to be an exigent circumstance necessitating the search for identification of the unresponsive person. *Com v. Johnson*, 969 A.2d 565, 572 (Pa. Super. 2009). Here, the

search of Defendant's pockets was not investigative in nature, but merely performed solely to ascertain his identity. Officer Trafford testified that he responded to a call for an unresponsive person. He testified that he did not know the Defendant before responding to the call. Upon arriving at the scene, he found the Defendant lying face up on the ground. He did not recall if any bystanders told him the defendant's name, and did not believe EMS had been provided with the Defendants name. Although Ms. Sunday testified that she told police the Defendant's name, she admitted that there was more than one officer on the scene and it was possible she could have provided the Defendant's name to a first responder other than Officer Trafford. Additionally, Ms. Sunday could not recall whether she provided the Defendant's name to officers before or after they searched his pockets in search of his identification.

The Defendant argues that he had been administered Narcan by EMS and Officer Trafford should have waited until he "woke up" and asked him to identify himself. This defies logic and assumes that everyone wakes up from Narcan, does so in a timely manner, and when they do, they are coherent enough to assist a first responder in identifying themselves. Officer Trafford, arriving on the scene of an unresponsive person, chose not to delay attempts to identify the victim. The Defendant argues that his position that Officer Trafford was simply on a fishing expedition is further supported by the fact that it is illogical that the first place the Officer would look for a man's wallet would be his front pocket. Having received no training on which pocket to search first in situations such as this, Officer Trafford searched the Defendant's front left pocket first, as the Defendant was on his back and the front left pocket was the closest in proximity and most easily accessible to him. This

was reasonable, but unfortunately for the Defendant, also where the Officer found his bag of controlled substances. The Defendant's theory is further debunked by the fact that Officer Trafford testified that he believes the Defendant's identification and wallet were indeed found in his right front pocket – the second pocket he checked.

This Court finds that exigent circumstances, namely the need to identify the unresponsive person in a timely manner, justified the warrantless search of the Defendant's person. Accordingly, the Court will deny the Defendant's motion to suppress.

III. Conclusion

The Court finds that the Commonwealth established a prima facie case for the charge of Possession with Intent to Deliver. Additionally, the Court finds that the exigent circumstances existed which justified the search of the Defendant's pockets without a warrant, as Officer Trafford was seeking identification of an unresponsive person and not conducting a "fishing expedition."

ORDER

AND NOW, this 16th day of **March, 2022**, upon consideration of Defendant's Omnibus Pre-Trial Motion and for the reasons set forth above, the Motion is **DENIED**.

By the Court,

Ryan M. Tira, Judge

RMT/jel

CC: DA (MS)
Tyler Caulkins, Esquire
Gary Weber, Esq.
Jennifer Linn, Esquire – Judge Tira's Office