

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	<b>CR-1055-2021</b>
<b>v.</b>	:	
	:	
<b>JULIUS JOSEPH SMITH III,</b>	:	<b>OMNIBUS PRETRIAL</b>
<b>Defendant</b>	:	<b>MOTION</b>

**OPINION AND ORDER**

Julius Smith (Defendant) was arrested by the Lycoming County Narcotics Enforcement Unit (NEU) on July 30, 2021. Defendant was charged with two counts of Delivery of a Controlled Substance,<sup>1</sup> one count of Criminal Use of a Communication Facility,<sup>2</sup> and one count of Possession of a Controlled Substance.<sup>3</sup> The charges arise from a controlled purchase, a subsequent motor vehicle stop of the Defendant, and search warrant executed on the Defendant's car and cellphone. Defendant filed this Omnibus Pretrial Motion on October 12, 2021. The Motion alleges the Commonwealth has failed to demonstrate a *prima facie* case for one of the above charges, and any search of the Defendant's vehicle was based upon an illegal stop of the vehicle. Additionally, the motion requests disclosure of criminal charges, promises of leniency and/or immunity of the confidential informant (CI) and the unwitting who is now cooperating with the NEU<sup>4</sup>. A hearing on the Motion was set for February 1, 2022. At that hearing the Commonwealth presented copies of the preliminary hearing transcript as an exhibit, upon which both parties agreed to rely. At the conclusion of the hearing, the Commonwealth requested, and the Court ordered that an additional hour be scheduled for testimony since their

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

<sup>2</sup> 18 Pa. C.S. § 7512.

<sup>3</sup> 35 P.S. § 780-113(a)(16).

<sup>4</sup> The parties discussed this issue on the record and the Commonwealth agreed to provide the information to Defense. The Court did not memorialize the agreement at the time of the hearing and will dispose of the matter in this opinion.

next witness was a distance away and sufficient time had not been allotted for the hearing. In addition, Defense counsel requested additional time to review the contents of a body camera recording from Detective Havens of the NEU and the opportunity to recross examine him after viewing the recording. The parties also agreed that the cellphone had not been searched by the NEU so that there were no contents to suppress.

After rescheduling the hearing, Defendant requested two continuances which were granted as he tested positive for COVID. The second hearing was finally held on August 4, 2022. Both parties were also granted the opportunity to brief their arguments.

### ***Preliminary Hearing Testimony***

Detective Jonathan Rachel (Rachael) of the NEU testified at the preliminary hearing on August 26, 2021. His testimony established the following. In June, 2021 Rachael had been watching a hotel room occupied by Edgar Garcia (Garcia) at the Econo Lodge, Loyalsock Township. P.H. 8/26/21, at 3-4. Through that surveillance he observed Garcia leave his room, walk through the lobby and into the parking lot where he entered a gray Chrysler 300. *Id.* at 6. Rachael testified that Garcia was in the Chrysler for about 15 minutes. *Id.* at 7. Although it was longer in the vehicle for a street level deal, Rachael testified that with larger amounts, when they are “reupping” it can take much longer. *Id.* After Garcia left the vehicle he was arrested in the lobby while other detectives on the surveillance detail set up a motor vehicle stop of the Chrysler in the Sheetz parking lot. *Id.* at 4.

Edgar Garcia (Garcia) also testified. Garcia said that he texted Defendant to purchase “a couple grams” from him before he left town. *Id.* at 13. He testified that the transaction took place in Defendant’s car, a Chrysler 300. *Id.* at 14. He said that Defendant handed him the drugs from his lap with his left hand and Garcia put it in his left pocket. *Id.* at 16. He believed it

was the four or five grams that he had ordered. *Id.* He testified that he paid the defendant \$600 in mostly \$20 dollar bills. *Id.* Garcia also explained that he had been staying at the Econolodge and selling drugs out of his hotel room. *Id.* Garcia testified that when he was taken into custody in the lobby of the Econolodge, just after the transaction and so he stuffed the drugs in the cushion of a seat. *Id.* at 13. He would have later called his wife from the prison to get the drugs from the chair. *Id.*

Sarah Edkin (Edkin) also a member of the NEU testified at the preliminary hearing. Edkin stated that she had been working surveillance on June 30 and had the opportunity to review body camera footage of Detective Havens and his stop of Defendant. *Id.* at 21. She watched Havens detain Defendant and took a large amount of currency from him. *Id.* Edkin said that he had approximately \$900 in one pocket and in another “\$600 and some dollars in the other.” *Id.* She also testified that she would have received the prison phone calls concerning Garcia after he had been committed to the Lycoming County Prison and heard the conversation Garcia had with his wife about the chair in the lobby. *Id.* She then went to the hotel where Garcia’s wife was still staying and after a consent search of the room, found three grams of fentanyl. *Id.* She also testified about the video surveillance and work with a CI concerning the Defendant making another sale of drugs on July 13, 2021. *Id.* Edkin testified that the CI showed her the Defendant’s residence on High Street and arranged a purchase from the Defendant’s Chrysler 300 in the neighborhood. *Id.* at 27. The CI was deposited at 6<sup>th</sup> and High St. *Id.* Defendant was stopped by the NEU on July 30 and arrested and the Chrysler 300 was impounded. *Id.* at 28. Williamsport Bureau of Police office Tyson Minnier used his K-9 on the vehicle in impound and as a result Edkin was able to obtain a search warrant for the vehicle.

The search warrant revealed the Defendant's wallet inside the vehicle and two pills suspected to be Suboxone. *Id.*

***Suppression hearing testimony***

At the hearing on the suppression motion on February 1, 2022, the Commonwealth called several witnesses. The first witness was NEU Detective Tyson Havens (Havens). He testified that he was part of an investigation regarding Julius Smith in June of 2021. Suppression Hearing #1, 2/1/2022 at 6. He received a phone call from the mother of someone who was using heroin and as a result decided to set up a surveillance position on room 219 of the Econo Lodge in Loyalsock Township, Lycoming County PA. *Id.* at 7. Havens testified that he observed Garcia meet with an individual later identified as Albert Zeitler and after Zeitler left the area he was stopped by the police and discovered to be in possession of methamphetamine. *Id.* at 8. After the stop of Zeitler, Havens went back to the Econo Lodge and another person was observed by the surveillance team who just purchased controlled substance from Garcia. *Id.* at 9 Havens subsequently conducted a traffic stop on that individual, J. S., and she turned over heroin purchased from the Econo Lodge to him. *Id.* After this stop Havens once again returned to the area of the Econo Lodge and surveillance observed two additional white females leaving the room 219 area who were again stopped and relinquished what appeared to be heroin to Havens. *Id.* at 10. As Havens was returning back to the Econo Lodge to resume his position, NEU detectives identified that Garcia left his room and entered a Chrysler 300 which remained in the lot. *Id.* Garcia was in the vehicle approximately 10 minutes and then Havens followed the Chrysler after it left the area of the Econo Lodge. *Id.* at 11. Havens described the vehicle as having "heavily tinted windows" *Id.* Havens followed the vehicle West onto the E. Third Street and waited until they had traveled far enough so he would not have been observed

making a vehicle stop by anyone at the Econo Lodge and pulled the Chrysler 300 over. *Id.* Defendant was the only occupant of the vehicle. *Id.* Havens asked the Defendant to get out of the vehicle and empty his pockets, to which he agreed. *Id.* Havens testified that the Defendant had \$500 in one pocket \$1300 another pocket. *Id.* Defendant told Havens the money came from “playing games of chance” *Id.* Defendant volunteered to Havens that he just came from the Sheetz and that he had been there to buy black and milds. *Id.* Havens indicated that not only did he stop defendant in the Chrysler 300 for a window tint violation, but also “on reasonable suspicion of criminal activity.” *Id.* at 13. Havens’ primary goal was to identify the person in the car as the NEU believed that the operator was associated with Garcia who was delivering drugs out of the Econo Lodge. *Id.* Once the vehicle was stopped, Defendant was taken into custody. *Id.* at 14. Havens admitted that from his surveillance location he was unable to see what was occurring at the Econo Lodge. *Id.* at 16. He stated that the multiple vehicle stops he made were as a result of information provided to him by the NEU. *Id.* at 17. When Defendant arrived in the Chrysler 300, Havens acknowledged that he did not see him come into the Econolodge parking lot. *Id.* Havens testified that when he stopped Defendant, he was provided a license, registration and proof of insurance as requested. *Id.* at 20. Havens did not observe anything illegal inside the vehicle at the time of the stop. *Id.* Havens admitted he took the Defendant into custody to question him about his involvement with Garcia that day. *Id.* at 23.

Garcia also testified at the first suppression hearing. He confirmed that he had purchased fentanyl from Defendant on June 30th. *Id.* at 26. He again described the transaction and that it was Defendant who came to the Econo Lodge and from whom he bought 5 grams of fentanyl for \$600. *Id.* at 27. Garcia stated that once the transaction was complete, he went back to the hotel. As he reached the door, he testified he was grabbed by some detectives. *Id.* at 28.

Garcia said they patted him down and sat him in the hotel lobby chair before they transported him. *Id.* While in handcuffs but left unattended, Garcia said that he was able to get the fentanyl out of his pocket and into the back seat cushion of the chair next to the laundry room. *Id.*

Garcia stated that he called his wife while he was in the county prison and described what she would find in the chair. *Id.* at 28. Garcia stated that he would have texted Defendant to arrange the purchase. *Id.* at 31. He acknowledged that he didn't speak directly to Defendant that day prior to seeing him in the vehicle. *Id.*

At the additional hearing on August 4th, 2022 the Commonwealth called Cassandra Garcia (Ex-wife). She testified that she was Garcia's ex-wife, and that Defendant was her ex-husband's dealer Suppression Hearing #2, 8/4/22 at 4. She testified initially about a transaction with Defendant which occurred on July 13, 2021. *Id.* Ex-wife testified that she would have traveled in Defendant's vehicle and drove around the block in the area of 6th and High Street in the city of Williamsport. She would have been working that day with NEU Detective Edkin. *Id.* Ex-wife testified that she texted Defendant and would have screen shot the text messages to provide to Edkin. *Id.* at 5. She further testified that she gave Defendant around \$140, and he gave her a bag of powdered fentanyl. *Id.* at 6. She was in the vehicle with Defendant for about 3-4 minutes. *Id.* at 20. The Commonwealth also asked Ex-wife about June 30, 2021. Ex-wife testified she received a phone call from her husband after he was arrested. *Id.* at 8. After the phone call, she went down to the chair outside of the laundry room and retrieved a bag of approximately 5 grams of fentanyl. *Id.* She described that she would have used some of it with some friends and gave the rest to Edkin. *Id.* at 9. Ex-wife didn't remember the number that she texted Defendant to arrange the purchase as she no longer had the telephone. *Id.* at 10.

Edkin was also called to testify at this hearing. She testified she facilitated the controlled purchase between Garcia's ex-wife and Defendant on July 13, 2021. *Id.* at 22. Edkin testified that she heard the recordings from the prison and went to see Garcia's ex-wife at the Econo Lodge to see if she retrieved the fentanyl from the chair. *Id.* at 28. Edkin also talked about taking a picture of a cell phone to verify that calls were made by ex-wife's phone to the Defendant on the 13th. *Id.* This transaction would have taken place near Defendant's residence on High Street. *Id.* at 23. Garcia's ex-wife would have entered Defendant's car, the Chrysler 300 to receive \$140 worth of fentanyl. *Id.* The fentanyl was packaged in a tied off knotted bag which was the same way Garcia described receiving his fentanyl from Defendant on June 30, 2021 at the Econo Lodge. *Id.* at 24.

The Commonwealth also admitted into evidence a copy of the body cam footage recorded by Havens on June 30, 2022. Upon review of the recording, it appeared to be consistent with Havens' testimony in court. In addition, Havens commented on the video discussing firearms which was playing on Defendant's phone as he approached the stopped vehicle, which could be heard on the recording from Havens' body camera. Commonwealth Exhibit # 2. Havens asks him to stop the video so that he can speak with him. *Id.*

***Whether the Commonwealth Established a Prima Facie Case***

Defendant contends that the Commonwealth failed to establish a *prima facie* case on the charges of possession with the intent and/or delivery of a controlled substance. 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). “A prima facie case in the criminal realm is the measure of evidence, which if accepted as true, would warrant the conclusion that the crime charged was committed.” *Commonwealth v. MacPherson*, 752 A.2d 384, 391 (Pa. 2000). 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).

A person commits this offense when they possess a controlled substance with the intent to manufacture or deliver it or actually deliver it. 35 Pa.C.S. § 780-113(a)(30). The Commonwealth presented testimony that on July 13, 2021, Defendant sold heroin to Cassandra Garcia. The Commonwealth also presented testimony by Edgar Garcia that on June 30, 2021 Defendant sold fentanyl to Garcia for \$600. The testimony of the Commonwealth also established that Garcia placed the substances in the chair in the lobby, which were retrieved by his ex-wife and later turned over to the Commonwealth. The Commonwealth further proved at the subsequent hearing in August, 2022 that both substances tested positive for heroin and



fentanyl, respectively. Therefore, the Commonwealth has established a *prima facie* case of delivery of a controlled substance on two separate occasions.

***Was the Stop of Defendant's vehicle lawful***

Defendant alleges that the motor vehicle stopped made by Havens on June 30, 2021 was unlawful. Defendant alleges that Havens testified at the hearing he observed nothing illegal inside the vehicle or on Defendant at the time he was patted down.

Pennsylvania law makes clear that a police officer has probable cause to stop a motor vehicle if the officer observes a traffic code violation, even if it is a minor offense. *Commonwealth v. Harris*, 2017 PA Super 402, 176 A.3d 1009, 1019 (2017) citing *Commonwealth v. Chase*, 599 Pa. 80, 960 A.2d 108 (2008). The United States Supreme Court has held that any violation of the Motor Vehicle Code legitimizes a stop, even if the stop is merely a pretext for an investigation of some other crime. *See Whren v. U.S.*, 517 U.S. 806, 812–13, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) (establishing a bright-line rule that any technical violation of a traffic code legitimizes a stop, even if the stop is merely a pretext for an investigation of some other crime); *Chase, supra* (indicating that if the police can articulate the necessary quantum of cause a constitutional inquiry into the officer's motive for stopping the vehicle is unnecessary). *Harris*, 176 A.3d at 1020. Therefore, Havens' stop for the window tint violation, even if it is a pretext to investigate other offenses, is still a lawful stop.

Defense counsel also alleges that Havens did not have reasonable suspicion to believe that there was criminal activity prior to Defendant being placed into custody. The Court disagrees. The NEU had Room 219 of the Econo Lodge under surveillance as a result of a report of drug dealing from that room. On three separate occasions, Havens stopped the vehicles of individuals who had left room 219 of the Econo Lodge and discovered that each had

purchased controlled substances. Therefore, Havens had reasonable suspicion that the occupant of the Chrysler 300 was involved in illegal activity as all of the vehicles who visited Room 219 at the Econo Lodge had been involved in a transaction involving controlled substances.

***Did the Search warrants have sufficient probable cause for the phone and car***

Defendant alleges that there was insufficient probable cause for Edkin to have obtained a search warrant for Defendant's car and cell phone. The parties agree that the determination by the Court is a "four corners" analysis. *Commonwealth v. Arthur*, 62 A.3d 424, 432 (Pa. Super. 2013).

When evaluating the probable cause of a search warrant this Court's determination is whether there was "substantial evidence in the record supporting the decision to issue a warrant" by giving deference to the issuing magistrate's probable cause determination and "view[ing] the information offered to establish probable cause in a common-sense, non-technical manner." *Commonwealth v. Jones*, 988 A.2d 649, 655 (Pa. 2010). Probable cause is established by a "totality of the circumstances." *Commonwealth v. Gray*, 503 A.2d 921, 925 (Pa. 1985)(adopting *U.S. v. Gates*, 462 U.S. 213 (1983)). It is "not require[d] that the information in a warrant affidavit establish with absolute certainty that the object of the search will be found at the stated location, nor does it demand that the affidavit information preclude all possibility that the sought after article is not secreted in another location." *Commonwealth v. Forster*, 385 A.2d 416, 437-38 (Pa. Super. 1978). A magistrate must simply find that "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Commonwealth v. Manuel*, 194 A.3 1076, 1081 (Pa. Super. 2018). The Court finds that the totality of the evidence contained in both affidavits of probable cause does establish probable cause to search both the car and the phone.

The affiant, Edkin of the NEU, included all of the information that was provided to her by surveillance officers and Havens. In addition, she had the statements of all of the named individuals who Garcia had sold heroin/fentanyl, the statements of both Garcia and his ex-wife, as well as the information obtained after a search warrant was executed on room 219 of the Econo Lodge to establish that there would be heroin/fentanyl, drug paraphernalia as well as firearms as well as the cell phone involved in the sale of controlled substances by Defendant to be found in the Chrysler 300 and that the cellular phone possessed by Defendant was used to arrange drug transactions.

### **Conclusion**

The Commonwealth satisfied its *prima facie* burden on the charges of delivery of a controlled substance. The stop of Defendant's vehicle on June 30, 2021 was lawful in that Havens observed a violation of the motor vehicle code and at the time had sufficient evidence to believe that Defendant was involved in the commission of a crime. Edkin had alleged sufficient facts to establish probable cause in the search warrant for the Chrysler 300 and cellular phone.

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<b>JULIUS JOSEPH SMITH III,</b>	:	<b>OMNIBUS PRETRIAL</b>
<b>Defendant</b>	:	<b>MOTION</b>

**ORDER**

**AND NOW**, this 28<sup>th</sup> day of February, 2023, based upon the foregoing Opinion, the Court it is **ORDERED AND DIRECTED** as follows:

1. Defendant’s Petition for Writ of Habeas Corpus is hereby **DENIED**.
2. Defendant’s Motion to Suppress Evidence is hereby **DENIED**.
3. The Commonwealth shall be required to provide the information requested in Defendant’s Motion for Disclosure of Criminal Charges, Promises of Leniency and/or Immunity for both the CI and Garcia within fourteen (14) days of this order.

By the Court,

Nancy L. Butts, President Judge