

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

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CR-1096-2022**  
 v. :  
 :  
 :  
 **JuMICHAEL DRUMMOND,** : **OMNIBUS PRETRIAL**  
 **Defendant** : **MOTION**

**OPINION AND ORDER**

JuMichael Drummond (Defendant) was arrested on or about August 3, 2022. Defendant was charged one count of Possession with Intent to Deliver,<sup>1</sup> three counts of Possession of a Controlled Substance,<sup>2</sup> and one count of Possession of Drug Paraphernalia.<sup>3</sup> The charges arise from an incident where Williamsport Bureau of Police Officer Nathan Kendall took the Defendant into custody based on an active PFA warrant and discovered approximately 36.7 grams of crack rocks inside a plastic bag in the Defendant's left pocket, 2.5 grams of white cocaine powder inside a clear plastic bag in the Defendant's front left pocket, an orange scale with powder residue in the Defendant's front right pocket, half a pink pill in the Defendant's right cargo pocket, and 0.4 grams of loose yellow crack rock inside his left cargo pocket during a search incident to arrest.

A preliminary hearing was held on August 16, 2022, at which time Williamsport Bureau of Police Officer Nathaniel Kendall testified and all charges were held for Court. The transcript of the preliminary hearing was admitted at the Omnibus Pretrial Hearing as Commonwealth's Exhibit 5. Arraignment, scheduled for September 12, 2022, was waived by the Defendant. The Defendant's Omnibus Pretrial Motion was filed on October 12, 2022. There were a series of continuances granted before the hearing on the Omnibus Pretrial Motion was scheduled for May 23, 2023. At that time, the Commonwealth was prepared to proceed and the

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

<sup>2</sup> 35 P.S. § 780-113(a)(16).

<sup>3</sup> 35 P.S. § 780-113(a)(32).

Defendant failed to appear. The Defendant's Omnibus Pretrial Motion was dismissed in light of his failure to appear. On January 26, 2024, Defendant's counsel filed a Motion to Reinstate Omnibus Pretrial Motion. On February 12, 2024, after a pre-trial conference, the Court entered an Order without objection from the Commonwealth reinstating the Omnibus Pretrial Motion. The hearing on Defendant's Omnibus Pretrial Motion was held on February 22, 2024.

***Suppression hearing testimony***

At the hearing on the suppression motion on February 22, 2024, the Commonwealth called two witnesses. The first witness was Detective Curt Laudenslager (Laudenslager). He testified that he is employed by the Lycoming County District Attorney's Office, assigned to the Narcotics Enforcement Unit (NEU), and that he has been involved in nearly 95% of the 1200 investigations conducted by the NEU during the six years he has been employed there. Laudenslager further testified that the majority of the cases since 2020 have involved cocaine and crack cocaine and he has been qualified as an expert in the field of possession with intent to deliver narcotics more than ten times. Laudenslager was qualified as an expert in the field of possession with intent to deliver narcotics for purposes of this hearing.

Laudenslager testified that he reviewed photos of the materials that were seized from the Defendant on August 3, 2022, which were admitted as Commonwealth's Exhibit 1. Laudenslager was also shown a Drug Identification sheet from the Pennsylvania State Police Bureau of Forensic Services, Wyoming Regional Laboratory, which was admitted as Commonwealth's Exhibit 2. This report contained information about 4 items seized from the Defendant on August 3, 2022, which were sent to the lab for testing. The conclusions from the lab report indicated the following:

- CONCLUSIONS:
- 1 The chunky substance in item 1.1 weighed 0.44g +/- 0.01g and contained cocaine (Schedule II)
  
  - 2 The chunky substance in item 2.1 weighed 34.77 g +/- 0.01g and contained cocaine (Schedule II)
  
  - 3 The powder in item 3.1 weighed 1.53g +/- 0.01g and contained cocaine (Schedule II)
  
  - 4 The tablet in item 4.1 weighed 0.10g +/- and contained 3, 4-methylenedicycymethamphetamine (Schedule 1)

(Com. Ex. 2). Notably, the Defendant's counsel stipulated to the lab results. Laudenslager testified, with regard to the 34.77g package, that in his experience that amount of cocaine is not consistent with personal use and a conservative estimate of its street value would be \$3,500. Additionally, when asked about the presence of a digital scale, Laudenslager testified that when an individual has one in his possession in close proximity to such a large amount of crack cocaine, he possessed the crack cocaine with the intent to deliver it, as there would be no need for the scale other than to prevent the dealer from overserving the client. Finally, Laudenslager testified that there was no means of ingestion found on the Defendant when he was arrested and in his experience a street user is seldom encountered without a means for ingesting drugs. Despite testifying on cross-examination that there were no baggies or multiple phones found on the Defendant, that the smaller amounts of drugs could be used for personal use if they were possessed alone and with a means for ingestion, and the amount of cash he was carrying was not consistent with amounts carried by drug dealers, Laudenslager testified that it was his

opinion to a reasonable degree of professional certainty that the Defendant possessed the drugs with the intent to deliver them.

The Commonwealth also called Williamsport Bureau of Police Officer Nathaniel Kendall (Kendall) to testify at the Omnibus hearing. Kendall testified that he was working on the night of August 3, 2022, and that he was familiar with the Defendant due to a prior domestic incident which resulted in a Protection from Abuse Order being entered against the Defendant. Kendall testified that he became aware of an arrest warrant for the Defendant for the violation of the PFA while looking through the warrant drawer at the station, which he typically does once per week. The arrest warrant was admitted as Commonwealth's Exhibit 3.

Kendall further testified that on the night of August 3, 2022, he was on routine patrol driving westbound on 4<sup>th</sup> Street in the City of Williamsport when he saw the Defendant riding a bike on the street. Kendall stopped the Defendant at the intersection of W. 4<sup>th</sup> and Hepburn Streets, reached out to dispatch to confirm that there was still an active warrant and radioed to other officers to assist for safety purposes. As Kendall took the Defendant into custody, Officer Stevens ran the Defendant's name through NCIC on the in-car computer and confirmed the existence of an active warrant for the PFA violation. Kendall testified that he searched the Defendant incident to the arrest and what he seized was consistent with what was shown in Commonwealth's Exhibits 1 and 2.

On cross-examination, counsel for the Defendant questioned Kendall about an incident report which was admitted as Commonwealth's Exhibit 5, wherein a line at the bottom of the document stated "THE FOLLOWING IS A PSP PROTECTION ORDER RECORD. DO NOT SEARCH, DETAIN OR ARREST BASED . . ." Kendall explained that if there was simply a

PFA against the Defendant there would not have been reason to detain or search him.

However, Kendall pointed to the top of the Officer Report and indicated that if there is a warrant for the individual it will say "WANTED." Kendall testified that he would not have taken the Defendant into custody if he only had a PFA but he believed that there was a warrant for the Defendant's arrest based upon what he had seen in the drawer at the station, which was confirmed by another officer running the Defendant's name through NCIC.

### ***Petition for Writ of Habeas Corpus***

Defendant contends that the Commonwealth failed to establish a *prima facie* case on the charges of possession with the intent to deliver and possession 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).

In the present case, the Defendant was only charged with one count of Possession with Intent to Deliver (PWID), related to the 34.77g of crack rocks confirmed by the Pennsylvania State Police lab. A person commits the offense of possession with intent to deliver 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). “Possession with intent to deliver can be inferred from the quantity of the drugs possessed along with the other surrounding circumstances.”

*Commonwealth v. Little*, 879 A.2d 293, 297 (Pa. Super. 2005). Here, Laudenslager testified that although some crack cocaine users visit drug dealers up to five times per day, it would be unlikely for a heavy user to carry a week’s worth of cocaine on his person. Although the Defendant did not have any packaging materials on him when he was searched, he also did not have any means of ingestion for the drugs. He was, however, in possession of a digital scale. Viewing the evidence in the light most favorable to the Commonwealth and drawing all reasonable inferences therefrom, the Court finds that the Commonwealth met its burden of establishing a *prima facie* case with regard to Count 1, Possession with Intent to Deliver.

The Defendant’s Omnibus Pretrial Motion also alleges that the Commonwealth failed to establish that any items were controlled substances and therefore the Possession of a Controlled Substance charges should be dismissed. At the time of the preliminary hearing and the subsequent filing of the Omnibus Pretrial Motion on October 12, 2022, counsel for the Defendant did not have the Pennsylvania State Police lab report. The lab report, dated

November 18, 2022, and entered as Commonwealth's Exhibit 2, identifies three of the four items that were found on the Defendant on August 3, 2022, as cocaine, a Schedule II controlled substance. These items formed the basis for the Possession of a Controlled Substance charges in Counts 2-4 of the Information. Defendant's counsel stipulated to the lab report at the hearing on his Omnibus Pretrial Motion. Therefore, the Court finds that the Commonwealth has met its burden of establishing a *prima facie* case with regard to Counts 2-4, Possession of a Controlled Substance.

***Motion to Suppress Arrest and Search***

Defendant alleges that the arresting officer was not aware of whether or not the Defendant was charged with contempt of a PFA Order and therefore his detention and arrest were illegal and any items seized as a result of the arrest are required to be suppressed as fruits of the poisonous tree. This Court disagrees.

At the preliminary hearing Kendall testified that he was aware that there was a warrant for the Defendant's arrest based on a violation of a PFA against the Defendant. (Com. Ex. 5 Prelim. Hrg. 8/16/22, pg. 11). Kendall testified that he had spoken to the officer who had obtained the warrant and that he also personally viewed a copy of the paper warrant at the police station. *Id.* Kendall further testified at the Omnibus hearing that upon seeing the Defendant, he reached out to the County Communication Center to confirm that the warrant was still active and that a fellow officer also ran the Defendant's name through NCIC in the in-car computer and verified the existence of the warrant.

This is not a case of a mistaken warrant. There was an active warrant for the Defendant's arrest based on an alleged violation of a PFA, which commanded law enforcement

to take the Defendant into custody. Defendant was taken into custody and the search was conducted incident to his arrest. The detention, arrest, and search were legal, and therefore the request to suppress the items seized on August 3, 2022, is denied.

### **Conclusion**

The Commonwealth satisfied its *prima facie* burden on the charge of Possession With Intent to Deliver a Controlled Substance as well as the charges of Possession of a Controlled Substance. The stop of Defendant on his bicycle on August 3, 2022, was lawful in that Kendall was aware there was an active warrant for Defendant's arrest based upon an alleged violation of a PFA.

### **ORDER**

**AND NOW**, this 10<sup>th</sup> day of May, 2024, based upon the foregoing Opinion, the Defendant's Omnibus Pretrial Motion filed on October 12, 2022, is **DENIED**.

By the Court,

Ryan M. Tira, Judge

RMT/jel  
cc: DA (MBW)  
Robert A. Hoffa, Esquire



Gary Weber, Esquire  
Jennifer E. Linn, Esq.