

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : **CP-41-CR-714-2023**
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 HARVEY EDWARDS, : **OMNIBUS PRETRIAL MOTION**
 Defendant :

OPINION AND ORDER

Harvey Edwards (Defendant) was charged on April 20, 2023 with Drug Delivery Resulting in Death¹, Possession with the Intent to Deliver², Possession of a Controlled Substance³ and Criminal use of a Communication facility⁴. The charges arise from the death of Jason Booth (Booth) due to a mixed drug toxicity (fentanyl and xylazine) along with the presence of prior cocaine use. Defendant filed an Omnibus Pretrial Motion on September 15, 2023. Hearing was held on December 29, 2023.

Defense Counsel alleges that the Commonwealth has failed to establish its *prima facie* burden on the charge of Drug Delivery Resulting in Death. In addition, Defense argues that the search warrants issued for two cellular phones lacked probable cause to justify their seizure.

The Commonwealth introduced the transcript of the preliminary hearing on May 30, 2023 held before MDJ Christian Frey. They also presented additional testimony at the time of the hearing.

Preliminary Testimony

At the preliminary hearing on May 30, 2023, Kasha Bassett (Bassett) testified as the Commonwealth's first witness. Bassett testified that back on February 24, 2023 she had been

¹ 18 Pa. C.S.A. § 2506(a).

² 35 P.S. §780-113(a)(30).

³ 35 P.S. §780-113(a)(16).

⁴ 18 Pa. C.S.A. §7512(a).

living at 900 Funston Avenue with her best friend, Jason Booth (Booth). N.T. 5/30/2023 at 4. Bassett said that Defendant had come to the apartment the day before and she remembered him sitting at the table. *Id.* at 5. She described that Defendant and Antoinette (Cherry) came over but neither had been invited. *Id.* At some point Cherry left, leaving Defendant in the living room and Booth in his room. *Id.* at 7. The next morning around 9 am Bassett left to walk to the Harvest Moon to get breakfast for her and Booth. *Id.* at 9. Bassett testified that she was nervous about leaving Defendant with Booth. *Id.* She estimated that she left Booth and Defendant alone in the apartment for about one-half hour. *Id.* Once she returned to the apartment, she described that Booth and Defendant were sitting in different parts of the apartment. *Id.* at 10. Bassett then testified that she saw Booth get up and run to his room as he was going to lay down, saying “I don’t feel good.” *Id.* at 10. As she was unwrapping her food, she heard a ‘smack’ and went in to see Booth. *Id.* She repeatedly asked Defendant what was wrong with Booth and he just laughed. *Id.* at 11. When asked why he was laughing, she said that the Defendant said ‘I don’t know, he’s a big guy’ and kept laughing. *Id.* She said that she was very upset knowing that her friend needed help and that something was wrong with him, so she called 911. *Id.* Bassett described that she was freaking out because she had never been in a situation like this before. *Id.* When Bassett was calling 911 she described that the Defendant had been sitting in a chair and got up and got some water and threw it on him. *Id.* at 12. She also called Cherry because she didn’t know what to do. *Id.* Once Cherry got there Bassett said that she tried to ‘Narcan’ him. *Id.* at 13. Bassett estimated that Cherry came to the apartment about five minutes before the ambulance arrived. *Id.* Bassett said that she never saw him with drugs in the apartment ‘like that.’ *Id.* at 15. She also described that on the table in front of where Booth was sitting before he got up to go to his room, she saw residue on the table. *Id.* at 16. She didn’t ever see Booth

using drugs and if he did she didn't know. *Id.* She had known him for more than ten years and never saw him using drugs. *Id.* When she left to get her food, he was not under the influence of any drugs. *Id.* at 17. On cross examination, Bassett testified that she thought that she left for the Harvest Moon to get food around 9:30-10 am that day. *Id.* at 18.

Next to testify was Matt Gotshall (Gotshall), a Lycoming County Adult Probation Officer (APO). He testified that on February 24, 2023 he was working with another APO officer, Jessica Mazzante. Gotshall described that on that day he was directed to go to 900 Funston Ave for the report of an overdose at a residence where two people who are on probation lived. *Id.* When they arrived on the scene, they saw EMS there and he began speaking with Defendant. *Id.* at 27. Ultimately, Gotshall and Mazzante took both Bassett and Edwards into custody and to the jail. *Id.* When they entered the jail through the sallyport, as Defendant was removed from the car, Gotshall began to pat him down. *Id.* at 30. He felt items in his pocket which were a cell phone, lighter, Narcan instructions, a wad of cash, a lighter and a bundle of heroin. *Id.* He described the bundle as individual baggies with a stamped logo 'North Face' gathered in a Ziplock bag. *Id.* Mazzante searched the back seat of the car and found no drugs. *Id.* The police were called to recover the drugs found on Defendant. *Id.* Bassett was searched and they did not find drugs on her. *Id.*

Agent Brittany Alexander (Alexander) of the Williamsport Bureau of Police also testified at the preliminary hearing. She stated that she was called to the scene by patrol to further investigate the circumstances surrounding the overdose. *Id.* at 33. Alexander learned that APO had picked up and incarcerated both Defendant and Bassett. *Id.* While processing the scene, Alexander said that one of the other Agents, Aaron Levan, recovered a cellphone from the scene, which was taken into evidence. *Id.* at 34. She did not discover any drugs near

Booth's body. *Id.* Alexander testified that she received a phone call from Mazzante that Defendant when taken into custody had drugs and a cell phone on him. *Id.* Mazzante also told her that Bassett had none and was accusing Defendant of killing her friend. *Id.* First, Alexander interviewed Bassett. Alexander said that she then obtained a search warrant for both cell phones. *Id.* She was only able to obtain a dump of the phone found at the scene, which she believed to be Defendant's based upon the pictures of him, selfies, pictures of children, and W-2 information and what she described as drug delivery transactions contained in the dump. *Id.* at 35. The other phone had a bad charging port so the information on it was unable to be accessed. *Id.* Alexander also said that she interviewed the other person that she found who was doing drug transactions from the phone information. *Id.* That person would have told Alexander both Cherry and Defendant would have supplied them with drugs the night before; those drugs matched the drugs seized from Defendant as he was searched in the prison. *Id.* at 36. The bags seized from Defendant were 13 purple bags stamped with 'North Face.' Although she did not have the lab results back yet from the testing of the drugs, she described it as "powdery with an appearance consistent with heroin or fentanyl". *Id.* at 37-38. Finally, Alexander said that she had spoken about the results of the autopsy. *Id.* at 36. She remembered it as a combination of xylazine, fentanyl and cocaine. *Id.*

Omnibus Hearing Testimony

At the hearing on the motion, the Commonwealth called additional witnesses. First, they called the Forensic Pathologist, Rameen Starling-Roney, M.D. Dr. Starling-Roney has been a practicing forensic pathologist for 13 years. N.T. Suppression Hearing, 12/29/2023 at 11. He testified that he performed the autopsy on Jason Booth on March 1, 2023. *Id.* at 13. He described that his process is to examine the clothing of the deceased, examine for injury or

disease, and then perform an internal exam with toxicology. *Id.* Dr. Starling-Roney related that the toxicology results revealed multiple drugs or substances including fentanyl⁵, xylazine⁶, benzoylecgonine⁷, topiramate⁸, citalopram⁹, and escitalopram¹⁰. *Id.* at 16-17. He opined that Booth's cause of death was fentanyl and xylazine toxicity with a contributory factor being cocaine use. *Id.* He described the effect of the fentanyl as a narcotic known to suppress respiratory effort which causes death by asphyxiation. *Id.* Xylazine is a potentiator or a substance that makes the effects of heroin worse on the body. *Id.* Dr. Starling-Roney also described that Booth was "morbidly obese, had cardiomyopathy (an enlarged heart) and had prior abdominal surgery." *Id.* at 18. He also opined that despite his physical condition, within a reasonable degree of medical certainty, his death was as a consequence of fentanyl and xylazine toxicity. *Id.* He also found that the presence of the cocaine metabolite was inactive and did not contribute to his death. *Id.*

Agent Alexander also testified at the suppression hearing. As part of her investigation, she was given the controlled substances which had been seized from Defendant at the County prison. *Id.* at 22. She sent them to the Pennsylvania State Police Wyoming labs. *Id.* Alexander identified the lab report from the drugs, Commonwealth's #2, which revealed the substances found on Defendant to be the same combination of fentanyl and xylazine. *Id.* at 23.

Habeas Motion

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

⁵ Fentanyl is a synthetic opioid (narcotic) to treat severe pain.

⁶ Xylazine is a tranquilizer used by veterinarians for sedation.

⁷ Benzoylecgonine is a breakdown product or metabolite of cocaine.

⁸ Topiramate is an anticonvulsant/anti-seizure medication.

⁹ Citalopram is a selective serotonin reuptake inhibitor (SSRI) for treating depression commonly sold as Celexa.

¹⁰ Escitalopram is also a SSRI, commonly sold as Lexapro used for generalized anxiety disorder (GAD) and depression.

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. Dantzer*, 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).

Drug Delivery Resulting in Death

A person commits a felony of the first degree if the person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.

233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance. 18 Pa. C.S.A. § 2506.

The information the Commonwealth presented at both the preliminary hearing and the omnibus motion establishes *prima facie* the elements of the offense of Drug Delivery Resulting in Death.

Bassett testified that she did not have drugs in her apartment. Defendant came over to the apartment and when Bassett came back, Booth was acting weird, said that he wasn't feeling well and collapsed. Bassett noticed a residue on the table inferring that it wasn't there before she left. Even though Bassett called 911, she called Cherry because she did not know what to do. Cherry came over to the apartment just before EMS arrived and administered Narcan to Booth in an attempt to revive him. The only person in the apartment prior to Booth's collapse was Defendant. Bassett described that when she asked Defendant what was wrong, "he just laughed" and "threw water on him." When committed to the prison, Defendant had what appeared to be a bundle of heroin and a makeshift straw made out of a \$1.00 bill. Defendant also had instructions to administer Narcan when searched.

After testing, the lab report from the State Police identified the substance on the Defendant was a combination of fentanyl and xylazine. The forensic pathologist testified that Booth died from a toxic level of fentanyl and xylazine. The Court finds that based upon the totality of the circumstances, Defendant was the source of the substance that resulted in Booth's overdose and ultimate death. The Commonwealth has presented *prima facie* evidence that the Defendant committed the offense of Drug Delivery resulting in Death.

Search Warrant

In his motion, Defendant contends that the search warrant affidavit for the search of the cell phones did not contain probable cause to search either the cell phone found at the scene and on Defendant.

At the hearing, Agent Alexander testified that the cell phone found at the scene was the only phone that was able to be searched. Due to a faulty charging port, the phone which was taken from Defendant when he was processed at the county prison was unable to be searched.

The affidavit of probable cause for the first warrant states:

On February 24, 2023 officers of the Williamsport Bureau of Police were dispatched to 900 Funston Ave. for a reported cardiac arrest, and possible drug overdose. Once on scene, officers discovered Jason Booth deceased on the living room floor inside the residence. There was evidence next to Booth which suggested Narcan had been utilized in attempts to revive him prior to police arrival. Additionally, police located a blue and Gray Motorola cell phone in the area of Booth's body. Officers also encountered Harvey Edwards on the scene, standing in the doorway of the apartment. It was learned there was a warrant for Edwards and he was subsequently picked up and transported to the Lycoming County Prison by Adult Probation. Once at the prison inside of the sally port, Agent Gotshall of the Lycoming County Probation Office conducted a search of Edwards person. During so he located 13 heroin bags bundled in a rubber band, a \$1.00 bill rolled in a straw fashion which would typically be used for ingestion of narcotics, as well as the cell phone believed to belong to Edwards. Additionally, Narcan instructions were located inside Edward's pants pockets.

Lastly, another individual on scene, Kasha Bassett, was also taken into custody by probation officers and transported to the Lycoming County Prison. Period. During transport, Bassett told officers that she had gone to the store to get some food with her father and when she returned, she observed Booth walking from the living room to the bedroom and acting weird. Booth told her he did not feel well before falling to the floor. Bassett then confronted Edwards, who told her that Booth would be fine and suggested that he "took all of it" meaning narcotics. However, Jason Booth never regained consciousness and was pronounced dead by the Lycoming County Coroner's Office.

A preliminary toxicology screen of Jason Booth suggested a mixture of drugs in his system, including in excess of 4000 ng of fentanyl.

On March 1st, 2023, the Lycoming County Coroner's Office transported to Jason Booth's body to Lehigh Valley for an autopsy.

Your affiant knows from previous investigations and experience that cell phones have become a primary means of communication between individuals, especially used by narcotics users and dealers. I know that cell phones retain identifying information about the owner/possessor of the phone as well as messages and phone call logs. Your affiant submits that there is probable cause to believe that contained within the cell phone collected from the overdose death scene of Jason Booth is additional evidence supporting the delivery of a controlled substance resulting in death.

An additional search warrant was authorized by MDJ Biichle at the same time with the only change made to the last sentence:

Your affiant submits that there is probable cause to believe that contained within the cell phone collected from Harvey Edwards is additional evidence supporting the delivery of a controlled substance resulting in death.

Was there sufficient probable cause for the search warrants

Defense counsel challenges the two search warrants obtained by the City Police identified as Commonwealth's #4, to search the two phones seized in the case: the one found by Booth's body and the other seized from Defendant as he was booked into the county prison. Although only one phone was able to be accessed at the time of the hearing, since the warrants are virtually identical the Court will review them both.

Both the Fourth Amendment of the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution protect citizens from unreasonable, searches and seizures. *Commonwealth v. Burgos*, 64 A.3d 641, 648 (Pa. Super. 2013). The Fourth

Amendment has a strong preference for searches conducted pursuant to warrants.

Commonwealth v. Leed, 186 A.3d 405, 413 (Pa. 2018). Search warrants may only issue upon probable cause and the issuing authority may not consider any evidence outside of the affidavits. Pa. R. Crim. P. 203 (B). The affidavit of probable cause must provide the magistrate with a substantial basis for determining the existence of probable cause. *Leed*, supra (quoting *Illinois v. Gates*, 462 U.S. 213, 239 (1983)).

In order to consider the Defendant's claim that there was insufficient probable cause, the parties agree that the Court must restrict its analysis to the information contained in the affidavit of probable cause attached to the warrant, or its "four corners." The Court "must limit [its] inquiry to the information within the four corners of the affidavit submitted in support of probable cause when determining whether the warrant was issued upon probable cause."

Commonwealth v. Arthur, 62 A.3d 424, 432 (Pa. Super. 2013).

"Probable cause exists where the facts and circumstances within the affiant's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a search should be conducted." *Leed*, supra (quoting *Commonwealth v. Johnson*, 615 Pa. 354, 42 A.3d 1017, 1031 (2012) (internal quotation marks and citation omitted). The affidavit of probable cause "must provide the magistrate with a substantial basis for determining the existence of probable cause[.]" *Gates*, 462 U.S. at 239, 103 S.Ct. 2317. 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.3d 1076, 1081 (Pa. Super. 2018).

Defense counsel primarily asserts that the police may not seize a phone when the owner is not known and no information ties it to the investigation at hand. By inference the Court assumes that Defense Counsel also argues that search warrants may not be used as an investigative tool without more information. Commonwealth alleges that pursuant to *Commonwealth v. Jones*, 988 A.2d 649 (Pa. 2010) there was substantial evidence in the record to support the MDJ’s decision to authorize a warrant. 988 A.2d 655-656.

In *Jones*, the police were responding to a report of shots fired on campus. They had information that someone matching Jones’ description was running from the scene after they heard shots fired, the victim was identified by others living on campus, and Jones and the victim lived together in the dormitory on campus. *Id.* at 651-652. Jones told the police that the victim had left the room and did not come back. *Id.* Police then obtained a warrant for the victim’s room seeking evidence of identity, cell phone, pager, drugs, paraphernalia, handguns and bullets. *Id.* The Pennsylvania Supreme Court held that [t]here was no question that a crime had been committed and that the police could, with fair probability, expect to find evidence related to that crime in what was reasonably believed to be the victim's dormitory room, including evidence concerning the positive identification of the victim and any persons with whom the victim may have had recent contact or with whom he may have been involved. *Id.* at 657.

Here, the information the police had at the time they requested the search warrant was as follows. Alexander spoke with Booth’s roommate who said that Defendant came over to the apartment and when she left to go get food, she discovered a residue on the table which wasn’t

there before she left. She described that she saw Booth acting weird, telling Bassett that he did not feel well and saw him collapse and was unable to be revived. Bassett also told police that Defendant told her that he would be fine and said that he “took all of it.” There was an expended cartridge of Narcan next to Booth’s body along with a cell phone. When Defendant was taken into custody, he had the instructions on how to administer Narcan in addition to a \$1.00 bill rolled up like a straw and 13 bags of what the police believed to be heroin and a black cell phone.

Clearly, the police had information about a crime an overdose of drugs which resulted in Booth’s death. It is reasonable to believe the phone lying next to Booth was his and possibly used to arrange Defendant’s visit to 900 Funston Ave. It is also reasonable to believe that if Defendant was the source of those drugs the phone would contain information about the drugs Booth took which resulted in his overdose and subsequent death. Bassett also told the police that Defendant said that he “took all of it.” Based upon the statements of Bassett, it appeared that Defendant knew what was happening to Booth and that he had taken something to cause the overdose. Therefore, the police could, with fair probability, reasonably expect to find evidence of Defendant’s involvement in a crime in either or both cell phones.

The Court finds that the two search warrants contained sufficient probable cause to seize and conduct searches of the two phones.

Conclusion

This Court finds the Commonwealth presented enough evidence at the preliminary hearing to establish a *prima facie* case for the charge of Drug Delivery resulting in Death.

In reviewing the totality of the circumstances for the warrants, Agent Alexander had sufficient probable cause to believe that both the cell phone found at the scene of Booth's overdose as well as the one on Defendant would contain evidence of a crime. Therefore, Commonwealth exhibits three and four each contain sufficient probable cause to request a search of the phones seized from the ground next to Booth and from Defendant as he was processed at the county prison.

ORDER

AND NOW, this 4th day of June, 2024, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Omnibus Pretrial Motion in the nature of a Petition for Habeas Corpus is hereby **DENIED**.

The motion to suppress is also **DENIED**.

By the Court,

Nancy L. Butts, President Judge

NLB/

cc: DA (M. Welickovitch)
Tyler S. Calkins, Esquire
Gary Weber, Esquire
Jerri Rook