

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

COMMONWEALTH OF PENNSYLVANIA	:	
	:	No. CR-968-2024
v.	:	
	:	
TYRICE BOWEN,	:	Omnibus Pretrial Motion
Defendant	:	

OPINION

On November 20, 2024, the Court heard the Defendant’s Omnibus Pretrial Motion that contained a Petition for Writ of Habeas Corpus, a Motion for Disclosure of Criminal Charges, Promises of Leniency, and/or Immunity, and a Motion to Reserve Right to file Additional Pretrial Motions. The Defendant was arrested and charged with eight counts each of Delivery of a Controlled Substance and Criminal Use of a Communication Facility, and two counts of Conspiracy to Deliver a Controlled Substance. A preliminary hearing was held on July 9, 2024, and following the hearing, Magisterial District Judge Christian Frey dismissed Counts 1, 5, and 7 of the initial Criminal Complaint. The remaining charges were bound for court. Arraignment was scheduled for August 5, 2024, and was waived by the Defendant.

As of the date the Omnibus Pretrial Motion was filed on September 4, 2024, PACfile did not contain a copy of the Criminal Information nor did the Defendant receive a copy. On September 25, 2024, the Commonwealth filed the Criminal Information with the charges that were bound for court from the preliminary hearing. Accordingly, the Defendant is charged in this matter with four counts of Criminal Use of a Communication Facility and two counts of Delivery of a Controlled Substance for events occurring in and around March and April of 2023.

At the hearing on November 26, 2024, the Commonwealth submitted into evidence a disc containing the audio recording of the preliminary hearing as Commonwealth Exhibit 1, and the Defendant submitted a written transcript of the preliminary hearing as Defense Exhibit 1. The Commonwealth did not provide any further legal argument. The Defendant raised the issue that the counts for Criminal use of a Communication Facility outweigh the amount of charges for Delivery of a Controlled Substance. The Commonwealth indicated its intent to refile the charges against the Defendant for Delivery of a Controlled Substance.

Background

At the preliminary hearing, the Commonwealth presented Michael Caschera with the Lycoming County Narcotics Enforcement Unit (Commonwealth Exhibit 1, Preliminary Hearing Transcript, 07/09/2024, 0:20) to provide testimony. Detective Caschera described each of the five controlled buys conducted in this matter prior to the arrest of the Defendant.

Detective Caschera testified that in or around March of 2023, a confidential informant contacted the Lycoming County Narcotics Enforcement Unit (“LCNEU”) and advised the detectives that he or she could purchase drugs from an individual in the area known as “Ace.” (*Id*, 0:38-1:01). Detective Caschera further stated that he was already aware of an individual in the Williamsport, Lycoming County area known as “Ace,” and Detective Caschera, independent of the confidential informant’s information, knew “Ace” to be Tyrice Bowen. (*Id*, 1:08).

On or around March 13, 2023, the LCNEU set up a controlled buy involving the confidential informant. (*Id*, 1:25-1:48) Prior to the transaction, the confidential informant was searched by detectives to negate the presence of drugs, money, or other contraband, and the confidential informant was cleared (*Id*, 2:45) and provided with pre-recorded police funds. (*Id*, 2:58) The confidential informant contacted an unwitting informant who traveled with the

confidential informant to 673 Grier Street to conduct the transaction. (*Id*, 2:44-3:06). At 673 Grier Street, the unwitting informant exited the vehicle after the confidential informant provided the cash and entered 673 Grier Street through a second-floor balcony entrance. (*Id*, 3:11). The unwitting informant provided the cocaine to the confidential informant who then turned the contraband over to the LCNEU who field-tested the product and it came back positive as cocaine. (*Id*, 3:45)

On March 14, 2023, the LCNEU established a second controlled buy with the same confidential informant. (*Id*, 3:58). Detective Caschera directed the confidential informant to contact the same unwitting informant. (*Id*, 4:10). The unwitting informant confirmed with the confidential informant, and in the presence of Detective Caschera, that the informants would return to the same address, 673 Grier Street, Williamsport, Pennsylvania. (*Id*, 4:22). The confidential informant was searched to negate the presence of any drugs, money, or contraband, and was cleared and given pre-recorded police funds. (*Id*, 4:33). For the second buy, an undercover detective accompanied the confidential and unwitting informants to the 673 Grier Street address. (*Id*, 6:20) At the location, the unwitting informant again entered the apartment of 673 Grier Street through the second-floor balcony entrance. Then the unwitting informant returned to the confidential informant's vehicle and turned over drugs later field-tested positive as cocaine. (*Id*, 6:27).

Immediately after the aforementioned second controlled buy, Detective Caschera approached the unwitting informant and made contact with him or her and identified himself as a detective working with the LCNEU, (*Id*, 6:52) and that the undercover detective who accompanied the informants to 673 Grier Street is also a detective. (*Id*, 6:58). Detective Caschera then Mirandized the unwitting informant who stated that he or she understood (*Id*,

7:00) and still provided a full confession regarding the events that occurred in the first two controlled buys. (*Id*, 7:09).

At the preliminary hearing, it was revealed through the testimony that the confidential informant involved in the first two controlled buys was deceased by the date of the hearing. (2:04) Accordingly, the Commonwealth stated that the unwitting informant would be available to testify at the trial in this matter. (*Id*, 2:08).

On March 20, 2023, a third controlled buy in which a second and different confidential informant was utilized. (*Id*, 8:42). The LCNEU utilized a different confidential informant who was able to directly facilitate dealings between “Ace” and the confidential informant. (*Id*, 25:12-25:25). The confidential informant contacted who he or she knew as “Ace” directly through the cell phone number that is identical to the number contacted in the first two controlled buys. (*Id*, 9:00). The confidential informant made the phone call to “Ace” in the presence of detectives. (*Id*, 10:00). Detective Caschera testified that he personally heard the voice on the other end of the phone call, and at that time, the voice was not identifiable to Detective Caschera. (*Id*, 10:10). The parties, “Ace” and the confidential informant, arranged the transaction for the sale and delivery of cocaine to occur at 673 Grier Street. (*Id*, 10:35-10:45). Prior to the controlled buy, the confidential informant was searched to negate the presence of any drugs, money, or contraband, and the informant was provided with pre-recorded police funds. (*Id*, 8:50 and 11:07). Detectives maintained surveillance on the confidential informant to 673 Grier Street. (*Id*, 11:00) Detective Caschera observed the confidential informant exit the undercover vehicle, (*Id*, 11:17) walk up the stairs to the second-floor balcony to enter the apartment, (*Id*, 11:19) and met with the individual known as “Ace,” (*Id*, 11:30) and exchanged the pre-recorded police funds for cocaine. (*Id*, 11:38). The confidential informant exited the apartment and immediately returned to the undercover

vehicle where he or she turned over the drugs that field-tested positive for cocaine. (*Id*, 11:40). The confidential informant was then searched to negate the presence of drugs, money, or contraband. (*Id*, 11:48).

On April 12, 2023, a fourth controlled buy was conducted, and followed a similar background as in the third controlled buy, stated Detective Caschera. (*Id*, 11:54). The confidential informant contacted the same individual known as “Ace” as in controlled buy number three and utilized the same phone number as the previous controlled buy procedures. (*Id*, 12:06). The parties arranged the sale of cocaine for money (*Id*, 12:15) to occur at 673 Grier Street. (*Id*, 12:29). The confidential informant spoke with the individual, in the presence of detectives, the voice was familiar, and identified as the same voice heard over the phone in the third controlled buy. (*Id*, 12:36-12:56). Prior to the controlled buy, the confidential informant was searched to negate the presence of any drugs, money, or contraband, and the informant was provided with pre-recorded police funds. (*Id*, 13:03). However, when the informant arrived at the apartment at 673 Grier Street, the individual known as “Ace” was not present. (*Id*, 13:22). When the informant spoke with “Ace” he advised the informant that he would be along shortly and to wait at the location. (*Id*, 13:29). As more time elapsed, the individual who lives at the apartment called “Ace” and told him someone was waiting. (*Id*, 13:37). The resident¹ contacted another individual who directed the resident to retrieve the cocaine and deliver it to the informant. (*Id*, 15:15). Detectives were able to identify the resident through their familiarity with the individual (*Id*, 27:26-27:53). The informant received the cocaine from the resident and immediately turned it over to the detectives who field-tested the substance, and it came back positive as cocaine. (*Id*, 15:33).

¹ The resident was identified as Mr. Ronald Crowe, the legal and sole lessee of the apartment, 673 Grier Street. (26:59).

On April 18, 2023, the Lycoming County Narcotics Enforcement Unit facilitated a fifth controlled buy. (*Id*, 15:53). Detective Caschera testified that prior to the date for the fifth controlled buy, the department sought and received a court order from the Honorable Nancy Butts, President Judge, that permitted and authorized Detective Caschera to utilize audio/visual surveillance within the residence at 673 Grier Street. (*Id*, 15:55-16:08).

Detective Caschera stated that the same confidential informant as in controlled buy three and four was utilized again. (*Id*, 16:14). Detective Caschera stated that the confidential informant again contacted the same individual using a different phone number, (*Id*, 28:50-29:00), as in controlled buy three and controlled buy four. (*Id*, 16:18-16:30). The parties arranged for a transaction of cocaine for money to occur at 673 Grier Street. (*Id*, 17:12). Detective Caschera further stated that the voice on the other end of the phone call was the same as the prior two controlled buys. (*Id*, 16:49). The confidential informant was again searched to negate the presence of any drugs, money, or contraband, (*Id*, 16:59). The confidential informant was transported by an undercover officer to 673 Grier Street. (*Id*, 17:33). The informant was equipped with consensual surveillance equipment that provided live audio and visual feed. (*Id*, 17:54). The confidential informant was transported to the location by an undercover officer. (*Id*, 17:38). Through the consensual surveillance feed, the detectives were able to observe the confidential informant exit the undercover vehicle, enter 673 Grier Street, and meet with “Ace.” (*Id*, 17:56-18:22). At that point and due to Detective Caschera’s familiarity, he was able to immediately identify “Ace” as the Defendant, Tyrice Bowen through the live audio and visual feed on the confidential informant’s person. (*Id*, 18:26). Moreover, Detective Caschera was able to identify the voice of the Defendant from the phone conversations occurring in his presence in previous controlled buys. (18:45-19:09). The undercover detective was able to watch the live feed of the transaction and observed the

confidential informant exchange the pre-recorded police funds for cocaine which was delivered by the Defendant. (*Id.*, 19:30). The confidential informant then exited the apartment and immediately returned to the undercover vehicle where he or she turned over the cocaine which field-tested positive as cocaine. (*Id.*, 19:41-19:50).

The Defendant was subsequently charged with eight counts of criminal use of a communication facility and delivery of a controlled substance, and two counts of conspiracy to deliver controlled substances. At the preliminary hearing, one count of criminal use of a communication facility and two counts of delivery of a controlled substance were dismissed. Accordingly, the Commonwealth file the Criminal Information after the Defendant filed his Omnibus Motion. Therein, the Defendant is charged with two counts of Delivery of a Controlled Substance for events occurring on March 14, 2023, and April 18, 2023; and, four counts of Criminal Use of a Communication Facility without an indication of any corresponding dates to underlying allegations.

I. Defendant's Petition for Writ of Habeas Corpus

In his Motion, Defendant argued that the Commonwealth failed to present any evidence with respect to the two counts charging delivery of or possession with intent to deliver controlled substances. More specifically, Defendant argued that the Commonwealth failed to present evidence that the Defendant did deliver or possessed with intent to deliver controlled substances on March 14, 2023, and April 18, 2023.

Additionally, the Defendant argued that the Commonwealth failed to establish a *prima facie* case against the Defendant for the charges bound for court. More specifically, the Defendant argued that the Commonwealth failed to present any evidence that the Defendant used a communication facility in furtherance of a felony.

At the hearing on the Motion, the Commonwealth submitted the audio recording of the preliminary hearing in support of its *prima facie* case did not present any argument or testimony. Also, at the hearing on the Motion, the Defendant contested that the Criminal Information charges the Defendant with more counts of Criminal Use of a Communication Facility than there are counts for any allegations that the Defendant committed or facilitated an underlying felony. The Commonwealth indicated its intent to refile charges against the Defendant. To the date that this Opinion and Order are issued, the Commonwealth has not pursued the filing of additional charges.

The Commonwealth meets its burden that a *prima facie* case exists when the evidence produced meets every material element of the charged offenses and the defendant's complicity therein. *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 (Pa. Super. 2016). This burden may be met by utilizing the evidence available at a preliminary hearing and also may produce 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. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). Rather, the Commonwealth bears the burden of establishing a *prima facie* case which requires the Commonwealth to present evidence of each element of every crime charged. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001); *see also* Pa.R.Crim.P. 141(d). In its consideration, a court does not factor in the weight and credibility of the evidence. *Id.*; *see also Commonwealth 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"). "[T]he 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.” *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). “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. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990).

First, the Defendant is charged with Delivery of a Controlled Substance pursuant to PA.ST.35 P.S. §780-113(a)(30) in counts 2 and 5 of the Criminal Information. Under PA.ST.35 P.S. §780-113(a)(30), “[e]xcept 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” is prohibited within this commonwealth.

The Court finds that sufficient evidence was presented at the preliminary hearing to establish a *prima facie* case against the Defendant for the delivery charges occurring on March 14, 2023, and April 18, 2023. The audio recording from the preliminary hearing established that the Commonwealth provided sufficient evidence to establish each element of Delivery of a Controlled Substance in two of the controlled buys where the Defendant was present, and the identification thereof was not inconclusive. Additionally, in each of the delivery charges, the confidential informant returned with contraband that field-tested positive as cocaine after turning over pre-recorded police funds. Thus, Defendant’s request to dismiss counts 2 and 5 of the Criminal Information is **DENIED**.

In counts 1, 3, 4, and 6 of the Criminal Information, the Defendant is charged with Criminal Use of a Communication Facility pursuant to 18 Pa.C.S.A. Section 7512. Under 18 Pa.C.S.A. Section 7512, “[a] person commits a felony of the third degree if that person uses a

communication facility to commit, cause, or facilitate the commission or the attempt thereof of any crime which constitutes a felony under this title or under the [Controlled Substance, Drug, Device, and Cosmetic Act]. Every instance where the communication facility is utilized constitutes a separate offense under this section.” “Communication facility” is defined under the statute to include “a public or private instrumentality used or useful in the transmission of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part, including but not limited to, telephone, wire, radio, electromagnetic, photoelectronic or photo-optical systems or the mail.” 18 Pa.C.S.A. §7512 (c)“Definition.—“communication facility.”

The Defendant’s inquiry about the disproportionate number of counts of Criminal Use of a Communication Facility to the number of counts of an underlying felony under the Controlled Substance, Drug, Device and Cosmetic Act is answered in *Commonwealth v. Moss*, 852 A.2d 374, 382 (Pa. Super. 2004). The Court in *Moss* concluded that the Commonwealth ultimately bears the burden of proving “(1)[defendant] knowingly and intentionally used a communication facility; (2) [defendant] knowingly, intentionally, or recklessly facilitated an underlying felony; and (3) the underlying felony occurred.” “‘Facilitation’ has been defined as ‘any use of a communication facility that makes easier the commission of the underlying felony.’” *Id.* Moreover, “[i]f the underlying felony never occurs, then Appellants have facilitated nothing...” *Id.*

Here, the Commonwealth failed to provide sufficient evidence to establish the underlying delivery charges that were subsequently dismissed at the preliminary hearing stage. Under the legal precedent, sufficient evidence must be presented to show that an underlying felony occurred and was committed by the defendant alleged to have criminally utilized a communication facility in the facilitation of the underlying felony. Accordingly,

under the totality of the circumstances, and even in the light most favorable to the Commonwealth, the Court finds that the Commonwealth presented insufficient evidence to maintain the additional counts of Criminal Use of a Communication Facility charged against the Defendant. Thus, the Court concludes that since there was insufficient evidence against the Defendant to bound the corresponding delivery charges for court, the Defendant's request is partially **GRANTED** and Count 4 and Count 6 of criminal use of a communication facility are dismissed.

II. Motion for Disclosure of Criminal Charges, Promises of Leniency, and/or Immunity

Defendant's Omnibus Motion contains a request for disclosure by the Commonwealth regarding whether the confidential informant in this matter has a criminal history and the circumstances surrounding his or her cooperation with the Lycoming County Narcotics Enforcement Unit. Moreover, the Defendant requested verifications related to the confidential informant's the credibility and reliability determinations on which the Lycoming County Narcotics Enforcement relied to utilize the confidential informant.

Defendant is entitled to the requested information pursuant to *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and *United States v. Giglio*, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).

The United States Supreme Court held in *Brady* that due process is offended when the prosecution withholds evidence favorable to the accused. *Commonwealth v. Strong*, 563 Pa. 455, 761 A.2d 455, 462 (2000) citing *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). "Where evidence material to the guilt or punishment of the accused is withheld, irrespective of the good or bad faith of the prosecutor, a violation of due process has occurred." *Id.*

Under *Giglio*, “any implication, promise or understanding that the government would extend leniency in exchange for a witness’ testimony is relevant to the witness’ credibility.” *Commonwealth v. Strong*, 563 Pa. 455, 761 A.2d 455, 463 (2000) citing *United States v. Giglio*, 405 U.S. 150, 154, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). Under *Brady* and its progeny, due process has been violated and a new trial is warranted where the prosecution fails to produce material evidence likely to create a reasonable probability that the outcome of the trial would have been different if the evidence had been produced. *Commonwealth v. Strong*, 563 Pa. 455, 761 A.2d 455, 462 (2000) citing *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

At the time the Motion was filed and by the date of the hearing, the Defendant had not yet received the discovery on the confidential informant as requested. At the hearing on the Motion, the Commonwealth indicated that it will provide the requested information. Accordingly, the Defendant’s request is **GRANTED**, and the Commonwealth is directed to provide the requested discovery to the Defendant in a reasonable amount of time prior to trial.

III. Motion to Reserve Right to file Additional Pretrial Motions

The Defendant’s Omnibus Pretrial Motion also requests to Reserve Right to file additional pretrial motions based upon the discovery he receives. At the hearing on the Motion, the Commonwealth indicated its agreement with Defendant’s request. Accordingly, the Motion to Reserve Right to File Additional Pretrial Motions is **GRANTED**.

Accordingly, the Court enters the following Order:

ORDER

AND NOW, this 17th day of June, 2025, based on the testimony and evidence presented, the arguments by the parties, and for the aforementioned reasons:

1. Defendant's Petition for Writ of Habeas Corpus is denied in part and granted in part:
 - a. Defendant's request to dismiss the charges related to Delivery of a Controlled Substance for failure by the Commonwealth to establish a *prima facie* case is **DENIED**;
 - b. Defendant's request to dismiss the excess charges of Criminal Use of a Communication Facility is partially **GRANTED**, and Count 4 and Count 6 are **DISMISSED**.
2. Defendant's Motion for Disclosure of Criminal Charges, Promises of Leniency, and/or immunity is **GRANTED**; and,
3. Defendant's Motion to Reserve Right to File Additional Pretrial Motions is **GRANTED**.

By the Court,

Ryan M. Tira, Judge

RMT/asw
CC: DA
Robert Hoffa, Esquire
CA
Gary Weber, Esquire-Lycoming Reporter