

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:	
	:	
vs.	:	CR-442-2021
	:	
DEMETRIA TENNISON,	:	Omnibus Pretrial Motion
Defendant	:	
* * * * *	:	
COMMONWEALTH	:	
	:	
vs.	:	CR-443-2021
	:	
JORDAN ARTLEY,	:	Omnibus Pretrial Motion
Defendant	:	

OPINION AND ORDER

Demetria Tennison (Defendant Tennison) and Jordan Artley (Defendant Artley) were arrested following the execution of an arrest warrant by the U.S. Marshals Fugitive Task Force for Defendant Artley on March 10, 2021. Defendant Tennison was charged with Receiving Stolen Property¹, Possession with Intent to Deliver², Possession of a Controlled Substance³, Possession of Drug Paraphernalia⁴, and Criminal Conspiracy⁵. Defendant Artley was charged with Possession with Intent to Deliver⁶, Possession of a Controlled Substance⁷, Possession of Drug Paraphernalia⁸, Criminal Conspiracy⁹, two (2) counts of Receiving Stolen Property¹⁰, and two (2) counts of Persons not to Possess a Firearm¹¹.

¹ 18 Pa.C.S. § 3925(a).

² 35 Pa.C.S. § 780-113(a)(30).

³ 35 Pa.C.S. § 780-113(a)(16).

⁴ 35 Pa.C.S. § 780-113(a)(32).

⁵ 18 Pa.C.S. § 903.

⁶ 35 Pa.C.S. § 780-113(a)(30).

⁷ 35 Pa.C.S. § 780-113(a)(16).

⁸ 35 Pa.C.S. § 780-113(a)(32).

⁹ 35 Pa.C.S. § 780-113(a)(30).

¹⁰ 18 Pa.C.S. § 3925(a).

¹¹ 18 Pa.C.S. § 6105(c)(1).

Defendant Artley filed a timely Omnibus Pretrial Motion on June 8, 2021 and Defendant Tennison filed her Omnibus Pretrial Motion on May 25, 2021. This Court held a hearing on the motions on August 5, 2021. Counsel for both parties were instructed to file briefs on the issues detailed in the pretrial motions and discussed at the hearing. Counsel for Defendant Artley filed a brief on September 21, 2021 and Defendant Tennison filed a brief on October 15, 2021. The Commonwealth filed an untimely brief on November 2, 2021. Defendant Tennison also filed a response to the Commonwealth's brief on November 9, 2021. In their Motions, Defendants assert several suppression issues and a habeas corpus petition for the Court to consider.

Preliminary Hearing and Background

At the preliminary hearing for Defendant Artley, Officer Robert Mausteller (Mausteller) of the Old Lycoming Township Police Department testified on behalf of the Commonwealth. The Commonwealth presented a recording of the preliminary hearing, marked as Commonwealth's Exhibit 1. On March 10, 2021, at approximately 7:30 a.m., Mausteller assisted the U.S. Marshals in the execution of an arrest warrant for Defendant Artley at 2307 ½ Lycoming Creek Road in Williamsport. Mausteller testified that he held the perimeter while the Marshals made entry into the home. Defendant Artley was arrested and two additional individuals were detained. Those people were later identified as Defendant Tennison and Jacob Bauer. Mausteller was advised by the Sheriff's office that contraband was located in the living room of the home, specifically marijuana, a handgun, and scales. Mausteller eventually went inside and observed a clear plastic bag containing marijuana, a digital scale and a black and silver handgun. Also located in the residence was a food sealer and a large container of plastic

bags. Mausteller then applied for a search warrant for the home that was granted. Mausteller executed the search warrant at approximately 10:30 a.m.

Mausteller testified that he had been advised by other law enforcement that Defendant Artley's vehicle, a silver Dodge Charger, contained a bullet hole on the side and marijuana flakes on the driver's side seat. Mausteller took photos of the vehicle in the corresponding locations where the bullet hole and marijuana flakes were located and arranged a tow for the car to be searched following the issuance of a separate search warrant. Mausteller stated that he entered the home to conduct the search warrant following his brief investigation of Defendant Artley's vehicle. Inside the kitchen was food sealer bags with marijuana residue. Police also discovered three (3) backpacks. Mausteller testified that upon searching these bags, one contained three (3) large bags of marijuana in pound quantities. In another backpack, Defendant Tennison's college identification card and two (2) firearms and paraphernalia were located. Next to that backpack was a laptop and PO Mazzante advised that Defendant Tennison had removed the laptop from the backpack.

Mausteller also noted that Defendant Artley had told him that he stayed in that residence about two (2) to three (3) times a week, had mail sent there, and kept his clothing and possessions there as well. Mausteller testified that law enforcement did not find any indicia of ownership of any of the backpacks for Defendant Artley. Mausteller stated that additional scales were found inside the home as well as firearm magazines and a suppressor, edibles in food bags pursuant to the search warrant. Police found two (2) shoeboxes under a mattress, one with Defendant Artley's name on it that contained 6,000 dollars in cash. Mausteller indicated that, based on his training and experience, these evidentiary discoveries, namely the large amount of cash, the scales, and the large quantity of marijuana, lead him to believe that the

drugs were for distribution and not personal use. Following the search of the home, Mausteller applied for a search warrant for Defendant Artley's vehicle that was executed on March 18, 2021. In the trunk was a stolen 50-caliber desert eagle firearm. Identification for Defendant Artley's ownership of the car, backpack, men's clothing, receipts were also discovered in the vehicle. Mausteller categorized Defendant Artley as a fugitive from justice that prevents him from owning a firearm. Mausteller also testified that, after being *Mirandized*, Jacob Bauer had informed him that Defendant Artley and Defendant Tennison were in a relationship.

At the hearing on this motion, Deputy Sheriff Christopher Warden (Warden) of the Lycoming County Sheriff's Office testified on behalf of the Commonwealth. Warden testified that in May of 2020, the Scranton City Police Department issued an arrest warrant for Defendant Artley for flight to avoid apprehension, possession with intent to deliver narcotics, and lesser offenses. N.T. 8/5/2021, at 7-8. The address on the arrest warrant was 2307 ½ Lycoming Creek Road in Williamsport. Id. at 8. The Commonwealth submitted this arrest warrant, marked as Commonwealth's Exhibit 2. Warden testified that the Scranton case against Defendant Artley appeared to be inactive. Id. at 28. He also testified that he was not aware of any steps being taken by the Scranton Police to arrest Defendant Artley or bring him to Lackawanna County. Id. at 29-30. Warden stated that he was involved in the execution of the warrant to arrest Defendant Artley. Id. at 7. Warden believed this address to be Defendant Artley's residence because of his investigation into documents and sources to verify addresses prior to making contact, such as JNet and a bail piece connected to Defendant Artley in which the same address was listed as his home in August 2020. Id. at 9-10. The Commonwealth submitted the bail piece in question, marked as Commonwealth's Exhibit 3. Warden further testified that the investigation into Defendant Artley's residence revealed that the Williamsport

City Police Department relayed to Warden that Defendant Artley was an associate of Jacob Bauer, who was alleged to be involved in a terroristic threat wherein Defendant Artley was believed to be present at the scene either prior, during, or after the incident. Id. at 11. Warden also discovered that Defendant Artley was in a relationship with Defendant Tennison. Id.

The Old Lycoming Police Department notified Warden that they had been keeping the target residence under surveillance and had seen Defendant Artley's and Defendant Tennison's cars there the day prior to the arrest. Id. On the day of the arrest, Warden and the local police department debriefed on Lycoming Creek Road before approaching the residence. Id. at 13. Warden stated that during the execution of the warrant, he was the "first man in what we refer to as a stack." Id. A different officer knocked on the door while they were announcing their presence. Id. Warden testified that Jacob Bauer (Bauer) came out of a room on the southern side of the residence, went back into that room, and then ultimately came and opened the front door. Id. Once the door was open, Warden asked Bauer where Defendant Artley was and Bauer's response was to turn his body back to look into the residence before looking back at Warden and denying Defendant Artley's presence in the house. Id. Warden stated that Bauer "was avoiding eye contact with me and appeared to be very nervous based on our presence." Id. at 14. Defendant Artley's vehicle was in front of the residence at this time, so Warden believed Bauer to be lying about where Defendant Artley was. Id. Bauer was asked to step aside and the arrest team announced their presence again and their purpose for being there. Id. at 14-15. Defendant Artley did not reveal himself so the team began to clear the residence and discovered Defendant Artley in the southeastern bedroom with Defendant Tennison. Id. at 15. Based on intelligence gathered before the arrest, Warden believed there to be at least one firearm in the residence. Id. Warden stated that in the southern bedroom they discovered

devices used to assist in consuming marijuana, a vacuum sealer and bags, and a Ziplock bag of marijuana, and a firearm all in plain view. Id. at 16. Warden noted that there are fifteen (15) different addresses listed on the arrest warrant, though some are variations of the same. Id. at 23.

Analysis

Habeas Corpus

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). To meet its burden, the Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. Commonwealth v. Dantzler, 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).

Defendant Artley challenges the sufficiency of the Commonwealth’s evidence on the charges brought against him. Defendant first challenges the drug related offenses, arguing that the Commonwealth failed to establish their *prima facie* burden on Count 1: Possession with Intent to Deliver a Controlled Substance, Count 2: Possession of a Controlled Substance, or Count 3: Possession of Drug Paraphernalia for failure to establish Defendant Artley maintained constructive possession. To establish a *prima facie* case for Possession with Intent to Deliver a Controlled Substance, the Commonwealth must show that an individual possessed a controlled substance with the intent to deliver it. 35 Pa.C.S. § 780-113(a)(30). An individual commits Possession of a Controlled Substance pursuant to 35 Pa.C.S. § 780-113(a)(16) when they “[k]nowingly or intentionally” possess a controlled or counterfeit substance. Possession of Drug Paraphernalia occurs when the an individual uses or possesses with the intent to use “drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance.” 35 Pa.C.S. § 780-113(a)(32).

Defendant Artley’s primary contention with these charges is the Commonwealth’s purported failure to establish his constructive possession of the controlled substance and the drug paraphernalia. Defendant Artley also takes the position that the Commonwealth failed to qualify their only witness at the preliminary hearing as an expert on drug trafficking and failed to connect the narcotics or the paraphernalia to Defendant Artley. Specifically, Defendant

Artley maintains that Mausteller was not the officer to observe the marijuana and was not qualified as a witness on this specific area pertaining to this offense. Defendant Artley also argues that the marijuana was located in a backpack that did not belong to Defendant Artley, but instead belonged to Defendant Tennison and contained her identification. As such, Defendant Artley does not believe that being in the same room as the backpack containing marijuana is enough to satisfy the requirements of constructive possession. Therefore, Defendant Artley believes that Counts 1 through 3 must be dismissed for failure to establish the requisite element of possession.

When contraband is not found on a defendant's person, the Commonwealth must establish “constructive possession,” that is, the “power to control the contraband and the intent to exercise that control.” Commonwealth v. Valette, 613 A.2d 548, 550 (Pa. 1992); *see also* Commonwealth v. Gutierrez, 969 A.2d 584, 590 (Pa. Super. 2009). As with any other element of a crime, constructive possession may be proven by circumstantial evidence. Commonwealth v. Macolino, 469 A.2d 132, 134-35 (Pa. 1983). The requisite knowledge and intent necessary for constructive possession may be inferred from a totality of the circumstances. Commonwealth v. Parker, 847 A.2d 745, 750 (Pa. Super. 2004). Constructive possession can be established in one or more actors where the item at issue is in an area of equal access. Commonwealth v. Murdrick, 507 A.2d 1212, 1214 (Pa. 1986).

Defendant Artley argues that mere association, suspicion, or conjecture alone do not establish constructive possession. *See* Commonwealth v. Chenet, 373 A.2d 1107 (Pa. 1977); *See also* Commonwealth v. Valette, 613 A.2d 548 (Pa. 1992). Defendant Artley contends that being found in the same room as the contraband is insufficient to establish his constructive possession. The Commonwealth argues that the element of possession with the intent to deliver

can be “inferred from possession of a large quantity of controlled substance.” Commonwealth v. Roberts, 133 A.3d 759 (Pa. Super. 2016). The Commonwealth asserts that the Commonwealth has presented a *prima facie* case on Count 1 for several reasons. Mausteller testified that he personally observed marijuana, a digital scale, a firearm, a food sealer, and a large container of plastic bags in the living room of what was believed to be Defendant Artley’s residence. Mausteller also observed plastic bags with marijuana residue in the kitchen. In the bedroom in which the U.S. Marshals located Defendant Artley, police discovered three (3) backpacks. One such backpack contained three (3) large bags of marijuana in pound quantities. In another backpack, police observed two (2) firearms, one of which was determined stolen by the Williamsport Police Department. Additionally, a shoebox labeled with Defendant Artley’s name contained approximately 6,000 dollars in U.S. currency. The Commonwealth also argues that after being taken into custody, Defendant Artley possessed a large quantity of U.S. currency on his person.

This Court agrees with the Commonwealth on this issue. In addition to the evidence cited by the Commonwealth in their brief, Mausteller testified that Defendant Artley had communicated to him that he resided in that home approximately two (2) to three (3) times a week, received mail there, and kept his possessions in the residence. Although Mausteller was not officially categorized as an expert, the large amounts of currency, the pound quantities of marijuana, the vacuum sealer and plastic bags, and the firearms considered together appear to be for the furtherance of distributing controlled substances. Defendant Artley treated this residence as his home for part of the week, was found in the room where the backpacks and shoebox of money were found. If Defendant Artley wished to do so, he would be able to control the items discovered within seconds. Therefore, considering all the evidence in the light

most favorable to the Commonwealth as required, this Court finds that the Commonwealth established a *prima facie* burden and Defendant Artley's constructive possession. Therefore, Counts 1 through 3 shall not be dismissed.

Defendant Artley also challenges the Commonwealth's evidence on Count 4: Criminal Conspiracy. An individual commits the crime of conspiracy if "with the intent of promoting or facilitating its commission he: agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime." 18 Pa.C.S. § 903(a)(2). Defendant Artley is charged with conspiracy to sell marijuana, but believes that no evidence was presented at the preliminary hearing to justify the count. In particular, Defendant Artley argues that Mausteller testified that Bauer had informed him of a romantic relationship between Defendant Artley and Defendant Tennison after being advised of his *Miranda* rights. Defendant Artley asserts that this testimony is the only evidence attributable to criminal conspiracy, which lacks the demonstration of an unlawful agreement, and therefore, Count 4 should be dismissed. The Commonwealth argues that a conspiracy can be proven through circumstantial evidence. *See Commonwealth v. Bricker*, 882 A.2d 1008 (Pa. Super. 2005). The Commonwealth asserts that the "conduct of the parties and the circumstances surrounding such conduct may create a web of evidence linking the accused to the alleged conspiracy...." *Id.* at 1017 (*citing Commonwealth v. Jones* 874 A.2d 108, 121-22.)

Furthermore, "an agreement can be inferred from a variety of circumstances including, but not limited to, the relation between the parties, knowledge of and participation in the crime, and the circumstances and conduct of the parties surrounding the criminal episode." *Id.* The Commonwealth believes that the testimony presented at the preliminary hearing established sufficient evidence to demonstrate a conspiracy to sell marijuana for the following reasons. The

common areas of the home, the living room and kitchen, contained items displayed in the open, such as a digital scale, a food sealer and plastic bags, plastic bags with marijuana residue, and a firearm. All three (3) people in the home at the time of Defendant Artley's arrest had access to and control over these items. Defendant Tennison had clothing and personal identification in the bedroom that she and Defendant Artley shared. The backpacks in their bedroom were filled with pounds of marijuana and two (2) firearms. The Commonwealth argues that, given the totality of the circumstances, the Commonwealth presented evidence that infers an agreement between Defendants Artley and Tennison and Baur to sell marijuana. For the same reasons listed, this Court agrees with the Commonwealth on this issue and Count 4 shall not be dismissed.

Defendant challenges the Commonwealth's evidence on Count 5 and Count 8: Receiving Stolen Property in relation to the two (2) firearms discovered. A person commits this offense when they "intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner." 18 Pa.C.S. § 3925(a). Defendant argues that, despite the Commonwealth's assertion that one or both of the firearms were stolen, the only evidence presented at the preliminary hearing was that a 50-caliber firearm was recovered in the trunk of Defendant Artley's vehicle that had been reported stolen by PSP Montoursville. Defendant Artley further contends that the Commonwealth failed to establish constructive possession or that Defendant would have reason to believe the firearm was stolen.

The Commonwealth argues that knowing or believing property is stolen may be inferred from circumstantial evidence. *See Commonwealth v. Robinson*, 128 A.3d 261 (Pa. Super.

2015). The Commonwealth also argues that constructive possession may be proven with circumstantial evidence. They argue that the Commonwealth “must establish facts from which the trier of fact can reasonably infer that the defendant exercised dominion and control over the contraband at issue.” Commonwealth v. Parrish, 191 A.3d 31 (Pa. Super. 2018). To further their position, the Commonwealth contends that multiple forms of indicia of ownership were found in Defendant Artley’s vehicle pointing to his ownership of the car, such as the title to the vehicle in Defendant Artley’s name and men’s clothing consistent with Defendant Artley’s size. Since the firearm was found in the trunk of Defendant Artley’s car, the Commonwealth believes that this evidence taken together demonstrates a *prima facie* case for Receiving Stolen Property. This Court believes that the Commonwealth has established a *prima facie* case only on the charge related to the gun found in Defendant Artley’s vehicle. It is reasonable to infer that Defendant Artley exercised control over this firearm because it was found in his vehicle. It is also reasonable that Defendant Artley had constructive possession and control over the firearm found in the backpack in his bedroom. However, the Commonwealth failed to establish that the firearm found in the bedroom was stolen or that Defendant Artley had knowledge of the fact that it was stolen. Therefore, the evidence presented for Count 5 does not establish all of the requisites for a *prima facie* case and shall be dismissed. Contrarily, this Court finds that the Commonwealth satisfied their burden for Count 8 at the preliminary hearing.

Lastly, Defendant Artley argues that the Commonwealth failed to establish their burden on Counts 6 and 7: Persons not to Possess a Firearm for being a “fugitive” in violation of 18 Pa.C.S. § 6105(c)(1). Defendant Artley and the Commonwealth agree that an arrest warrant alone does not demonstrate that an individual has actively fled authority or escaped prosecution. *See* Commonwealth v. Smith, 234 A.3d 576 (Pa. 2020) (holding that an active

bench warrant is sufficient to establish defendant as a fugitive from justice.) Defendant Artley is of the position that without the designation of “fugitive”, there is nothing that would preclude Defendant Artley’s ownership of firearms. However, the Commonwealth asserts that Defendant was adjudicated delinquent on September 29, 2016 of Prohibited Offensive Weapons in violation of 18 Pa.C.S. § 908. While Defendant Artley’s juvenile conviction does preclude him from possessing a firearm, the two (2) counts he is charged with do not accurately reflect the reason for his ineligibility for gun ownership. Therefore, Counts 6 and 7 shall be dismissed and the Commonwealth will have to amend the charge to accurately reflect Defendant Artley’s preclusion from owning firearms.

Arrest Warrant and Entry into the Residence

Both Defendants also challenge law enforcement’s entry into the home to arrest Defendant Artley as unjustified. The Fourth Amendment to the United States Constitution provides that “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. CONST. amend. IV. The Supreme Court of the United States held that the “Fourth Amendment prohibits law enforcement from making a warrantless and nonconsensual entry into a residence for the purpose of conducting a routine felony arrest.” Romero, 183 A.3d 354, 371 (Pa. 2018); *See Payton v. New York*, 445 U.S. 573 (1980). The Court also held that a warrant for someone’s arrest does not authorize the entry into the home of a third party not named in the arrest warrant. *See Steagald v. United States*, 451 U.S. 204 (1981). In *dictum* at the end of its opinion, the Court stated that a warrant requirement for arrests conducted in a home does not place undue burden on law enforcement. Payton v. New York, 445 U.S. 573, 603 (1980). The Court also wrote “an arrest warrant founded on probable cause implicitly

carries with it the limited authority to enter a dwelling in which the suspect lives when there is reason to believe the suspect is within.” Id. The Fourth Amendment’s “warrant requirement mandates a magistrate’s determination of probable cause before police may enter those homes in order to search the premises for the individual named in the arrest warrant.” Romero, 183 A.3d 354, 371, (Pa. 2018).

Defendants rely on Commonwealth v. Romero, 183 A.3d 354 (Pa. 2018) and Commonwealth v. Boyd Chisholm, 198 A.3d 407 (Pa. Super. 2018) to support their argument that the arrest warrant alone was not enough justification for police to enter the home to locate and arrest Defendant Artley. In the Romero case, the Superior Court considered the question of “when a law enforcement officer seeks to execute an arrest warrant inside a home, how it is to be determined that the home is that of the intended arrestee, such that the Payton dictum could apply, rather than the home of a third party, where Steagald will control?” Romero, 183 A.3d at 371. In Romero, a man named Earnest Moreno (Moreno) absconded from a halfway house and police subsequently obtained a warrant for his arrest. Id. at 372. A parole agent began an investigation into Moreno’s whereabouts in order to take him into custody. Id. Based on his investigation, this agent, alongside deputies of the U.S. Marshals, attempted to execute the arrest warrant at a residence on North Second Street in Philadelphia in the belief that this was Moreno’s “most likely place of residence.” Id. However, the residence was actually occupied by Moreno’s half-brother, Angel Romero (Romero), and his wife, Wendy Castro (Castro). Id. Moreno was not found in the home, but upon searching the basement, the agents discovered a large number of plants resembling marijuana. Id.

Following their discovery, law enforcement obtained a search warrant for the premises. Id. The search pursuant to that warrant yielded a significant amount of marijuana plants,

equipment used to facilitate the growth of marijuana, and a firearm and ammunition. Id. Romero and Castro were arrested and charged accordingly. Id. Upon its consideration of the defendants' motions to suppress the evidence seized pursuant to the search of their residence, the Superior Court concluded, "the Fourth Amendment requires that, even when seeking to execute an arrest warrant, a law enforcement entry into a home must be authorized by a warrant reflecting a magisterial determination of probable cause to search that home, whether by a separate search warrant or contained within the arrest warrant itself." Id. at 405. "Absent such a warrant, an entry into a residence is excused only by a recognized exception to the search warrant requirement." Id. at 405-406. "The question is whether, in obtaining the arrest warrant...information sufficient to establish probable cause to search for [defendant]...was presented to and approved by a neutral and detached magistrate." Id. at 406.

In Commonwealth v. Boyd Chisholm, 198 A.3d 407 (Pa. Super. 2018), the police attempted to serve an arrest warrant for Antonio Foster (Foster) at a home on Fourth Street in Harrisburg for failure to pay child support. Id. at 409. Testimony from the police indicated that the addresses on warrants are typically "very reliable." Id. at 410. While attempting to execute the warrant at this residence, police encountered Chisholm who informed them that Foster did not reside there and never had. Id. Despite this assertion, law enforcement informed Chisholm that because this address was the only one they had for Foster, they had to conduct a walk-through to ensure Foster was not there. Id. Once police entered the property, Chisholm asked them not to arrest him because he had marijuana in his bedroom. Id. The marijuana was found and an additional search was conducted once the city police were alerted. Id. Chisholm was charged with various drug and firearm offenses. Id. Chisholm's motion to dismiss the evidence found in his home was denied by the trial court and he appealed to the Superior Court, arguing

that the decision in Romero precluded the officers from entering and searching his home and all evidence recovered must be suppressed. Id. at 411. The Superior Court held that no magisterial determination of probable cause was made prior to serving the arrest warrant in violation of the requirements as articulated in Romero, and therefore, all evidence must be suppressed. Id. at 417-418.

Defendant Artley asserts that the arrest warrant was improperly issued and both Defendants believe that the entry into the home by law enforcement with only the arrest warrant is not lawful. Magisterial District Judge Adcock issued the arrest warrant on May 15, 2020. The only supporting documentation attached to the warrant was Defendant Artley's identification information, a copy of the charges listed against him, and the Affidavit of Probable Cause for the Criminal Complaint. The arrest warrant did not include a search warrant and no separate search warrant was issued prior to the execution of the arrest warrant. Defendants also argue that the warrant was stale since it was issued nearly a year before the date of Defendant Artley's arrest in the case at hand. In particular, Defendants take issue with the fact that the Commonwealth failed to articulate a reason why the warrant was acted upon in March 2021 after no action was taken on it since May 2020. Pursuant to Romero, Defendants argue that without a warrant supported by probable cause and issued by a magistrate, an entry into a residence is only permitted by recognized exceptions to the search warrant requirement or if "some form of urgency necessity" should arise. Romero, 183 A.3d 354, 400, 406 (Pa. 2018). Defendants also argue that no exigency existed here to support law enforcement's entry into this location and no exception to the search warrant is applicable. More specifically, Defendant Tennison argues that police did not have probable cause to believe Defendant Artley was inside the residence at the time the arrest warrant was executed. Defendant Tennison

contends that the fact that Defendant Artley's vehicle was parked near the residence is not evidence that he was inside at the time because police knew that Defendants were in a relationship and Defendant Tennison's car was not present at the time, it is feasible that the two left together in her vehicle. Furthermore, Defendant Tennison argues that police did not have current evidence that Defendant Artley lived at this property because the address listed at least six (6) different addresses and a total of fifteen (15) address including variations of repeated addresses. Defendant Tennison also argues that the factors articulated below that the Commonwealth relies on existed before Defendant Artley was released from the Lycoming County Prison on August 13, 2020. Therefore, Defendants are of the opinion that the arrest warrant did not include the requisites needed for entry to search for Defendant Artley and there was no exigency, consent, or probable cause to enter the premises without the supporting documentation.

The Commonwealth argues that the applicable exception to the warrant requirement in this situation is that of probable cause in addition to exigent circumstances. The Commonwealth argues that the court must consider the following factors in determining whether exigent circumstances exist:

1. The gravity of the offense;
2. Whether the suspect is reasonably believed to be armed;
3. Whether there is above and beyond a clear showing of probable cause;
4. Whether there is a strong reason to believe that the suspect is within the premises being entered;
5. Whether there is a likelihood that the suspect will escape if not swiftly apprehended;
6. Whether the entry was peaceable; and
7. The time of entry.

Commonwealth v. Rushing, 73 A.3d 919 (Pa. Super. 2013). The Commonwealth further states that this particular exception requires balancing the needs of law enforcement against

individual liberties and a consideration of the totality of the circumstances. *See Commonwealth v. Johnson*, 68 A.3d 930 (Pa. Super. 2013). The Commonwealth contends that the arrest warrant provided the last known address for Defendant Artley was 2307 ½ Lycoming Creek Road and that additional investigation by Warden revealed that Defendant Artley referenced the same address as his primary address, as well as a bail piece in his Lackawanna County case that noted the same address in May 2020. The Commonwealth also references Warden's testimony in which he stated that during surveillance of the residence the day before the execution of the arrest warrant, Defendant Artley's vehicle was seen at the property and was there on the day of the arrest. Defendant Artley was also known to have a history with Bauer who is alleged to have been involved in a terroristic threats involving firearms case and who lied about Defendant Artley's presence in the home in an attempt to thwart law enforcement's execution of the arrest warrant. The Commonwealth argues that the totality of the circumstances regarding Defendant Artley, the entry into the residence was the result of exigent circumstances and Defendant Artley's arrest was lawful.

Nevertheless, this Court agrees with Defendants on this issue. The most recent information about Defendant Artley's address was found in August of 2020. The arrest warrant was nearly a year old without any explanation from the Commonwealth regarding the time lapse. Defendants' assertion that the arrest warrant does not include magisterial determination of probable cause to search that home within the warrant or as a separate warrant is correct and is contrary to the precedent discussed at length in this opinion. Additionally, this Court does not believe that probable cause or exigency existed in this scenario to justify the entry into the home pursuant to the deficient and stale arrest warrant. Police certainly did not have consent to enter because Warden's testimony indicated that Bauer was commanded to step aside to

facilitate their entry. As Defendant Tennison articulated, the information giving rise to any exigency was already known to police before August 2020. Therefore, the entry into the home is unsupported by probable cause or exigency and the arrest warrant did not conform to the requirements necessary to search the residence for Defendant Artley. As a result, the evidence seized following law enforcement's entry shall be suppressed.

Search Warrant Issues

Defendant Tennison also contests the search warrant and the evidence seized pursuant to the search warrant as fruit of the illegal entry into the home. "The 'fruit of the poisonous tree' doctrine excludes evidence obtained from, or acquired as a consequence of, lawless official acts." Commonwealth v. Lukach, 163 A.3d 1003, 1013 (Pa. Super. 2017) (*quoting* Commonwealth v. Brown, 700 A.2d 1310, 1318 (Pa. Super. 1997)).

We need not hold that all evidence is fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.

Id. at 1013-14 (*quoting* Commonwealth v. Loughnane, 128 A.3d 806, 815 (Pa. Super. 2015)).

The burden of proving that the evidence would have been found absent the illegality rests on the Commonwealth. Id. at 1014. Defendant Tennison argues that, but for the illegal entry into the residence, police would never have observed the contraband in plain view that lead to an additional search warrant. The Commonwealth argues that the entry was lawful and therefore the evidence discovered was the result of plain view observation and a valid search warrant. However, this Court has already held that the police's entry into the home with a deficient warrant and no probable cause or exigency violated Defendant Artley's Fourth Amendment

rights. Consequentially, this Court also holds that law enforcement are not able to purge the primary taint of the illegal entry on the evidence discovered and therefore, the evidence shall be suppressed as fruit of the poisonous tree

In the alternative, Defendant Artley argues that the applications for the search warrants were deficient and should never have been granted. Defendant Tennison also believes the search warrants for the house and for Defendant Artley's vehicle lack probable cause. Since the Court has held that the entry into the home was unjustified and all evidence must be suppressed as fruit of the poisonous tree, the information included in the application for each search warrant is also tainted by the information discovered by police as a result of their unlawful entry. Therefore, all evidence seized pursuant to the search warrants shall also be suppressed. Defendant Tennison also argues that the police exceeded the scope of the warrant for the home, but this Court has already determined this search warrant is invalid so the Court will not discuss this issue.

Conclusion

The Court finds that the Commonwealth has satisfied their *prima facie* burden on Counts 1 through 4 and Counts 6 through 8. The Commonwealth has failed to establish a *prima facie* case for Counts 5, 6, and 7. Therefore, Count 5: Receiving Stolen Property, Count 6: Persons not to Possess a Firearm, and Count 7: Persons not to Possess a Firearm shall be dismissed. The Court further finds that the arrest warrant lacked the requisite finding of probable cause by a magisterial district judge to search the residence for Defendant Artley and no probable cause or exigency justified their entry into the home without the proper contents of a valid arrest warrant as required by Pennsylvania case law. Therefore, all evidence seized as a result of the unlawful entry shall be suppressed. This Court also finds that the search warrants

issued for the home and Defendant Artley's vehicle lack probable cause since the evidence the warrant applications rely on are fruits of the poisonous tree of police's initial entry into the home. Therefore, all evidence seized pursuant to these search warrants shall also be suppressed.

ORDER

AND NOW, this 21st day of January, 2022, based upon the foregoing Opinion, Defendant Artley's Motion for Habeas Corpus is **GRANTED** in part and **DENIED** in part. Counts 5, 6, and 7 shall be dismissed for failure to establish a *prima facie* burden, but the remaining charges based upon the evidence presented at the preliminary hearing shall be held for court. The Defendants' Motion to Suppress is **GRANTED**. All evidence seized because of law enforcement's unlawful entry into the home to arrest Defendant Artley shall be suppressed. Furthermore, all evidence seized pursuant to the subsequently issued search warrants shall also be **SUPPRESSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA
Robert Hoffa, Esq.
David Lampman, Esq.