

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

**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**TYLER MOORE,**  
**Defendant**

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**CP-41-CR-712-2022**

**HABEAS CORPUS MOTION**

**OPINION AND ORDER**

Tyler Moore (Defendant) was charged on April 26, 2022 with Drug Delivery resulting in Death<sup>1</sup>, Possession with the Intent to Deliver a Controlled Substance<sup>2</sup> and Criminal Use of a Communication Facility<sup>3</sup>. The charges arise from the death of Jennifer Berkebile (Berkebile) due to a mixed drug toxicity (including fentanyl and buprenorphine.) Defendant filed this Omnibus Pretrial Motion on August 31, 2022. The Court held a hearing on the motion on November 21, 2022. In his Omnibus motion, Defendant argues that the Commonwealth has not provided sufficient evidence to satisfy the *prima facie* burden at the preliminary hearing and the charges should be dismissed. The Commonwealth introduced a copy of the transcript of the preliminary hearing before Magisterial District Judge Frey from May 17, 2022. No additional testimony was presented by either the Commonwealth or Defendant.

**Background and Testimony**

At the preliminary hearing on May 17, 2022, Officer Brittany Alexander (Alexander) of the Williamsport Bureau of Police (WBP) testified on behalf of the Commonwealth. Alexander has been employed by the WBP approximately 12 years and at the time involved in more than one hundred investigations involving drug activity. N.T. 5/17/2022 at 6. She approximated that about 95 percent of the investigations involved opiates including heroin and fentanyl. *Id.* On

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<sup>1</sup> 18 Pa. C.S. §2505.

<sup>2</sup> 35 P.S. § 780-113(a)(30).

<sup>3</sup> 18 Pa.C.S. § 7512(a).

March 31, 2020, Alexander was working as a criminal investigator. *Id.* at 2. On that day she was requested to go to the YWCA for the report of an overdose death. *Id.* at 3. Alexander testified that when she came on scene, she observed Berkebile on the floor and next to her were two cell phones, a hypodermic needle, and a spoon with a piece of cotton in it with a rubber band. *Id.* She testified that the rubber band was consistent with the packaging of heroin. *Id.* Alexander believed that she had been dead for a while as she observed decomposition of the body. *Id.* She also testified that an autopsy had been performed on Berkebile, and the conclusion was she died from a lethal drug toxicity which included fentanyl. *Id.* at 4. As a result of that information, Alexander took a look at the cell phones found with Berkebile. *Id.* She discovered there was a conversation between Berkebile and a Tug Moore, whom she later identified as Defendant. *Id.* Alexander also testified that she spoke with several people at the YWCA, and one had recognized Defendant's vehicle and was familiar with his name. *Id.* Alexander described the Facebook messenger conversations she observed between Berkebile and Defendant, which discussed Berkebile wanting to purchase D, which Alexander believed to be dope or heroin. *Id.* at 5-6. She thought based upon her training and experience that was what they were talking about Berkebile attempting to purchase drugs from Defendant. *Id.* at 7. When Defendant was apprehended by the Marshals approximately two (2) years after Berkebile's death, Alexander had the opportunity to question him about what happened. *Id.* After advising Defendant of his Miranda warnings, he said that he wanted to tell her "his side of the story." *Id.* at 7-8. Defendant told Alexander that he picked up Berkebile along with another person and his kids. *Id.* at 8. Alexander said Defendant thought that Berkebile bought the drugs when he took her to Walmart. *Id.* Since Alexander had some of the text messages, she presented the ones she had to him as he made his statement. *Id.* He would have brought them

with him when he was incarcerated. *Id.* She described that he would have vacillated in his acknowledgment of being the author of the messages to Berkebile. *Id.* Although Defendant would have deleted the Facebook messages to Berkebile, Alexander was able to obtain a search warrant to retrieve the messages from Berkebile's phone. *Id.* at 9. Alexander read the messages into the record at the hearing. *Id.*

“she messages Tyler says can you get bags. He responds, yeah, most likely and I want to go get salt, but I'm 100 short. He says to her, what you want a bun? She says, depends on price. He says, well, the salt I got 1.5 for 100 and the bun probably 60 to 75. She said, I don't want salt I want D. He says, OK, I can definitely get you the D. Let me text him quick. And then she asks if you can come -- if he can come get her period and he says, yeah and do you think there is any way you can help me with the 100 so I can re-up on my stuff. I'll get it right to you. Just hang on to it and well off it. I already know two people that want to have GPS. And she said, I can't just give you 100, I don't have it like that. Moving forward she said, right now I'm only focused on getting D. Once I get that then I'll see. And he says, I can 100% get you that. She said, OK, when? He says, I'm just trying to figure this all out so we can do it all at once. She expresses concern because he mentions about his friend having fentanyl and she says, if this shit is junk or I get ripped off I'm not helping you so make sure shit is right. He said, Jenn, it's going to be straight and then he's on his way. And then eventually he picks her up.”

*Id.* at 10. Based upon her experience with narcotics investigations, Alexander identified “d” as dope or heroin and bundles as heroin. *Id.* at 5. Alexander testifies that there were no messages between Berkebile and Defendant between March 28 and March 31, 2020 when her body was found. *Id.* Defendant does admit that he gave her a ride after the messages were exchanged and dropped her off at the YWCA. *Id.*

## **Discussion**

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 challenges the sufficiency of the evidence on all of the charges brought against him. Firstly, Defendant challenges the Commonwealth's evidence on Count 1: Drug Delivery Resulting in Death. Pursuant to 18 Pa.C.S. § 2506(a), an individual commits this offense when “the person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance...and another person dies as a result of using the substance.” He also challenges the Commonwealth's evidence on Count 2: Delivery of a Controlled Substance. 35 P.S. 780-113(a)(30) states, “The following acts and the causing thereof within the Commonwealth are hereby prohibited: ...(30) Except 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.” Defendant argues that the Commonwealth failed to show a *prima facie* case that Defendant delivered drugs to Ms. Berkebile, and so he cannot have caused her death. The Commonwealth relies on the testimony presented at the preliminary hearing. Finally, Defendant argues that the Commonwealth did not present enough evidence to satisfy their burden for Criminal Use of a Communication Facility. According to 18 Pa.C.S. § 7512, it is a criminal offense for a person to use “a communication facility to commit, cause, or facilitate the commission or the attempt of any crime.”

Alexander testified that Defendant used Facebook messenger to communicate with Berkebile, and Defendant has acknowledged that he responded to Berkebile’s request as a result of those communications. Berkebile sought drugs from Defendant, Defendant’s apparent responses recognized what she was looking for, and Defendant replied that he could get them for her. Defendant admitted that he picked her up and returned her to the YWCA. Berkebile was found dead with the cause of death due to lethal drug toxicity, and drug paraphernalia surrounding her decomposing body. Since the Commonwealth is able to establish circumstantially a connection between Defendant and Berkebile acquiring drugs and her contemporaneous death, the Commonwealth has established *prima facie* on these charges.

### **Conclusion**

The Court finds that the Commonwealth has presented enough evidence at the preliminary hearing to establish a *prima facie* case for the charges of Drug Delivery resulting in

Death, Delivery of a controlled substance, and Criminal Use of a communication facility against Defendant. Therefore, Defendant's Petition for Writ of Habeas Corpus is denied.

**ORDER**

**AND NOW**, this 22nd day of March, 2023, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Petition for Writ of Habeas Corpus contained in his Omnibus Pretrial Motion is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge