

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

**COMMONWEALTH OF PENNSYLVANIA** : **CR-1343-2023**  
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:   
v. :   
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:   
**JERMAINE MAURICE BROWN,** : **OMNIBUS MOTION**  
**Defendant** :

**OPINION AND ORDER**

Jermaine Maurice Brown (Defendant) was charged on or about September 28, 2023 with one count each of the following: Drug Delivery Resulting in Death<sup>1</sup> (F1); Delivery of a Controlled Substance<sup>2</sup> (F); Possession of a Controlled Substance<sup>3</sup>; Theft by Unlawful Taking<sup>4</sup> (M1); Abuse of Corpse<sup>5</sup> (M2); and Tampering with Evidence<sup>6</sup> (M2). A preliminary hearing was held on October 17, 2023, after which these charges were held for court and one additional charge, Unauthorized Use of an Automobile, was dismissed.

After several agreed upon extensions of time, Defendant, by and through his counsel Tyler Calkins, Esquire, filed an Omnibus Pretrial Motion on March 13, 2024. A hearing on the Motion was held on May 14, 2024, at which time the Defendant was present and represented by Attorney Calkins and Matthew Welickovitch, Esquire, appeared on behalf of the Commonwealth. The Court will address each individual motion separately below.

**I. PETITION FOR A WRIT OF HABEAS CORPUS**

The Defendant alleges that the Commonwealth's evidence at the preliminary hearing held on October 17, 2023, was insufficient to establish a prima facie case on Count 1, Drug

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<sup>1</sup> 18 Pa.C.S. §2506(a)

<sup>2</sup> 35 P.S. §780-113(a)(30)

<sup>3</sup> 35 P.S. §780-113(a)(16) M)

<sup>4</sup> 18 Pa.C.S. §3921(a)

<sup>5</sup> 18 Pa.C.S. §5510

<sup>6</sup> 18 Pa.C.S. 4910 (1)

Delivery Resulting in Death. Specifically, the Defendant challenges that the Commonwealth failed to establish the death element of the charge by means other than hearsay evidence. The definition of *prima facie* is not precise or without difficulty. On the one hand, it has been described as evidence, read in a light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime. *Commonwealth v. Packard*, 767 A.2d 1068, 1070 (Pa. Super. 2001), *abrogated on other grounds by Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 n.5 (Pa. Super 2016).

On the other hand, it has been defined as evidence, which if accepted as true, would warrant submission of the case to a jury. *Packard, id.*; *Commonwealth v. Karetny*, 880 A.2d 505, 514 (Pa. 2005); *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2001). The weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person has committed the offense. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2011). The evidence must be read in a light most favorable to the Commonwealth and inferences reasonably drawn from the evidence of record which would support a verdict of guilty, must be given effect. *Id.*

In support of its position, the defense relies on the case of *Commonwealth v. Harris*, which held that a trial court correctly quashed all charges when a shooting victim (Stewart) failed to show for any of the scheduled preliminary hearings and the Commonwealth presented only the testimony of the detective who took his statement identifying Harris as the shooter because there was no direct non-hearsay evidence that Harris shot Stewart. 269 A.3d 534, 536 (Pa. Super. 2022). The defense argues that the only testimony supporting the cause of death in the present case was provided by Agent Brittany Alexander, who took no part in the chemical analysis of any purported drugs and took no part in the autopsy of the decedent, Connor Smith.

In *Harris*, the Superior Court held that the Commonwealth is precluded from relying on hearsay alone at a preliminary hearing to establish a prima facie case to an element of a crime. *Id.* at 548. However, the Commonwealth is not precluded from utilizing hearsay evidence to corroborate direct evidence of an element of a crime. *Id.* The *Harris* Court stated that Pa.R.Crim.P. 542(E) permits “otherwise inadmissible evidence to be admitted when the evidence does not materially go to whether a crime has been committed or that the person committed the crime.” *Id.* This includes evidence such as lab reports, which was noted by the Commonwealth in its argument. However, just because a lab report could potentially be admitted under this provision does not end the inquiry into the Defendant’s challenge that the Commonwealth has only offered hearsay evidence to prove the death element of the charge. The lab report’s admission at a preliminary hearing without stipulation by the defense or testimony from the author of the report would render it hearsay that could only be used to corroborate other direct evidence offered by the Commonwealth to establish the element of the charge. Thus, the Court must review the other evidence to determine if any direct evidence was provided by the Commonwealth to establish the cause of death of Connor Smith.

The transcript of the Preliminary Hearing was attached to the Omnibus Pretrial Motion and was marked as “Exhibit A” and admitted into evidence at the time of the hearing. In addition to the lab report, at the preliminary hearing the Commonwealth offered the testimony of Nicole Peterson. Ms. Peterson testified that she met the Defendant, he asked her if she wanted to get high, and they got in the back seat of a parked car. (Prelim. Hrg. 10/17/23, pgs. 18-20). Ms. Peterson further testified that “there was a guy in the front seat who was snoring really loud” and the Defendant “was trying to wake him up at one point” and the Defendant told her “he gave him drugs, and he should not have done that much.” (*Id.* at 20-22). Agent

Alexander testified that she was present for the autopsy and also reviewed photos of the deceased and he had “what they refer to as a foam cone, that would essentially be a bunch of foam coming out of the right nostril. That’s usually consistent with somebody (inaudible) a narcotic or something like that –” (Id. at 30, 31). Finally, the Commonwealth called Agent Aaron Levan to testify at the Omnibus hearing. Agent Levan identified Commonwealth’s Exhibit 2, which was a picture from the Defendant’s phone that was obtained pursuant to a search warrant. The picture depicts Connor Smith, unconscious, at approximately 5:09 a.m. on the morning that he was found deceased. As the Commonwealth presented the foregoing direct evidence regarding the cause of death, it did not rely upon the hearsay evidence (lab report and autopsy report) as the sole means to prove a prima facie case with regard to the cause of death. These reports may be considered as corroborating evidence at this stage of the proceeding without the need to have the reports’ authors present to testify.

When viewed in the light most favorable to the Commonwealth and drawing all reasonable inferences from the evidence presented, the Court finds that the Commonwealth has met its burden to establish a prima facie case for Count 1, Drug Delivery Resulting in Death. Accordingly, the Petition for a Writ of Habeas Corpus is **DENIED**. The Court notes, however, absent a stipulation between the Commonwealth and Defendant’s counsel, the author of any lab reports and autopsy reports will need to testify.

## **II. MOTION TO SUPPRESS SUGGESTIVE PRETRIAL IDENTIFICATION AND TAINTED PRELIMINARY HEARING IDENTIFICATION**

At the time of the hearing, the Motion to Suppress Suggestive Pretrial Identification and Tainted Preliminary Hearing Identification was **WITHDRAWN** by the Defense. Accordingly, this motion is considered resolved and will not be further addressed by the Court.

### III. LACK OF PROBABLE CAUSE FOR SEARCH WARRANTS

The Defendant's motion contends that the two search warrants Agent Alexander applied for – one for the DNA of the Defendant and one for his cell phone – lacked the necessary probable cause because they failed to establish that a crime had been perpetrated by the Defendant. He requests that the Court suppress all evidence seized through the search warrants.

“The issuance of a constitutionally valid search warrant requires that police provide the issuing authority with sufficient information to persuade a reasonable person that there is probable cause to conduct a search based upon information that is viewed in a commonsense manner.” *Commonwealth v. Nicholson*, 262 A.3d 1276, 1280 (Pa. Super. 2021) (quoting *Commonwealth v. Housman*, 986 A.2d 822, 843 (Pa. 2009). “The issuing authority must determine whether, given the totality of the circumstances presented, there is a fair probability that evidence of a crime or contraband will be found in a particular location.” *Id.* The issuing authority's “finding of probable cause must be based upon facts described within the four corners of the affidavit.” *Commonwealth v. Stamps*, 427 A.2d 141, 143 (Pa. Super. 1981).

The Defendant attached the search warrant for the Defendant's DNA to its Petition as “Exhibit B” and the search warrant for the Defendant's cell phone as “Exhibit C.” The facts alleged in the Affidavit of Probable Cause are the same for both search warrants. The Affidavit states extensive facts supporting probable cause that the Defendant committed one or more crimes. With regard to the search warrant seeking the Defendant's DNA, the Affidavit of Probable Cause states when the deceased was discovered in the vehicle his body was positioned in a way that appeared as though he had been pulled from the passenger seat into the driver seat. The Affidavit of Probable Cause alleges the Defendant was observed on camera with his

arms inside the vehicle taking belongings from inside the vehicle, including what was likely the decedent's missing cell phone, which could constitute theft. Additionally, the Affidavit of Probable Cause details that the Defendant was observed on camera "poking" or "nudging" the deceased and later entering the driver's seat and moving the vehicle. Each of these allegations are sufficient to support that there is probable cause that the Defendant committed a number of crimes, including theft, tampering with evidence, abuse of corpse, etc. The DNA seized as a result of the search would confirm that he was present and support the identification of him by the Lycoming County Narcotics Enforcement Detectives who identified him from the surveillance video.

Similarly, with regard to the search warrant for the Defendant's cell phone, the facts alleged in the Affidavit of Probable Cause support several crimes that could have been committed by the Defendant. The cell phone could potentially be evidence of Defendant's interactions with the decedent and messages regarding any drug transactions, evidence confirming his use of the cell phone number that was communicating with the decedent on the date of death, and provide information which links the location of the phone in comparison to the decedent around the approximate time of his death.

The Court finds that there were sufficient facts alleged within the four corners of each of the two search warrants to establish probable cause that a crime had been perpetrated by the Defendant. Further, the Court finds that there was a fair probability that evidence of that crime would be found in Defendant's DNA and cellphone. Accordingly, Defendant's request that all evidence seized through the search warrants be suppressed is **DENIED**.

#### IV. MOTION IN LIMINE

On February 8, 2024, the Commonwealth filed a Notice to Admit Evidence Pursuant to Pennsylvania Rule of Evidence 404(b). The Notice indicates that on August 16, 2023, Defendant was charged with three (3) counts of Delivery of a Controlled Substance (F) and three (3) counts of Criminal Use of a Communication Facility at Lycoming County Docket Number CR-1078-2023. Notably, these charges occurred after the date of death in this case. The Commonwealth seeks to introduce this information at Defendant's trial in the instant matter. Defendant contends that this is an improper use of Rule 404(b) and seeks to preclude the Commonwealth from introducing such evidence.

The Defendant argues that evidence of the separate charges is highly prejudicial and provides little to no probative value with regard to whether or not he committed the crimes charged in this matter. The alleged acts occurred after the death of Connor Smith and do not make it more or less likely that the Defendant committed the crimes charged in the present case. He further argues that because the charges are still pending and he has not yet been convicted of any crimes under docket number CR-1078-2023, he maintains a presumption of innocence. The Commonwealth counters that case law permits them to utilize events or acts that occur after the crime has been charged in the current case and argues that the use of the same cell number to set up drug deals in both cases shows the identity of the Defendant as well as a common scheme of dealing drugs.

While there is potential prejudice to the Defendant in the introduction of evidence regarding separate charges of Delivery of a Controlled Substance, such evidence is permissible under Rule 404(b) to establish the identity of a defendant and/or a common plan or scheme. In *Commonwealth v. Shackelford*, 293 A.3d 692 (Pa. Super. 2023), the Superior Court dealt with a

very similar fact pattern wherein the appellant was charged in one case with Drug Delivery Resulting in Death and in another case with Possession With Intent to Deliver. In *Shackelford*, the Court held that the evidence surrounding the drug delivery that resulted in death enabled investigators to learn of the defendant's identity and role in drug dealing operations. The Court held that such evidence was admissible for the purpose of identity and common scheme. The *Shackelford* court relied upon the memorandum decision in *Commonwealth v. Arrington*, 2020 WL 2070386, as being instructive on the issue of subsequent PWID charges being admissible in a drug delivery resulting in death case.

Although the issue in the *Arrington* case centered around whether the cases should be severed or tried together, there are significant factual similarities to the present case. The *Arrington* Court's decision to try the cases together was upheld on the grounds that the evidence in each case would be admissible in the other case. Thus, consolidation was proper in that case. If the law allows entire cases to be tried together regarding one case of a drug delivery resulting in death and a subsequent PWID case, the logic must follow that such subsequent delivery of a controlled substance allegation would be admissible under Rule 404(b) for identity and common scheme purposes. Accordingly, the Defendant's Motion in Limine is **DENIED**.

#### **V. MOTION TO SET BAIL**

The Defendant has been incarcerated since August 16, 2023. When he was arraigned, bail was denied. In his Omnibus Pretrial Motion, the Defendant requests that this Court set reasonable bail. Article I, Section 14 of the Pennsylvania Constitution, which was amended in 1998, states as follows with regard to bail:

All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life



imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great . . .

Pa. Const. art. I, § 14.

The opening clause establishes a right to bail for all prisoners, while the remainder of the text provides an exception to the right for three classes of defendants. *Commonwealth v. Talley*, 265 A.3d 485, 513 (Pa. 2021). To satisfy one of these exceptions, the Commonwealth must offer “evident” proof or establish a “great” presumption that the accused: (1) committed a capital offense, (2) committed an offense that carries a maximum sentence of life imprisonment, or (3) presents a danger to any person and the community, which cannot be abated using any available bail conditions. *Id.* If the Commonwealth fails to satisfy its burden of proof, the trial court cannot deny bail. *Id.* The Commonwealth Court held that the 1998 amendment was intended to serve “one core purpose and effectuate only one substance change: that is, to reinforce public safety by making it more difficult for seriously dangerous accused criminals to obtain bail.” *Grimaud v. Com.*, 806 A.2d 923, 926 (Pa.Cmwlt. 2002), *aff’d*, 865 A.2d 835 (Pa. 2005).

The Defendant’s motion lists numerous facts in support of his request, including that he would reside in New York with a roommate but has a fiancé and child in Lycoming County, he is active in his church, has a GED, that no bench warrants have been issued for past missed court appearances, and that he does not have any pending criminal charges aside from those in Lycoming County. The Commonwealth strongly opposed the setting of bail, arguing that the Defendant poses such a threat to the safety of the community that no bail conditions could adequately abate the risk. ADA Welickovitch cited the Defendant’s nearly 17 page long rap sheet, mostly from New York State, as evidence of his lack of ties to the Lycoming County

community, as well as the 40 year maximum sentence the Defendant faces if convicted of Drug Delivery Resulting in Death which may provide Defendant with a reason to flee the area if released on bail. Additionally, the Commonwealth pointed to strong evidence that the Defendant was involved in the death of Connor Smith, including moving his body, moving his car, and taking a picture of him unconscious at 5:00 a.m. on the morning he was found deceased.

The Court finds that each of the examples provided by the Commonwealth to be of valid concern, although not so unusual or dangerous on their own that they could not be potentially managed through strict bail conditions. What is most concerning to the Court however, and what tips the scales, is the fact that while the Defendant may only have pending charges in Lycoming County, those charges include the alleged sale and delivery of crack cocaine to a confidential informant on three separate dates *after* the alleged delivery of drugs to Connor Smith which resulted in his death. The Defendant's continued selling of drugs in the same area using the same phone number, in conjunction with the arguments set forth by the Commonwealth in opposing the Motion to Set Bail, satisfy the Court that the Defendant presents a danger to the community that cannot be abated by any combination of conditions, no matter how strict. Accordingly, the Motion to Set Bail is **DENIED**.

**ORDER**

**AND NOW**, this **23<sup>rd</sup>** day of **July, 2024**, upon consideration of Defendant's Omnibus Pre-Trial Motion, the argument of counsel, and for the reasons set forth above, with the exception of the Motion to Suppress Suggestive Pretrial Identification and Tainted Preliminary Hearing Identification, which was withdrawn by Defendant's counsel on the record, the Omnibus Pretrial Motion filed on March 13, 2024, is **DENIED**.

By the Court,

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Ryan M. Tira, Judge

RMT/jel

cc: DA – Matthew Welickovitch, Esquire  
PD – Tyler Calkins, Esquire  
Gary Weber, Esquire  
Jennifer Linn, Esquire