

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA

v.

JESSIE COOPER,
Defendant

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CP-41-CR-1446-2023

OMNIBUS PRETRIAL MOTION

OPINION AND ORDER

Jessie Cooper (Defendant) was charged on September 28, 2023 with one count of Possession with the Intent to Deliver¹ and Possession of a Controlled Substance². The charges arise from the Defendant providing a pill to Ameera Blackwell in the City of Williamsport, Lycoming County. Defendant filed an Omnibus Pretrial Motion on December 22, 2023. Hearing was scheduled for March 12, 2024 but the parties agreed to submit the decision to the Court on the transcript of the preliminary hearing.³

At the preliminary hearing on October 31, 2023 the Commonwealth presented two witnesses. The first witness was Ameera Blackwell (Blackwell). She testified that in May 2022 she was living at 803 Wilson Street. N.T. 10/31/2023 at 4. On May 21, 2022, Blackwell said she was “hanging out with a friend.” *Id.* The friend she was hanging out with was Kareema and she would have texted Defendant. *Id.* Blackwell said that Defendant had been her friend for a long time and was having a cookout that day. *Id.* at 5. Blackwell told Defendant that she had a headache. Defendant said she “had a pill for me.” *Id.* Blackwell went over to Memorial Avenue where the Defendant was having her cookout and Defendant handed her a pill. *Id.* at 6. Blackwell said that it actually was a half of a pill, and Defendant said that it was a Tylenol. *Id.*

¹ 35 P.S. §780-113(a)(30).

² 35 P.S. §780-113(a)(16).

³ A motion for discovery concerning the Commonwealth’s only witness was also included in the motion. A separate order was issued resolving that motion.

at 7. Blackwell did not remember what the pill looked like. *Id.* Within about five minutes after taking the pill, Blackwell felt lightheaded and dizzy. *Id.* Blackwell said that she told Kareema that she didn't feel right and Kareema took her to the hospital. *Id.* Blackwell went to the hospital within five to ten minutes later. *Id.* at 8. Once she got there when she was signing forms, she felt her legs give out and the room was spinning. *Id.* She described hospital personnel rushing her to the back to give her what she thought was Narcan. *Id.* She asked them to please not let her die. *Id.* She testified that she was released from the hospital and was told that she had taken fentanyl. *Id.* at 10. Blackwell said that she had not knowingly taken fentanyl that day. *Id.*

On cross examination, Blackwell said that although she may have taken drugs in the past, she never took heroin, cocaine, or fentanyl. *Id.* at 10-11. She said that the only thing she took that day was the half a pill that Defendant gave her. *Id.* at 12. Defendant told her it was Tylenol and Blackwell believed her. *Id.* She also testified that she was on good terms with Defendant and her daughter. *Id.* at 11. Blackwell also testified that she had taken both Tylenol and Ibuprofen in the past and never had an allergic reaction to either one. *Id.* Blackwell believed that they took urine sample from her but she wasn't sure if they drew blood. *Id.* at 13.

The Commonwealth also called Agent Christopher Salisbury (Salisbury) of the Williamsport Bureau of Police. He testified that he was working on May 21 and Blackwell came to the police station and told him that she was given a fentanyl pill by Defendant. *Id.* at 14. She originally told him that she reached out to Defendant and asked for Tylenol and that Defendant gave her something "that would help." *Id.* at 14-15. Blackwell described it to Salisbury as a broken in half yellow pill, that she immediately began to feel dizzy and didn't feel right and sought treatment at the hospital. *Id.* at 15. Salisbury took her report and the paper

she got from the hospital that day. *Id.* He then obtained a copy of Blackwell's medical record from that day. *Id.* Her records indicated that she had fentanyl in her urine and she was given Naloxone. *Id.* at 15-17. He also added that the urine sample was tested on May 21st at 7:20. *Id.* Salisbury also testified that only Blackwell's urine was tested and there is no way to determine when the substance was taken but that it was positive for fentanyl. *Id.* at 18.

Defense Counsel alleges in the motion that the Commonwealth has failed to establish a *prima facie* case on the charge of Delivery of a Controlled substance as it failed to present evidence that Defendant **knowingly** possessed or delivered a controlled substance to Blackwell.

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).

Did the Commonwealth present prima facie evidence of Delivery of a Controlled Substance and Possession of a Controlled Substance

Defendant is charged with one count of Delivery of a Controlled Substance (fentanyl), in violation of 35 Pa. C.S. Section 780-113(a)(30), which 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.

The term delivery, as used in this section, is defined by the Act as “the actual, constructive, or attempted transfer from one person to another of a controlled substance, other drug, device or cosmetic whether or not there is an agency relationship.” 35 P.S. § 780–102. “Thus, for a defendant to be liable as a principal for the delivery of a controlled substance there must be evidence that he knowingly made an actual, constructive, or attempted transfer of a controlled substance to another person without the legal authority to do so.” *Commonwealth v. Ellison*, 213 A.3d 312, 319 (Pa. Super. 2019). A defendant actually transfers drugs whenever he

or she physically conveys drugs to another person. *Com. v. Murphy*, 577 Pa. 275, 285, 844 A.2d 1228, 1234 (2004).

A controlled substance under the Act is defined as a drug, substance, or immediate precursor included in Schedules I through V. 35 Pa. Stat. Ann. § 780-102. Fentanyl is a controlled substance.

Defendant is also charged with possession of a controlled substance in violation of 35 P.S. §780-113(a)(16), which prohibits “Knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.”

Tylenol and Ibuprofen are substances generally available for purchase at any store without the need for a prescription for pain relief. In the Court’s experience, the only time Tylenol is dispensed by prescription, or controlled, is when it combined with a controlled substance or of a dosage that is greater than offered over the counter.

Here the substance that Blackwell thought she was getting was Tylenol. She testified that she had never had such a reaction from taking either Tylenol or Ibuprofen. The Court can infer that Blackwell knew that Tylenol or Ibuprofen never gave her the same reaction as the pill did on that day, so much so that it caused her to be worried for her life, made her go to the hospital and while there asked them not to let her die. That reaction, along with the fact that Blackwell had not taken any other substances, and her urine came up positive for fentanyl, circumstantially proves sufficient evidence to establish that the pill was fentanyl and not Tylenol.

The much tougher question, though, is whether Defendant knew that the pill she provided to Blackwell was fentanyl. The Crimes Code defines the term “knowingly” as follows:

A person acts knowingly with respect to a material element of an offense when:

- (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
- (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

18 Pa.C.S.A. § 302(b)(2). “Intent can be proven by direct or circumstantial evidence and it may be inferred from acts or conduct or from the attendant circumstances.” *Commonwealth v. Horlick*, 296 A.3d 60, 63 (Pa. Super. 2023)(quoting *Commonwealth v. Miller*, 172 A.3d 632, 641 (Pa. Super. 2017)). Furthermore, “as there is rarely direct evidence of a defendant’s state of mind, intent is often established through circumstantial evidence.” *Horlick, id.*

Unfortunately, there is nothing in the record from which the Court can infer that Defendant was aware that the pill was fentanyl or any other controlled substance. The only evidence in the record is that Blackwell had a headache and that Defendant handed her a half of a pill that Defendant said was a Tylenol and Blackwell believed her. Defendant may have also said that the pill would help Blackwell. There was no other evidence regarding Defendant’s actions or statements. While there was evidence of the effect that the pill had on Blackwell, there is nothing to show that Defendant was aware that the pill would have that effect. The Court also does not know anything about the circumstances surrounding the giving of the pill. For example, the Court doesn’t know if Defendant pulled the pill from a corner of a plastic baggie, the pocket of her jeans, a prescription bottle, or a Tylenol bottle. On the record presented, neither Blackwell nor Defendant made any statements about controlled substances or

typical slang used to denote controlled substances. Unlike the typical drug delivery case, there is nothing to indicate that Blackwell was specifically seeking a controlled substance for a certain price or anything of that nature that would put the possession and delivery of the pill into a context that would show that Defendant was aware that the pill was fentanyl.

Conclusion

Since the Commonwealth failed to show that Defendant was aware that the pill was a controlled substance and not a Tylenol, it has failed to establish a *prima facie* case that Defendant **knowingly** possessed and delivered fentanyl to Blackwell.

ORDER

AND NOW, this 26th day of June, 2024, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Omnibus Pretrial Motion in the nature of a Habeas Corpus motion is hereby **GRANTED**. The charges of Delivery of a Controlled Substance and Possession of a Controlled Substance are hereby **DISMISSED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA(EB)
Robert A. Hoffa, Esq.
Jerri Rook