

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-61-2024
v.	:	
	:	
JuMICHAEL DRUMMOND,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION

JuMichael Drummond (Defendant) is charged with four counts of Delivery and/or Possession with Intent to Deliver a Controlled Substance,¹ and four counts of Criminal Use of a Communication Facility.² The charges stem from four separate controlled buys using the same confidential informant (“CI”) arranged by the Lycoming County Narcotics Enforcement Unit (“NEU”) detectives in January and February of 2023.

A preliminary hearing was held on January 11, 2024, at which time all charges were held for Court. The Defendant waived his arraignment. On March 4, 2024, the Defendant filed an Omnibus Pretrial Motion. A hearing was held on May 8, 2024, at which time the Defendant appeared personally and was represented by Robert A. Hoffa, Esquire, and Phoebe Yates, Esquire, appeared on behalf of the Commonwealth.

The Court will address each of the Defendant’s motions individually.

Petition for Writ of Habeas Corpus

In his motion, Defendant contends that the Commonwealth failed to establish a *prima facie* case on any of the eight counts contained in the Information and requests all counts be dismissed. 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

¹ 35 P.S. § 780-113(a)(30).

² 18 Pa.C.S.A. §7512(a).

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). “A *prima facie* case in the criminal realm is the measure of evidence, which if accepted as true, would warrant the conclusion that the crime charged was committed.” *Commonwealth v. MacPherson*, 752 A.2d 384, 391 (Pa. 2000). While 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 charged has committed the offense, the absence of evidence as to the existence of a material element is fatal. *Commonwealth v. Ripley*, 833 A.2d 155, 159-60 (Pa. Super. 2003). 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).

At the hearing on the Defendant’s Omnibus Pretrial Motion, the Commonwealth called Michael Caschera (“Caschera”) a detective in the District Attorney’s Office assigned to the Narcotics Enforcement Unit, who testified that he is tasked with investigating the illegal sale and distribution of drugs. Following Caschera’s testimony, Defendant’s counsel conceded that the Commonwealth had met its burden to establish a *prima facie* case for Counts 1, 5, and 7. With regard to Count 3, the remaining charge for Delivery of a Controlled Substance, the

Defendant alleges that the Commonwealth failed to present any identification of the Defendant as being an individual that would have been delivering a controlled substance.

At the hearing, Caschera testified that on January 26, 2023, a CI was searched and no contraband was found. This was the same CI who was used in the other three controlled buys which resulted in the Defendant being charged with Delivery of a Controlled Substance in Counts 1, 5, and 7. Caschera testified that the CI placed a phone call utilizing the same phone number utilized in the controlled buy on January 9, 2023. The CI asked the recipient of the phone call “are you good?” and Caschera indicated that was meant as an inquiry regarding the availability of crack cocaine for sale. Caschera testified that the CI was given \$100 and transported to the designated location, and he watched as the CI approached the building at Braine and High Streets and knocked on the east-facing door. Caschera further testified that he saw the door open, observed a hand at the “threshold” and an exchange occur, and then the CI returned to the NEU vehicle with crack and no funds. Caschera testified that the CI informed him that the Defendant is the individual who came to the door and conducted the exchange, and that it was the same individual that surveillance units observed conduct a hand-to-hand transaction during a controlled buy with the same CI on January 9, 2023.

Defense counsel objected on the grounds that the identification of the Defendant was based upon hearsay as Caschera only testified as to what the CI told him. The Commonwealth argued that they do not need to produce the CI at this stage, as long as they are available to testify at trial, and cited the case of *Commonwealth v. Sutton*, 313 A.3d 1071 (Pa. Super. 2024) in support of its position. The Court in *Sutton* held that it was error for the trial court to determine that production of the CI was required at the preliminary hearing. In *Sutton*, the record showed the Commonwealth asserted that its prosecution of charges against Appellee

would be dependent on the live testimony of the CI, who, it maintained, was willing to testify both to his/her observations made inside Appellee's residence during the two controlled buys and to his/her alleged statements made to the detective immediately after the controlled buys, consistent with the content of the detective's testimony at the preliminary hearing. 313 A.3d at 1077. In the present case, the Commonwealth indicated that the CI would be available to testify at the time of trial as to the identification of Defendant as the individual who delivered the crack cocaine on January 26, 2023. As the Commonwealth enjoys a qualified privilege to withhold the identity of a confidential source until a defendant establishes, pursuant to Rule 573(B)(2)(a)(i), that the information sought is material to the preparation of the defense and that the request is reasonable, the Defendant's hearsay argument is without merit.

Notwithstanding Caschera's testimony regarding the CI's identification of the Defendant as the individual who delivered him the crack cocaine on January 26, 2023 during controlled buy #2, this Court finds that the other evidence of record - including the use of the same cell phone number and location as the other controlled buys, wherein the Defendant was positively identified and observed by Caschera and other members of the NEU conducting hand to hand drug transactions – when viewed in the light most favorable to the Commonwealth and giving effect to all reasonable inferences drawn therefrom, establishes a *prima facie* case for Delivery of a Controlled Substance under Count 3.

The Defendant next argues that all four counts of Criminal Use of a Communication Facility must be dismissed as the Commonwealth failed to establish that he utilized a communication device to commit or attempt to commit a violation of the Controlled Substance Act. He argues that without a positive identification of the person on the receiving end of a phone call, there is no *prima facie* case and that it cannot be assumed that because the

Defendant showed up to a drug transaction that the Defendant was the individual using the cell phone.

At the hearing, Caschera testified that in all four controlled buys, he directed the CI to contact the Defendant, and the CI placed the phone call to establish the sale of cocaine between the CI and the individual on the other end of the line. The same CI was used for each of the four controlled buys, and the CI contacted the same cell phone number, which he believed to be the Defendant's. Caschera testified that the phone call was made by the CI over speaker phone and although Caschera was not previously familiar with the Defendant's voice, the same voice answered during each of the four calls made by the CI to arrange the purchase of crack cocaine. For three of the four controlled buys, Caschera or another member of the NEU observed the Defendant conduct the hand to hand transaction and the CI relayed to Caschera immediately after controlled buy #2 that the Defendant was the individual who sold him the crack.

At this stage of the proceeding, it is not necessary for the Commonwealth to prove the Defendant's guilt beyond a reasonable doubt, but rather, its burden is merely to put forth a *prima facie* case of the Defendant's guilt. As previously noted, "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." *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). Based upon the evidence of record, when read in the light most favorable to the Commonwealth, it is reasonable to infer that the Defendant was the one who answered the CI's calls, and used his cell phone to communicate the location and other details of the sale and delivery of the crack cocaine to the CI on each of the four controlled buys. This Court finds that the Commonwealth has met its

burden to establish a *prima facie* case with regard to each of the four counts of Criminal Use of a Communication Facility.

Accordingly, the Petition for Writ of Habeas Corpus is **DENIED**.

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

The Defendant alleges that the discovery provided by the Commonwealth as of the date of the filing of the Omnibus Pretrial Motion did not disclose information regarding the Commonwealth's CI, including the CI's prior cooperation or methodology upon which the CI became a source of information, the CI's criminal history and the circumstances surrounding his/her cooperation with the NEU, and how the NEU determined the CI to be credible and reliable. Additionally, the motion avers that the Defendant is entitled to know whether there have been any promises made for leniency or preferential treatment as a result of the CI's cooperation.

At the time of the hearing on the Omnibus Pretrial Motion, a discussion between the Court and counsel occurred regarding an information sheet developed by the District Attorney's Office for use when CIs are utilized in cases. It is anticipated that this sheet, when completed, would satisfy Defendant's request and provide the information he is legally entitled to. Assistant District Attorney Yates indicated that form would be properly filled out and provided to Defendant's counsel by May 22, 2024. Accordingly, the Motion for Disclosure of Criminal Charges, Promises of Leniency and/or Immunity is **GRANTED**. If the information was not provided by May 22, 2024, as indicated on the record, the District Attorney shall provide the completed form to Defendant's counsel within seven (7) days of the date of this Order.

Motion to Reserve the Right to File Additional Motions

The Defendant's Omnibus Pretrial Motion avers that some discovery has been provided by the Commonwealth but Defendant believes there is additional discovery outstanding and requests authority to file additional pretrial motions deemed necessary. This motion is **GRANTED**, to the limited extent that any motion is based on information or discovery provided by the Commonwealth after May 8, 2024, the date of the hearing on Defendant's Omnibus Pretrial Motion.

ORDER

AND NOW, this 19th day of July, 2024, upon consideration of Defendant's Omnibus Pretrial Motion, and for the reasons set forth above, the Court finds the following:

1. Petition for Writ of Habeas Corpus is **DENIED**;
2. Motion for Disclosure of Criminal Charges, Promises of Leniency and/or Immunity is **GRANTED**;
3. Motion to Reserve Right to File Additional Motions is **GRANTED** subject to the limitations discussed above.

By the Court,

Ryan M. Tira, Judge

RMT/jel

cc: DA (PY)
Robert A. Hoffa, Esquire
Gary Weber, Esquire
Jennifer E. Linn, Esq.