

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : **CP-41-CR-896-2022**
 :
 CHARLES E. JOHNSON, : **OMNIBUS PRETRIAL**
 Defendant : **MOTION**

OPINION AND ORDER

On May 26, 2022, the Lycoming County Narcotics Enforcement Unit (LCNEU) obtained a search warrant for the residence of Charles Johnson (Defendant) located at 606 Spruce Street, City of Williamsport based upon information that was provided to the NEU by the Drug Enforcement Agency (DEA). As a result of the search, Defendant was charged by the LCNEU with five counts of Possession with the Intent to Deliver a Controlled Substances (PWID)¹. After a preliminary hearing on June 30, 2023 Defendant was held for court on all of the charges filed; however, the Commonwealth conceded that two of the PWID charges should be reduced to simple possession charges. On August 14, 2023, Defendant filed a timely omnibus motion in the nature of a suppression challenging the search warrant as well as a *habeas corpus* motion challenging the Commonwealth's evidence presented at the preliminary hearing. The Commonwealth offered additional testimony, the recording of the preliminary hearing from June 30, 2022, along with exhibits which included the search warrant issued May 26, 2022 and recordings from the DEA from a T3².

¹ 35 Pa.C.S.A. §780-113(a)(30).

² A T3 is the informal way of referring to Title III of the Omnibus Crime Control and Safe Streets Act of 1968. (Pub. L. 90-351; 6/19/68), also known as the "Wiretap Act" which prohibits the unauthorized, nonconsensual interception of "wire, oral, or electronic communications" by government agencies as well as private parties,

Background

LCNEU Detective Michael Caschera (Caschera) had been contacted by the DEA with information that Sean Davis was coming to Williamsport again to deliver approximately one ounce of fentanyl to Defendant. Consequently, he obtained a sealed anticipatory search warrant from this Court in expectation of the drug transaction. NEU served the warrant and discovered multiple quantities of controlled substance along with other items in Defendant's residence.

At the hearing on the suppression motion, the Commonwealth also offered additional testimony. Agent Nathan Deshaise (Deshaise) of the DEA testified that he was investigating an individual named Sean Davis, who he described as a fentanyl redistributor. He described that they had information that he was travelling to Williamsport to meet Defendant. Caschera also testified to the events leading up to the search warrant and from the service of the warrant along with Kevin Dent (Dent), another LCNEU detective. The Commonwealth also included the recordings from the T3.

The warrant which the LCNEU obtained prior to the search of 606 Spruce contained the following information in the affidavit of probable cause.

On May 25th, 2022, I received information from DEA Agent Deshaies regarding an illegal drug transaction of fentanyl that was going to take place between SEAN DAVIS and CHARLES JOHNSON for approximately (1) once ounce of fentanyl. Based off the information provided by Agent Deshaies, obtained through a TT3 this will be the second resupply from DAVIS to JOHNSON in Williamsport, PA.

I was able to corroborate this information through members of the Lycoming County District Attorney's Office who confirmed that CHARLES JOHNSON is a known drug dealer who resides at 606 Spruce St City of Williamsport.

establishes procedures for obtaining warrants to authorize wiretapping by government officials, and regulates the disclosure and use of authorized intercepted communications by investigative and law enforcement officers.

The following information was provided directly from Agent Deshaies.

In April 2022, members of the DEA Martinsburg POD and investigators from the Potomac Highland Drug and Violent Crime Task Force (PHD&VCTF) initiated a Title III investigation of the Sean DAVIS Drug Trafficking Organization (DTO). DAVIS resides in Baltimore County, MD and operates a fentanyl DTO supplying MD, WV and PA.

On 5/24/22, while monitoring authorized intercepted communication on DAVIS's cellular number (443) 425-#### (TT3), investigators identified a new customer of DAVIS, utilizing cellular number (570) 560-####. Investigators conducted a query using a public database and believe that the above cellular number to be utilized by Charles JOHNSON, residing at 606 Spruce Street, Williamsport, PA. Also, based on the intercepted communication between DAVIS and JOHNSON, both subjects discussed a possible drug transaction. Investigators believe DAVIS met with JOHNSON at the above residence for the purpose of re-supplying JOHNSON with fentanyl for sale based upon intercepted communication. Additionally, electronic surveillance confirmed DAVIS travelled from the Baltimore area to the Williamsport, PA area at the time of the above meet facilitated by authorized intercepted communication.

I was able to confirm that the Cellular number 570-560-#### is the same number that JOHNSON provided to the District Attorney's office regarding a separate police incident involving the endangering the welfare of a child. I ran the above number through a national law enforcement database which confirmed that it is owned by CHARLES JOHNSON.

On 5/26/2022, DAVIS and JOHNSON continued to communicate regarding a second possible drug transaction. DAVIS informed JOHNSON that he would be leaving the Baltimore area around four o'clock (1600 hours) and traveling to Williamsport, PA. Investigators believe JOHNSON [sic] will be travelling to Williamsport, PA to resupply JOHNSON with fentanyl based on the current investigation of the DAVIS DTO and authorized intercepted communication.

Based off the Information received an investigation was opened by the Lycoming County Narcotics Unit (LCNEU) On May 26, 2022 Surveillance was set up on 606 Spruce Street, Charles JOHNSON's known address from previous police contacts. Members of the LCNEU observed a black Audi PA registration LJI1263 owned by Kevin Leroy BEST of Lock Haven, PA. BEST is a known drug dealer out of the Lock Have area who currently in [sic] the main target of an active narcotics investigation which has resulted in numerous controlled buys from him by the Pennsylvania State Police. BEST arrived out back of JOHNSON's residence. JOHNSON approached the front passenger side window of the vehicle, reached his arm inside the vehicle, dealt with BEST, removed his arm from the vehicle and returned to the back yard

of 606 Spruce St. BEST departed the area. During these hours, multiple vehicles were observed arriving in the back alley and JOHNSON would meet them at the front passenger side of the vehicle. Based on my training and experience I know this course of conduct is indicative of an illegal drug transaction.

While maintaining surveillance on JOHNSON he was with (3) unknown black males. All were situated in the backyard of 606 Spruce St. JOHNSON and another Unknown B/M exited the backyard of 606 Spruce St and entered 607 Walnut St. Both individuals did this multiple times between the hours of 1230hrs and 1500hrs. Not [sic] staying inside 607 Walnut for more than 5 minutes.

In 2021 607 Walnut St was the base of operations for an illegal fentanyl enterprise In 2021 the LCNEU conducted an undercover purchase from a BM who went directly back to 607 Walnut after the transaction. In 2021 a search warrant was conducted where approx. a half ounce of fentanyl and illegal firearms were recovered from the residence.

I know through my training and experience that drug dealers will utilize multiple locations to operate their illegal drug enterprise. The locations are referred to as “Trap Houses” and “Stash Houses” A trap house is typically used for the distribution of narcotics where users and smaller drug dealers will meet a dealer to purchase or resupply narcotics. A Stash House is typically utilized to store the illegal narcotics and/or money aka profits from their illegal drug enterprise. It is common for these locations to be within close proximity of one another to make the resupply of the trap house easier and faster. 606 Spruce and 607 Walnut are directly across the alley from one another.

During the duration of this surveillance operation JOHNSON was observed with (4) other unknown black males. All of which entered the property of 606 Spruce and 607 Walnut.

Based on my training and experience it is also common for illegal drug enterprises to utilize multiple individuals to operate the enterprise. I.E [sic] multiple individuals conducting hand to hand sales, conducting resupplies, conducting electronic communications arranging deals. Etc. [sic]

On May 26th 2022 at approximately 1410hrs while conducting surveillance I received a call from Agent Deshaies who stated that DAVIS had just contacted JOHNSON via phone. Agent Deshaies provided the picture of DAVIS’s vehicle. A silver sedan with heavy window tint as well as a picture of DAVIS and what he is currently wearing, A dark yellow hooded sweatshirt with a white t shirt underneath and black pants. [sic] Agent Deshaies stated that DAVIS told JOHNSON he was leaving Baltimore area and heading to

Williamsport to resupply JOHNSON with fentanyl. JOHNSON told DAVIS that it was his sons [sic] birthday and he was having a party for him at his house (606 Spruce St). I corroborated this information by observing multiple individuals on the property of 606 Spruce St hanging up balloons and other birthday decorations. While conducting surveillance JOHNSON was observed on his phone multiple times during the above time frame.

I ask for an anticipatory search warrant for 606 Spruce St Williamsport, PA. The triggering factors would be the following:

Arrives at 606 Spruce St in the previously described silver colored sedan with heavy window tint and meets with JOHNSON or one of his associates at 606 Spruce St or on the curtilage of 606 Spruce St in the City of Williamsport.

DAVIS meets with JOHNSON or one of his associates at another location then JOHNSON or his associates return to 606 Spruce St or onto the curtilage of 606 Spruce St in the City of Williamsport.

Commonwealth's Exhibit #3.

Defendant asserts that the search warrant obtained by Caschera lacked probable cause within its four corners. However, within that general statement alleging an unlawful search warrant, Defendant alleges more specifically that the search warrant: 1) lacked sufficient information to provide probable cause that substances would be located in the residence to be searched, 2) failed to establish a nexus of criminal behavior to the 606 Spruce Street address, 3) was executed prior to the occurrence of either triggering event, and 4) contained statements of material fact that were demonstrably untrue.

Did the Search Warrant have probable cause

Both the Fourth Amendment of the United States Constitution and Article 1 Section 8 of the Pennsylvania Constitution protect citizens from unreasonable searches and seizures.

Commonwealth v. Burgos, 64 A.3d 641, 648 (Pa. Super. 2013). The Fourth

Amendment has a strong preference for searches conducted pursuant to warrants.

Commonwealth v. Leed, 186 A.3d 405, 413 (Pa. 2018). Search warrants may only issue upon probable cause and the issuing authority may not consider any evidence outside of the affidavits. Pa. R. Crim. P. 203 (B). The affidavit of probable cause must provide the magistrate with a substantial basis for determining the existence of probable cause. *Leed*, supra (quoting *Illinois v. Gates*, 462 U.S. 213, 239 (1983)).

In order to consider Defendant's claim that there was insufficient probable cause, the parties agree that the Court must restrict its analysis to the information contained in the affidavit of probable cause attached to the warrant, or its "four corners." The Court "must limit [its] inquiry to the information within the four corners of the affidavit submitted in support of probable cause when determining whether the warrant was issued upon probable cause."

Commonwealth v. Arthur, 62 A.3d 424, 432 (Pa. Super. 2013).

"Probable cause exists where the facts and circumstances within the affiant's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a search should be conducted." *Leed*, supra (quoting *Commonwealth v. Johnson*, 615 Pa. 354, 42 A.3d 1017, 1031 (2012) (internal quotation marks and citation omitted). The affidavit of probable cause "must provide the magistrate with a substantial basis for determining the existence of probable cause[.]" *Gates*, 462 U.S. at 239, 103 S.Ct. 2317. In a case where the information from an informant is used as the basis of information to form the totality of circumstances "...the task of the issuing magistrate is simply to make a practical, common-sense decision whether, given **all the circumstances** set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that

contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a “substantial basis for ... conclud[ing] that probable cause existed.” *Commonwealth v Gray*, 503 A.2d 921, 925 (quoting *Gates, supra* at 238–39, 103 S.Ct. 2317) (emphasis added). It is “not require[d] that the information in a warrant affidavit establish with absolute certainty that the object of the search will be found at the stated location, nor does it demand that the affidavit information preclude all possibility that the sought after article is not secreted in another location.” *Commonwealth v. Forster*, 385 A.2d 416, 437-38 (Pa. Super. 1978). A magistrate must simply find that “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Commonwealth v. Manuel*, 194 A.3 1076, 1081 (Pa. Super. 2018).

“[T]he probable cause standard is a practical, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men [and women], not legal technicians, act.” *Maryland v. Pringle*, 540 U.S. 366, 371, 124 S.Ct. 795, 799 (2003)(internal quotation marks omitted). Thus, “the information offered to establish probable cause must be viewed in a common sense, nontechnical manner.” *Commonwealth v. Carey*, 249 A.3d 1217, 1224 (Pa. Super. 2021). Furthermore, the court must view the totality of the circumstances “through the eyes of the trained officer, not those of an average citizen.” *Commonwealth v. Lake*, 879 A.2d 816, 819 (Pa. Commw. Ct. 2005); *Commonwealth v. Burnside*, 625 A.2d 678, 681 (Pa. Super. 1993).

Based upon the information contained in the affidavit of probable cause, the Court finds that the LCNEU established a fair probability that evidence of a crime would be found in 606 Spruce. The DEA was investigating Davis, who was a known fentanyl dealer. Davis, after a phone call to Defendant, was making his way to Williamsport, PA from Baltimore, MD. A

reasonable inference from the information that a high-level drug dealer was making his way to Williamsport to meet with a Defendant who had a known history of drug dealing, was that Davis was traveling to Williamsport to supply drugs to Defendant, not for a social call. This inference along with the other observations made by Caschera about Defendant making multiple very brief contacts with individuals in his back yard which is consistent with drug deliveries establishes that drug dealing appears to be taking place at 606 Spruce Street. Finally, a known drug dealer (Best) from Lock Haven met with Defendant in the same manner as the individuals in the rear of 606 Spruce.

Was there a nexus of criminal activity to 606 Spruce Street

“Probable cause to believe that a man has committed a crime on the street does not necessarily give rise to probable cause to search his home.” *Commonwealth v. Wallace*, 615 Pa. 395, 42 A.3d 1040, 1049–50 (2012) (citing *Commonwealth v. Heyward*, 248 Pa.Super. 465, 375 A.2d 191, 192 (1977)) (emphasis added); see also *Commonwealth v. Kline*, 234 Pa.Super. 12, 335 A.2d 361, 364 (1975). The affidavit of probable cause must establish a “substantial nexus” between the suspect's home and the criminal activity or contraband sought to permit the search of the home. *Id.* The task of the reviewing court is to ensure that the issuing authority had a substantial basis to conclude that probable cause existed. *Commonwealth v. Nicholson*, 2021 PA Super 193, 262 A.3d 1276, 1280 (2021).

The information in the affidavit of probable cause describes Defendant meeting with individuals in front of his home and in the back alley behind his residence engaging in activity that appeared to be drug transactions. In other words, Defendant was engaging in activity that appeared to be drug transactions while at his property at 606 Spruce Street. He was not driving

to another location and dealing drugs on the street or from his vehicle. A known drug trafficker from Baltimore was driving over three hours to Williamsport Pennsylvania to meet with Defendant at 606 Spruce Street to resupply him with drugs. Therefore, there was a nexus to 606 Spruce Street.

The affidavit also describes the behavior of Defendant and one of the unknown B/M's leaving 606 Spruce and going a short distance to 607 Walnut multiple times over a two- and one-half-hour period, staying no more than five minutes each time. The affidavit then describes the concept of stash and trap houses and notes that 607 Walnut in 2021 was the base of an illegal fentanyl enterprise.

Although this information may make it appear just as likely or perhaps even more likely that Defendant was keeping his supply of drugs "stashed" in 607 Walnut, as opposed to 606 Spruce Street, this does not mean that the police lacked probable cause to believe that 606 Spruce Street would contain controlled substances after Davis left that residence. As the Superior Court stated in *Commonwealth v. Smith*, "Questions of probable cause do not entail certainties. Indeed, probable cause exists when criminality is one reasonable inference; it need not be the only, or even the most likely, inference...." 979 A.3d 913, 917 (Pa. Super. 2009)(quoting *Commonwealth v. El*, 933 A.3d 657, 661 (Pa. Super. 2007)(citations and internal quotation marks omitted)). Under the totality of the circumstances, there was probable cause to believe that Davis was going to meet with Defendant or one of his associates for the purpose of supplying Defendant with controlled substances. Davis resided in Baltimore County MD and was operating a fentanyl drug trafficking operation (DTO) supplying Maryland, West Virginia and Pennsylvania. During the federal investigation of Davis and through a wiretap of Davis'

phone, the federal investigation discovered a new customer with a cell phone number that was utilized by Defendant. Based on the intercepted conversations, law enforcement officers believed that Davis and Defendant were discussing drug transactions and Davis was going to leave the Baltimore area and travel to Williamsport to meet with Defendant or one of his associates. The triggering event for the anticipatory search warrant was either Davis meeting with Defendant or one of his associates at 606 Spruce Street or Davis meeting Defendant or one of his associates at another location and then Defendant or the associate returning to 606 Spruce Street. Since the triggering event was tied to 606 Spruce Street, there was a fair probability that there would be controlled substances at 606 Spruce Street following the triggering event.

Did the Triggering Event Occur

Anticipatory warrants “subject their execution to some condition precedent other than the mere passage of time—a so-called ‘triggering condition.’” *United States v. Grubbs*, 547 U.S. 90 (2006). The Fourth Amendment “does not require that the triggering condition for an anticipatory warrant be set forth in the warrant itself....” *Id.* at 99. To make a determination on whether the requisite probable cause exists to support a warrant, the totality of the circumstances is considered. *Illinois v. Gates*, 462 U.S. 213 (1983). The Supreme Court specifically adopted that standard as a matter of Pennsylvania constitutional law in *Commonwealth v. Gray*, 509 Pa. 476, 503 A.2d 921 (1985). Probable cause exists when “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Gates*, 462 U.S. at 238. “[I]n making the practical determination of what amounts to probable cause, the magistrate may consider likely future events, subject to the sorts of specificity and reliability strictures attending all probable cause evaluations. *Id.* at 664.

To support an anticipatory warrant, an affidavit of probable cause must satisfy two “prerequisites of probability” to satisfy the Fourth Amendment. *Grubbs*, 547 U.S. at 96. Those prerequisites are: “(1) establish a fair probability that the triggering condition for the warrant’s execution, as set forth in the affidavit, will occur at the place described therein, and (2) the affidavit must establish a fair probability that contraband will be found in the specified place after the triggering event for the execution of the warrant transpires.” *Commonwealth v. Wallace*, 42 A.3d 1040, 1046 (Pa. 2012).

Anticipatory warrants have the added virtue of providing law enforcement with the flexibility needed to effectively protect the citizenry so that *all* Pennsylvanians may lead quieter, safer, private lives. *Commonwealth v. Glass*, 562 Pa. 187, 203–04, 754 A.2d 655, 665 (2000).

Absent the anticipatory warrant tool, police, with probable cause to believe that drugs will be delivered to a location, must wait until after the delivery to take any action. At that point, police are forced to choose between attempting to obtain a search warrant, or conducting a warrantless entry and search immediately after the delivery in the belief that sufficient exigent circumstances exist to justify that action. The former course risks distribution or destruction of the contraband, while the latter runs the risk of suppression if the courts disagree with the on-the-spot police assessment of probable cause and exigency. Authorizing anticipatory warrants resolves this real-world dilemma in a fashion that far better serves Article I, § 8’s concerns with privacy and the warrant requirement.

Glass, 754 A.2d at 665. The Pennsylvania Supreme Court has also held that “The purpose of warrant protection is not to hinder the conscientious efforts of law enforcement to discover and address criminal activity but to ensure that, before intrusions are made, neutral judicial officers pass upon the question of the basis for a belief that evidence of a crime will be found at the place to be searched”. *Commonwealth v. Coleman*, 830 A.2d 554, 564 (2003).

Upon reviewing the warrant's affidavit of probable cause and analyzing the totality of the circumstances and the reasonable inferences which can be drawn from those circumstances as required, the Court finds that the triggering event occurred to justify the search of 606 Spruce Street.

The affidavit included information about Davis being investigated by the DEA for drug dealing, specifically being a significant dealer who the DEA had sufficient information about his activities that there was a wiretap authorized to monitor his communications and activity. Davis, who was located in Baltimore Maryland, discussed his willingness to meet Defendant in Williamsport, PA some three hours away by car. The DEA contacted Detective Caschera and informed him that Davis was going to travel from the Baltimore area to Williamsport to supply drugs to Defendant. The DEA sent Detective Caschera a photograph of Davis and his vehicle. Detective Caschera relayed those photographs to all members involved in this investigation. Surveillance was set up to watch for Davis' arrival in the area.

On the anticipated date, Davis in fact drove from Baltimore to 606 Spruce Street in Williamsport. Trooper McMunn observed Davis and his vehicle when it pulled in at the Snappy's convenience store on Route 15 south of Williamsport. Transcript of Suppression Hearing, 03/12/2024, at 47-48. Trooper McMunn confirmed that Davis was the driver of the vehicle and that Davis had a passenger with him who was wearing all blue. *Id.* at 48. When Davis left Snappy's, he continued to travel north on Route 15 toward Williamsport. Detective Caschera personally observed Davis approach and park in front of Defendant's residence at 606 Spruce Street. *Id.* Detective Caschera also surveilled the vehicle Davis was driving after it left 606 Spruce Street. When Davis and the passenger stopped at a Sheetz, Caschera was able to

confirm that the passenger was an associate of Davis' through a photograph sent to him by Agent Deshaies. *Id.* at 51.

Agent Deshaies overheard telephone conversations between Davis and Defendant. In those conversations, Defendant indicated that he was having a birthday party for his son. Detective Kevin Dent testified that there was a party going on at Defendant's residence on the day in question. *Id.* at 38. Therefore, Agent Deshaies' information from the phone conversations was corroborated by law enforcement officers' observations of Davis traveling to 606 Spruce Street in Williamsport and their observations of the party occurring at 606 Spruce Street.

Caschera listed in his anticipatory search warrant that the triggering event was that Davis would meet with either Defendant or one of his associates. Davis and a passenger came to the Williamsport area and in fact parked in front of 606 Spruce. There was no information presented that Caschera or anyone who was observing the scene saw Davis enter the residence. However, Detective Dent saw the passenger enter the residence, and he saw Davis and his passenger leave about an hour later. *Id.* at 32-33, 37-38. In order for Davis to exit the residence, he had to have entered it at some point. A reasonable inference from the totality of the circumstances is that Davis entered the residence immediately prior to Detective Dent observing the passenger enter the residence. Although no one observed Davis or the passenger carrying any packages, Detective Caschera testified that drug transactions are typically conducted in secret, not in the open, and that an individual could easily conceal an ounce or more of drugs on their person. *Id.* at 73.

Although there was no direct evidence that Davis met with Defendant or any of his associates,³ it is reasonable to infer that such a meeting occurred from the totality of the circumstances. Based on Davis' drug trafficking organization/business, the activities that Defendant and his associates were conducting with vehicles at the alley in the rear of 606 Spruce that were consistent with drug transactions, the expectation that Davis was driving to Williamsport to supply drugs to Defendant and then the confirmation of his arrival at Defendant's residence, the expectation of Defendant having a party at his and the confirmation that there was a party at Defendant's house, and Davis being inside 606 Spruce Street for approximately one hour, a reasonable person would conclude that Davis and his associate met with Defendant or one of his associates while Davis was inside Defendant's house at 606 Spruce Street for the purpose of delivering drugs. Therefore, viewing the totality of the circumstances through the eyes of a trained officer in a common sense, nontechnical manner, the court concludes that the triggering event occurred.

Was there a material misstatement in the affidavit of probable cause

Lastly, Defendant alleges the affidavit of probable cause contained demonstrably false statements in the affidavit.

While we have recognized that the veracity of facts establishing probable cause recited in an affidavit supporting a search warrant may be challenged and examined, *Commonwealth v. Hall*, 451 Pa. 201, 302 A.2d 342 (1973); *Commonwealth v. D'Angelo*, 437 Pa. 331, 263 A.2d 441 (1970), we have not suggested that every inaccuracy will justify an exclusion of evidence

³ It would be unreasonable to expect the police to have direct evidence that Davis met with Defendant or his associates because one would not expect the police to be inside the residence with them.

obtained as a result of the search. *Commonwealth v. Baker*, 24 A.3d 1006, 1017 (2011), *aff'd*, 621 Pa. 401, 78 A.3d 1044 (2013).

Defendant contends that there is nothing in the intercepted calls to show that Davis ever told Defendant that he was on his way from Baltimore to resupply Defendant with fentanyl, nor is there ever any mention whatsoever of drugs, money, or any other word or phrase which would even indicate a clandestine attempt to arrange for the delivery of controlled substances. The court cannot agree.

While Davis and Defendant never specifically discussed “an ounce of fentanyl” or a price for drugs, the conversations would lead a reasonable officer knowledgeable in drug slang that is used so the actors are not caught would conclude that they are discussing Davis driving to Williamsport to meet at Defendant’s address to exchange drugs. There were approximately eight recorded phone calls on a disc that the Commonwealth submitted as Commonwealth’s Exhibit #1.

In the first call on the disc, which appears to have occurred on May 24, 2022 at 1733 hours (or 5:33 p.m.), Davis asking Defendant to send his address to him and that he (Davis) was on the highway. Defendant replied that “she got it” and “I sent the address to her.” Defendant also says something to the effect of “if we are going to shoot marbles, let’s draw some circles and make a key.”⁴ Defendant also tells Davis that: “if you come through..., I got you”; he is “OG from the old school”; and “you gotta get to know me”. At the end of the call, Davis says, “I’m on my way right now” and Defendant replies, “Get at me, baby. Peace.”

⁴ The recordings are not always perfectly clear. For example, the Court is not entirely sure of the word “key” in that sentence, because Defendant’s voice trailed off at the end of the sentence and the parties sometimes talk over one another.

This call appears to be setting up the first in-person meeting for Davis to deliver drugs to Defendant. The word “marbles” can be used as a slang term for drugs in general or crack cocaine in particular. The word “key” or “ki” can be used as a slang term for the amount of drugs, such as a kilogram.

In the third call, which appears to have been made on May 24, 2022 at 23:50 hours (or 11:50 p.m.), Davis asks Defendant, “You know anybody that got any bluebirds”. The word “bluebirds” can be used as a slang term for barbiturates. Defendant replies, “Do I know?” Davis asks, “You know what I’m talkin’ about?” Defendant says, “yeah. Yeah.” Defendant then says either “what you mean?” or “what you need?” Davis says, something not completely audible initially but ends with “like two or three.” Defendant eventually tells Davis to shoot by and he would see what he can do. Davis then says that “sister hit me and asked me to ask you”. In other words, a female contacted Davis and asked him to see if Defendant knew anybody who had any barbiturates. Defendant then seems confused about who “sister” is. Davis says, “the one who just left.” Defendant then says “oh yeah, yeah, yeah” indicating that he now knows who Davis is talking about and tells Davis to “come back through then.” Defendant says it was a different number, but Davis should keep it that way. Davis should “jump all over the place or those motherf---ers got you.” It appears that Defendant is telling Davis to keep using different numbers to avoid detection by law enforcement. At the end of the call, Defendant says “come on through, man. I got you.” This call indicates that Defendant is going to supply Davis with some drugs, likely barbiturates.

In the fourth call, which appears to have occurred on May 25, 2022 at 15:50 hours or (3:50 p.m.), Davis calls Defendant to let him know that he “got most everything” and that he was just waiting for “his bro” to come around and either cook or cut some. Again, the

recording is not entirely clear on whether the second to the last word was “cook” or “cut.” Defendant says “sounds good.” He then tells Davis that “some of his peeps weren’t cool with it”, they only “got a little something-something out of it” but “that’s the way Dragon goes.” In other words, some of Defendant’s customers were complaining about the quality of the drugs provided to Defendant by Davis. They got a little high from it but it wasn’t the best high. Defendant also told Davis that “they lie” but he also said that they didn’t come back for any more.

“Dragon” is word that can be used as slang for heroin and fentanyl. Based on this conversation, it appears that Davis provided Defendant with “Dragon” (fentanyl and/or heroin) during the first trip on May 24 and that Defendant’s “peeps” (i.e., people or customers) weren’t happy with the quality of the drugs and they didn’t come back to buy more drugs from Defendant.

In the fifth call, which appears to have occurred on May 26, 2025 at 13:51 hours (or 1:51 p.m.), Davis tells Defendant that he has everything now but not until late last night (like 4:00 a.m.). Davis indicates that he will be leaving to come to Defendant after his child gets out of school at 4:00 p.m. Defendant tells Davis he will be there and that it was his son’s birthday.

Based on the totality of the calls, the Court finds that these were clandestine calls to set up drug transactions. While the calls may have never expressly stated that Davis was going to deliver an ounce of fentanyl, the calls were sufficient to lead law enforcement to believe that Davis was supplied Defendant with controlled substances on May 24, 2022 and that he was going to supply Defendant with more controlled substances on May 26, 2022. The DEA’s knowledge of Davis as an individual operating a fentanyl DTO and Defendant’s use of the term “Dragon” indicates a fair probability that the drugs that were delivered on May 24 and were

going to be delivered on May 26, 2022 were fentanyl. The delivery or possession with intent to deliver any amount of controlled substance by a person who is not a licensed practitioner is unlawful. *See* 35 P.S. §780-113(a)(30). Heroin and fentanyl are Schedule I controlled substances. 35 P.S. §780-104(1)(ii)(10), (23). Cocaine is a Schedule II controlled substance. 35 P.S. §780-104(2)(i)(3). Therefore, the Court rejects Defendant's that the warrant must be invalidated due to law enforcement making deliberate material misrepresentations in the affidavit of probable cause.

Habeas Motion

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 also may submit additional proof. *Commonwealth v. Dantzer*, 135 A.3d 1109, 1112 (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).

Possession with the Intent to Deliver a Controlled Substance

The Commonwealth has charged Defendant with three counts of Possession with the Intent to Deliver a Controlled Substance⁵. Defendant alleges that the Commonwealth failed to establish that if the Defendant possessed the controlled substance, that he did so with the intent to deliver. Defendant alleges that the Commonwealth is relying solely on the amount and or weight to establish its *prima facie* burden.

Defendant is charged with three counts of Possession with the Intent to Deliver a Controlled Substance (fentanyl, cocaine, and propoxyphen), in violation of 35 P.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.

To establish PWID, “the Commonwealth must prove both the possession of the controlled substance and the intent to deliver the controlled substance [to another].” *Commonwealth v. Brown*, 904 A.2d 925, 931 (Pa. Super. 2006); 35 P.S. § 780-113(a)(30). The factfinder may infer the intent to deliver from all the facts and circumstances surrounding a defendant's possession.

Commonwealth v. Jackson, 645 A.2d 1366, 1368 (Pa. Super. 1994).

It is well settled that a factfinder may infer intent to deliver from possession

⁵ Defendant is also charged with two other offenses possession of a controlled substance (alprazolam and OxyContin), a violation of 35 P.S. Section 780-113(a)(16).

of a large quantity of controlled substances. *Commonwealth v. Santiago*, 340 A.2d 440, 444 (Pa. 1975). Where the quantity of narcotics seized does not conclusively establish intent, other relevant circumstances include “the manner in which the controlled substance was packaged, the behavior of the defendant, the presence of drug paraphernalia, and large sums of cash found in possession of the defendant.” *Jackson*, 645 A.2d at 1368 (citation omitted). Importantly, “[n]ot all of these factors must be present to prove intent to deliver a control substance, nor must they be given equal weight.” *Id.*

In addition, the factfinder may consider admissible expert testimony that the facts surrounding a defendant's possession are consistent with an intent to deliver. *Commonwealth v. Ariondo*, 580 A.2d 341, 350-51 (Pa. 1990) (citation omitted). *Commonwealth v. Curet-Sanchez*, 240 A.3d 990 (Pa. Super. Ct. 2020).

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, cocaine and propoxyphen [sic] are controlled substances.

Caschera testified at the preliminary hearing which was held on June 30, 2022. He has been working solely undercover for the last 5 ½ years as part of the Narcotics Enforcement Unit (NEU). Caschera testified that he executed a search warrant on 606 Spruce Street, and found one adult male inside, Defendant, who he identified at the hearing. Caschera also testified that when they went inside the residence, Defendant told him that the only items he had were ‘personal use narcotics’ - what Defendant described as “sniffing powder”- in the back bedroom. After searching the residence, NEU found approximately 45 grams of fentanyl, 540

propoxyphen⁶ [sic] pills and approximately 25 grams of cocaine. Caschera added that they found scales with a white residue powder on the weight plate. They also found 11 alprazolam⁷ pills, and 8 OxyContin⁸ pills.

Caschera testified that based upon his training and experience the drugs were possessed for delivery. He based that opinion on multiple facts. He opined that the quantity of fentanyl possessed, depending upon how cut, could generate \$17,330.00 to \$107,000.00 on the street. In addition, the fentanyl was found packaged in four separate distribution bags. He testified that the cocaine was also packaged in distribution bags with a potential street value up to \$4148.00 (using .6 of a gram valued at approximately \$100.00). He also believed that 540 pills of propoxyphen [sic] was a quantity for sale as it was not contained in a properly labelled prescription bottle. There were no large amounts of money (only approximately \$500-\$600), no smaller baggies for packaging or cutting agents found. The fact that there were a set of scales in the kitchen with a white residue also supported Caschera's opinion that Defendant was possessing the largest quantities of controlled substance for delivery.

At the hearing on the motion, Caschera also testified about the search of 606 Spruce and where the drugs were found. Defendant told Caschera after he was given *Miranda* warnings that there was some "sniffing powder" in the closet of the room that he came out of. N.T., Suppression Hearing, 3/12/2024, at 52. Caschera was the inventory officer at the search and described the items found as a quantity of what later tested as 61.71 grams of cocaine with a street value of approximately \$9,000-\$11,000.00 that was located in multiple different

⁶ The substance propoxyphene is incorrectly identified here as propoxyphen. Propoxyphene is a synthetic opiate which is no longer available by prescription (as Darvocet) but is sold on the streets.

⁷ Alprazolam is the generic name for brand name drugs such as Xanax, a benzodiazepine, a Schedule IV substance used to treat anxiety and panic disorder.

⁸ OxyContin is the brand name for the substance known as oxycodone hydrochloride, a Schedule II substance used for the treatment of pain.

distribution bags. *Id.* at 54. Prescription pills were also found Darvocet (propoxyphene) in three separate prescription bottles with the name ripped off, small amount of benzodiazepine pills which he thought were Xanax or alprazolam, and small amount of “hydros or Percocets.” *Id.* at 53. Caschera also testified that he found a straw with an angled cut which is normally used to separate cocaine into smaller bags and a scale coated with a white powder residue which later tested to be cocaine. *Id.* at 54-55. He also testified that they found logs of customers of the Defendants. *Id.* at 69.

Detective Kevin Dent of the LCNEU (Dent) testified at the hearing on Defendant’s motion about what he observed at the search. He said that when he entered the house at about 10 a.m. he saw Defendant coming out of the left bedroom. N.T. Suppression Hearing, 03/12/2024 at 34. Dent thought that the drugs found that morning were located in that same room in a shoe along with male clothing. *Id.* at 35-36. He also observed indicia or occupancy in the residence with the name of Defendant on them. *Id.* at 36. At that time, although there was one child, there were no others at the residence. *Id.*

Counsel for Defendant argued that mere presence at the scene of illegal activity is not enough evidence to establish that the drugs were Defendant’s. He also argued that Defendant did not reside at 606 Spruce Street. Commonwealth argued that Defendant made reference to “sniffing powder” being located in his bedroom, and the other substances were found in the room Defendant referred to as his.

The Commonwealth may meet its burden of proving a possessory crime by showing actual possession, constructive possession, or joint constructive possession. *Commonwealth v. Thompson*, 428 A.2d 223, 224 (Pa. Super. 1981). “Constructive possession” is “the ability to exercise a conscious dominion over” the contraband. *Commonwealth v. Vargas*, 108 A.3d 858,

868 (Pa. Super. 2014). It usually comes into play when police find contraband somewhere other than on the defendant's person. Constructive possession requires proof that the defendant had knowledge of the existence and location of the item. *Thompson*, 428 A.2d at 224. The Commonwealth may prove such knowledge circumstantially. That is, it may prove that the defendant had knowledge of the existence and location of the items at issue “from examination of the totality of the circumstances surrounding the case,” such as whether the contraband was located in an area “usually accessible only to the defendant.” *Commonwealth v. Hall*, 199 A.3d 954, 960–61 (Pa. Super. 2018).

The Court finds for the purposes of *prima facie* that the Commonwealth has met their burden. Defendant makes reference to the area where all of the drugs are found as “his bedroom.” Dent saw him leave that room. Defendant came out of the bedroom in the morning from the room where the drugs were found. There was no discussion that he shared the space with anyone although Defense Counsel argued that the Defendant did not reside at that location. While the Commonwealth would need to present more evidence to meet the beyond a reasonable doubt standard, the Court finds sufficient circumstantial evidence to establish constructive possession and expert testimony as to quantity and value to support the charges.

Conclusion

In order for an affidavit of probable cause supporting a search warrant to be valid it must contain information to establish that there is a fair probability that contraband or evidence of a crime will be found in a particular place. A common sense reading of the affidavit of probable cause establishes a fair probability that contraband or evidence of the crime alleged to

have been committed would be contained within the residence. In addition, the affidavit had sufficient evidence that there was a nexus to criminal activity with the residence at 606 Spruce with the information provided by the DEA and Davis's travel to Williamsport from Baltimore, Maryland. Based on the totality of the circumstances, the Court concludes that the triggering events listed in the affidavit occurred.

ORDER

AND NOW, this 12th day of July 2024, for the reasons set forth in the foregoing Opinion, the Defendant's Omnibus Pretrial Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: Matthew Welickovitch, Esquire
Matthew Diemer, Esquire
Jerri Rook