

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : **CP-41-CR-349-2023**
 : **CP-41-CR-105-2024**
 :
 CARLTON COWEN, : **OMNIBUS PRETRIAL MOTION**
 Defendant :

OPINION AND ORDER

Carlton Cowen (Defendant) was charged at docket number 349-2023 by the Lycoming County Narcotics Enforcement Unit (LCNEU) on March 2, 2023 with one count of Delivery of a Controlled Substance, cocaine,¹ two counts of Criminal Use of a Communication Facility,² and one count of Criminal Conspiracy to Deliver a Controlled Substance³. The charges arise from the Defendant selling cocaine to an undercover confidential informant (CI) in and around the City of Williamsport, Lycoming County. Defendant filed an Omnibus Pretrial Motion in the form of a Habeas motion on May 3, 2023. Hearing was scheduled for August 1, 2023 but continued upon the request of Defense to November 16, 2023. The hearing was subsequently continued due to this Court's unavailability to December 19, 2023. On December 19, 2023 Defense Counsel requested an additional continuance for the hearing to be scheduled no sooner than 60 days and was ultimately scheduled for May 14, 2024.

Defendant was then later charged by the Lycoming County Narcotics Enforcement Unit (LCNEU) on December 11, 2023 in case 105-2024 with three counts of Delivery of a Controlled Substance and one count of Possession with the Intent to Deliver (PWID),⁴ as well

¹ 35 P.S. §780-113(a)(30).

² 18 Pa. C.S.A. §7512(a).

³ 18 Pa. C.S.A. §903.

⁴ Both delivery and PWID are violations of 35 P.S. §780-113(a)(30).

as three counts of Criminal Use of a Communication Facility⁵. The charges arise from the Defendant both possessing and selling cocaine to an undercover confidential informant (CI) in and around the City of Williamsport, Lycoming County. Defendant filed an Omnibus Pretrial Motion in the form of a Habeas motion on April 3, 2024. Hearing was also scheduled for this motion on May 14, 2024⁶.

At the hearing on May 14, 2024 no additional testimony was presented. The Commonwealth submitted the recordings of the preliminary hearings from 349-2023 as Commonwealth's exhibit #1 and the recording for the hearing from 105-2024 as Commonwealth's exhibit #2. Defense Counsel also provided a written copy of the transcript of the preliminary hearing from case number 349-2023 on March 14, 2023 as Defense #1.

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The preliminary hearing in case number 349-2023 was held on March 14, 2023. The Commonwealth presented two witnesses. The first witness was detective Robert Anderson (Anderson) of the LCNEU. He testified that he was involved in an investigation on January 31, 2023. The target was Defendant. Anderson worked with the CI on that day after they got in contact with Defendant. He was told by the CI that Defendant was calling them and Anderson was able to overhear the conversation and described the voice as a deep, raspy masculine voice. He did not know Defendant at that time. Later, he did have an opportunity to speak with the Defendant and believed that it was his voice that he was listening to at the earlier time. He said

⁵ 18 Pa. C.S.A. §7512(a).

⁶ The Motion at 349-2023 raised other issues, specifically a Motion for Discovery as the video provided to the Defense from the Commonwealth was unable to be played. The other issue raised was a request for the identity of the confidential informant. An order memorializing the agreement by the Commonwealth to provide both items was issued on the day of the hearing.

that the voice also directed the CI to the Brandon Café. Defendant allegedly told the CI not to make him wait long “while I am holding this.” Anderson did not review anything on the cellular phone about this transaction. The CI was equipped with a secret camera before going into Brandon Café. He did not see any part of the transaction. Later, after the transaction, the CI came back to Anderson’s car and turned over a knotted off plastic bag which contained a quantity of white powdery substance. Based upon his training and experience both the appearance and the quantity was consistent with the purchase of a quantity of cocaine. Anderson searched the CI before and after the transaction to eliminate the chance that the CI possessed money or drugs prior to or after the transaction. The phone number that was used was a 570 exchange. Anderson “ran” the number and found it to have been registered to Keri Schooley and Defendant. Schooley and Defendant are in a romantic relationship.

On cross, Anderson said that the ability to purchase came from the CI and was not targeted previously by the LCNEU. Anderson was not sure that the phone at this time was registered to the Defendant. He did not verify which Facebook account the Messenger account was attached to. There were several phone calls from the same phone number. The part of the conversation of the one call that he heard did not mention anything about a drug transaction but about work. Anderson testified that he was parked about 500’ away from the Brandon Café. Once the CI walked around the building he was unable to see the CI for the entire transaction; he did not see him enter the Café. Anderson lost sight of the CI for about 3-5 minutes. Anderson had not yet had the opportunity to review the recording that was made from that day so he did not know if Defendant was on the video. The Brandon Café was under surveillance by other LCNEU officers while the transaction was taking place. The CI identified that they received the cocaine from Keri [Schooley], and the CI knows her to be in a relationship with

Defendant. The CI also said that they have “purchased cocaine other times from her through Defendant”. Anderson explained that the CI called Defendant but when the CI went to purchase the cocaine the actual transaction was with Schooley. Only one phone number was used to facilitate the transaction.

The second witness presented was Detective Sarah Edkin (Edkin) also of the LCNEU. She was also involved in the investigation on January 31, 2023. She was the case officer involved utilizing the CI for the transaction with Defendant. Edkin said that the CI reached out to her multiple times and said they could purchase cocaine from Defendant. Edkin said that she was familiar with Defendant. She met up with the CI and set up the transaction. She was positioned north of the Café where she could see the front of the Brandon Café so she could see the entrance and up the alley that leads south to the parking lot. Dets. Anderson and Dent were also on surveillance. She saw the CI approach from the west and south toward the lot behind the Café. Edkin saw Schooley exit the Brandon Café and walk south to meet up with the CI, outside of the Café but obscured by a vehicle for about 10-15 seconds. The vehicle was registered to Defendant and Carleton Cook. She then saw Schooley get into the vehicle. Shortly thereafter, Edkin also saw Defendant come out of the Brandon Café pass the CI and then get into the car with Schooley and watched them travel away.

Prior to the controlled purchase, Edkin had the opportunity to review a Facebook page with Defendant’s name and picture on it. Edkin said that there was a picture of Defendant on the Facebook profile. Based upon Edkin’s training and experience, the messages between the CI and the page were talking about arranging the purchase. The vehicle that Schooley entered after the transaction was registered to 503 Thomas Ave, and Defendant and Carleton Cook. Edkin had the opportunity to review the video of that day. Edkin said that she could see the CI

and Schooley making contact, exchanging something and then leaving. She could see that when the CI walked past Defendant they verbally acknowledged one another while they were leaving the area. The substance which was turned over from that transaction tested positive for cocaine. When Edkin attempted to discuss what Schooley shared with her to support the conspiracy charge, the MDJ ruled it was not relevant as Schooley was not charged.

Edkin testified that there was a second controlled purchase on March 1, 2023. The same CI reached out through the Defendant's named Facebook page. Messages were exchanged, and a phone call was made in the presence of Edkin utilizing the same number as the first controlled purchase, between the CI and a male Edkin identified as Defendant, with the male asking about how much money that the CI had, the CI stated \$125 and the CI was directed to come to the address at 503 Thomas Ave. The same LCNEU officers worked on the drug transaction. A recording device was given to the CI for this transaction as well. Edkin brought the CI to the rear of 503 Thomas Ave. She lost visual when she walked around to a backyard. Dent told Edkin he saw that the CI went east to what Edkin believed to be a side door at the residence. Edkin saw her walk south and return a minute later. The CI returned with a knotted bag which tested positive for cocaine.

Edkin was also able to review the recording of the transaction inside Thomas Ave. She testified that the CI cut through the back yard, go into the address at 503 Thomas Ave. She saw Defendant open the door which led into the kitchen. She saw a black hand reach toward the CI with controlled substance and no one else was in the kitchen. The camera turns and you see Defendant ask for a cigarette and in what appears to be Defendant's hand appeared to hold a cigarette which came from the CI along with the buy money. She also heard him tell the CI to come back after 11 that night to get some more as it "was a new batch." CI then exits the

residence. Edkin admits that she could only see the Defendant's hand reaching out toward the CI.

A search warrant was also executed at the residence the next day after the transaction. She thought that indicia of occupancy for the Defendant was found in one of the bedrooms. The Defendant lived there with his father. Schooley was also present when they searched the residence. Edkin confirmed the buy number from a phone found on a bed and the Facebook account used to arrange both of the transactions. They found buy money along with other currency about \$800-\$900 in total and a small scale in a male's brown jacket found in the closet. Also found in the same jacket in another pocket was a small knotted up bag field tested positive for cocaine weighing approximately one (1) gram. At the time of the search, Schooley, Defendant and Carleton Cook were present.

On cross examination, Edkin said that on January 31, the video does show the reflection of the transaction that took place between the CI and Schooley. None of the agents saw the transaction directly. There was conversation between Schooley and the CI recorded on the video. The CI did acknowledge Defendant as they walked past each other but there was no conversation. Edkin was not aware that the CI and Defendant worked together. There was no conversation about that on the video.

On the second buy March 1, 2023, Edkin was able to see the Facebook messenger posts as they were happening and the same phone number was used to arrange the transaction. The CI is directed to 503 Thomas Ave. by either a phone call or Facebook messenger Edkin does not recall which. The recording device attached by Edkin on the CI, shows that the CI does enter the correct apartment as Edkin was familiar with the layout of the apartment building but there were no markings on the outside of the apartment to show that it was 503. Edkin says

that the CI's recording shows Defendant's face when he opens the door of 503 Thomas. No other people were present. She describes where the camera goes from Defendant's face to his hand during the drug transaction. Edkin also describes that she was able to confirm the Facebook page to the phone called to set up transactions by using her own account that was already "Facebook friends" with him. She did acknowledge that the phone had been registered to two different people, Defendant and Schooley, so she would have to research who the phone was registered to at the time of the transactions. There was no video of Defendant using the phone or Facebook account, she just inferred that Defendant was using it because it was found in his room during the search. Edkin also testified that the CI was given \$125.00 in currency for the transaction but only \$40 of the buy money was found during the search. They never found the rest of the buy money in the search.

The preliminary hearing in case number 105-2024 was held on January 23, 2024. The Commonwealth called Edkin for this hearing as well. She was working with a CI who said that they could purchase cocaine from Defendant. The CI made a call to a number on November 1, 2023 to arrange the purchase. Edkin was present for the conversation between the CI and someone through Messenger on a Facebook profile of a Jack Smith. She identified the voice on the other line as Defendant. The CI was told to pick up Defendant at the alley by his house on Thomas Avenue. The CI was equipped with a live feed video recorder. Edkin saw the Defendant enter the CI's vehicle at the alley location. Defendant directed the CI to go to the 6th and High Street gas station to purchase cigarettes. She saw Defendant go inside and come back out of the store. Together they then travelled to the Weis Markets on Lycoming Creek Road where Edkin saw the Defendant enter the store. About 10 minutes later, Defendant came back to the vehicle. Once inside the vehicle she saw Defendant hand a plastic cut off bag to the CI,

and asked that he be brought back to his residence on Thomas Ave. She saw the CI drop Defendant off and drove directly to meet the CI. The CI gave the substance to Edkin which was field tested and came back positive for cocaine.

Another buy for an eight-ball of cocaine was arranged on November 15, 2023. CI used the same Facebook profile messenger to call Defendant in Edkin's presence. The CI was equipped with a live feed video recorder. Although he changed the pickup location several times, Defendant told the CI to pick him up at his residence on Thomas Ave and together they travelled to the Shamrock Bar. Once there, she saw that Defendant took the money and surveillance told Edkin that Defendant entered the rear of the Shamrock and exit the bar sometime later. Through the live feed Edkin saw Defendant hand the controlled substance to the CI. Once the transaction was complete, the CI gave the cocaine to Edkin which was field tested and came back positive for cocaine.

An additional controlled purchase was arranged for November 20, 2023 for cocaine. The CI contacted the Defendant through the Facebook Messenger for Jack Smith. CI arranged to make a purchase of an eight-ball cocaine and Defendant directed the CI to meet him at the Sheetz on Maynard St. The CI was equipped with a live feed video recorder. Edkin saw Defendant arrive and enter the CI's vehicle on the front passenger's side. Edkin heard Defendant direct the CI to travel to the Minit Mart on Fourth Street in Newberry. Defendant got the prerecorded money from the CI, told the CI to park near the Minit Mart and she saw the Defendant go into the Minit Mart. Once out she saw that Defendant hand the cocaine to the CI and directed the CI to drop him off near his residence on Thomas. Once the Defendant left the CI's car, the CI met with Edkin and gave her the suspected cocaine which field tested positive.

Finally, on December 11, 2023 Edkin attempted to make another purchase using the same CI. The CI arranged to meet the Defendant at the Sheetz on Maynard. The CI was equipped again with a live feed video recorder. CI was directed to go again to the Minit Mart and wait while Defendant went inside. Before Defendant returned back to the CI's car, U.S. Marshals took Defendant into custody on his outstanding felony warrant. While being taken into custody, \$82.00 of prerecorded funds were recovered from the Defendant along with two small amount bags containing cocaine.

On cross examination, Edkin testified that the CI reached out to her about making purchases from Defendant and that she had worked with the CI before. She described that the CI placed the location of the live feed camera on them for each transaction so it would stay in the same place. She also testified that she recognized Defendant's voice from each of the transactions from prior contacts with him. The CI gave Edkin the original Facebook profile of Defendant and then the new one named Jack Smith. The CI was equipped with a live feed video recorder which had live video along with recording the events taking place. Edkin described that the Defendant took the money from the console of the CI's vehicle, Defendant goes into the different stores and once the Defendant returns to the CI's vehicle he provides cocaine to the CI each time. Edkin agrees that Defendant didn't have the cocaine on him before the transactions. Edkin testifies that she searched both the CI and the CI's car each time.

On the first transaction Defendant was in the Weis Markets for about 10 minutes and Edkin searched the CI and their car before the transaction. The second transaction also showed that Defendant took the money from the center console and the Defendant was in the Shamrock for about 10-15 minutes. Each time, Defendant takes the money from the center console, goes into a location and comes out with the cocaine. Edkin got the warrant for the Defendant that

day in December before they went out for a controlled purchase. When LCNEU searched Defendant at the time of his arrest he had some other currency on him in addition to prerecorded funds. The substances which were found on him after his arrest were consistent with the eight ball which was the agreed upon amount for the drug transaction along with another amount consistent with personal use. For the December 11 transaction, the Defendant was not charged with the criminal use of communication facility even though the CI used Facebook messenger to arrange the transaction.

Defense Counsel alleges in his two motions that the Commonwealth has failed to establish a *prima facie* case on both sets of the charges as it did not prove that Defendant delivered a controlled substance to the CI since it did not offer the testimony of the CI.

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).

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In his motion Defendant asserts that the Commonwealth failed to present any testimony to establish that he conspired with anyone to deliver controlled substances or used a communication facility to facilitate any transactions.

Did the Commonwealth present prima facie evidence of Conspiracy to Deliver a Controlled Substance

Defendant contends the Commonwealth failed to establish the elements of Criminal Conspiracy. For the Commonwealth to establish conspiracy it must show “that the defendant (1) entered into an agreement to commit or aid in an unlawful act with another person or persons, (2) with a shared criminal intent and (3) an overt act was done in furtherance of the conspiracy.” *Commonwealth v. Murphy*, 795 A.2d 1025, 1037-38 (Pa. Super. 2002).

“Circumstantial evidence may provide proof of the conspiracy. The conduct of the parties and the circumstances surrounding such conduct may create a web of evidence linking the accused to the alleged conspiracy.” *Commonwealth v. Jones*, 874 A.2d 108, 121 (Pa. Super. 2005). The agreement can be demonstrated in a variety of ways including “the relation between the parties,

knowledge of and participation in the crime, and the circumstances and conduct of the parties surrounding the criminal episode.” *Id.* at 122.

Anderson testified about the controlled purchase on January 31, 2023, involving the CI, but he did not witness the transaction directly. He stated the CI identified receiving the drugs from Schooley, who allegedly was in a relationship with the Defendant. Anderson overheard the CI’s conversation with a male voice (allegedly the Defendant’s), directing the CI to the transaction location. However, Anderson did not confirm the voice was the Defendant’s during the interaction. The CI was monitored and searched before and after the transaction, eliminating the possibility that the drugs originated from another source.

Edkin corroborated Anderson’s account by observing Schooley handing the CI a substance seen in the recording, but she did not observe direct interaction between the CI and the Defendant at that point. Finally, Schooley was observed leaving the Brandon Café (where the transaction occurred) and entering a vehicle registered to the Defendant. Shortly after the transaction, the Defendant exited the same café and entered the vehicle owned by him and his father with Schooley.

The Court finds that sufficient evidence was presented to establish *prima facie* on the charge of conspiracy to deliver. The CI spoke with Defendant by phone and by messages through Defendant’s Facebook account to set up the transaction. The relationship between the Defendant and Schooley (romantic partner and co-occupant of the residence at 503 Thomas Ave.) suggests familiarity and potential coordination. Edkin’s testimony described Schooley delivering drugs to the CI after communication between the Defendant and the CI setting up the transaction. Schooley’s observed behavior (exchanging drugs with the CI) and her use of a vehicle registered to the Defendant could be considered as overt acts in furtherance of a shared

plan with Defendant. Finally, evidence that drugs and cash were found in the residence shared by Schooley and the Defendant supports the argument of a cooperative enterprise. Therefore, the Commonwealth has established *prima facie* on this charge.

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

Defendant is charged with one count of Delivery of a Controlled Substance (cocaine), 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. Cocaine is a controlled substance.

The delivery charge relates to the events that occurred on March 1, 2023. Detective Edkin testified that the transaction was arranged through phone calls and messages with Defendant. The CI went to Defendant's residence at 503 Thomas Ave. Through the recording device, Detective Edkin observed Defendant answer the door. She also saw Defendant's hand pass an item to the CI. She did not see any other individuals present during the transaction. The CI returned to Detective Edkin and handed her a knotted bag of cocaine. The evidence presented by the Commonwealth, and the reasonable inferences to be drawn from that evidence established a *prima facie* case that Defendant delivered cocaine to the CI inside his residence on March 1, 2023.

Did the Commonwealth present prima facie evidence of Criminal Use of a Communication Facility

Defendant next argues that insufficient evidence was presented to establish a *prima facie* case for Criminal Use of a Communication Facility. The Commonwealth has charged Defendant with two counts of Criminal Use of a Communication Facility. The Commonwealth is required to prove that Defendant used "a communication facility to commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony under this title or . . . The Controlled Substance, Drug, Device and Cosmetic Act. Every instance where the communication facility is utilized constitutes a separate offense under this section." 18 Pa. C.S. § 7512(a). There is no question that a cellular phone was used to facilitate the transaction, the issue is whether the Defendant was the one that used it.

For the purposes of the preliminary hearing, the Court accepts the identification of the Defendant's voice by Edkin to establish that the Defendant is the one who arranged the transactions. She testified that she had sufficient contact with the Defendant to be able to recognize his voice over the phone. When the Defendant was either present or directly involved in the two transactions as evidenced by his use of the phone, circumstantially supports the Defendant's participation in the transaction.

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Defendant argues that the transactions could not have occurred since the confidential informant did not testify and the phone call was not from Defendant since the CI did not testify to identify the voice on the other line.

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

Defendant is charged with three counts of Delivery of a Controlled Substance (cocaine) and one count of PWID (cocaine), 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. Cocaine is a controlled substance.

The Court finds that there was sufficient evidence to establish each of the delivery charges against Defendant. Detectives surveilled multiple transactions where the Defendant personally met the CI, directed the CI to specific locations, and returned with drugs. Testimony regarding the video footage corroborates the Defendant’s involvement in the exchanges. Cocaine was recovered from the CI immediately after transactions involving the Defendant. The CI was monitored and searched before and after the transaction, eliminating the possibility that the drugs originated from another source. Pre-recorded buy money and additional cocaine were found on the Defendant’s person during his December 11 arrest. The additional cocaine found on Defendant’s person at the time of his arrest by the Marshals before he could return to the CI to deliver it was the basis for the PWID charge. Facebook Messenger and phone records tied to the Defendant were used to arrange transactions. While no direct evidence was presented showing the Defendant physically using the devices, the LCNEU circumstantially proved his involvement based on their interactions and the context of the transactions. Therefore, the Court finds that the Commonwealth’s *prima facie* burden has been met.

Did the Commonwealth present prima facie evidence of Criminal Use of a Communication Facility

Defendant next argues that insufficient evidence was presented to establish a *prima facie* case for Criminal Use of a Communication Facility. The Commonwealth has charged Defendant with three counts of Criminal Use of a Communication Facility. The Commonwealth is required to prove that Defendant used “a communication facility to commit, cause or facilitate the commission or the attempt thereof of any crime which constitutes a felony under this title or . . . The Controlled Substance, Drug, Device and Cosmetic Act. Every instance where the communication facility is utilized constitutes a separate offense under this section.” 18 Pa. C.S. § 7512(a).

Multiple controlled transactions (November 1, 15, 20, and December 11, 2023) were arranged via Facebook Messenger and/or phone calls. Messages were exchanged between the CI and a Facebook profile tied to the defendant ("Jack Smith"). The CI also called a phone number allegedly associated with the Defendant, with Edkin present to overhear the conversations. Edkin identified Defendant's voice. The communication facilitated the purchase of cocaine, a felony under the Controlled Substances Act. In addition, the conversations included details such as arranging meeting times and locations along with discussing quantities of drugs and pricing. Finally, the timing and content of the communications are consistent with the Defendant's observed actions (meeting the CI, directing them to locations, and completing drug transactions). Therefore, the Court finds that the Commonwealth has met *prima facie* on this charge.

Conclusion

Through the use of surveillance, circumstantial evidence and Edkin's identification of the Defendant's voice in the phone calls setting up the drug transactions, the Commonwealth has established *prima facie* on all of the charges filed under both informations.

ORDER

AND NOW, this 30th day of January, 2025, based upon the foregoing Opinion, it is **ORDERED AND DIRECTED** that Defendant's Omnibus Pretrial Motion in the nature of a Habeas Corpus motion as to docket 349-2023 is hereby **DENIED**.

Defendant's Omnibus Pretrial Motion in the nature of a Habeas Corpus motion as to docket 105-2024 is hereby **DENIED**.

By the Court,

Nancy L. Butts, President Judge

cc: DA(LS)
Robert A. Hoffa, Esq.
Jerri Rook
CR-105-2024