

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : **CR-617-2023; 780-2023**
 :
 :
 JERRY JENNINGS, : **POST SENTENCE MOTION**
 Defendant :

OPINION AND ORDER

Jerry Jennings (Jennings), through Counsel, filed a timely Motion for Post Sentence Relief on October 8, 2024. A hearing on the Motion was held on November 25, 2024. In his Motion, Jennings alleges that the confidential informant (CI) failed to identify the Jennings at trial, both of the CI's were not credible and that the verdict was against the weight of the evidence. Jennings also alleges that Defense Counsel should have filed a Rule 600 motion as he was continuously incarcerated without going to trial between May 2023 to July 2024. Finally, Jennings argued that the sentence was excessive. Jennings requested the opportunity to add issues within 30 days of the trial transcript being filed. No additional issues were raised.

Background

On July 29, 2024, Defendant was convicted on the above docket numbers of two counts of Delivery of a Controlled Substance,¹ one count of Criminal Use of a Communication Facility,² one count of Possession of a Controlled Substance with the Intent to Deliver,³ and two counts of Possession of a Controlled Substance.⁴ Detectives Tyson Havens (Havens), Robert Anderson (Anderson) and Jonathan Rachael (Rachael) of the Lycoming County District Attorney's Office Narcotics Enforcement Unit (LCNEU), Christine Confer (Confer), Brandy

¹ 35 P.S. § 780-113(a)(30).

² 18 Pa. C.S. § 7512(a).

³ 35 P.S. § 780-113(a)(30).

⁴ 35 P.S. § 780-113(a)(16).

Walter (Walter), and County Detective Loretta Clark on behalf of the Commonwealth, while no testimony was provided by Defendant. That testimony and the evidence presented at trial established the following.

Prior to May 3, 2023 Havens was working with a confidential informant (CI) investigating drug sales from an individual named Sam Harris who she knew as Boo. Confer owed Boo \$150.00 from a previous drug transaction and he was holding her cell phone hostage or collateral as a result. Usually CI's work because they have pending criminal charges, but Havens explained that Confer was paid \$50 for participating in the transaction and she would be paid \$100 for her testimony in court. So on May 3, 2023 she made arrangements to purchase crack cocaine from Boo to pay enough to get her cell phone back. Confer was searched by a female officer and Havens searched her car and given a surveillance device along with \$300 cash and took her to Boo's house since Boo hadn't told her where to meet for the drug transaction. While on her way, Confer received a call from Boo who told her to go to the Harvest Moon market. Havens recognized Boo's voice on the speaker phone through the electronic surveillance device. Ultimately, both Confer and Havens following her travelled to an area north of Harvest Moon on Oaks Alley behind Frederick's Tavern. Havens observed a Honda Civic approach Confer's vehicle shortly after she arrived. Havens saw Confer get out of her car and sit in the passenger's side front seat of the Civic. Havens then observed the Civic travel north behind the tavern and turn right onto Trenton Avenue where Confer got out of the vehicle. Confer then proceeded to walk back to Haven's vehicle where she gave him three bags of cocaine. She said that she purchased the cocaine from a black male that she did not know. Havens testified that he had the opportunity to see who she purchased the cocaine from and identified Jennings in court as the black male in the Civic. He also noted that he could hear

Harris's voice on Jennings cell phone in the vehicle. (Testimony of Detective Tyson Havens, N.T., 07/29/24, at 18-29).

Havens testified that he used the electronic surveillance device later that day with Jennings using a second CI, Brandy Walter. This CI primarily worked with Anderson from the LCNEU. Havens testified that the second transaction occurred behind the Finish Line Café off of Fourth Street in an area to the north of where the first transaction took place. Neither CI knew that the other was working that day. Havens testified that he saw the same Honda Civic arrived in the area of the Finish Line Café and could see Walter enter the rear passenger seat of the vehicle. He testified that he heard Walter say "you're not Boo" when she got into the vehicle. He could also see there was another white female in the car with Jennings. After the CI left the vehicle, Havens followed it to the Family Dollar store on West Fourth Street. Havens testified that he videoed the vehicle travelling as he wanted to record the black male getting out of the car. The video Havens recorded from that day was introduced to the jury as Commonwealth's exhibit #4. (*Id.* at 30-31, 34, 40)

Havens also testified that he participated in the execution of a search warrant that occurred on the next day. The location on Federal Avenue which was searched was the apartment the LCNEU saw Jennings exit to enter the Honda Civic. Jennings was at home at the time with a female, who Havens identified as the other passenger in the second delivery earlier that day. Havens testified that he was present for the search of his room where psilocybin mushrooms and cocaine was found. The cocaine was packaged in 9 individually knotted bags similar to the ones Havens received from Confer after her purchase. Havens also testified that during the search they did not find any pipes, dented aluminum cans or burnt foils with which to smoke crack cocaine. The Commonwealth then established Havens as an expert in possession

with the intent to deliver drugs. Havens testified that the nine knotted bags found in Jennings residence was not only packaged for delivery but matched the packaging that was recovered by both Walter and Confer in their drug transactions for the LCNEU. He also affirmed that there was nothing in the apartment to show that the crack was possessed for personal use. Havens also testified that they found the distinctive hat and jacket in the Honda Civic that Jennings was wearing when he was observed at the Family Dollar by Havens. The Commonwealth presented to the jury a still photograph taken from body cam footage of the SpongeBob Square Pants hat and denim jacket with the unique image on the back marked as Commonwealth's exhibit #6. Havens also testified that they were able to find paperwork in the apartment for a Kitty Lucas who is the girlfriend of Sam Harris, connecting Jennings and Harris. (*Id.* at 40-49.)

On cross, Havens testified that the confidential informant that he had worked with was Confer. He estimated that he would have been about 20 yards from Jennings' transaction with Confer, but that she was also being monitored by electronic surveillance. Havens also confirmed that Confer owed Boo or Harris \$150 from an earlier transaction, and that she had been paid \$100 prior to her testimony and he expected to pay her an additional \$100 for her time testifying at trial. When asked, Havens acknowledged that he did not search Confer, Detective Clark did, but he did search her vehicle. Havens also explained that the Honda Civic used by Jennings was a rental which was rented by Harris. Although Kitty Lucas was on the lease of the location searched, she was not present when the LCNEU executed the search warrant. Havens also testified that LCNEU did not find a scale or any packaging materials in their search. He also was not aware if any buy money was found during the search. (*Id.* at 50-57).

On redirect, Havens clarified that he was able to see Confer the entire time either with the naked eye or electronic surveillance and she had no contact with anyone. Havens also

explained that there was about an hour or so in between the two deliveries so that he (Jennings) could have changed his clothes on May 3rd. He said that he could not see what Jennings was wearing in the first transaction. (*Id.* at 57-58.)

Next to testify for the Commonwealth was Christine Confer. She testified that she worked with Havens on a drug transaction on May 3rd with Boo. Although she texted with Boo on that day, Jennings, who she identified in court, came for the transaction instead. That day she said she showed up at the Harvest Moon where she was searched and given \$300, \$150 for the drug deal and \$150 for the money that she owed Boo. She explained that she had given Boo her phone for collateral. She explained that Havens gave her a recording device for the transaction and she was going to meet up with Boo near the Harvest Moon. After she knocked on his door he called her and told her to meet in an alley across Third Street next to the Harvest Moon. Confer was asked to identify a picture of her phone with the conversation related to purchasing crack, labelled as Commonwealth's exhibit #7. She said that she recognized Boo's voice on the phone. This transaction would have been from a couple of days before May 3rd, showing the number that she contacted Boo at. On May 3rd she was told to go to the alley behind Frederick's Tavern and when the other car came, she got out of her car and into the white car. When she got in the car, she could hear Boo's voice on the phone. She gave Jennings \$300 and was given 3 bags of crack. She only stayed in the car as long as it took to go down the alley and turn the corner. The only person she met with was Havens and she gave him the three bags of crack. Confer also testified that she had the opportunity to look at the recording of the transaction that day that she said accurately represented the transaction from that day, marked as Commonwealth's #8. The Commonwealth stopped and started the video several times so that Confer could explain what was happening inside both her car and the car Jennings was in. She

described that Boo was on the phone during the transaction and it was Jennings who handed her the cocaine. She also testified that she did not get her phone back. She told the Commonwealth that she was telling the truth of what happened that day. Confer also said that she had prior convictions for theft offenses that were related to her prior use of crack. She said that she was participating so that she could get paid. (Testimony of Christine Confer, *Id.* at 59-74.).

On cross examination, Confer testified that she had one phone that was being held by Boo as collateral but was able to communicate with him on another phone. She explained the reason that she owed Boo money was because back then she was smoking crack. Confer did say that she was clean on the day of the transaction. She thought that she was going to see Boo on May 3rd but that it was a different guy. She described where and how she was strip searched by the female detective. She also described Boo's girlfriend as Nikki, not Kitty. She also clarified for trial counsel how much money she was paid for her participation in the transaction. Confer also acknowledged to pleading guilty to retail theft and theft in 2016 and a no contest plea to a retail theft charge in 2018. Confer confirmed that Havens searched her vehicle but that the transaction happened in the Civic. She also acknowledged that she provided the bags of crack to Havens after the transaction, but does not remember other than a "little baggy with a knot" that they had any wording on them. (*Id.* at 75-78, 80.)

Next to testify for the Commonwealth was LCNEU Detective Rachael. He testified that on May 3, 2023 he acted in the role of surveillance and security of the controlled buy. Although they were targeting the purchases from Harris, Rachael identified that Jennings was the one who appeared, and identified him in court. He testified that for the first buy he was set up at the laundromat just north of Arch Street. He was told that the CI (Confer) was walking north on Oak Alley and there was a white Honda Civic parked in the alley waiting. He could see Confer

travelling north in the alley through the houses. After he was told that the CI was in the Honda Civic, he saw the Civic pull out turning east on Trenton Ave and north on Arch to travel west on Glynn Ave. He tried to follow the vehicle but by the time he reached Glynn Ave., he lost it. Later that day, he located the vehicle at 2500 Federal Ave in Newberry Estates. He saw the Civic parked in front of Apartment 351. He then set up surveillance of the vehicle. At one point, he saw a female exit the apartment and get inside the trunk area. By this point, they were arranging the second purchase and they realized that it would not be Harris, but Jennings. Rachel observed Jennings and a white female access the trunk of the vehicle, then they got in the vehicle and drove away. All of this occurred in less than one hour. Once the vehicle drove away, Rachel remained on the scene. He was certain that it was Jennings he saw because he had a pair of binoculars. Jennings and the female left the apartment in a timeframe consistent with the second controlled purchase. (Testimony of Detective Jonathan Rachel, *Id.* at 82-85).

Next for the Commonwealth was LCNEU Detective Anderson. He testified that he was part of a drug investigation on May 3rd, 2023 with Samuel Harris or Boo as the target. He testified that there were two different CI's used for the transactions that day. The first CI was primarily managed by Havens and the second buy was managed by him. The second buy occurred about an hour after the first and that the CI's were not aware of each other. He described that after the first buy, he reached out to Brandy Walter to ask her to reach out to Harris to arrange for a purchase of crack cocaine. She was picked up by Anderson and Clark who performed a strip search on her. She was given \$80 of prerecorded money and a "secret camera." Anderson testified that Havens was able to watch the livestream of the camera. Walter made a call to Harris in Anderson's presence to set up the purchases of crack cocaine. She was directed by Harris to go to Funston Avenue near the rear of the Finish Line. Anderson identified Jennings

in court and said that he was the one who showed up for the buy with Walters. He described that Walter was dropped off north up Funston where she entered the Honda Civic, conducted the drug transaction and then left to walk south on Funston Avenue back to where Anderson was located. When she got back into the vehicle she handed Anderson two plastic knotted-off bags containing crack cocaine. Anderson identified the photograph taken of the bags given to him by Walter as Commonwealth's exhibit #9. He was also shown Commonwealth's exhibit #10, which was a photograph of a Newport cigarette package given to him by Walter which contained the bags of cocaine. (Testimony of Detective Robert Anderson, *Id.* at 88-94).

On cross, Anderson acknowledged that Harris was the target of the investigation, but he was not seen in either transaction. Anderson also described that the transactions were about one hour apart. He confirmed that Walter was the CI that he had worked with previously. Although Anderson was not able to see Walter throughout the entire transaction, Havens was able to see and hear her through the electronic device. He did see Walter interact with someone on her way back to Anderson after the drug buy. He said that he saw them hug and maybe spend about 30 seconds together. He also confirmed that LCNEU did not swab for DNA on the cigarette pack. (*Id.* at 95-98).

Next to testify was Brandy Walter. She testified that she worked with Anderson as a confidential informant. She testified that she was trying to get drugs, specifically crack cocaine, from Boo on May 3rd. Walter testified that Commonwealth's exhibit # 11 was a picture of her phone, which showed that she tried to call Boo that day. She tried to call him three times that day, but at around 12:41 pm she was able to reach him. Boo told her to meet him in Newberry in the area of the Finish Line Café. She had met him there before to buy drugs. She described that before the transaction, she met with a female detective who did a strip search of her and

then she was given \$80 to buy drugs. They also gave her a secret camera which she felt she didn't do a very good job of using to capture the transaction. When asked who showed up to the transaction, she identified Jennings in court. Walter said that she knew Jennings because she had seen him with Boo about two weeks prior sitting in the car. Walter said that when Jennings showed up that day, he had a female in the car with him. She said that once she was in the car, she handed Jennings the money and he handed the crack cocaine to the female, who placed it in the Newport package and then handed it to her. She then said that they dropped her off across the street from the Finish Line. On the way back to Anderson's car, she ran into her cousin and gave him a hug. She did not get anything from him; he lives above the Finish Line so he was in the neighborhood. She gave Anderson the Newport package with the crack right away and then was strip searched again. Walter testified that she had the opportunity to watch the video she recorded from that day, which was played for the jury as Commonwealth's exhibit #12. Just like with the other CI, the video was stopped by the Commonwealth's attorney to point out important information. She showed the area where she met Jennings, and Jennings himself on the video. She described where Jennings and the female were seated in the vehicle and the Newport pack that she got from the female passenger. She also showed where her cousin lived in the video about the Finish Line bar. She also pointed out on the video the conversation she had with her cousin. She was certain that the cocaine came from Jennings. (Testimony of Brandy Walker, *Id.* at 99-110).

Walter testified that she had her own pending felony drug charges at the time of the drug transaction. She said that was one of the reasons why she started working with the LCNEU. She said that she wanted to help herself "get on the right path." She did not expect anything and was not promised anything, but she hoped that her cooperation would be given some kind of

consideration with her case. (*Id.* at 111-112).

On cross-examination, Walter testified that she talked to Boo on the phone to set up the transaction, but that he did not arrive in the white car. She said that she knew Jennings for about 20 years, but that she called him Keith. She said that even though she called him by the wrong name, she still knew him. Walter added that her strip search was done in the car in a parking lot by the Hiawatha. She also testified that she was a smoker but did not have a pack of cigarettes with her; she smoked full flavored LD reds. (*Id.* at 112-115).

Walter was also asked about her memory of that day. When asked, Walter said that she was not under the influence and sometimes her memory is foggy, but she remembered that day. She said that she told people that she had family in that area so it was normal that she would run into her cousin near the Finish Line. She also clarified that she was working with the Commonwealth to help take care of herself. She added that she was working with the Commonwealth not to clear something up but to clear herself up. Although no one has promised her anything, she hoped that her assistance would be taken into consideration but she was mainly doing it for herself. She also acknowledged that she had previously pled guilty to a conspiracy to commit robbery charge in 2015. (*Id.* at 117-119).

Next to testify for the Commonwealth was Detective Loretta Clark. As of the time of trial, she had been employed as a county detective for about 4 years and, prior to that, she was with in the Lycoming County Adult Probation Office for 5 years. On May 3rd, she assisted the LCNEU with two controlled buys, specifically with searches on CI's. She described the searches she did of Walter and Confer as pretty thorough. Each search takes several minutes to perform to look for any contraband or money. She added that she has had numerous trainings and conducted hundreds of searches both as an adult probation officer and county detective. She

testified that she was very confident in the searches she performed. On cross, Clark stated that she searched both women inside the vehicle she was operating. She did not remember any personal items that she would have found on Walter. (Testimony of Detective Loretta Clark, *Id.* at 120-124).

The Commonwealth also recalled Detective Anderson. He was asked about the crack cocaine he received from Walter. He described the original packaging and how the PSP lab repackaged it after testing. Anderson also said that after these purchases, he applied for a search warrant, which was executed the next day on May 4, 2023. The warrant was for 2500 Federal Ave, Unit 351 where the LCNEU believed that Jennings was living. Both Jennings and a female, Ashton Harden, were present during the execution of the search warrant. They were located in a back bedroom decorated as if for a young boy. Anderson identified Commonwealth exhibits #14 and #15 as the items seized from the search. 127. He said that a plastic bag of psilocybin mushrooms was found next to Jennings' wallet on a nightstand in a bedroom. 128. LCNEU also found in the same room in a ShopRite bag at the foot of the bed a bottle of Tylenol with nine knotted-off bags of crack cocaine. 128. There was another tied off plastic bag containing multicolored pills. 128. He thought that they appeared to be Ecstasy⁵ pills. 128. After testing, Anderson testified that the tablets came back from the lab testing positive for the presence of methamphetamine. 130. Also in the bag were "legal papers" with Jennings name on them. 132. He also acknowledged the lab reports prepared by the Wyoming Regional Lab with respect to each transaction as well as the items found after the execution of the search warrant. 136. On cross, Anderson acknowledged that Jennings was not the leaseholder. 139. He was the one who discovered the bag containing the letters. (*Id.* at 125-140).

⁵ Ecstasy is the common name for the chemical compound MDMA or 3,4-Methylenedioxymethamphetamine a stimulant and hallucinogen.

Jennings knowingly, intelligently, and voluntarily waived his right to testify at trial, and no evidence was presented by the defense. (*Id.* at 142-145, 149).

DISCUSSION

In his post sentence motion, Jennings challenges the sufficiency of the evidence, the weight of the evidence, and the length and consecutive nature of his sentences, and he claims that counsel was ineffective for failing to file a motion to dismiss pursuant to Rule 600.⁶

Whether the Evidence Was Sufficient to Support the Jury's Verdicts

Jennings asserts the Commonwealth's evidence presented at trial was insufficient to justify a verdict of guilty and therefore requests relief in the form of an arrest of judgment. He makes a boilerplate assertion that the evidence was insufficient to convict him of the deliveries and the criminal use of a communication facility charges in 780-2023. In his portion of his motion challenging the weight of the evidence, however, he contends that the Commonwealth failed to prove Jennings delivered to the CIs, one of the CIs failed to identify Jennings at trial, and the CIs were not credible. With respect to the charges in case 617-2023, Jennings specifically asserts that the evidence was insufficient to establish that he possessed any of the controlled substances found when the search warrant was executed at the apartment in Newberry Estates, because he was not the lessee of the apartment and the lessee was the friend or girlfriend of the co-defendant (Harris) who allegedly arranged the controlled buys.

When evaluating the sufficiency of the evidence a court must determine "whether the

⁶ Although Jennings raised the weight claim first in his motion, the Court will address the sufficiency claim first as a claim that the verdict was against the weight of the evidence concedes that the evidence was sufficient. *See Commonwealth v. Holt*, 273 A.3d 514, 532 (Pa. 2022) ("A motion for a new trial on the grounds that the verdict is against the weight of the evidence concedes that there is sufficient evidence to sustain the verdict."). The Rule 600 claim is contained within the motion for a new trial on the basis that the verdict was against the weight of the evidence. The court will consider this as a separate claim, because this portion of the claim has nothing to do with the weight of the evidence and if this claim were successful, it would not result in a new trial but dismissal of the charges.

evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in the light most favorable to the Commonwealth as verdict winner, support the jury’s verdict beyond a reasonable doubt.” *Commonwealth v. Murray*, 83 A.3d 137, 150-51 (Pa. 2013); *see also Commonwealth v. Anderson*, 323 A.3d 744, 753 (Pa. 2024); *Commonwealth v. Brown*, 52 A.3d 320, 323 (Pa. Super. 2012). All reasonable inferences are drawn in favor of the verdict winner. *Commonwealth v. Watley*, 81 A.3d 108, 113 (Pa. Super. 2013). “[T]he evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented.” *Brown*, 52 A.2d at 323.

Despite the fact that Jennings only makes a boilerplate challenge to the sufficiency of the evidence for the conviction in case 780-2023, which would normally result in waiver,⁷ the court will address these convictions since current counsel did not represent Jennings at trial and did not have the trial transcript at the time the post sentence motion was filed and more specific allegations were made in his challenge to the weight of the evidence which may more appropriately be sufficiency claims.

In case 780-2023, Jennings was convicted of two counts of delivery of cocaine and one count of criminal use of a communication facility.

An individual commits the crime of Delivery of a Controlled Substance if the person transfers from one person to another a drug, substance, or immediate precursor, which under the Controlled Substance, Drug, Device and Cosmetic Act includes cocaine. 35 P.S. §§ 780-102(b), 780-104 (2)(i)(4), 780-113(a)(30).

The evidence presented at trial established that Jennings made two separate deliveries of cocaine to CIs on May 3, 2023. The first delivery was to Chrissy Confer who was working as a

⁷ To properly preserve a sufficiency of the evidence claim, a litigant must specify the element or elements upon which the evidence was insufficient. *See Commonwealth v. McFarland*, 278 A.3d 369, 381(Pa. Super. 2022).

CI with Detective Havens. Confer called Harris (“Boo”) to purchase cocaine from him for \$150. She owed him \$150 from a prior purchase and he was holding a cell phone of hers as collateral for that debt. Confer was strip-searched by Detective Clark and her vehicle was searched by Havens to ensure that Confer was not in possession of any controlled substances or money. Havens provided Confer with \$300 in prerecorded funds to pay her debt of \$150 and to purchase \$150 in cocaine and supplied her with an electronic recording device to record the transaction.

The transaction was set up to occur at the Harvest Moon at 11:00 a.m., but Harris was not there. Harris then called and redirected Confer to Oak Alley, a street north of the Harvest Moon. Confer parked her vehicle in a lot behind Frederick’s Tavern. A white Honda Civic rented by Harris turned onto Oak Alley from Third Street. Confer got out of her vehicle, walked to Oak Alley and got into the white Honda Civic. Harris, however, was not driving the Civic, a black male was the driver and sole occupant of the vehicle.

When Confer entered the vehicle, the driver was on the phone with Harris. All three of them were interacting. After Confer entered the vehicle, the vehicle drove north on Oak Alley and turned east or right onto Trenton Avenue, where it stopped and Confer exited the vehicle. During the short drive, Confer handed the money to the driver and the driver handed her three knotted bags of crack cocaine, but she did not receive her phone back. Confer exited the Honda Civic and walked back to her vehicle. She met with Havens and provided the three bags of crack cocaine to him.

The driver and sole occupant of the vehicle was Jennings. Confer captured Jennings’ face on video with her electronic recording device.⁸ The device allowed Havens to observe what Confer was recording while it was occurring. Although Confer did not know Jennings prior to

⁸ N.T., at 29, 56. The video from the recording device was admitted as Commonwealth Exhibit 8 and played for the jury. *See* N.T., at 67-68.

this delivery, Havens did. Both Confer and Havens identified Jennings at trial as the individual who arrived in the white Honda Civic and delivered cocaine to Confer.⁹

Havens placed the three bags of crack cocaine in an evidence envelope and they were sent to the lab for analysis. The parties stipulated to the lab report, Commonwealth's Exhibit 17, which showed that the three bags contained .72 grams of cocaine.¹⁰

This evidence, and the reasonable inferences to be drawn from the evidence, established beyond a reasonable doubt that Jennings transferred or delivered three bags or .72 grams of crack cocaine to Confer on May 3, 2023 to sustain the jury's verdict of guilty on Count 3, delivery of a controlled substance (cocaine). Therefore, Jennings claim that the evidence was insufficient to establish that he delivered cocaine to Confer lacks merit.

An individual commits the crime of Criminal Use of a Communication Facility if the person uses "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).

This charge relates to Jennings' use of a telephone to communicate with Harris and to enable communication between Harris and Confer during the transaction. Confer was having communications via text message with Harris about purchasing cocaine in days leading up to transaction. The text messages were introduced as Commonwealth Exhibit 7. She used the same phone number to talk with Harris on the day of the transaction. When Confer entered the white Honda Civic, Jennings was on his cell phone with Harris. Havens could hear them talking on the telephone in real time through the record device. The recording was played in its entirety

⁹ N.T., at 29, 61-62.

¹⁰ N.T., at 135-136.

for the jury. Since the transaction was arranged through Harris, he not only told the CI where to meet, but he had to have told Jennings where to meet Confer and given Jennings a description of Confer so that Jennings would meet with the right person and deliver the cocaine to her. A reasonable inference from Jennings being on the phone with Harris as Confer was entering the vehicle is that Harris communicated with Jennings about Confer and the drug transaction via Jennings' cellular telephone to facilitate the meeting with Confer to deliver the cocaine to her.

A cellular telephone is a communication facility. *See* 18 Pa. C.S.A. §7512(c) (“the term ‘communication facility’ means a public or private instrumentality used or useful in the transmission of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part, including, but not limited to, telephone, wire, radio, electromagnetic, photoelectronic or photo-optical systems or the mail.”).

Even if the conversation was solely about Confer's phone that was being held by Harris, it was still conversation to facilitate a drug transaction. The testimony at trial was that Confer had previously arranged to purchase cocaine from Harris for \$150 but she did not have the cash to pay him, so he was holding a phone of Confer's to ensure that she would pay him for the cocaine that he had provided to her. Harris would not sell more cocaine to Confer unless she paid him \$150 dollars for the cocaine he previously had provided to her and an additional \$150 for the cocaine he was going to provide her on May 3. This was the reason Havens supplied Confer with \$300 even though she was only buying \$150 worth of cocaine on May 3. The conversation about Confer's phone enabled the completion of the prior drug transaction through payment of the owed \$150 and facilitated the May 3 drug transaction because if she had not paid for the prior transaction, she would not have received more cocaine on May 3.

Based on the foregoing, the court finds that the evidence was sufficient to prove that

Jennings used a communication facility to facilitate the delivery of cocaine to Confer. Therefore, the evidence was sufficient to support the jury's verdict of guilt on Count 2, criminal use of a communication facility.

The evidence was also sufficient to prove that Jennings delivered cocaine to Brandy Walter on May 3, 2023 about an hour after the delivery of cocaine to Confer. After the first delivery, other detectives located the white Honda Civic parked in the parking of lot of the Newberry Estates apartment complex in front of Apartment 351. They surveilled the apartment and vehicle and observed Jennings exit Apartment 351, enter the Civic, and drive to Funston Avenue to meet with Walter.

Prior to the transaction, Walter was strip-searched to ensure that she was not in possession of any controlled substances or money. After the search, Detective Anderson provided her with \$80 in prerecorded funds to purchase cocaine. Havens testified that although Walter was Anderson's CI, Havens observed the transaction between Jennings and Walter through the electronic recording device that she was provided for the transaction, as he still had the receiver for the device. He watched the live-stream from the device while the transaction was occurring and he was conducting surveillance.

At the direction of the LCNEW, Walter contacted Harris ("Boo") to purchase cocaine from him. Harris directed Walter to meet on Funston Avenue in the area near the Finish Line café/bar.¹¹ Walter did not have a vehicle, so she was dropped off at the M&T Bank parking lot, which is on the south side of Fourth Street slightly diagonally across the street from Finish Line.

¹¹ The Finish Line café/bar is located on East Fourth Street in Williamsport, PA, as is the M&T Bank where Walter was dropped off. The Finish Line is on the north side of Fourth Street and the bank is on the south side of Fourth Street. Funston Avenue is a street that runs north/south and intersects with East Fourth Street across the street from the Finish Line and east of the bank and its parking lot, which takes up most of the block on the south side of East Fourth Street between Arch Street and Funston Avenue.

Havens observed the white Honda Civic appear and travel north on Funston Avenue. As it approached Walter, the Civic stopped and Walter entered the rear passenger side of vehicle. A black male was driving the Civic and a white female was in the front passenger seat. When Walter entered the vehicle, she immediately said, "You're not Boo." As the Civic traveled north on Funston Avenue and then east on Newberry Street, Walter handed the money to the driver and the driver handed two bags of cocaine to the front seat passenger who placed the bags in a Newport cigarette pack and handed it to Walter. When the vehicle stopped at the corner on Newberry Street, Walter exited the vehicle. She walked back to the area behind the Finish Line where she met Detective Anderson and provided the two knotted bags of cocaine to him. Anderson placed the bags of cocaine in an evidence envelope and it was sent the lab for testing.

The parties stipulated to the lab results contained in Commonwealth Exhibit 17, which established that the two bags delivered to Walter contained .36 grams of cocaine.¹² Cocaine is a Schedule II controlled substance. *See* 35 P.S. §780-104(2)(i)(4).

After the transaction, Havens followed the white Honda Civic as it traveled to the Family Dollar Store on Fourth Street. Havens was not able to obtain video of Jennings exiting the vehicle and entering the store, but he obtained video of him exiting the Family Dollar and returning to the vehicle. He was wearing a rear-facing, SpongeBob SquarePants ball cap and a denim jacket with a unique design on the back. Havens recognized Jennings and knew him as "J-Rock." During the search of Apartment 351 and the white Honda Civic, at which time only Jennings and his white female companion were present, the detectives discovered the SpongeBob SquarePants hat and denim jacket with the unique design on the back inside the white Honda Civic.

¹² N.T., at 135-136.

At trial, Detective Rachel identified Jennings as the individual he observed exit Apartment 351 and enter the white Honda Civic; Havens identified Jennings as the individual who was driving the white Honda Civic that picked up Walter and that he followed directly to the Family Dollar store after the transaction occurred and obtained video footage of him exiting the store wearing the hat and the denim jacket and returning to the vehicle; Anderson identified Jennings as the person who showed up to deliver cocaine to Brandy Walter, and Walter identified Jennings as the person who gave the cocaine to the female passenger who then put the bags of cocaine in the Newport cigarette package.¹³

The video footage that Havens took of the Civic arriving to pick up Walter and the video footage of Jennings exiting the Family Dollar and returning to the vehicle were admitted as Commonwealth's Exhibits 3 and 4 and were played for the jury.¹⁴ The video from the recording device used by Walter was admitted as Commonwealth's Exhibit 12 and was played for the jury.¹⁵

This evidence, and the reasonable inference to be drawn from the evidence, when viewed in the light most favorable to the Commonwealth as the verdict winner, was sufficient to establish that Jennings delivered two bags containing .36 grams of cocaine to Walter on May 3, 2023. Therefore, Jennings claim that the evidence was insufficient to sustain the guilty verdict for Count 1 delivery of cocaine lacks merit.

In case 617-2023, Jennings was convicted of PWID-cocaine, possession of methamphetamine, and possession of psilocybin mushrooms. An individual commits PWID when the person possesses a controlled substance with the intent to deliver it. 35 P.S. §780-

¹³ N.T., at 35, 39-40 (Havens); 82 (Rachel); 91 (Anderson); 104-105, 108 (Walter).

¹⁴ N.T., at 35-36, 38-39.

¹⁵ N.T., at 107.

113(a)(30). Possession can be found by proving actual possession, constructive possession, or joint constructive possession. *Commonwealth v. Rojas-Rolen*, 256 A.3d 432, 437 (Pa. Super. 2021).

Where a defendant is not in actual possession of the prohibited items, the Commonwealth must establish that the defendant had constructive possession to support the conviction. Constructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. We have defined constructive possession as conscious dominion, meaning that the defendant has the power to control the contraband and the intent to exercise that control. To aid application, we have held that constructive possession may be established by the totality of the circumstances.

It is well established that, as with any other element of a crime, constructive possession may be proven by circumstantial evidence. In other words, the Commonwealth must establish facts from which the trier of fact can reasonably infer that the defendant exercised dominion and control over the contraband at issue.

Id. at 437-438 (citation omitted). The power and intent to control need not be exclusive to Jennings as “constructive possession may be found in one or more actors where the item in issue is in an area of joint control and equal access.” *Id.* at 438.

When the detectives of the LCNEU searched Apartment 351 in Newberry Estates, in the west bedroom they found Jennings and the white female who was with him during the delivery to Walter, Ashton Harden, who was believed to be Jennings’ friend or girlfriend.¹⁶ On the nightstand in that bedroom along with Jennings’ wallet, credit cards and IDs, there was a bag of psilocybin mushrooms.¹⁷ At the foot of the bed, they found a ShopRite bag inside of which was a Tylenol bottle containing nine knotted baggies of cocaine, a tied-off bag containing multicolored tablets, and documents with Jennings name and address on them.¹⁸ The parties stipulated to the lab reports. Commonwealth’s Exhibit 18, which contained the results for the

¹⁶ See N.T., at 41-42, 127.

¹⁷ N.T., at 41, 128.

¹⁸ N.T., at 41-42, 128, 130.

substances found during the search of the apartment that were introduced through the testimony of Detective Anderson, showed that the substance in the nine knotted baggies was 2.12 grams of cocaine, the mushrooms contained 1.91 grams of psilocyn (some of which may be due to the conversion of psilocybin), and the multicolored pills contained methamphetamine.¹⁹

Materials containing psilocybin and/or psilocyn are Schedule I controlled substances. 35 P.S. 780-104(1)(iii)(14), (15). Cocaine and methamphetamine are Schedule II controlled substances. 35 P.S. 780-104(2)(i)(4), (ii)(4).

Detective Havens testified that the bags of crack cocaine were packaged in the knotted bags, which was the same way that the three bags of cocaine that he delivered to Confer and she provided to Havens the day before were packaged.²⁰ Havens also noted that no items to ingest the cocaine were located during the search.²¹ Havens also testified as an expert that Jennings possessed the nine baggies of cocaine with the intent to deliver it. He noted that the cocaine was packaged in nine individual bags, it was the same packaging as the deliveries the day before, a user would get a better deal buying a single bulk bag of cocaine rather than nine individual bags, and Jennings possessed two cell phones, which was typical as many dealers possess one cell phone as their personal phone and a second cell phone for “work.”²²

When this evidence, and the inferences deducible from the evidence, are viewed in the light most favorable to the Commonwealth as the verdict winner, it is sufficient to show that Jennings possessed the cocaine, psilocybin mushrooms and methamphetamine tablets and that he possessed the cocaine with the intent to distribute it.

The court rejects Jennings’ claim that the evidence was insufficient because he was not

¹⁹ N.T., at 137-138.

²⁰ N.T., at 42.

²¹ N.T., at 43.

²² See N.T., at 45-47.

the lessee and the lessee was the friend or girlfriend of Harris. Although Kitty Lucas may have been the friend or girlfriend of Harris and lessee of the apartment, her belongings (including letters from Harris and a photograph of her and Harris) were in the east bedroom. None of the drugs were found in the east bedroom; they were all found in the west bedroom where Jennings and Ashton Harden were located at the time of the search and they were with Jennings' papers and effects. Therefore, despite the fact that Lucas was the lessee and she was the friend or girlfriend of Harris, the evidence was sufficient to show that Jennings possessed the drugs found in the west bedroom.

To the extent defense counsel argued that there was no expert testimony to establish intent to deliver, this claim lacks merit. Although there is no requirement that the Commonwealth present expert testimony to establish intent to deliver, the Commonwealth presented expert testimony from Havens in this case.

Whether the Verdict was Against the Weight of the Evidence

Jennings contends that the verdict reached by the jury was against the weight of the evidence provided at trial, and therefore, he is entitled to a new trial. More specifically, Jennings argues both Walter and Confer failed to testify credibly and did not identify him.

“A motion for a new trial on the grounds that the verdict is against the weight of the evidence concedes that there is sufficient evidence to sustain the verdict.” *Commonwealth v. Holt*, 273 A.3d 514, 532 (Pa. 2022). When evaluating a weight of the evidence claim, the trial court may award relief only “when the jury’s verdict is so contrary to the evidence as to shock one’s sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail.” *Commonwealth v. Clemons*, 200 A.3d 441, 463 (Pa. 2019). The

trial court should not grant a new trial merely because there is a conflict in the testimony or because the judge would have arrived at a different conclusion. *See id.* at 464. Rather, “the trial court must determine whether certain facts are so clearly of greater weight that to ignore them, or to give them equal weight with all the facts, is to deny justice.” *Holt*, 273 A.3d at 532.

The jury’s verdict did not shock the conscience of the court. All the evidence in the case pointed to the conclusion that Jennings was the individual in the white Honda Civic who was meeting with the CIs and providing cocaine to them after they arranged with Harris to purchase cocaine. The testimony from the CIs was corroborated by the recordings that they took during the transactions, the surveillance videos taken by Havens and the observations of Havens, Rachel, and Anderson.

Jennings was the only person present in the vehicle during the first transaction with Confer. No one else could have provided her with the cocaine. She was strip-searched by Detective Clark prior to the transactions and her vehicle was searched by Havens and no controlled substances were found. She was given funds to purchase cocaine, drove to the location she was directed to by Harris, met with Jennings in the white Honda Civic, and returned with three bags of a substance that lab results showed contained .72 grams of cocaine. Furthermore, contrary to Jennings’ arguments, Confer did identify him at trial. *See* N.T. at 61-62.

There were some inconsistencies in Walter’s trial testimony and she briefly saw her cousin and hugged him on the way back to Anderson after the transaction occurred, but these circumstances were not sufficient to negate the fact that the controlled substances came from Jennings. Initially, Walter’s testified that she gave the money to Jennings and then Jennings took the cocaine out of his pocket, he handed it to the female passenger and the female passenger

put it in the Newport cigarette package and handed it to Walter, but it came from Jennings.²³ At another point during her testimony, she indicated that Jennings handed the cocaine to her. She was asked about this discrepancy and she said, “that’s neither here nor there because the crack cocaine definitely came from him.”²⁴ She was correct in this assessment. Regardless whether Jennings provided the cocaine directly to Walter or whether he provided it indirectly to her by transferring it to the female passenger in the front seat who then provided it to Walter, Jennings still transferred cocaine to Walter when he was not registered or licensed to do so. *See* 35 P.S. 780-102 (“‘Deliver’ or ‘delivery’ means 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.”).

The Commonwealth also admitted into evidence and played for the jury Commonwealth’s Exhibit 12, which was the recording taken by Walter with the secret camera the LCNEU provided to her.²⁵ While the Commonwealth was playing the video, it paused the video to ask questions of Walter. During one of the pauses, the point where the transaction occurred was noted, Walter stated she was in the back of the vehicle and, when asked if the Newport pack appeared in the video and whether it was handed to her before she met her cousin, she answered yes to both questions.²⁶ Since the evidence showed that Walter received the Newport pack with the cocaine prior to her hugging and speaking with her cousin briefly on her way back to meeting Detective Anderson, her interaction with her cousin did not render the jury’s verdict against the weight of the evidence.

Jennings argument that Walter did not identify him is belied by the record. Walter

²³ N.T., at 105.

²⁴ N.T., at 110.

²⁵ N.T. at 106-110.

²⁶ N.T. at 109.

testified that Harris/Boo did not show up. When asked who showed up, Walter indicated that the African-American gentleman in the purple shirt in the middle of the defense table and the court stated, “Record shall reflect that she’s identified the Defendant.”²⁷ She again identified Jennings on the recording when it was played for the jury. The prosecutor asked if the individual in the green hat and the jean jacket was Harris/Boo, and Walter said no. He then asked who it was and Walter replied, “That’s the gentleman I pointed out earlier.” The prosecutor asked, “Seated here in the courtroom today?” Walter replied, “Yes.”²⁸

Furthermore, the court cannot award Jennings a new trial based on his assessment of the credibility of the CIs, because the “jury is the ultimate fact-finder and arbiter of the credibility of the witnesses.” *Clemons*, 200 A.3d at 463. “[T]he trier of fact, while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.” *Commonwealth v. Knox*, 50 A.3d 749, 754 (Pa. Super. 2012); *see also Commonwealth v. Rivera*, 983 A.2d 1211, 1220 (Pa. 2009). This finding rests exclusively with the jury as the trier of fact. *Commonwealth v. Rice*, 902 A.2d 542, 546 (Pa. Super. 2006).

Jennings argument concerning the alleged inconsistencies in Walter’s testimony also falls within the realm of credibility. *See Clemons*, 200 A.3d at 463 (“Issues of witness credibility include questions of inconsistent testimony and improper motive. A jury is entitled to resolve any inconsistencies in the Commonwealth’s evidence as it sees fit.”)(citations omitted).

The jury, as the trier of fact, was free to believe all, part, or none of the testimony provided by Walter and Confer and chose, in their sole discretion, to believe their testimony. The jury’s determination does not shock the court’s sense of justice as their testimony was largely corroborated by the testimony of the detectives and the video recordings. Therefore, the

²⁷ N.T., at 104.

²⁸ N.T., at 108.

court finds Jennings' claim that the verdict was against the weight of the evidence is meritless.

Whether Defense Counsel erred by failing to file a Rule 600 motion

In his post sentence motion, Jennings also contends that trial counsel was ineffective for failing to file a motion to dismiss pursuant to Rule 600 when he was incarcerated on these charges from May 2023 to July 2024.

At the argument on the motion, Jennings' counsel conceded that this issue should be deferred to pursuing relief under the Post Conviction Relief Act (PCRA) "down the road" based on *Holmes*. Transcript, 11/25/24, at 3-4. The Commonwealth noted that there was a significant amount of delay attributable to the defense that would be excludable for Rule 600 purposes such that any such motion would not be successful. *Id.* at 7-8.

The court agrees that this is an issue that should be deferred to PCRA proceedings. In *Commonwealth v. Holmes*, the Pennsylvania Supreme Court held that ineffective assistance of counsel (IAC) claims should not be asserted in post sentence motions and direct appeal but should be deferred and asserted in a timely PCRA petition, unless one of two limited exceptions is present: (1) the claim is relates to a clearly meritorious issue that is readily apparent from the record; or (2) the individual who seeks to assert prolix claims rather than waiting until post-conviction relief shows good cause and the individual enters a knowing and express waiver of his entitlement to seek PCRA review of his or her conviction and sentence, including an express recognition that the waiver would subject any future PCRA petition to the time restrictions for serial PCRA petitions. 79 A.3d 562, 577-79 (Pa. 2013).

Although it is readily apparent from the record that the criminal complaints in these matters were filed on May 4, 2023 in case 617-2023 and May 31, 2023 in case 780-2023 and

that trial occurred on July 29, 2024, which is beyond the mechanical run date,²⁹ it is not apparent from the record that this claim is meritorious because there are in the record several court orders and continuances attributing delay in the case to the defense and excluding it for Rule 600 purposes.

The arraignment date in case 617-2023 was June 12, 2023. At arraignment, defense counsel requested that this case be placed on a guilty plea date. As a result, the case was scheduled for a guilty plea on September 29, 2023, and the court issued an order indicating that the time from the date of the order (June 12, 2023) to the date of the guilty plea (September 29, 2023) would run against Jennings for Rule 600 purposes. This would likely result in 109 days of excludable time, as the Commonwealth is not going to subpoena witnesses for trial or otherwise prepare a case for trial when the case is on a guilty plea list. *See Commonwealth v. Graham*, 576 A.2d 371, 374 (Pa. Super. 1990) (“it would be unreasonable to expect the Commonwealth to schedule a trial when the accused has indicated during good faith plea bargain negotiations that he will enter a plea.”); *see also Commonwealth v. Bowes*, 839 A.2d 422, 425 (Pa. Super. 2003) (“tender” of a guilty plea is any good faith offer by the defendant stating his intent to enter a plea), *disapproved on other grounds in Commonwealth v. Brock*, 61 A.3d 1015 (Pa. 2013) (a defendant cannot orally request dismissal based on the speedy trial rule; the motion must be made in writing and a copy must be served on the Commonwealth’s attorney).

Similarly, in case 790-2023, the arraignment date was July 3, 2023. At arraignment, defense counsel requested that this case also be placed on the September 29, 2023 guilty plea

²⁹ The mechanical run date is 365 days from the date the criminal complaint was filed. *See Commonwealth v. Lear*, 325 A.3d 552, 560 (Pa. 2024). The court must then adjust the mechanical run date to account for any excludable time. *Id.* The mechanical run dates would have been May 4, 2024 and May 31, 2024, respectively.

day. As a result, the court entered an order indicating that the time from July 3, 2023 to September 29, 2023 was attributable to the defense and would run against Jennings for Rule 600 purposes. This likely would result in 88 days of excludable time.

On September 29, 2023, the defense requested that these cases be removed from the guilty plea list and be placed on a trial list. The court issued an order scheduling the case for a pretrial conference on November 11, 2023 and the trial term for which the first day of jury selection was December 4, 2023. The court noted September 29, 2023 to December 4, 2023 (which the court has calculated as 66 days) would run against the defense for Rule 600 purposes. Cases cannot be tried on guilty plea days or at pre-trial conferences. By placing the case on the guilty plea list, the case could not be scheduled for trial until December 4, 2023 at the earliest.

On March 25, 2024, the Commonwealth requested a continuance because the co-defendant's case (Harris' case) had been continued. Defense counsel agreed to this continuance request. The order indicated that the delay was attributable to the Commonwealth, but by agreeing to the continuance, it arguably became a joint continuance and the time became excludable. *See Commonwealth v. Hunt*, 858 A.2d 1234 (Pa. Super. 2004), *appeal denied* 875 A.2d 1073 (Pa. 2005). March 25, 2024 to the date of the defense continuance request on April 1, 2024 was 7 days.

On April 1, 2024, defense counsel requested a continuance, which was granted and the case was continued to May 20, 2024, so that the defense could explore the option of filing motions and do so by May 1, 2024. The order indicated that from the date of the order (April 1, 2024) to May 20, 2024 would run against the defense for Rule 600 purposes.³⁰ The court has calculated this time period as 49 days.

³⁰ Excludable time begins on the date the continuance is granted. *See Commonwealth v. Lowry*, 560 A.2d 781, 784 (Pa. Super. 1989), *appeal denied* 593 A.2d 416 (Pa. 1991).

The trial occurred on July 29, 2024.

The complaint was filed in case 617-2023 on May 4, 2023 and trial occurred on July 29, 2024, which was 452 days after the filing of the complaint. If all of the potential excludable time is excluded at the time trial occurred only 221 days of non-excludable time had elapsed. Even if the court did not exclude the time attributable to the Commonwealth continuance or to the defense continuance on April 1, 2024 because no motions were filed, only 277 day non-excludable would have elapsed.³¹

The criminal complaint in 780-2023 was filed on May 31, 2023 and trial occurred on July 29, 2024, which was 425 days later. Nevertheless, according to the court orders and continuance requests, there were 88 days of excludable time from July 3, 2023 to September 29, 2023; 66 days of excludable time from September 29, 2023 to December 4, 2023; 7 days of excludable time between March 25, 2024 and April 1, 2024; and 49 days of excludable time between April 1, 2024 and May 20, 2024. Excluding this time from 425 days would result in only 215 days of non-excludable time as of the date of trial. Even if the court did not exclude the time from March 25, 2024 through May 20, 2024, only 271 days of non-excludable time would have elapsed as of the date of trial.³²

Therefore, Jennings claim that counsel was ineffective for failing to file a motion to dismiss pursuant to Rule 600 is not apparent from the record.³³ Jennings also has not waived his right to seek relief under the PCRA. Therefore, his claims of ineffective assistance of counsel

³¹ 452 minus 109 = 343. 343 minus 66=277.

³² 425 minus 88 = 337. 337 minus 66 = 271.

³³ This is not to say that Jennings could not file a PCRA petition and challenge the determinations of excludable time similar to the manner provided in Rule 600. *See* Pa. R. Crim. P. 600 (C)(3), (D)(3). Jennings would have to plead and prove that counsel requests were not designed to effectuate his interests. *See Commonwealth v. Wells*, 521 A.2d 1388, 11391 (Pa. 1987)(continuances are a matter of trial strategy within the purview of counsel and counsel's actions will be imputed to the defendant who is bound thereby; the defendant may assert that counsel improperly requested a continuance but the inquiry ceases and counsel is deemed effective once it is determined that the course chosen by counsel had some reasonable basis designed to effectuate his client's interests).

should be deferred to PCRA proceedings.

Whether the Court's Sentence was Excessive

Jennings seeks reconsideration of his sentence for the following reasons: (1) the court abused its discretion when imposing a consecutive sentence for criminal use of a communication facility when he was not the person who arranged a purchase of controlled substances and he was, at best, the middle person; (2) the court failed to adequately weigh his prison adjustment; and (3) his aggregate sentence, including his 20-year maximum sentence, is unduly harsh and excessive. The court cannot agree.

Sentencing has been found to be within the sound discretion of the trial court judge. *Commonwealth v. Allen*, 24 A.3d 1058, 1065 (Pa. Super. 2011). The court had the benefit of a presentence investigation report prior to sentencing and considered all relevant factors in fashioning its sentence.

Jennings was before the court for sentencing on October 1, 2024 for two counts of delivery of cocaine and one count of criminal use of a communication facility in case 780-2023 and one count of PWID-cocaine and two counts of possession of a controlled substance (methamphetamine and psilocybin mushrooms) in case 617-2023. Jennings had a prior score of four. His prior record included four previous convictions for Delivery or PWID, but only two of them counts in his prior record score.³⁴ Here, Jennings was convicted of two counts of Delivery

³⁴ In case CP-41-CR-1542-2018, on March 31, 2020, Jennings entered a guilty plea to PWID-cocaine and was sentenced to 6 months to 13 ½ months incarceration followed by 2 years' probation. In cases CP-41-CR-960-2019 and CP-41-CR-1007-2019, Jennings entered guilty pleas to one count each of PWID-cocaine and was sentenced to serve 6 months to 13 ½ months incarceration concurrent to 1542-2018. With his credit for time served, he had served the incarceration portion of his sentence and was released to begin his 2 years of probation supervision. Jennings was only on probation for about 3 ½ months before he was back to delivering cocaine. He was arrested on December 3, 2020 for delivering cocaine and conspiring with another person to deliver cocaine (and related charges) on six separate occasion between July 16, 2020 and December 3, 2020. Those charges were filed in case CP-41-CR-216-2021. On April 8, 2022, Jennings entered a guilty plea to one consolidated count of conspiracy to deliver and one consolidated count of delivery of cocaine and he was sentenced to concurrent terms of 18 months to 42 months' incarceration in a state correctional institution. With

of a Controlled Substance, an ungraded felony which carries an offense gravity score (OGS) of five, based upon the amount of controlled substances sold which, with his prior record score of four, resulted in a standard range of 9-16 months. One count of Possession with the Intent to Deliver, an ungraded felony, which carries an offense gravity score (OGS) of six which, with his prior record score of four, results in a standard range of 15-21 months. One count of Criminal Use of a Communication Facility, a felony of the third degree which carries an offense gravity score (OGS) of five, the standard range was 9-16 months, and two separate counts of Possession of a controlled substance, which each carry an offense gravity score (OGS) of three, standard range was 3-14 months. 204 Pa. Code § 303.16(a). “All numbers in sentence recommendations suggest months of minimum confinement.” 204 Pa. Code § 303.9(e).

The court sentenced Jennings to an aggregate sentence of 5 to 20 years’ incarceration in a state correctional institution, which consisted of 1 to 5 years’ incarceration on Count 1, Delivery of Cocaine, a consecutive 1 to 5 years’ incarceration on Count 3, Delivery of Cocaine and a consecutive 1 to 3 years’ incarceration on Count 2, Criminal Use of a Communication Facility in case 780-2023, as well as consecutive sentences of 1 to 5 years on Count 1, PWID-cocaine, 6 months to 12 months on Count 2, Possession of a Controlled Substance (methamphetamine), and 6 months to 12 months on Count 3, Possession of a Controlled Substance (psilocybin mushrooms) in case 617-2023.

Jennings first contends that the court abused its discretion when it imposed a consecutive sentence for criminal use of a communication facility when he did not arrange the purchase of

credit for time served, he was paroled to a Community Corrections Center (CCC) on July 18, 2022 and he was released from the CCC in November of 2022. Sentencing Transcript, 10/01/24, at 4. By May 3, 2023, he was again delivering cocaine to CIs in case 780-2023 and on May 4, 2023 police executed the search warrant on Apartment 341 in Newberry Estates where police found additional controlled substances. Jennings was charged with the controlled substances found in the apartment on May 4, 2023 in case 617-2023. He was charged with the deliveries of cocaine and criminal use of communication facility on May 31, 2023 in case 780-2023.

cocaine and he was the middle person. The jury found Jennings guilty of this charge. Furthermore, regardless of whether Jennings initially arranged for the transaction or was “the middle man”, he still used a communication facility to facilitate the transaction. Jennings and Confer did not know each other. When Confer got into the white Honda Civic, Jennings was on the phone with Harris. Jennings used his cell phone to facilitate communication between Harris and Confer regarding the transaction. Additionally, a reasonable inference from the evidence is that Harris and Jennings spoke by cell phone for Harris to instruct Jennings where to meet Confer and give him a description of Confer so that Jennings could deliver the cocaine to her in exchange for \$300, \$150 that she owed Harris for the prior purchase and \$150 for the current purchase.

It is well established it is within the sound discretion of the sentencing court whether to make sentences consecutive or concurrent under 42 Pa. C.S. § 9721(a). *Commonwealth v. Pass*, 914 A.2d 442, 446-47 (Pa. Super. 2006). Therefore, the court had the discretion to impose a consecutive sentence for criminal use of a communication facility.

Jennings next asserts that the court failed to adequately weigh his prison adjustment. This contention is meritless. Jennings had been incarcerated before in both the Lycoming County Prison (LCP) and a State Correctional Institution in connection with his prior drug convictions. He should know how to behave in a prison setting. The court received a sentencing report from LCP. Jennings had three write-ups while he was in the county prison between May 4, 2023 and October 1, 2024. On June 2 2023, Jennings was written up for disrupting prison routine and received a sanction of 10 days in Disciplinary Lock-Up (DLU) which was suspended. On July 10, 2023, he was again written up for disrupting prison routine and received a sanction of 10 days in DLU. On January 12, 2024, Jennings was written up for refusing to

obey an order and received a sanction of 20 days in DLU. While he did not have any write-ups between January 13, 2024 and October 1, 2024, he did not participate in any programming and he had a state parole detainer. Jennings also fails to take into consideration the fact that after his prior convictions, he was back dealing drugs within months of his release from prison. In his 2018 and 2019 cases, he pleaded guilty and was sentenced on March 31, 2020. Due to credit for time served, he was released from LCP to probation supervision that day but was back to selling drugs by July 16, 2020. In his 2021 case, he was sentenced to 18 to 42 months' incarceration in a state correctional institution. He was paroled to a CCC on July 18, 2022 and was released from there in November 2022. Within six months (by May 3, 2024), Jennings was back involved in drug dealing in these cases. In light of these facts and circumstances, Jennings' "prison adjustment" did not warrant a lesser sentence.

Jennings final assertion is that his aggregate sentence of 5 to 20 years' incarceration is unduly harsh and manifestly excessive. The court cannot agree. All of the convictions in 780-2023 had a guideline range of 9-16 months and the minimum sentence on each count was one year or twelve months. The minimum sentence for PWID-cocaine was also one year or twelve months, but the standard range for that offense was 15-21 months. The standard range for the two counts of possession of controlled substance was 3-14 months and the minimum sentence imposed of 6 months was within that range. Each of these sentences were within the standard guideline ranges, except for PWID-cocaine for which the minimum sentence was in the mitigated range.

Jennings' minimum sentence on each of the charges is in the middle of the recommended standard range and therefore is not unreasonable and/or excessive. *See Commonwealth v. Raven*, 97 A.3d 1244, 1254-55 (Pa. Super. 2014) (sentencing a defendant within the standard range after

considering all evidence at sentencing is not unreasonable or excessive).

Jennings also challenges the court's imposition of his sentence consecutively, as opposed to concurrently, with his previous convictions. It is well established it is within the sound discretion of the sentencing court whether to make sentences consecutive or concurrent under 42 Pa. C.S. § 9721(a). *Commonwealth v. Pass*, 914 A.2d 442, 446-47 (Pa. Super. 2006).

The aggregate sentence was appropriate given Jennings inability to stay away from drug dealing activities for more than six months after he was released from prison. He received breaks on his sentences in the past and it did nothing to deter him from his life of crime. The court did not necessarily want Jennings to spend all 20 years in prison, but it wanted to make sure that society was safe from him for a minimum period longer than his prior maximum and it wanted him on supervision for a significant period of time.

For the foregoing reasons, the court rejects the claims asserted in Jennings' post sentence motion.

ORDER

AND NOW, this 4th day of February, 2025, based on the foregoing opinion, Jennings' Motion for Post Sentence Relief is hereby **DENIED**.

Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4), Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of entry; (b) the right to assistance of counsel in the preparation of the appeal; (c) if indigent, the right to appeal *in forma pauperis* and to proceed with assigned counsel as provided in Pennsylvania Rule of Criminal Procedure 122; and (d) the qualified right to bail under Pennsylvania Rule of Criminal Procedure 521(B).

BY THE COURT,

Nancy L. Butts, P.J.

cc: Nicole Spring, Esq.
Martin Wade, Esq. ADA
Jerri Rook

NLB/laf