

# FAYETTE LEGAL JOURNAL

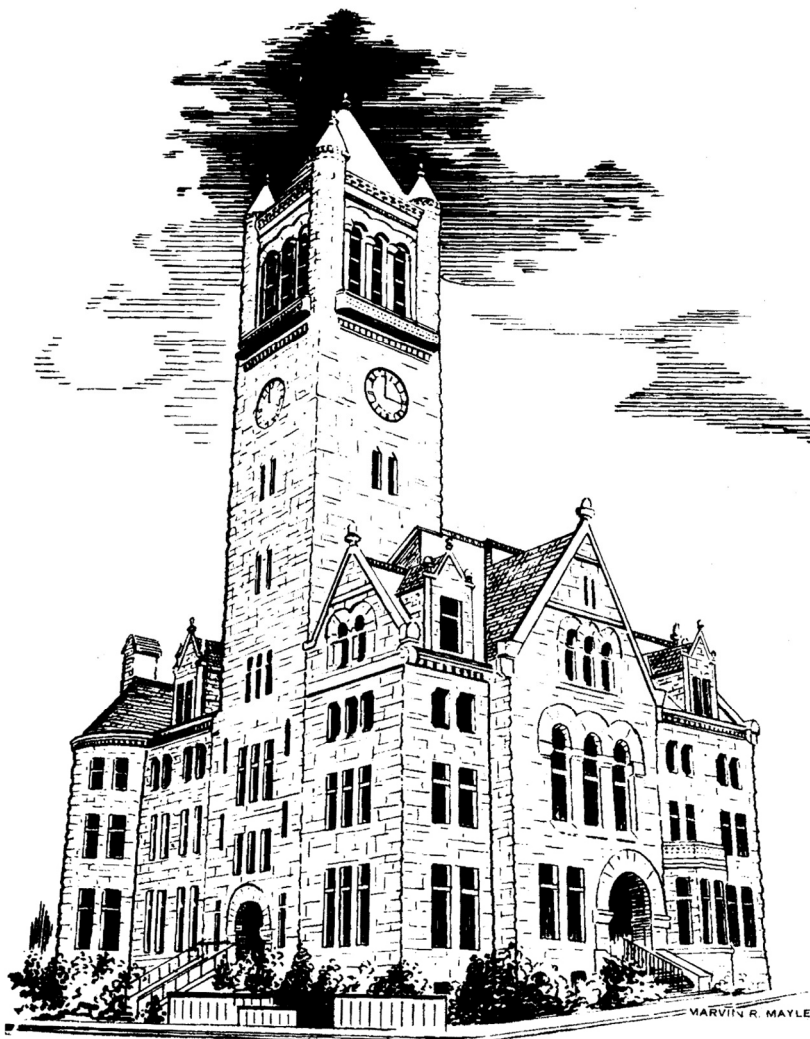
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## FAYETTE LEGAL JOURNAL

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Notice is hereby given that letters testamentary or of administration have been granted to the following estates. All persons indebted to said estates are required to make payment, and those having claims or demands to present the same without delay to the administrators or executors named.

### Third Publication

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*Attorney:* Jennifer M. Casini

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*Attorney:* Webster & Webster

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*Attorney:* Webster & Webster

## First Publication

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 107 East Main Street  
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*Attorney:* Samuel J. Davis

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*Attorney:* James W. Haines, Jr.

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*Executor:* Walter Leonard Dillinger  
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 68 South Beeson Boulevard  
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**GARNET J. WINEMILLER**, late of Bullskin  
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*Personal Representatives:*

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Randy R. Winemiller

c/o 208 South Arch Street, Suite 2

Connellsville, PA 15425

*Attorney:* Richard A. Husband

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## LEGAL NOTICES

### FICTITIOUS NAME REGISTRATION

Notice is hereby given that an Application for Registration of Fictitious Name was filed in the Department of State of the Commonwealth of Pennsylvania on November 05, 2021 for Sparkling Maid Service at 5 James Street, Belle Vernon, PA 15012. The name and address of each individual interested in the business is Jamie Monack at 5 James Street, Belle Vernon, PA 15012. This was filed in accordance with 54 PaC.S. 311.417.

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## **WARMAN ABSTRACT & RESEARCH LLC**

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**COMMERCIAL/RESIDENTIAL/CURRENT OWNER/MINERAL TITLE**

**A DECADE OF EXPERIENCE**

**E&O INSURED**

**WILL TRAVEL**

**ACCEPTING NEW CLIENTS**

**JUDICIAL OPINION**

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
	:	
v.	:	
	:	
XAVIER D. ROSE,	:	No. 2039 of 2020
Defendant.	:	Honorable Steve P. Leskinen

OPINION AND ORDER

Leskinen, J.

March 23, 2021

Before the Court is the Defendant's Omnibus Pretrial Motion in the form of a Petition for a Writ of Habeas Corpus, a Motion To Suppress Evidence Pursuant to the Pennsylvania Wiretapping and Electronic Surveillance Act, a Motion To Suppress Evidence Due to Illegal Detention, and a Motion to Compel Additional Discovery. The issue giving rise to the Motion to Compel Additional Discovery was resolved at the Omnibus Pretrial Hearing, leaving only the Petition for a Writ of Habeas Corpus, the Motion To Suppress Evidence Pursuant to the Pennsylvania Wiretapping and Electronic Surveillance Act, and the Motion To Suppress Evidence Due to Illegal Detention. After careful review of the evidence and applicable law, the Court hereby DENIES the Motion.

Factual Background

The Affidavit of Probable Cause and the testimony given at the Omnibus Pretrial Hearing on March 9th, 2021 establish the following facts: On January 31st, 2021, PA State Constable Jerry Sowers proceeded to serve an arrest warrant on a female named Dawni Monholland residing at Apartment #7, 123 West Apple Street in Connellsville. Constable Sowers testified that he knocked on the door and that it was answered by the Defendant, Xavier D. Rose. Constable Sowers testified that the Defendant went back, "into the bedroom" to get Monholland. Constable Sowers testified that Monholland then came out of the bedroom and into the living room. Constable Sowers testified that he observed drugs and drug paraphernalia in plain view on a coffee table and a tv stand and requested backup. Constable Sowers testified that, in addition to Monholland, there were three individuals seated in the living room: Shawn Larkins, Mychia Watros, and Christopher Henry, a juvenile male. Constable Sowers testified that none of the four individuals made any attempt to leave the apartment. Four City of Connellsville Police Officers then arrived on the scene. The Defendant, however, was not in the living room, and had not been seen since he went into the bedroom to get Monholland. The officers initiated the process of obtaining a search warrant for the apartment and began "clearing" the apartment for officer safety. In that process, Detective Lieutenant Thomas Patton told the four individuals in the living room to stand up. Detective Patton testified that when Henry stood up, he (Detective Patton) immediately observed a firearm wedged between the seat cushion and the armrest of the chair in which Henry had been sitting. The firearm had been in the area immediately against Henry's leg. Detective



Patton testified that the firearm was a Smith & Wesson .22 caliber pistol. The officers checked the serial number of the firearm in the NCIC system and found that it had been stolen in the Connellsville area less than one week before. Detective Patton testified that Henry told him that he had seen the Defendant holding the firearm on the previous night, that he had seen the Defendant hand the firearm to another individual ("Dakota Koontz"), and that he had heard the Defendant tell Koontz "to hold it for him while he and Larkins went to Detroit to 're-up'."

The officers moved the four individuals from the living room to the hallway. The Defendant still had not been found; the officers had cleared every room in the apartment and had not seen the Defendant again. Connellsville Police Officer Jacob Cavanaugh testified that he reentered the apartment to check again. Officer Cavanaugh testified that, at this time, he observed the Defendant in a small hallway leading out of the bedroom. Officer Cavanaugh testified that the area where the Defendant was found had been checked two minutes before but that the area had not been continuously within the Officers' sight during the intervening two minutes. Based on the areas searched, he deduced that the Defendant must have been hiding in the bedroom closet. The Defendant was detained. The Defendant gave his name as "Davon Beauchamp." The officers suspected that that name was false. They asked him again, and he gave his true name, Xavier D. Rose.

Detective Patton testified that a cell phone was found on the Defendant's person. Detective Patton testified that the cell phone rang continuously after the Defendant was detained. Detective Patton testified that after several minutes of ringing, he (Detective Patton) answered the cell phone. Detective Patton testified that the caller, ("Cathy") began speaking volubly. Detective Patton testified, "She asked me if I could 'do eighty' and I said 'yes'."

In addition to the firearm, the officers seized 39 grams of Cocaine, 19 grams of Heroin, Fentanyl, smoking devices, baking soda, seven cell phones, and multiple plastic bags. 31 grams of the Cocaine and all 19 grams of the Heroin were found later, in Mychia Watros' vagina.

Later that day, Detective Patton met with the caller on the cell phone (Cathy Criss) at a gas station across the street from the apartment and found that the caller had expected to buy \$80.00 worth of drugs from a man named "Forty," whom she described as a "young, tall, and skinny black male." A search warrant was obtained on the cell phone and it was found to contain "drug jargon" and messages referring to the phone's user as "Forty."

The Defendant was charged with three counts of Conspiracy - Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver - Cocaine, Heroin, and Fentanyl, 35 P.S. § 780-113(a)(30); one count of Conspiracy - Receiving Stolen Property, 18 Pa.C.S.A. § 3925(a); and three counts of Conspiracy- Possession of Cocaine, Heroin, and Fentanyl, 35 P.S. § 780-113(a)(16).

#### Legal Standard, Habeas Corpus

To grant a petition for a Writ of Habeas Corpus, the Court must find that the Commonwealth did not establish a prima facie case. *Com. v. James*, 863 A.2d 1179, 1182

(Pa.Super.2004). To establish a prima facie case, the Commonwealth must show sufficient probable cause that the Defendant committed the offense. *Id.* The evidence should be such that, if presented at trial and accepted as true, the Court would be warranted in allowing the case to go to the jury. *Id.* Evidence is viewed in the light most favorable to the Commonwealth, and all reasonable inferences based on that evidence which could support a guilty verdict are considered. *Com. v. Packard*, 767 A.2d 1068, 1071 (Pa.Super.2001). The Commonwealth is not required to prove guilt beyond a reasonable doubt. *Id.* A prima facie case merely requires evidence of the existence of each element of the crime charged. *Com. v. Patrick*, 933 A.2d 1043 (Pa.Super.2007). The weight and credibility of the evidence is not a factor at this stage. *Com. v. Landis*, 48 A.3d 432, 444 (Pa.Super.2012).

35 P.S. § 780-113(a)(30) states:

(a) 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.

18 Pa.C.S.A. § 3925 states:

A person is guilty of theft if he intentionally receives, retains, or disposes of movable property of another knowing that it has been stolen, or believing that it has probably been stolen, unless the property is received, retained, or disposed with intent to restore it to the owner.

35 P.S. -§-780-113(a)(16) states:

(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

(16) Knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.

Possession can be established by "proving actual possession, constructive possession, or joint constructive possession." *Com. v. Paffish*, 191 A.3d 31, 36 (Pa.Super.2018). 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.

Id.

Constructive possession may be proven by circumstantial evidence. Id. 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 36-37. The power and intent to control the contraband does not need to be exclusive to the defendant as constructive possession may be found in one or more actors where the item at issue is in an area of joint control and equal access. *Com. v. Vargas*, 108 A.3d 858, 868 (Pa.Super.2014). For the Commonwealth to prove constructive possession where more than one person has access to the contraband, the Commonwealth must introduce evidence demonstrating either the defendant's participation in the drug related activity or evidence connecting the defendant to the specific room or areas where the drugs were kept. Id. However, an intent to maintain a conscious dominion may be inferred from the totality of the circumstances and circumstantial evidence may be used to establish a defendant's possession of drugs or contraband. Id.

To sustain a conviction for criminal conspiracy, the Commonwealth must establish 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) that an overt act was done in furtherance of the conspiracy. *Com. v. Melvin*, 103 A.3d 1, 42 (Pa.Super.2014). Once the trier of fact finds that there was an agreement and that the defendant intentionally entered into that agreement, that defendant may be liable for the overt acts committed in furtherance of the conspiracy regardless of which co-conspirator committed the act. *Com. v. Barnes*, 871 A.2d 812, 820 (Pa.Super.2005). The essence of a criminal conspiracy is a common understanding, no matter how it came into being, that a particular criminal objective be accomplished. *Com. v. Melvin*, 103 A.3d 1, 42 (Pa.Super.2014). A conviction for conspiracy requires proof of the existence of a shared criminal intent. Id. An explicit or formal agreement to commit crimes can seldom, if ever, be proved and it need not be, for proof of a criminal partnership is almost invariably extracted from the circumstances that attend its activities. Id. Thus, a conspiracy may be inferred where it is demonstrated that the relation, conduct, or circumstances of the parties, and the overt acts of the co-conspirators sufficiently prove the formation of a criminal confederation. Id. The conduct of the parties and the circumstances surrounding their conduct may create a web of evidence linking the accused to the alleged conspiracy beyond a reasonable doubt. Id.

#### Legal Standard. Pennsylvania Wiretapping and Electronic Surveillance Act

18 Pa.C.S.A. § 5703 states:

Except as otherwise provided in this chapter, a person is guilty of a felony of the third degree if he:

(1) intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication;

(2) intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived

therefrom, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; or

(3) intentionally uses or endeavors to use the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire, electronic or oral communication.

The Pennsylvania Supreme Court ruled in *Com. v. Cruttenden*:

That a police officer does not identify him- or herself, or misrepresents his or her identity, does not change the fact that he or she is a direct party to the conversation, and by virtue of being a direct party to the conversation, is deemed the intended recipient of the conversation under whatever identity the officer has set forth...

... An officer is deemed the "intended recipient" of a phone communication in which the officer is directly involved, even under circumstances in which the officer shields or misrepresents his or her identity, because the caller elects to talk to the officer who answered the phone. *Proetto*, supra at 832 (citing *Smith*, supra at 350). The applicability of the Act does not rest on whether the caller's presumption of the identity of the person answering the call is accurate.

*Com. v. Cruttenden*, 58 A.3d 95, 100 (2012).

### Legal Standard, Illegal Detention

The Fourth Amendment protects citizens against unreasonable searches and seizures; a mere encounter need not be supported by any level of suspicion, an investigative detention must be supported by reasonable suspicion, and an arrest must be supported by probable cause. *Com. v. Hicks*, 208 A.3d 916, 926 (2019). The Pennsylvania Supreme Court summarily articulated the mechanism which distinguishes a mere encounter from an investigative detention in *Com. v. Mathis*:

In fixing the moment at which a detention has occurred, "the pivotal inquiry is whether, considering all the facts and circumstances evidencing the exercise of force, a reasonable [person] would have thought he was being restrained." *Com. v. Mendenhall*, 715 A.2d 1117, 1120 (1998) (citing *Com. v. Jones*, 378 A.2d 835, 840 (1977)); see also *United States v. Mendenhall*, 446 U.S. 544 (1980) ("[A] person has been 'seized'... only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."). In *Com. v. Strickler*, 757 A.2d 884 (2000), the Court set forth a non-exhaustive list of factors deemed relevant in assessing whether a seizure has occurred: the presence of police excesses; physical contact with the suspect; police direction of the subject's movements; the demeanor of the officer; the location of the confrontation; the manner of expression directed to the citizen; and the content of statements or interrogatories. See *id.* at 72-73, 757 A.2d at 897- 98 (citations omitted). *Strickler* cautioned, though, that no single factor dictates the ultimate conclusion as to whether a

detention occurred, see *id.* at 59, 757 A.2d at 890, and this Court has recognized that the line between a mere encounter, which requires no suspicion, and an investigative detention, "cannot be precisely defined 'because of the myriad of daily situations in which police[ ] and citizens confront each other on the street.'" *Mendenhall*, 715 A.2d at 1120 (quoting *Jones*, 474 Pa. at 371, 378 A.2d at 839). Ultimately, it is the "nature of the confrontation" that informs the assessment of the totality of the circumstances. *Com. v. Lewis*, 636 A.2d 619, 623 (1994).

*Com. v. Mathis*, 173 A.3d-699, 712 (2017).

### Conclusions of Law, Habeas Corpus

The Defendant petitions the Court for a Writ of Habeas Corpus on all three counts of Conspiracy - Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver - Cocaine, Heroin, and Fentanyl, 35 P.S. § 780-113(a)(30); the charge of Conspiracy - Receiving Stolen Property, 18 Pa.C.S.A. § 3925(a); and all three counts of Conspiracy - Possession of Cocaine, Heroin, and Fentanyl, 35 P.S. § 780-113(a)(16).

With respect to the three counts of Conspiracy - Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver - Cocaine, Heroin, and Fentanyl, 35 P.S. § 780-113(a)(30), the Defendant argues that "[the] majority of the items were found on, or inside of, the other individuals charged in this matter; further, the other items were located in areas of the apartment for which [sic] the Defendant did not reside."

However, an intent to maintain a conscious dominion may be inferred from the totality of the circumstances, and circumstantial evidence may be used to establish the Defendant's possession of drugs or contraband. *Com. v. Vargas*, 108 A.3d 858, 868 (Pa.Super.2014).

Furthermore, a conspiracy may be inferred where it is demonstrated that the relation, conduct, or circumstances of the parties, and the overt acts of the co-conspirators, sufficiently prove the formation of a criminal confederation. *Com. v. Melvin*, 103 A.3d 1, 42 (Pa.Super.2014). The conduct of the parties and the circumstances surrounding their conduct may create a web of evidence linking the accused to the alleged conspiracy beyond a reasonable doubt. *Id.*

In this case, the Commonwealth's witnesses testified that the Defendant was found in the apartment where the drugs were located, that a cell phone was found on the Defendant's person, that the cell phone contained drug jargon and messages referring to the phone's user as "Forty," that the cell phone rang, and that the caller sought drugs from the phone's user: a man matching the Defendant's description, whom she referred to as "Forty," and whom she attempted to rendezvous with in a location immediately across the street from the apartment. The Court finds that the Commonwealth has thus introduced evidence demonstrating the Defendant's participation in the drug related activity and connecting the Defendant to the area where the drugs were found; the totality of the circumstances and circumstantial evidence therefore establish the Defendant's constructive possession of all of the drugs seized.

Furthermore, the Court finds that the Commonwealth has introduced a web of evi-

dence linking the Defendant to the alleged conspiracy beyond a reasonable doubt: Detective Patton testified that Henry told him that he had heard the Defendant tell Dakota Koontz that he and Larkins were going "to Detroit to 're-up'." {1} Furthermore, much of the drugs were in a common area, in plain view. {2} The Court finds that the conduct of the parties and the circumstances surrounding them create a web of evidence linking the Defendant to the Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver - Cocaine, Heroin, and Fentanyl beyond a reasonable doubt. The Court is satisfied that the Commonwealth has introduced sufficient evidence that the Defendant entered into an agreement to commit or aid in the Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver - Cocaine, Heroin, and Fentanyl with other persons with a shared criminal intent, and that overt acts were done in furtherance of it. Viewing the evidence in the light most favorable to the Commonwealth, and considering all reasonable inferences based on that evidence which could support a guilty verdict, the Court finds that the Commonwealth has established a prima facie case for all three counts of Conspiracy - Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver - Cocaine, Heroin, and Fentanyl, 35 P.S. § 780-113(a)(30).

With respect to the three counts of Conspiracy - Possession of Cocaine, Heroin, and Fentanyl, 35 P.S. § 780-113(a)(16), the Court finds that the Commonwealth has, by the same evidence, established a prima facie case for all three of them, as well, and herein incorporates the reasoning articulated above.

With respect to the charge of Conspiracy - Receiving Stolen Property, 18 Pa.C.S.A. § 3925(a), Detective Patton testified that Henry told him that he had seen the Defendant holding the firearm on the previous night, {3} that he had seen the Defendant hand the firearm to Dakota Koontz, and that he had heard the Defendant tell Koontz "to hold it for him while he and Larkins went to Detroit to 're-up'." Furthermore, the Commonwealth presented evidence that the firearm had been stolen in the area only a week before and that the Defendant was found in the apartment where the firearm was found. The Court finds that the Commonwealth has therefore established a prima facie case for Conspiracy - Receiving Stolen Property, 18 Pa.C.S.A. § 3925(a), and herein incorporates the reasoning articulated above.

#### Conclusions of Law, Pennsylvania Wiretapping and Electronic Surveillance Act

The Defendant argues that Detective Patton violated the Pennsylvania Wiretapping and Electronic Surveillance Act by answering the cell phone because the call was not intended for him. However, the Pennsylvania Supreme Court ruled in *Com. v. Cruttenden*:

That a police officer does not identify him- or herself, or misrepresents his or her identity, does not change the fact that he or she is a direct party to the conversation, and by virtue of being a direct party to the conversation, is deemed the intended recipient of the conversation under whatever identity the officer has set forth...

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{1} "Re-up" is drug jargon describing a street dealer renewing his supply of drugs for sale.

{2} Even the drugs in Watros' vagina could be considered as being in the Defendant's joint constructive possession, as that is a common technique.

{3} That hearsay statement was admissible as a statement of a co-conspirator.

... An officer is deemed the "intended recipient" of a phone communication in which the officer is directly involved, even under circumstances in which the officer shields or misrepresents his or her identity, because the caller elects to talk to the officer who answered the phone. Proetto, supra at 832 (citing Smith, supra at 350). The applicability of the Act does not rest on whether the caller's presumption of the identity of the person answering the call is accurate.

Com. v. Cruttenden, 58 A.3d 95, 100 (2012).

The Court finds that the Pennsylvania Supreme Court's ruling on this issue is clear and unambiguous. Detective Patton did not represent his identity to Cathy Criss and Cathy Criss elected to talk to Detective Patton. Under Com. v. Cruttenden, the Pennsylvania Wiretapping and Electronic Surveillance Act was not violated.

#### Conclusions of Law, Illegal Detention

The Defendant argues that, "Constable Sowers' detention of the individuals in the apartment was illegal, and any evidence derived therefrom is fruit of the poisonous tree and must be suppressed." However, the Court finds that the Defendant has introduced no evidence to show that the Defendant, himself, was detained by Constable Sowers. Indeed, the evidence presented indicates that the Defendant was nowhere to be found in the period before the four City of Connellsville Police Officers arrived. The Court therefore concludes that the Defendant's illegal detention argument is inapplicable.

WHEREFORE, the Court issues the following Order:

#### ORDER

AND NOW, this 23rd day of March, 2021, upon consideration of the Defendant's Omnibus Pretrial Motion in the form of a Petition for a Writ of Habeas Corpus, a Motion To Suppress Evidence Pursuant to the Pennsylvania Wiretapping and Electronic Surveillance Act, a Motion To Suppress Evidence Due to Illegal Detention, and a Motion to Compel Additional Discovery, it is hereby ORDERED and DIRECTED that it is DENIED.

BY THE COURT:  
STEVE P. LESKINEN, JUDGE

ATTEST:  
Clerk of Courts

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