

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :

VS :

ANDRE GRAY : 00-10,495

OPINION AND ORDER

Before the Court is Defendant's Petition for Habeas Corpus Relief. Defendant has been charged with possession with the intent to deliver cocaine, possession with the intent to deliver marijuana, and related charges as a result of an incident that occurred on March 19, 2000. A preliminary hearing was held on March 24, 2000 before District Magistrate Allen Page. Defendant now argues that the Commonwealth did not establish a prima facie case of the charges of possession with the intent to deliver cocaine and possession with the intent to deliver marijuana. After a review of the testimony from the preliminary hearing, the Court finds the following facts relevant to the charges.

On March 19, 2000 at approximately 2:10 a.m., Officer Eric Houseknecht and Officer Timothy Miller on patrol in the rear lot of the Hampton Inn, witnessed a vehicle, driven by the Defendant, travel at a high rate of speed through the parking lot. The vehicle skidded out of control and hit the side of the Hampton Inn building (N.T. 3/24/00, p.3). The two occupants exited the vehicle and fled from the scene, but were later apprehended by officers of the Williamsport Bureau of Police.

Officer Brian Womer of the Williamsport Bureau of Police apprehended the Defendant. He testified that as he drove down Pine Street to Church Street, he saw a person fitting the description of the driver who had fled the scene of the accident. (Id.,

p. 31). He stopped the Defendant at the rear of Wilson, north of the Hampton Inn's parking lot. The Defendant identified himself, and was determined to be the owner of the vehicle involved in the accident. The Defendant was arrested and searched. In the Defendant's right pocket, Officer Womer found nine-hundred twenty five dollars, some pocket change, a pager, two slips of paper with a name and telephone numbers, and some white napkins. (Id., p.32). Officer Womer testified that the napkins were significant to him because in his experience, dealers of narcotics will place cocaine in a napkin when they are dealing so that it is easy to discard should the police come. (Id., p. 33).

Both occupants of the vehicle were transported to City Hall. A strip search of the occupants at the time of processing revealed a large rock of cocaine and some marijuana in the Defendant's underwear. (Id., p. 18). The rock of cocaine was packaged in a clear wrapper taken from a cigarette box, which was then placed in a sandwich bag. The marijuana was in seven one-inch zip-lock "dime" baggies of various colors, which were placed together in a larger, approximately four by four zip-lock bag. (Id., p. 23). Officer Miller testified that the two substances field tested positive for cocaine and marijuana.

Officer Miller testified that based on his training and experience, he recognized the packaging of the marijuana as what is used by dealers for resale. (Id., p.25). Officer Miller testified that dealers may have ten to fifteen dime bags at the beginning of an evening, and slowly through out the evening after making their sales they may have five or six remaining.

To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and the probability the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). In order to establish a prima facie case of 35 P.S.C.A. § 780-113(a)(30), the Commonwealth must have come forward with evidence sufficient to prove that defendant possessed controlled substance, and did so with intent to deliver it. Defendant argues that the quantity of drugs seized is insufficient for a prima facie showing of his intent to deliver the controlled substances he possessed. Defendant argues that the small amount of controlled substances involved negates the inference that he intended to deliver or sell.

It is well settled that all the facts and circumstances surrounding possession are relevant in making a determination of whether contraband was possessed with the intent to deliver. Commonwealth v. Ramos ____ Pa.Super. ____, 573 A.2d 1027 (1990), *citing* Commonwealth v. Fisher, 316 Pa.Super. 311, 322, 462 A.2d 1366, 1371 (1983). The Superior Court in Ramos, held that “while the presence of a large amount of drugs, by itself, may negate any inferences and refute any claim of possession for personal use, the fact that an individual possesses only a small amount of one or more controlled substances is but one of many factors to be considered in determining whether possession was for sale or delivery, or for personal use.” Ramos, 573 A.2d at 1034. Instantly, after consideration of the facts and circumstances in this case, the Court finds there was sufficient evidence presented to establish a prima facie case that the Defendant possessed cocaine and marijuana with the intent to deliver. The Court finds the existence of the pager, phone numbers, napkins, and large amount of cash on the

Defendant's person in addition to the controlled substances and packaging, supports a compelling inference of possession for sale as opposed to for personal use. The Court therefore denies the Defendant's Petition for Habeas Corpus Relief.

ORDER

AND NOW, this _____ day of June 2000, based on the foregoing Opinion, it is ORDERED AND DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is DENIED.

By The Court,

Nancy L. Butts, Judge

cc: CA

Nicole Spring, Esquire
Diane Turner, Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire