

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 01-11,101
	:
	:
vs.	: CRIMINAL DIVISION
	: Habeas Corpus
LESTER J. SHORT,	:
Defendant	:

OPINION AND ORDER

Before the Court is Defendant’s Petition for Writ of Habeas Corpus, filed June 29, 2001. Upon agreement of counsel, the matter is being considered without argument, solely on the basis of the transcript of the preliminary hearing.

Defendant has been charged with possession with intent to deliver a controlled substance, delivery of a controlled substance, possession of a controlled substance, and possession of drug paraphernalia. The preliminary hearing was held June 19, 2001. Defendant contends the Commonwealth has failed to present a prima facie case on all of the charges, on the grounds that the confidential informant did not testify and thus, Defendant contends, “all evidence presented by the Commonwealth is hearsay testimony.” The Court does not agree.

A review of the transcript indicates that Officer Dustin Kreitz, a police officer with the Williamsport Bureau of Police assigned to the narcotics unit, along with another officer, another individual and the confidential informant, were present at the residence located at 759 West Fourth Street, Williamsport. The confidential informant dialed a telephone number and made contact with an individual and then told the police officers that that individual would be there in approximately 20 to 30 minutes. The officer testified that approximately 20 to 30 minutes later, an individual, who he saw and identified as the Defendant, entered the residence and although Defendant and the confidential informant moved to a portion of the room which could not be viewed by the officer, within a few

seconds the confidential informant went to the officer's location with four (4) bags of suspected cocaine. The informant gave the officer two of the bags, the officer gave her \$100.00 and then she returned to the front room where the Defendant was still standing. The officer then observed the Defendant exit the residence and the confidential informant returned to his location to give him two additional bags of cocaine. The officer indicated that there was no one else with the Defendant and the only other persons in the apartment besides the officer and the confidential informant, the other officer and another person, remained in the room with the officer during the entire transaction. From the time the Defendant entered the residence until the time he left was estimated by the officer to be only one or two minutes. The substance was later field tested positive as cocaine.

While the officer did not actually observe the bags of cocaine being passed from the Defendant's hand to the hand of the confidential informant, the Court believes that sufficient evidence has been presented to establish a prima facie case of all charges, and that any hearsay testimony which was presented is not necessary to support the charges.

ORDER

AND NOW, this day of July, 2001, for the foregoing reasons Defendant's Petition for Writ of Habeas Corpus is hereby denied.

By the Court,

Dudley N. Anderson, Judge

cc: DA
 PD
 Gary Weber, Esq.
 Hon. Dudley N. Anderson