

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-793-2016
	:
vs.	:
	:
	: Omnibus Pretrial Motion
NATESHA BROWN,	: Pursuant to Rule 578
Defendant	:

OPINION AND ORDER

Defendant was charged with five counts of criminal conspiracy, one count of possession with intent to deliver a controlled substance, one count of possession of a controlled substance, and one count of possession of drug paraphernalia. The Information was filed on May 18, 2016. The charges arise out of Defendant’s alleged involvement in both the delivery of heroin to a confidential informant as well as the alleged possession of additional heroin found in an automobile in which Defendant was riding as a passenger.

On June 14, 2016, Defendant filed an omnibus pretrial motion which included two petitions for writs of habeas corpus, one motion to strike and one motion to sever. The hearing and argument on Defendant’s motion was held on September 6, 2016 before this Court.

The hearing was continued and a separate order was entered with respect to some of Defendant’s claims. The parties submitted briefs. The Commonwealth intended to call the confidential informant who, for reasons beyond the control of the Commonwealth, was unavailable. Accordingly, the confidential informant’s testimony was taken on September 28, 2016.

Prior to addressing the issues at hand, it is appropriate to place this case in its

present procedural posture in light of prior agreements between the parties and prior court orders.

Counts 3, 5 and 7, all criminal conspiracy counts, have been dismissed. Count 6 was amended to include only those alleged bags of heroin found in the vehicle Defendant was driving. Count 8 has also been amended to include only the alleged paraphernalia found in the vehicle Defendant was driving.

The remaining counts against Defendant include Count 1, criminal conspiracy to deliver a controlled substance; Count 2, criminal conspiracy to possess with intent to deliver a controlled substance; Count 4, possession with intent to deliver a controlled substance; amended Count 6, possession of a controlled substance; and amended Count 8, possession of drug paraphernalia.

The only remaining issue to be determined is whether the Commonwealth has presented sufficient prima facie evidence to hold for court Counts 1, 2, 4, 6 and 8.

Defendant's remaining issues have been resolved. The Court notes for example, that the motion to sever is moot in that Co-Defendant Kennedy previously pled guilty.

The proper means for testing whether the Commonwealth has sufficient evidence to establish a prima facie case is through the filing of a pretrial habeas corpus petition. *Commonwealth v. Carroll*, 936 A.2d 1148, 1152 (Pa. Super. 2007). "To demonstrate that a prima facie case exists, the Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant's complicity therein." *Id.*

A prima facie case consists of evidence, read in a light most favorable to the Commonwealth, that sufficiently establishes both the

commission of a crime and that the accused is probably the perpetrator of that crime. The Commonwealth need not prove the defendant's guilt beyond a reasonable doubt. Rather, the Commonwealth must show sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the Judge would be warranted in allowing the case to go to the jury.

Commonwealth v. Black, 108 A.3d 70, 77 (Pa. Super. 2015)(quoting *Commonwealth v. Fountain*, 811 A.2d 24, 26 (Pa. Super. 2002)). In addressing a petition for writ of habeas corpus, the court must examine the evidence and reasonable inferences derived from it in a light most favorable to the Commonwealth. *Commonwealth v. James*, 863 A.2d 1179, 1182 (Pa. Super. 2004). The Commonwealth may utilize the evidence presented at the preliminary hearing and may also submit additional proof. *Carroll*, 936 A.2d at 1152.

In this particular case, the Commonwealth utilized the testimony from the preliminary hearing, which consisted of testimony from Detective Matthew Keller of the Lycoming County District Attorney's office and Detective Keefer Bathgate of the Lycoming County Narcotic Enforcement Unit, and the testimony presented at the September 28, 2016 hearing from Officer Keller and Justin Schaar, who was the confidential informant.

The facts, viewed in the light most favorable to the Commonwealth, show that on April 25, 2016, Mr. Schaar contacted a known cell phone number and spoke with a male for the purpose of arranging the purchase of heroin. The number that the confidential informant called was the same number of a cell phone that was eventually discovered in the constructive possession of Dominique Kennedy.

The transaction was arranged to take place on Waltz Alley in the city of Williamsport. Defendant was driving a Buick automobile. While the confidential informant was walking down the alley, Defendant dropped Mr. Kennedy off on the same alleyway.

According to the confidential informant, the Buick was in the same alley and was observable while the transaction took place. The transaction took place “behind” the Buick. According to Detective Keller, Defendant dropped Mr. Kennedy off, drove around the block and, when the transaction was over, she came and picked Mr. Kennedy back up.

The transaction took place in the alleyway and after the transaction, both individuals walked in opposite directions. The confidential informant went to his vehicle while Mr. Kennedy was picked up at the end of the alleyway by the vehicle being driven by Defendant.

There were three people in the vehicle. Two females, including the Defendant, were in the front of the vehicle. Defendant was the driver of the vehicle, and the other female was the owner of the vehicle. Mr. Kennedy was in the backseat when he was dropped off and picked up.

The transaction with Mr. Kennedy involved 50 bags of heroin for a total price of \$500.00. After the transaction was completed, the police eventually stopped and searched the Buick. As noted before, the one cell phone was found lying underneath Mr. Kennedy. The number for that phone was the same cell phone number that the confidential informant called to arrange the control buy.

Defendant was searched and \$950.00 was found in her bra. There is no evidence that she had any cell phones on her. However, in the front driver’s side door compartment, officers found one brick, or 50 bags, of heroin. The packaging of the 50 bags was the same as the packaging of the bags that were sold to the confidential informant. They both consisted of blue baggies rubber banded together.

Finally, there was expert testimony that the heroin was possessed with the intent to deliver it due to the large amount of cash found on Defendant, the lack of paraphernalia to ingest heroin, the quantity of heroin, the way the heroin was banded together, the packaging of the heroin being the same as that sold to the confidential informant “and the cell phones.”

While it is certainly a close call, for prima facie purposes, the court concludes that there is sufficient evidence to prove a prima facie case of conspiracy to deliver a controlled substance, conspiracy to possess with intent to deliver a controlled substance, possession with intent to deliver, possession of a controlled substance and possession of drug paraphernalia.

With respect to the conspiracy counts, when viewed in the light most favorable to the Commonwealth the following evidence shows for prima facie purposes an agreement between Defendant and Mr. Kennedy to deliver the controlled substances: Defendant’s actions in taking Mr. Kennedy to the transaction site, dropping him off and then picking him up; the transaction between Mr. Kennedy and the confidential informant; the fact that a similar amount of heroin in similar packaging was located next to and readily available to Defendant; and the large amount of cash (\$950.00) secreted in Defendant’s bra .

With respect to the possession charges, there was clearly sufficient evidence to demonstrate that the 50 bags were with intent to deliver. Furthermore, there was sufficient evidence to prove prima facie that Defendant exercised constructive possession of the heroin. Defendant’s intent to maintain a conscious dominion and control over the property can be inferred from the totality of the circumstances. Furthermore, multiple people may be found to

constructively possess contraband where the contraband is found in an area of joint control and equal access. *Commonwealth v. Haskins*, 677 A.2d 328, 330 (Pa. Super. 1996), appeal denied, 692 A.2d 563 (Pa. 1997).

ORDER

AND NOW, this ___ day of November 2016, following a hearing and argument, the court denies Defendant's petition for habeas corpus. Defendant's motion for severance is moot.

By The Court,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Ronald C. Travis, Esquire
Gary Weber, Lycoming Reporter
Work file