

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 01-11,438

V :

EDWIN MIRANDA :

OPINION AND ORDER

Before the Court is the Defendant's Petition for Habeas Corpus. The Defendant has been charged with possession of a controlled substance and related charges as a result of an incident that occurred June 16, 2001. A Preliminary Hearing was held on August 17, 2001 before District Justice Allen P. Page, after which all of the charges were held for Court. The Defendant now argues that the Commonwealth failed to establish a prima facie case as to the charges.

The Commonwealth presented the testimony of Officer James Douglas, of the Williamsport Bureau of Police. Officer Douglas testified that on June 16, 2001, he was alerted to alleged drug activity in the area of 713 Locust Street. Upon reaching the residence, four individuals, including the Defendant were seated at a table on the front porch. (N.T. 8/17/01, p. 3) Officer Douglas testified that he immediately identified the odor of marijuana in the area. One of his fellow responding officers also noticed a cigar butt on the floor. All of the individuals denied using marijuana.

Officer Douglas asked the resident of the house, Stephanie Riggle, for consent to search the house. She requested that the officers contact her mother, Judy Riggle, at work. Ms. Riggle requested that she be present at the residence. While waiting for Ms.

Riggle to arrive at the scene, the three other individuals were released from the scene. Upon arriving at the residence, Ms. Riggle signed a written consent to search the home.

After Ms. Riggle signed the consent, Stephanie Riggle informed the officers that she would go and get “Polo,” the street name for the Defendant. (Id., p. 4) She indicated that the “stuff” that was in the residence was his. She then showed the officers the “stuff” she was referring to. In her upstairs bedroom, in her underwear drawer, were bags containing straws of crack cocaine. (Id., p. 5) Stephanie told the officers that the Defendant brought the baggies to the residence that evening, and had requested that she keep the baggies in her drawer since the police were always hassling him. Also in her bedroom, underneath her bed, was a small amount of marijuana in a pot pipe. She indicated to Officer Douglas that this was also the Defendant’s. (Id., p. 10)

Officer Douglas testified that the substance in the straws tested positive for crack cocaine. Officer Douglas testified that there were 68 heat-sealed straws, with a total of 3.8 grams. He testified that in his training and experience, the amount is consistent with possession with the intent to deliver as opposed to possession for personal use. (Id., p. 6) Officer Thomas Ungard, of the Williamsport Bureau of Police, and coordinator of the Lycoming County Drug Task Force, testified that in his training and experience, both the weight and packaging of the crack cocaine is consistent with possession with the intent to deliver. (Id., p. 16)

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). The Defense argues that a prima facie case has not been established, as the only evidence establishing that the Defendant could be connected with the crime is Officer Douglas' testimony of the statements made by Stephanie Riggle. The Defense argues that since Stephanie Riggle did not testify, the statements are inadmissible hearsay.

Statements, other than the one made by the declarant while testifying at trial or hearing, offered into evidence to prove the truth of the matter asserted, are objectionable as hearsay. Hearsay evidence admitted without objection, however, is accorded same weight as evidence legally admissible as long as it is relevant and material to issues in question. In the instant case, since the testimony of Officer Douglas relaying the statements of Stephanie Riggle was not timely objected to at the time the evidence was introduced, it constitutes a waiver of the issue, and the evidence was legally admitted. The Court therefore denies Defendant's Motion to Dismiss on this basis.

ORDER

AND NOW, this _____day of December, 2001, 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

E.J. Rymsha, Esquire
Roan J. Confer, Jr., Esquire
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esquire