

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: NO. 02-11,660
	:
	:
vs.	: CRIMINAL DIVISION
	:
RICKY ANTWON HOLMES,	: Pre-Trial Motion
Defendant	:

OPINION AND ORDER

Defendant has been charged with one (1) count of possession of a small amount of marijuana, one count of driving under suspension and one (1) count of failing to have required lighted lamps. In the instant Omnibus Pre-Trial Motion, filed October 22, 2002, Defendant seeks to dismiss the count of possession of a small amount of marijuana. At argument on the Motion, held December 23, 2002, counsel agreed the Court should proceed with the motion based solely on the transcript of the preliminary hearing.

Defendant argues that as no drugs were found on his person, the Commonwealth must prove constructive possession of the marijuana and that there is insufficient evidence of such as a matter of law. A review of the transcript indicates that Defendant was pulled over because the vehicle which he was driving did not have the headlights on. Once the officer learned the vehicle was rented and contacted the rental company, who asked that the vehicle be searched since Defendant was not named in the lease, the officer found 2/100's of a gram of marijuana on the driver's side floorboard. While it is true that the vehicle was rented to someone other than Defendant and the officer could not say how long the vehicle had been rented nor who, if anyone had had access to the vehicle besides Defendant, the Court finds there was sufficient evidence to establish a prima facie case of possession, albeit constructive possession, in that the officer also testified that it seemed "by the odor of marijuana in the vehicle it was extremely recent", referring to the depositing of the small amount of marijuana onto the driver's side floorboard,

that the odor indicated marijuana had been recently smoked, and that Defendant smelled of the odor of marijuana. All of this evidence is contrary to Defendant's assertion, made on page 3 of his motion, that "there was no evidence that Defendant had been using marijuana." The Court considers the totality of the circumstances to establish a prima facie case of constructive possession of the marijuana, and Defendant's motion to dismiss that count will be denied.

ORDER

AND NOW, this 9th day of January, 2003, for the foregoing reasons, Defendant's Pre-Trial Motion to Dismiss is hereby denied.

By the Court,

Dudley N. Anderson, Judge

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