

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. 04-11,255
 :
 vs. : CRIMINAL
 :
 ANTHONY MONROE, : Petition for Habeas Corpus/
 Defendant : Motion to Reduce Bail

ORDER

AND NOW, this ___ day of August 2004, the Court GRANTS the defendant's Petition for Habeas Corpus with respect to the charges of conspiracy, delivery of a controlled substance, possession with intent to deliver, and possession of cocaine.¹ The Commonwealth's prosecution for these charges was based on a theory that the defendant was an accomplice of the individual who sold cocaine to a confidential informant.

To prove that the defendant was an accomplice, the Commonwealth must present evidence to satisfy two criteria. First, the Commonwealth must present evidence that "the defendant intended to aid or promote the underlying offense." Commonwealth v. Murphy, 844 A.2d 1228, 1234 (Pa. 2004). Second, the Commonwealth must present evidence that "the defendant actively participated in the crime by soliciting, aiding, or agreeing to aid the principal." Id. "[A] defendant cannot be an accomplice simply based on evidence that he knew about the crime or was present at the scene of the crime." Id.

The evidence presented at the preliminary hearing showed that Russell Hollinger, the confidential informant, called Breon Grissom to make a controlled buy of cocaine. Mr. Hollinger and his vehicle were searched before he went to make the purchase and no contraband or money was found. Preliminary Hearing Transcript, at 4, 11-12. The

police gave Mr. Hollinger \$750 to purchase cocaine from Mr. Grissom. Id. at 5. At around 3 to 4 o'clock in the afternoon, Mr. Hollinger went to the parking lot of the Weis grocery store to meet Mr. Grissom. Id. at 5. Trooper Brett Herbst was in a vehicle in the parking lot and observed the incident out of the rear of his vehicle. Id. at 10. Mr. Grissom and the defendant arrived at the Weis parking lot. Id. Mr. Grissom, Mr. Hollinger and the defendant stood in front of Mr. Hollinger's vehicle because the hood of the car was up at that time. Id. Mr. Grissom climbed into the passenger seat and Mr. Hollinger got in the driver's seat. Mr. Hollinger left the door open for about a minute, while the defendant stood at the door and the three men appeared to be talking. Id. at 10-11. The defendant stepped away from the car and Mr. Hollinger closed the door. Id. at 11. Mr. Hollinger purchased cocaine from Mr. Grissom while they were inside the car. Id. at 8. The defendant was standing outside the car. Id. Mr. Hollinger gave the pre-determined signal that he had made the purchase and the police took Mr. Grissom and the defendant into custody. The police searched the vehicle, Mr. Grissom and the defendant. The police found the cocaine wrapped in aluminum foil in Mr. Hollinger's vehicle, they found the \$750 used to purchase the cocaine on Mr. Grissom, and they found some marijuana in the defendant's pants pocket. Id. at 11, 18.

There was no testimony regarding the substance of the short conversation between the three individuals while the car door was open. Although Trooper Herbst testified that based on his training and experience it was his opinion that the defendant "was there to assist in some way, either as a lookout to carry money or drugs for that matter," Trooper Herbst did not offer any **factual** basis for that conclusion.² There was no testimony

1 The Court notes that the motion was not directed to the marijuana and any paraphernalia, which was found on the defendant's person.

2 Even if one were to accept Trooper Herbst's opinion testimony that the defendant was there to assist in some

that any money or any cocaine was found on the defendant. There also wasn't any testimony that the defendant transferred the drugs or any other item to Mr. Hollinger or Mr. Grissom or that the defendant was looking around to make sure no one was approaching. Absent this type of factual basis, Trooper Herbst's opinion is nothing more than inadmissible speculation.³

In conclusion, the testimony presented at the preliminary hearing in this case was insufficient to establish that the defendant actively participated in the crime by soliciting, aiding or agreeing to aid the principal, Mr. Grissom. At most, it established mere presence, which is insufficient to show the defendant was an accomplice.

In light of the Court's decision on the petition for habeas corpus, the Court REDUCES the defendant's bail to \$5,000 ROR with the condition that he reside at 1049 Memorial Avenue with his mother, Linda Monroe.

By The Court,

Kenneth D. Brown, P.J.

cc: Nicole Spring, Esquire
Henry Mitchell, Esquire (ADA)
Prothonotary
Prison
Gary Weber, Esquire (Lycoming Reporter)
District Justice James Carn

way, there must be some evidence that the defendant assisted or attempted to assist Mr. Grissom. Murphy, 844 A.2d at 1234 (“There must be some additional evidence [other than knowledge or presence] that the defendant intended to aid in the commission of the underlying crime, and then did or attempted to do so.”).

³ The fact that Trooper Herbst could not state whether the defendant was acting as a lookout or whether he was there to carry money or drugs further shows the speculative nature of his opinion in this case.