

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 04-12,040

VS :

ERIC JOLIN :

**OPINION AND ORDER**

On November 17, 2004, the Defendant was charged with Loitering and Prowling and Underage Drinking. A preliminary hearing was held before District Justice James Sortman. At the hearing, the charge of Possession of Drug Paraphernalia (PDP) was added. Following the hearing, all charges were bound over. The Defendant filed a timely motion challenging the evidence presented by the Commonwealth, alleging they failed to meet their burden of proof on the charges. The relevant facts are as follows:

Patrolman Sponhouse of the Old Lycoming County Township Police Department observed Defendant and another individual standing within an arm's reach of a trailer. Sponhouse testified that he knew the trailer to be occupied by two elderly people. As Sponhouse approached, both individuals began to run, and Sponhouse followed them to another trailer where they were found hiding in a closet. Sponhouse testified that he smelled alcohol and the individuals admitted they had been drinking. Upon searching the Defendant, Sponhouse found a device made from a soda bottle cap and socket. Sponhouse testified that such a device was commonly used to smoke drugs.

Defendant argues that the evidence fails to establish a prima facie case of Loitering and Prowling as well as PDP. To successfully establish a prima facie case, the Commonwealth must present sufficient evidence that a crime was committed and

the probability that the Defendant could be connected with the crime. Commonwealth v. Wodjak, 502 Pa 359, 466 A.2d 991 (1983). The evidence “should be such that if presented at the trial in court, *and accepted as true*, the judge would be warranted in allowing the case to go to the jury.” *Id.* at 368; citing *Commonwealth ex rel. Scolio v. Hess*, 149 Pa.Super. 371, 374-75, 27 A.2d 705, 707 (1942) (Emphasis in original).

### **Loitering and Prowling:**

18 Pa. C.S.A. § 5506 provides that a person is guilty of Loitering and Prowling if he, at night time, maliciously loiters or maliciously prowls around a dwelling house or any other place used wholly or in part for living or dwelling purposes, belonging to or occupied by another. “Malicious, as used in the instant statute, means an intent to do a wrongful act or having as its purpose injury to the privacy, person, or property of another.” *Commonwealth v. Belz*, 295 Pa.Super 183, 186, 441 A.2d 410, 411 (1982). The offense is, “intended to punish not only those persons who at night are bent on peeping into the private affairs of citizens in their dwellings, but also those persons who are found at or near dwellings without lawful purpose or reason and whose presence can only be explained in some preparation for or attempt at illegality or crime.” *Id.*, citing *Commonwealth v. DeWan*, 181 Pa.Super. 203, 124 A.2d 139 (1956).

In the instant case, the Court finds that the Commonwealth established a prima facie case of Loitering and Prowling. Sponhouse testified that the Defendant was within arm’s reach of another’s private dwelling at night. The malicious prong of the offense is established by the lack of any valid purpose for the Defendant’s proximity to the private residence. Further, Defendant was in position to cause injury to the privacy or property

of another and attempted to flee a law enforcement officer when said proximity was discovered.

### **Possession of Drug Paraphernalia**

The Defendant next argues that the Commonwealth failed to establish a prima facie case of PDP. 35 P.S. § 780-113(a)(32) prohibits, “the use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance.” 35 P.S. § 780-102(b) provides further guidance in defining “Drug Paraphernalia.” The list of “equipment, products and materials” to be considered drug paraphernalia includes: “(12) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marihuana, cocaine, hashish or hashish oil into the human body.” A factor to consider under this section includes expert testimony identifying an object’s intended use. Further, the offense includes a specific intent requirement “to distinguish innocent transfers of multi-purpose items from illegal transfers of drug paraphernalia [ . . . ] For an item to be classified as drug paraphernalia, the prosecution must establish that the person charged with violating the Act had the specific intent that the item he possessed or delivered be used with controlled substances. *Commonwealth v. Lacey*, 344 Pa.Super. 576, 582, 496 A.2d 1256, 1259-60 (1985).

The Court concludes that there is sufficient evidence to establish a prima facie case of PDP. Taken as true, the testimony of Sponhouse leads to the conclusion that the soda cap and socket found on the Defendant fell within the parameters Section 780-102, and constituted "drug paraphernalia." That the parties had specific intent to use it with controlled substances was sufficiently evidenced through Sponhouse's identification of the object and through his experience as a police officer. To summarize, a trained police officer found a device on the Defendant's person that he identified as commonly used to smoke drugs. For purposes of a preliminary hearing and adopting the testimony as true, there exists sufficient evidence that a crime was committed and a sufficient probability that the Defendant could be connected with the crime.

ORDER

AND NOW, this \_\_\_\_\_day of February, 2005, based on the foregoing Opinion, it is hereby ORDERED AND DIRECTED that the Defendant's Petition for Writ of Habeas Corpus be DENIED.

By The Court,

Nancy L. Butts, Judge

cc: PD (NS)  
DA  
Honorable Nancy L. Butts  
Judges  
Law Clerk  
Gary Weber, Esquire