

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**JESSICA HOUSTON,
Defendant**

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**No. 1431-2009
CRIMINAL DIVISION**

OPINION AND ORDER

Defendant filed a Petition for a Writ of Habeas Corpus on September 9, 2009. A hearing on the Motion was scheduled for October 29, 2009. However, prior to the hearing the parties agreed to submit the motion on the transcript of the Preliminary Hearing.

Background

The following is a summary of the facts presented at the Preliminary Hearing. On June 24, 2009, Officer Justin Snyder (Snyder) of the Williamsport Bureau of Police (WBP), along with Officer Kristopher Moore (Moore) was informed by a citizen that a black male was running from the police and was observed running into the rear of the occupied building at 203 Campbell Street. Snyder testified that a perimeter was set up and mutual aid was requested from Penn College Police, the Pennsylvania State Police, and their helicopter. A few moments after setting up the perimeter, through the same door the suspect was seen running into, two females exited the residence, one identified as Jessica Houston, Defendant, and the other her mother, Miss Reustle (Reustle).

Snyder explained that he briefly interviewed the Defendant and Reustle about the person observed running into their house. Defendant told Snyder that nobody ran into her house. Defendant was advised that someone was seen running into her house and that if she was aiding

or harboring somebody in the house she would be prosecuted for doing so. Snyder explained that he tried to get permission to enter the apartment from the Defendant and Reustle, who was the owner or resident of the apartment, but Defendant would not give permission. Again, Defendant was advised about being charged with hindering apprehension. Reustle eventually gave the officers consent to go in the house and check for the suspect.

As the officers were getting ready to do a SERT entry and calling out the Special Response Team, another black male identified as Nafis Faison entered the perimeter and stated he knew who was in the house and that he was running from the police. Faison identified the individual as Alphonso Batten (Batten). Snyder verified that WBP had a felony warrant for Batten. Snyder related that Captain Raymond Kontz made contact with Batten via cell phone and shortly thereafter he came out of the house, surrendered to the police, and was taken into custody.

After Batten exited the house, the officers did an entry check for more bodies. While conducting the search, the officers observed in plain view some narcotics and packaging material on the coffee table in the living room. The officers applied for and secured a search warrant. Upon execution of the search warrant, the officers found ammunition in a bedroom, which they determined to be the Defendant's based upon identifying paperwork, such as an ACCESS card. In a child's room, they found a 9mm Ruger handgun with a loaded magazine and one round in the chamber (ammunition matching that found in Defendant's bedroom) and a few hundred dollars in an easy bake oven box. In another room, they found a shoe box full of what field tested as marijuana in a closet. The marijuana weighed approximately four and one half ounces.

Defendant was taken into custody and transported to City Hall. At City Hall, Snyder attempted to run the handgun found in her residence for identification. The County search

revealed no registered owner. He then sent out the handgun for an A.T.F. scan and IBIS testing at the lab. Snyder also ascertained that the Defendant had a prior felony trespassing conviction, rendering her ineligible to possess a firearm. Defendant was charged with one count of Possession with Intent to Deliver a Controlled Substance, one count of Possession of Small Amount of Marijuana, one count of Possession of Drug Paraphernalia, one count Persons not to Possess, Use, Manufacture, Sell or Transfer Firearms, and one count of Hindering Apprehension or Prosecution.

Discussion

In Defendant's Motion for Issuance of Writ of Habeas Corpus she alleges the evidence presented by the Commonwealth fails to show a prima facie case of (1) Possession with Intent to Deliver, (2) Possessions of a Controlled Substance – Small Amount of Marijuana, (3) Possession of Drug Paraphernalia, (4) Persons Not to Possess, Use, Manufacture, Control, Sell or Transfer Firearms, and (5) Hindering Apprehension or Prosecution.

The burden the Commonwealth bears at the Preliminary Hearing is they must establish a prima facie case; the Commonwealth must present sufficient evidence that a crime has been committed and that the accused is the one who probably committed it. Commonwealth v. Mullen, 333 A.2d 755, 757 (Pa. 1975). See also Commonwealth v. Prado, 393 A.2d 8 (Pa. 1978). The evidence must demonstrate the existence of each of the material elements of the crimes charged and legally competent evidence to demonstrate the existence of the facts which connect the accused to the crime. See Commonwealth v. Wodjak, 466 A.2d 991, 996-97 (Pa. 1983). Absence of any element of the crimes charged is fatal and the charges should be dismissed. See Commonwealth v. Austin, 575 A.2d 141, 143 (Pa. Super. 1990).

Possession with Intent to Deliver Charge

Defendant first alleges that the Commonwealth failed to present a prima facie case of Possession with the Intent to Deliver.

The elements of a charge of Possession with the Intent to Deliver are the possession of a controlled substance and the specific intent to deliver said controlled substance to another. 35 Pa.C.S. § 780-113(a) (30). According to the Pennsylvania Supreme Court, the intent to deliver may be inferred from possession of a large quantity of controlled substances. Commonwealth v. Jackson, 645 A.2d 1366, 1368 (Pa. Super. 1994). However,

if the quantity of the controlled substance is not dispositive as to the intent, the court may look to other factors. Other factors to consider . . . include the manner in which the controlled substance was packaged, the behavior of the defendant, the presence of drug paraphernalia, and large sums of cash found in possession of the defendant.

Commonwealth v. Ratsamy, 934 A.2d 1233, 1237-38 (Pa. 2007) (citing Jackson, 645 A.2d at 1368). Further, “[e]xpert opinion testimony is admissible concerning whether the facts surrounding the possession of controlled substances are consistent with an intent to deliver rather than with an intent to possess it for personal use.” Ratsamy, 934 A.2d 1238.

The Pennsylvania Superior Court defines constructive possession as “‘conscious dominion,’ which in turn has been defined as ‘the power to control . . . contraband and the intent to exercise that control.’” Commonwealth v. Stenbridge, 579 A.2d 901, 903 (Pa. Super. Ct. 1990) (quoting Commonwealth v. Mudrick, 507 A.2d 1212, 1213 (Pa. 1986)). Constructive possession “is a legal fiction, ‘an inference arising from a set of facts that possession of the contraband was more likely than not.’” Id. The purpose of the constructive possession “doctrine is to expand the scope of possession statutes to encompass cases in which possession at the time

of arrest cannot be shown, but in which there is a strong inference that there has been actual possession.” Stembridge, 579 A.2d at 903 (citing Commonwealth v. Carroll, 507 A.2d 819, 820 (1986)). Constructive possession ““may be inferred from the totality of the circumstances [and], circumstantial evidence may be used to establish a defendant's possession of drugs or contraband.”” Commonwealth v. Valette, 613 A.2d 548, 550 (Pa. 1992) (quoting Commonwealth v. Macolino, 469 A.2d 132, 134 (1983)).

Pennsylvania courts have also held that where another person has equal access to the area where illegal contraband or weapon is found, the defendant cannot be said to have either the power to control or the intent to control such contraband or a weapon *per se*. See Commonwealth v. Heidler, 741 A.2d 213; (Pa Super 1999). (citing Commonwealth v. Chenet, 373 A.2d 1107 (1977) (“finding no constructive possession because the contraband was found in an area equally accessible to a third party”); Commonwealth v. Juliano, 490 A.2d 891 (Pa. Super. 1985) (“finding the evidence insufficient to conclude that appellant constructively possessed contraband when three other people had equal access to the area in which the contraband was found”); Commonwealth v. Smith, 258 Pa. Super. 148, 392 A.2d 727 (Pa. Super. 1978) (“finding constructive possession because no person, other than appellant, had equal access to a bag in which a firearm and contraband were located”); See also Commonwealth v. Wisor, 466 Pa. 527, 353 A.2d 817 (1976) (stating “the fact of possession loses all persuasiveness if persons other than the accused had equal access with him to the place in which the property was discovered”).

The Court finds the Commonwealth failed to present sufficient evidence to establish a prima facie case of Possession with Intent to Deliver. The testimony presented reveals that the only item found in the Defendant’s bedroom was ammunition. The narcotics and packaging material, weapon, and cash was found in different rooms in the Defendant’s mother’s (Reustle)

apartment with no evidence connecting the Defendant to the sole use of those rooms. The Court finds that the Commonwealth failed to present any testimony which would show the Defendant was in possession or even constructive possession of the narcotics. There is no evidence to show that the narcotics did not belong to the Defendant's mother or even Batten, the individual who ran into the apartment. Based upon the totality of the circumstances, the Court finds there is insufficient evidence the Defendant possessed the narcotics with the intent to deliver.

Possession of a Controlled Substance – Small Amount of Marijuana Charge

Next, Defendant asserts that the Commonwealth failed to present sufficient evidence for a prima facie case of Possession of a Controlled Substance – Small Amount of Marijuana.

A person violates 35 P.S. § 780-113(31) and is guilty of Possession of a Small Amount of Marijuana when (1) in possession of a small amount of that substance for personal use, (2) intends to distribute the substance but not sell it, or (3) in fact distributed the substance but did not sell it.

The Court finds there is insufficient evidence to establish a prima facie case of Possession of a small amount of marijuana. The testimony shows that marijuana was found in the house the Defendant was residing in; however, there was no testimony presented which shows the Defendant was in possession of the marijuana as it was found on a coffee table in a common room, equally available to all those who resided within. Therefore, in reliance upon the legal analysis, *supra*, the Commonwealth has failed to present sufficient evidence to establish a prima facie case of Possession of a small amount of marijuana.

Possession of Drug Paraphernalia Charge

Defendant also asserts that the Commonwealth did not establish a prima facie case of Possession of Drug Paraphernalia.

A person violates 35 P.S. § 780-113(32) when he/she uses, “or possession with intent to use, drug paraphernalia for the purpose of . . . preparing . . . packing, repacking, storing. . .”

The Court finds based upon the testimony presented that the Commonwealth has failed to establish a prima facie case of Possession of Drug Paraphernalia. The testimony presented revealed that when the officers entered the apartment there was narcotic packaging material on the living room coffee table in plain view; however, the testimony does not show that the narcotic packing material belonged to the Defendant. The testimony only shows the Defendant resided in the residence and that the material was found in a common room, not the Defendant’s room. Again, based upon the foregoing analysis, the Court finds the Commonwealth has failed to meet its burden of proof on the paraphernalia charge as well.

Persons Not to Possess, Use, Manufacture, Control, Sell or Transfer Firearms Charge

The Defendant asserts that the Commonwealth failed to present a prima facie case of Persons Not to Possess, Use, Manufacture, Control, Sell, or Transfer Firearms.

A person violates 18 Pa.C.S. § 6105(c) when previously convicted of a felony that person possess[es], . . . a firearm in this Commonwealth.

Based upon the testimony presented at the Preliminary Hearing, the Court finds the Commonwealth established a prima facie case of Persons Not to Possess. The testimony presented reveals that the officers found ammunition and a handgun, both in separate rooms in the apartment in which the Defendant resides. While the Defendant argued at the Preliminary

Hearing that the gun was not found in the Defendant's room, and therefore, she was not in possession, that argument is without merit. Ammunition for a weapon was found in the Defendant's room; furthermore, it is not uncommon for those in possession of firearms in a residence with small children to store those items in separate rooms. The testimony also revealed that the Defendant has a prior felony conviction, thus prohibiting her from possessing a firearm. Accordingly, the Court finds the Commonwealth presented sufficient evidence to establish a prima facie case of Persons Not to Possess a Firearm.

Hindering Apprehension or Prosecution Charge

Defendant's final argument is that the Commonwealth did not present sufficient evidence for a prima facie case of Hindering Apprehension or Prosecution.

A person Hinders Apprehension or Prosecution and violates 18 Pa.C.S. § 5105 when "with intent to hinder the apprehension, prosecution, conviction or punishment of another for crime . . . , he: (1) harbors or conceals the other[.]"

The Court finds the testimony sufficient to establish a prima facie case of Hindering Apprehension or Prosecution. The testimony reveals that Batten was observed entering the residence in which the Defendant resides, with the Defendant exiting moments later, through the same door the Defendant entered. One can infer that the Defendant was aware that Batten had entered the apartment. However, when questioned about Batten, instead of telling the officers she did not see someone enter the house, the Defendant told the officers that no one ran into her house. The Defendant was also asked to consent to allow officers to enter her apartment and she refused to do so, leaving an inference that she was aware of the presence of Batten and trying to conceal him from law enforcement. Therefore, the Court finds the Commonwealth presented

sufficient circumstantial evidence for a prima facie case of Hindering Apprehension or Prosecution.

ORDER

AND NOW, this ____day of December 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED as follows:

1. Defendant's Petition for a Writ of Habeas Corpus is hereby GRANTED as to Count 1, Possession with Intent to Deliver under 35 P.S. § 780-113(a)(30), Count 2, Possession of a Controlled Substance – Small Amount of Marijuana under 35 P.S. § 780-113(a)(31), and Count 3, Possession of Drug Paraphernalia under 35 P.S. § 780-113(a)(32). It is ORDERED AND DIRECTED those charges are DISMISSED without prejudice.
2. In all other respects Defendant's Motion is hereby DENIED.

By the Court,

Nancy L. Butts, Judge

xc: DA (AMK)
George E. Lepley, Jr., Esq.
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber (LLA)