

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

v.

**SAMUEL J. BOZOCHOVIC,
Defendant**

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**CR-1784-2010
CRIMINAL DIVISION**

OPINION AND ORDER

The Defendant filed an Omnibus Pretrial Motion on February 17, 2011. Within the Omnibus Pretrial Motion, the Defendant included a Petition for Writ of Habeas Corpus/Motion to Dismiss Count 1 Possession of a Controlled Substance Contraband by Inmate Prohibited.

Background

On October 21, 2010, Samuel J. Bozochovic (Defendant) was incarcerated at the Lycoming County Prison. On this date, Lieutenant William H. McKissick, the first shift supervisor at the Lycoming County Prison, was involved with a search of the Defendant's cell. The Defendant's cell was searched at this time as information was received that the Defendant may have been in the possession of drugs and money. The Defendant's tennis shoes were confiscated from his cell. A lighter, a pill, and money were found inside of his tennis shoes. The Defendant had a hole in the sole of his tennis shoes. The money was inside the sole of one of his shoes, and the pill and lighter were inside the sole of the other shoe. Correctional Officer Michael White (White) testified at the Preliminary Hearing that he had a conversation with the Defendant several days following the confiscation of the Defendant's shoes. In response to a question by White as to why he had the pill in the prison, the Defendant told White that he needed the pill for his heroin addiction. Chief County Detective William Weber (Detective Weber) also testified at the Preliminary Hearing. Detective Weber testified that he had observed

the contraband found in the Defendant's shoes and that he had researched the pill found. Detective Weber identified the pill found in the Defendant's shoe as Suboxone, a schedule III narcotic used to treat heroin addiction. At the time of the Preliminary Hearing, the pill had not yet been sent to the lab.

As a result of the pill found in his shoe, the Defendant was charged with 18 Pa.C.S. §5123(A.2) Possession of a Controlled Substance Contraband by Inmate Prohibited.

Discussion

The Defendant contends in his Petition for Writ of Habeas Corpus/Motion to Dismiss, that there is no evidence establishing a prima facie case for the charge of 18 Pa.C.S. §5123(A.2) Possession of a Controlled Substance Contraband by Inmate Prohibited. Specifically, the Defendant asserts that the Commonwealth failed to provide adequate evidence that the pill found in the Defendant's shoe was a controlled substance, as the pill had not yet been sent out to a laboratory at the time of the Preliminary Hearing.

“A prima facie case consists of evidence produced by the Commonwealth which sufficiently establishes that a crime has been committed and that the accused is probably the perpetrator of that crime.” Commonwealth v. McConnell, Pa. Dist. & Cnty. LEXIS 252 (Pa. Dist. & Cnty. 2009) (See Commonwealth v. McBride, 595 A.2d 589, 591 (Pa. 1991). “Every element of the crime charged must be supported by the evidence; however the Commonwealth need not establish guilt beyond a reasonable doubt.” McConnell at 9. (See Commonwealth v. Lopez, 654 A.2d 1150, 1153 (Pa. Super. 1995). “The Commonwealth establishes a prima facie case as long as the evidence presented establishes sufficient probable cause to warrant the belief that the accused committed the offense.” McConnell at 9. (See Lopez at 1153.)

A prisoner or inmate violates 18 Pa.C.S. §5123(A.2) Possession of a Controlled Substance Contraband by Inmate Prohibited, if that person unlawfully has in their possession or under their control, any controlled substance in violation of section 13(a)(16) of the Controlled Substance, Drug, Device and Cosmetic Act. In this case, the Defendant was an inmate at the Lycoming County Prison on October 21, 2010, when he was found to be in possession of a pill. The pill was found inside of the Defendant's shoe. The pill was identified by Detective Weber to be Suboxone, a schedule III narcotic. The Defendant would like the Court to dismiss the charge against him merely because the pill in question had not, at the time of the Preliminary Hearing, been sent to the laboratory. The Court notes that "[I]n determining the presence or absence of a prima facie case, inferences reasonably drawn from the evidence of record that would support a verdict of guilty are to be given effect, but suspicion and conjecture are not evidence and are unacceptable as such." Commonwealth v. Sanchez, Pa.Dist.& Cnty. LEXIS 225 (Pa.Dist. & Cnty. 2008) (Quoting Commonwealth v. Packard, 767 A.2d 1068, 1071 (Pa.Super.2001)). The Court does not find Detective Weber's identification of the pill as Suboxone to be mere suspicion or conjecture. The Court finds Detective Weber's identification of the pill to be evidence from which the Court can reasonably infer that the Defendant is guilty of Possession of a Controlled Substance Contraband by Inmate Prohibited. Therefore, the Court finds that the Defendant was in possession of a schedule III narcotic, in violation of Possession of a Controlled Substance Contraband by Inmate Prohibited.

ORDER

AND NOW, this 15th day of April, 2011, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA
Robin Buzas, Esq.