

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH**

v.

**ISAIAH MILLS,  
Defendant**

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**CR: 1818-2010  
CRIMINAL DIVISION**

**OPINION AND ORDER**

The Defendant filed an Omnibus Pretrial Motion on February 11, 2011. The Motion included a Petition for Writ of Habeas Corpus and a Motion to Suppress. A hearing on both was held May 19, 2011.

***Background***

On November 10, 2010, at approximately 9:15 a.m., members of the U.S. Marshal's Fugitive Task Force, accompanied by members of the Williamsport Bureau of Police, attempted to serve a felony drug warrant on Sharief Rainier (Rainier) at 405 High Street in Williamsport, PA, a residence known for drug activity. The Task Force was warned ahead of time to use extra caution as Rainier was known to carry a weapon and that he might be armed. After a member of the Task Force knocked on the door of the residence, Isaiah Mills (Defendant) answered the door, and the Task Force entered and cleared the residence<sup>1</sup>. The Defendant was forced face down on the floor once the Task Force entered. Once the residence was cleared, members of the

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<sup>1</sup> The only testimony presented on the issue of whether the Task Force knocked and announced before entering the residence established that the Task Force knocked, the Defendant answered, and the Task Force then entered. While it is unclear whether the Task Force announced their presence or purpose before entering the residence, the fact that they were aware that the Rainier was known to carry a weapon and that he might be armed provided them with an exception to the knock and announce rule; this knowledge gave the Task Force reason to believe that announcement prior to entry would imperil their safety. See Commonwealth v. Wagstaff, 911 A.2d 533, 536 (Pa. Super. 2006).

Task Force began to gather information on the individuals present, which in addition to the Defendant, included an adult male, an adult female, and a child. Eric Spiegel (Spiegel), a Special Deputy United States Marshal with the U.S. Marshal's Fugitive Task Force, and full time Lycoming County Deputy Sheriff, was told to place the Defendant, who was at that point handcuffed, on the couch. Before the Defendant was placed on the couch, the couch was searched for weapons to ensure officer safety. A loaded firearm with the serial number obliterated beyond recognition was found under the cushion. As the Defendant was only wearing underwear when the Task Force arrived, he at some point requested to put on clothing as it appeared he would soon be taken to another location. Agent Don Mayes (Mayes) of the Williamsport Bureau of Police, who was called to the scene to assist the operation after the initial entry, took the Defendant to an upstairs bedroom of the residence to get some clothing. The Defendant showed Mayes to his bedroom and pointed out a hoodie and a pair of pants as his clothing. Before giving the clothing to the Defendant, Mayes frisked the hoodie to make sure there were no weapons inside. Mayes felt a little baggie the size of a jaw breaker which he recognized as suspected crack cocaine. Mayes pulled the baggie with the suspected cocaine out of the hoodie, and the Defendant identified the cocaine as his. Found inside the pants was a small amount of marijuana, a Pennsylvania I.D. card which lists the Defendant's residence as 405 High Street, Williamsport, PA, and a key which fit the front door to the residence. The Defendant's J-NET criminal driver's history also lists 405 High Street as his residence, and the Defendant's name is on the mailbox of the residence. After the discovery of the firearm and the cocaine, a search warrant for the residence was obtained. Officer Edward Lucas (Lucas) of the Williamsport Bureau of Police executed the search warrant and found five (5) separate baggies containing suspected cocaine in the kitchen of the residence. A random sample from the baggies

field tested positive for cocaine. Also found in the kitchen was an electronic weigh scale with white residue on it, and a razor blade. Found in the bedroom where the Defendant's clothing had been removed was a Hollister bag containing about \$2,700.00 along with a receipt bearing the Defendant's name. A bong and two (2) cell phones were found in the upstairs bedrooms of the residence. The Defendant was arrested and ultimately charged with Possession With Intent to Deliver a Controlled Substance, Possession of a Firearm With Altered Manufacturer's Number, Possession of a Small Amount of Marijuana, and Possession of Drug Paraphernalia.

### ***Petition for Writ of Habeas Corpus***

In his Petition for Writ of Habeas Corpus, the Defendant alleges that the evidence is insufficient to establish a prima facie case on the charges of Possession With Intent to Deliver, Possession of a Controlled Substance – Small Amount of Marijuana, Possession of Drug Paraphernalia, and Possession of a Firearm with Altered Manufacturer's Number. "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 person commits the offense of 35 P.S. §780-113(A)(30) Possession With Intent to Deliver if that person possesses a controlled substance with the intent to deliver it to another. A person commits the offense of 35 P.S. §780-113(A)(32) Possession of Drug Paraphernalia if that person uses or possesses with intent to use, drug paraphernalia for the purpose of... packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of the Controlled Substance, Drug, Device, and Cosmetic Act. Possession can be established by proving actual possession, constructive possession, or joint constructive possession. See Commonwealth v. Micking, 211 Pa.Super. 45, (Pa. Super. 2011) (quoting Commonwealth v. Heidler, 741 A.2d 213, 215 (Pa. Super. 1999)). Constructive possession can be established by showing that the defendant had the ability to consciously exercise control over the object as well as the intent to exercise such control. Micking (see Commonwealth v. Sanes, 955 A.2d 369 (Pa. Super. 2008). “An intent to maintain a conscious dominion may be inferred from the totality of the circumstances....” Micking (quoting Commonwealth v. Valette, 613 A.2d 548, 550 (Pa. 1992.)).

In this case, crack cocaine was found in the Defendant’s hoodie and the Defendant admitted that the crack cocaine belonged to him. Additionally, found in what was established to be the Defendant’s residence, was a large amount of crack and powder cocaine, a scale, a firearm with the serial number obliterated, a large amount of cash, a bong, and multiple cell phones. Multiple indicia of occupancy establish 405 High Street as the Defendant’s residence: 1) the Defendant’s Pennsylvania I.D. card; 2) the Defendant’s J-NET criminal history report; and 3) the Defendant’s name on the mailbox of the residence. At the Preliminary Hearing held before Magisterial District Judge Allen Page on December 3, 2010, Mayes testified that the packaging and the quantity of the cocaine, along with the large amount of cash and other contraband found

in the residence, indicated that the cocaine was possessed with the intent to deliver. Mayes also emphasized the fact that no evidence of ingesting the cocaine, such as crack pipes or needles, was found in the residence. While a marijuana bong was found in the residence, Mayes testified that it was common for people who sell cocaine to ingest marijuana. As the Court discusses below, the Defendant was found to be in possession of a small amount of marijuana.

Furthermore, while it does appear that other people had access to the residence, as there were multiple names on the mailbox along with the Defendant's, the Court finds significant the fact that the \$2,700.00 cash, which is indicative of possession with intent to deliver, was found in a bag along with a receipt bearing the Defendant's name, and was located in a bedroom along with the Defendant's clothing. In addition, Lucas testified at the Preliminary Hearing that the Defendant was the only person present at the residence on the date of the search who it was determined actually lived at the residence. Therefore, based on the totality of the circumstances, the Court finds that the Commonwealth has presented sufficient evidence to establish that the crimes of Possession With Intent to Deliver and Possession of Drug Paraphernalia were committed, and that the Defendant was probably the person who committed the crimes.

A person commits the offense of Possession of a Small Amount of Marijuana if that person is: 1) in possession of a small amount of that substance for personal use; 2) intends to distribute that substance but not sell it; or 3) in fact distributed the substance but did not sell it. In this case, the small amount of marijuana was found in the Defendant's pants<sup>2</sup>. While the Defendant was not wearing the pants at the time the marijuana was discovered, the Defendant

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<sup>2</sup> While testimony was not presented to establish that the marijuana was immediately recognized as contraband by the Task Force upon the frisk of the pants, the Court finds that the marijuana would still be admissible under the inevitable discovery doctrine as it would have been discovered as a search incident to the Defendant's arrest for possession of the cocaine found in his hoodie. The Court notes that while the Defendant was not wearing the pants at the time of the frisk, it was apparent that he intended to put them on immediately following the frisk.

indicated that the pants were his. Furthermore, the marijuana was not found in an open area where multiple people had access to it, but enclosed in the Defendant's pants' pocket. Based on these facts, the Court finds that the Commonwealth established that the crime of Possession of a Small Amount of Marijuana was committed, and that the Defendant was probably the person who committed the crime.

A person commits the offense of 18 Pa.C.S.A. §6110.2 Possession of a Firearm with an Altered Manufacturer's Number if that person possesses a firearm which has had the manufacturer's number integral to the frame or receiver altered, changed, removed or obliterated. In this case, a loaded firearm with the serial number eradicated beyond recognition was found under the cushion of a couch in the residence. While there were multiple names on the mailbox of the residence along with the Defendant's, this was the only indicia of occupancy presented to establish that anyone other than the Defendant lived at the residence. However, as noted above, multiple indicia of occupancy exists establishing the residence as the Defendant's. Also, as noted above, the Defendant was the only person present at the residence on the date of the search who it was determined actually lived at the residence. It also appeared that the Defendant was on, or close to the couch which hid the firearm at the time the Task Force entered the residence. Therefore, based on the totality of the circumstances, the Court finds that the Commonwealth has, at least minimally, established that the offense of Possession of a Firearm with an Altered Manufacturer's Number was committed, and that the Defendant was probably the person who committed the offense.

### *Motion to Suppress*

The Defendant contends that the initial detention and subsequent search of his person were both unlawful as they were done without a warrant, without consent, or beyond the scope of any consent given, and without reason to believe that the Defendant committed an unlawful act. The Defendant believes that no exception to the warrant requirement existed which could be the basis for the search of the Defendant. The Defendant also contends that the search of the couch exceeded the scope of the arrest warrant, any statements made while the Defendant was in custody were in violation of the Defendant's Miranda warnings, and any statements made after his arrest were also in violation of Miranda.

The Court finds the Defendant's contentions, that the initial detention and subsequent search of his person were unlawful, to be without merit. According to the United States Supreme Court in Muehler v. Mena, 544 U.S. 93 (2005), while executing a search warrant, officers have the authority to detain the occupants of the place to be searched for the duration of the search. (See Michigan v. Summers, 452 U.S. 692 (1981)). Inherent in the authority "[t]o detain an occupant of the place to be searched is the authority to use reasonable force to effectuate the detention." Muehler at 98-99. In Muehler, officers conducted a search of a residence pursuant to a warrant which authorized "[a] broad search of the house and premises for, among other things, deadly weapons and evidence of gang membership." Id. at 95-96. The Supreme Court found the officers' "[u]se of force in the form of handcuffs to effectuate ..." the detention of the occupants "[w]as reasonable because the governmental interests outweigh the marginal intrusion." Id. at 99. The Supreme Court reasoned that "[t]he governmental interests in not only detaining, but using handcuffs, are at their maximum when, as here, a warrant authorizes a search for weapons and a wanted gang member resides on the premises." Id. at 100. The

Supreme Court noted that the use of handcuffs in inherently dangerous situations minimizes the risk of harm to both the officers and occupants alike. Id.

In this case, the Defendant was detained after members of the Task Force attempted to execute a felony drug warrant on Rainier at the 405 High Street residence. The Task Force was warned to use extra caution as Rainier was known to carry a weapon and that he might be armed. Upon execution of the warrant, the Task Force found the Defendant on the first floor of the residence. The Defendant was forced face down on the floor and was subsequently handcuffed. While the Court notes that the warrant was for Rainier, and not to search the premises of 405 High Street, the Court finds the circumstances of the search to be analogous to those in Muehler. The Court finds that the search for a potentially armed and dangerous suspect is exactly the type of inherently dangerous situation for which the Muehler Court authorized the use of handcuffs to minimize the risk of harm to both officers and occupants. Therefore, the Court finds the Defendant's argument that his detention was unlawful to be without merit. Furthermore, no evidence of a search of the Defendant's person was presented at either the Preliminary Hearing or the Hearing on the Motion to Suppress. Consequently, the Court finds the Defendant's argument that the search of his person was unlawful to also be without merit.

The Defendant additionally contends that the search of the couch exceeded the scope of the arrest warrant. The Court finds that the couch was not searched pursuant to the arrest warrant, but was searched in light of the lawful detention of the Defendant. After the Defendant was placed in handcuffs, Spiegel was told to place the Defendant on the couch. Before the Defendant was placed on the couch, the couch was searched for weapons to ensure officer safety. The Court finds that the search of the couch was lawful. The Superior Court in Commonwealth v. Davidson, 566 A.2d 897 (Pa. Super. 1989) found that an officer's search of appellee's



handbag for officer safety was lawful where “[t]he officer had reasonable suspicion that appellee was armed and dangerous because the cocaine found on her boyfriend suggested that she was involved in drug trafficking, which the court noted was a crime that typically involved the use of firearms.” Id. at 898, 900. The Supreme Court recently decided in Commonwealth v. Grahame, 7 A.3d 810 (Pa. 2010), that the search of a purse “[b]ased on a generalization that firearms are commonly found in close proximity to illegal drugs” was an insufficient basis on which to conduct a search. The Grahame Court determined that the facts of the case were distinct from those in Davidson, “[a]s a police officer must have a particularized, objective basis for a protective search....” Id. at 817. The Grahame Court noted that the search in Davidson was upheld “[b]ecause the owner had been riding in a car next to a man who possessed a large sum of cash and cocaine, and she reached for her purse after a police officer asked her not to touch it.” Id. at note 9. Before the police officer returned the purse to the woman, a search of the purse was lawful to ensure the safety of the officers and other individuals in the vicinity. Davidson at 901. The Court finds that the circumstances surrounding the search of the couch in this case are even less attenuated than those which justified the search of the handbag in Davidson. In this case, the Task Force attempted to execute a search warrant on Rainier, an individual known to carry a weapon, at the 405 High Street residence. The Task Force therefore had reason to believe that a weapon was present at the residence, which was a particularized, objective basis for the search. In light of these circumstances, the Court finds that the search of the couch for weapons before the Defendant was placed on the couch was lawful to ensure officer safety.

The Defendant also contends that any statements he made while in custody were in violation of his Miranda warnings, and any statements made after his arrest were also in violation of Miranda. The Court finds these contentions to be without merit. The only statements that it

appears the Defendant made prior to his arrest, while he was detained for purposes of the search, were statements related to his clothing and the cocaine found in his clothing. These statements were not made as the result of custodial interrogation, as they were not made in response to questions by the Task Force, but were instead voluntary requests made by the Defendant. While he was detained at the residence, the Defendant requested to put on clothing, as he was only in his underwear when the Task Force arrived. The Defendant indicated to Mayes that a specific hoodie and a pair of pants belonged to him. Prior to Mayes giving the clothing to the Defendant to put on, Mayes frisked the hoodie to ensure there were no weapons present. Mayes felt a little baggie the size of a jaw breaker which he recognized as suspected crack cocaine. Mayes pulled the baggie with the suspected cocaine out of the hoodie, and the Defendant identified the cocaine as his own. It appears to the Court that the statements pertaining to the clothing and the cocaine were voluntary statements made by the Defendant and not in violation of any Miranda warnings. As for any statements the Defendant may have made after he was arrested for the marijuana found in his pants and the firearm found under the couch cushion, the Court was presented with no evidence of any such statements. Therefore, the Court cannot determine whether these alleged statements were, or were not, made in violation of the Defendant's Miranda warnings.

**ORDER**

AND NOW, this \_\_\_\_day of July, 2011, based upon the foregoing Opinion, it is hereby ORDERED and DIRECTED that the Defendant's Petition for Writ of Habeas Corpus and Motion to Suppress are DENIED.

By the Court,

Nancy L. Butts, President Judge

xc: DA  
Peter T. Campana, Esq.