

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

**COMMONWEALTH OF PA**

**vs.**

**CRAIG McCULLOUGH,  
Defendant**

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**: No. CR-407-2011**

**OPINION AND ORDER**

Defendant is charged by Information filed on April 20, 2011 with one count of Possession with Intent to Deliver Crack Cocaine, one count of Possession of Crack Cocaine, one count of Possession of Heroin, one count of Possession of Drug Paraphernalia and one count of Persons not to Possess, Use, Manufacture, Control, Sell or Transfer Firearms.

On April 27, 2011, Defendant filed a Motion to Dismiss all of the charges contending that there was insufficient evidence to prove that the Defendant constructively possessed the narcotics, paraphernalia or firearms. Defendant argues that possession is an essential element of all of the charges and without proof of such, the charges must be dismissed.

In support of his motion, Defendant submitted in evidence, without objection by the Commonwealth, a transcript of his preliminary hearing held on March 22, 2011.

On January 31, 2011, law enforcement officers obtained a felony arrest warrant for an individual named Bilal Sabur. On February 3, 2011, Mr. Sabur was located at 1643 Memorial Avenued, (rear 2<sup>nd</sup> Floor) in Williamsport and was taken into custody on said arrest warrant. During the arrest of Mr. Sabur, the officers came in contact with the Defendant and another individual who were later identified as being residents of 1643 Memorial Avenue (Rear 2<sup>nd</sup> Floor).

In the course of conducting the arrest of Mr. Sabur, the officers allegedly observed in plain view several items to include drugs, drug paraphernalia and firearms. A search warrant was later obtained and executed.

Officers eventually located and seized numerous items pursuant to the search warrant including approximately ½ ounce of crack cocaine individually pre-packaged in 21 separate Ziplock baggies, nine individually pre-packaged bags of heroin, one revolver, one shotgun and one long rifle.

The investigation confirmed that the Defendant was a convicted felon and by law could not possess a firearm.

A Petition for Habeas Corpus attacks the sufficiency of the evidence. The Commonwealth must present a prima facie case that a crime has been committed and the Defendant was the one who probably committed it. Commonwealth v. Mullen, 460 Pa. 336, 333 A.2d 755, 757 (Pa. 1975). The evidence must demonstrate the existence of the each of the material elements of crimes charged. Commonwealth v. Wodjak, 502 Pa. 359, 466 A.2d 991, 996 (Pa. 1983). When deciding whether the Commonwealth has presented a prima facie case, the Court must view all of the evidence presented, including all reasonable inferences drawn therefrom, in a light most favorable to the Commonwealth. Commonwealth v. Landis, 2011 PA Super 108 (May 20, 2011).

It is undisputed that an essential element with respect to all of the charges against the Defendant is possession. Because no controlled substances, paraphernalia or firearms were found on the Defendant's person, the Commonwealth must satisfy the burden of

proving possession by proof of constructive possession. Commonwealth v. Valette, 531 Pa. 384, 613 A.2d 548, 549-50 (Pa. 1992).

Constructive possession “requires proof of the ability to exercise conscious dominion over the item and the intent to exercise such control.” Commonwealth v. Perez, 931 A.2d 703, 708 (Pa. Super. 2007) quoting Commonwealth v. Bricker, 882 A.2d 1008, 1014 (Pa. Super. 2005). Constructive possession may be established by the totality of the circumstances. Perez, supra.

Defendant argues that the Commonwealth is unable to present evidence to show that the Defendant had both the power to control the items and the intent to exercise such control. Defendant argues that because other individuals had equal access to the area where the items were found, the Defendant cannot be said to have either the power to control or the intent to control such items. Commonwealth v. Chenet, 473 Pa. 181, 373 A.2d 1107 (Pa. 1977). “Where more than one person has equal access to where drugs are stored, presence alone in conjunction with such access will not prove conscious dominion over the contraband.” Commonwealth v. Ritty, 732 A.2d 1216, 1220 (Pa. Super. 1999).

Where, however, the Commonwealth introduces evidence connecting Defendant to a specific area where the items were kept, constructive possession despite equal access, is established. Commonwealth v. Bricker, supra. at 1016. In the course of executing the search warrant, law enforcement officers identified one of the rooms in the apartment as being the bedroom of the Defendant. In it, police found “indicia of occupancy” consisting of “items” with “the name Craig McCullough” such as a “work ID card.” The police also found clothing of a size consistent with Defendant.

Found in Defendant's room were a plate full of various amounts of cocaine individually pre-packaged into twenty-one (21) bags as well as an open bag of heroin. Further, the police found two long rifles in a closet.

In the "common area" living room of the apartment the police found a handgun "stashed in a love seat" as well as three baggies of heroin. Located in Defendant's room was "paraphernalia for the handgun."

The police also utilized a secure tech drug wipe on Defendant's hands, which resulted in a positive reading for, among other controlled substances, cocaine.

The Commonwealth presented sufficient evidence connecting the Defendant to the specific rooms where the items were found. Accordingly, there is prima facie evidence to support constructive possession and Defendant's Petition for Habeas Corpus will be denied.

**ORDER**

AND NOW, this \_\_\_\_ day of May 2011 following an argument and hearing, Defendant's Omnibus Pretrial Motion in the nature of a Motion to Dismiss is **DENIED**.

BY THE COURT,

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Marc F. Lovecchio, Judge

cc: Andrea Pulizzi, Esquire  
DA  
Gary Weber, Esquire (Lycoming Reporter)  
Work File