

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	:
	:
vs.	: No. CR- 1282-2015
	:
ANGELIE LOPEZ,	:
Defendant	: Omnibus Pretrial Motion

OPINION AND ORDER

Before the court is Defendant's omnibus pretrial motion filed on September 23, 2015. Defendant is charged with three counts of possession with intent to deliver controlled substances, one count of conspiracy to deliver a controlled substance and four counts of possession of a controlled substance.

In reviewing the criminal complaint that was filed against Defendant on June 16, 2015, it appears that the charges relate to numerous controlled substances that were found at 321 Tinsman Avenue in Williamsport on June 16, 2015. More specifically, Defendant is charged with possessing 2.2 ounces of crack cocaine packaged in 16 individual bags, approximately 11.2 grams of powder cocaine and 116 grams of heroin. Defendant is charged with conspiring to deliver cocaine with Antoine Davis and Raheem Ruley. In addition to possessing the crack cocaine, powder cocaine and heroin, Defendant also is charged with possessing approximately one ounce of marijuana.

Defendant's omnibus pretrial motion includes a petition for writ of habeas corpus and a motion to suppress. The petition for writ of habeas corpus asserts that the evidence is insufficient for prima facie purposes to prove that she had either actual or

constructive possession of any controlled substances found at 321 Tinsman Avenue.

With respect to the motion to suppress, Defendant requests that her social security card, which was seized pursuant to a search warrant, should be suppressed because it did not come within the definition of items to be seized. Specifically, Defendant contends that a social security card is not “indicia of occupancy.”

The hearing in this matter was held on October 28, 2015. No testimony was presented although the Commonwealth admitted without objection a transcript of the preliminary hearing held on July 27, 2015 in connection with Defendant’s case as well as the cases involving Mr. Davis and Mr. Ruley. That transcript was marked as Commonwealth’s Exhibit No. 1. Admitted as Commonwealth’s Exhibit No. 2 was a copy of the relevant search warrant and affidavit of probable cause along with the receipt and inventory. Admitted as Commonwealth’s Exhibit 3 was a search warrant diagram of the premises.

The facts, read in a light most favorable to the Commonwealth, establish that Defendant, her boyfriend and their one child were the tenants of the Tinsman Avenue property. They were residing there for quite some time.

During the time that the tenants were residing at the property, Mr. Ruley was observed making three separate sales of controlled substances to confidential informants. He was under surveillance and was actually seen returning to the property at Tinsman Avenue on one of the occasions and on the other two occasions, he was observed coming from and returning to the premises after he had made the illegal sales.

More specifically, Raheem Ruley was observed on June 3, 2015, June 10,

2015, and June 16, 2015 delivering cocaine to a confidential informant. The transaction was a controlled transaction in which law enforcement personnel were able to observe Mr. Ruley both before and after the transactions. Following the first transaction, members of the “narcotics unit” were “able to observe Mr. Ruley step up to the front porch and enter a residence at 321 Tinsman Avenue.” In connection with the second transaction, law enforcement officers were “able to observe Mr. Ruley as he exited Tinsman Avenue” as well as following the transaction “going back to 321 Tinsman.” In connection with the last transaction, Mr. Ruley was observed “exiting the residence at 321 Tinsman Avenue prior to it and then “walking towards 321 Tinsman Avenue” following the transaction.

A search warrant was subsequently obtained. Several officers were present for the execution of the search warrant at 321 Tinsman Avenue. Upon entering the residence, officers first observed Antoine Davis. Defendant was observed “coming down from the upstairs.” An individual identified as Hakeem Price was observed in the residence as well. He was taken into custody and interviewed. “He explained that Ms. Lopez (Defendant) was Mr. Davis’ girlfriend and she had been there for quite some time. He advised law enforcement personnel as well that they were “residing in the top floor of the residence.”

In the master bedroom, a safe was located. In the safe, “was a quantity of cocaine” as well as “a quantity of US currency that was used...to purchase drugs on the previous delivery on the 10th.”

Another safe was located in the hallway closet “in a common area of the residence” and contained over 100 grams of heroin, over 20 ounces of crack cocaine and

over 11 grams of powder cocaine. Also located in the safe was a plastic bag containing packaging material and a digital scale.

Regarding evidence connecting Defendant to the residence, her social security card was found in a wallet on the dresser in the master bedroom. As well, she told Trooper Herbst that she was living there. Further, the landlord verified that Defendant was living there along with Mr. Davis. Of significance as well was the fact that law enforcement officers found “court documentation for Mr. Davis regarding a DUI” in the bedroom along with multiple cellphones and a marijuana grinder. Defendant indicated that she was staying in the master bedroom with Mr. Davis. She also admitted that the electric utilities “were in her name at the residence.”

In addition to the items found in the two different safes, “marijuana was located in [a] kitchen drawer where Mr. Ruley’s license was found as...[as well as] in the same area where crack cocaine was found.”

As previously indicated, the application for search warrant and authorization as well as the supporting affidavit of probable cause and receipt/inventory of seized property were collectively marked and admitted into evidence as Commonwealth’s Exhibit No. 2. Found in the residence were the following: A white and silver I-phone, a sandwich bag containing marijuana, blue bags of suspected crack cocaine, containers of marijuana, a plastic bag containing marijuana, plastic baggies, a metal grinder, at least seven other cellphones, two digital scales, cocaine, a green drawstring bag with packing material, packages of crack cocaine, a bag of cocaine, a bag of heroin, a plastic bag with black rubber

bands, a plastic bag with drug paraphernalia, packets of heroin, a plastic bag containing packing material, and close to \$1500.00 in cash. The search warrant was approved and authorized among the items to be seized “indicia of occupancy, residency, rental and/or ownership of the premises.”

Defendant contends that the seizure of her social security card was illegal because it was not authorized by the search warrant. Specifically, Defendant contends that a social security card found in a particular location does not constitute indicia of occupancy or residency.

The word “indicia” means circumstances that point to the existence of a given fact as probable. The court believes that it is synonymous with circumstantial evidence. Indicia of occupancy or residency essentially means any circumstance which would induce the belief that a given person was occupying or residing in a particular location.

A social security card is a card which includes the name and nine-digit social security number of that individual. It is issued to primarily US citizens. It is used for a variety of purposes including, but not limited to, identification. Each citizen has a unique social security number. Social security numbers are not duplicated. An individual’s social security number is used for numerous purposes and protects one’s personal information from being used by others.

The fact that a social security card is found in a wallet in a room in a residence is certainly circumstantial evidence that the individual occupies or resides in that room. To suggest otherwise begs logic.

Accordingly, Defendant's motion to suppress the social security card as being beyond the scope of the search warrant shall be denied.

In connection with Defendant's petition for writ of habeas corpus, Defendant contends that the evidence is insufficient to prove a prima facie case for any of the possessory offenses because the evidence does not demonstrate actual or constructive possession of any of the controlled substances.

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 each of the material elements of the crimes charged. *Commonwealth v. Santos*, 583 Pa. 96, 876 A.2d 360, 363 (Pa. 2005).

As Defendant correctly notes, an essential element with respect to all of the charges against her is possession of the controlled substances. Because no controlled substances were found on 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 of controlled substances "requires proof of the ability to exercise conscious dominion over the illegal substance, the power to control the contraband, 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. *Id.*

Defendant argues that the Commonwealth is unable to present evidence to show that Defendant had both the power to control the contraband and the intent to exercise such control. Defendant submits that because other individuals had equal access to the areas where the contraband was found, 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).

Defendant's statement is true, but only when the evidence establishes mere presence and equal access without more. As the Superior Court noted in *Rippy*:

[Moreover,] where more than one person has equal access to where drugs are stored, presence alone in conjunction with such access will not prove conscience domain over the contraband. [Rather,] the Commonwealth must introduce evidence demonstrating either [Defendant's] participation in the drug-related activity or evidence connecting [Defendant] to the specific room or areas where the drugs were kept.

Commonwealth v. Rippy, 732 A.2d 1216, 1220 (Pa. Super. 1999), quoting *Commonwealth v. Ocasio*, 619 A.2d 352, 354-355 (Pa. Super. 1993)(citations, quotation and emphasis omitted).

With respect to the drugs found in the safe in the master bedroom, the evidence is sufficient for prima facie purposes to prove constructive possession by Defendant.

First, there is no doubt that Defendant was living in the residence and sleeping in the master bedroom. She admitted such. A wallet with her social security card was found in the bedroom as well. "A bedroom is a private place with limited access and is usually

subject to the exclusive control of the inhabitant of that bedroom. A closet within a bedroom is even more likely to be a private place with limited access.” *Commonwealth v. Smith*, 345 Pa. Super. 196, 497 A.2d 1371, 1373 (1985).

While others may have been present in the house and indeed utilized it for other purposes, there is no evidence that any other individual utilized the bedroom except for Defendant and Mr. Davis, her boyfriend. Where the Commonwealth introduces evidence connecting a defendant to a specific area where items were kept, constructive possession despite equal access is established. *Bricker*, 882 A.2d at 1016.

With respect to the drugs found in the safe in the hallway, it is a more difficult issue. While at first blush, it may appear that Defendant’s argument has merit, the safe was found in a closet in a hallway adjacent to Defendant’s bedroom. Only Defendant, her boyfriend and their child were residents of the premises. No other person had any other possessory interest whatsoever in the premises. The utility bills were actually in Defendant’s name. Defendant had easy access to the safe. Clearly, Defendant had joint control and equal access to this safe.

In light of the abundance of evidence found throughout the house including cash, numerous cellphones, paraphernalia, controlled substances, and the fact that Defendant had access to all of those areas and was one of only two adults renting the premises, the court concludes that, for prima facie purposes, Defendant had constructive possession of the drugs in the safe.

A similar argument holds true with respect to the drugs found in the kitchen

drawer. Although Mr. Ruley's wallet was found in the kitchen drawer, the drawer was in a common area over which Defendant had access and control. The drawer contained crack cocaine and marijuana. Defendant and Mr. Davis were the two adults renting the premises. Crack cocaine and a marijuana grinder were found in their bedroom in the residence. Furthermore, some of the "buy" money was also found in the safe in a closet of that bedroom. Given the totality of the circumstances, whether these drugs were jointly controlled by Defendant and others (including Mr. Ruley) or solely controlled by Mr. Ruley is an issue of fact for the jury to decide.

ORDER

AND NOW, this __ day of November 2015 following a hearing and upon consideration of Defendant's omnibus pretrial motion, the court **DENIES** said motion. The Court also **DENIES** Defendant's motion to suppress.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Josh Bower, Esquire (APD)
Gary Weber, Esquire
Work file