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

COMMONWEALTH   :   No. CR-1121-2015
                                         :
      vs.   :
                                           :
                                           :
JEROME WILSON,   :
          Defendant   :   Omnibus Pretrial Motion

OPINION AND ORDER

Defendant is charged by Information filed on July 31, 2015 with one
count of conspiracy to possess with intent to deliver a controlled substance, two counts
of possession with intent to deliver a controlled substance, one count of possession of
a small amount of marijuana, two counts of possession of heroin and one count of
possession of drug paraphernalia.

Defendant filed an Omnibus Pretrial Motion on September 23, 2015 in
the nature of a Petition for Writ of Habeas Corpus. While Defendant's Motion is
somewhat vague, Defendant asserts that there is insufficient evidence to support a
prima facie case against him for any of the charges because the Defendant was
"merely present" when the crimes allegedly occurred and had no knowledge of the
crimes.

A hearing was held before the Court on October 28, 2015. Admitted as
Commonwealth's Exhibit 1 was a transcript of Defendant's preliminary hearing.

On June 16, 2015, the Pennsylvania State Police were conducting an
investigation in the area of the Best Western Hotel on East Third Street in
Williamsport. Specifically, they were searching for an individual who they had

previously identified on surveillance footage who had been selling controlled substances in the area.

They noticed a vehicle being driven by Defendant. The passenger in the vehicle was the individual they were searching for. The vehicle parked in the area of the hotel. The individual in the passenger seat exited the vehicle. Law enforcement took him into custody and then returned to the vehicle. Defendant was identified as the driver of the vehicle. Law enforcement discovered that Defendant was wanted on an outstanding warrant and, accordingly, he was taken into custody.

The passenger, Donald Smith, was also taken into custody. He was searched and had 22 bags of heroin in his pocket, "a whole bunch of cash" and a key for Room 123 at the hotel.

A search warrant was eventually executed on the hotel room. In the room was a duffle bag that had 136 bags of heroin in it along with digital scales. The duffle bag had been closed and in it as well was a pair of Mr. Smith's shoes.

A small amount of marijuana was found among some clothing that was similar in size to Defendant.

After being taken into custody and Mirandized, Defendant gave a statement to law enforcement. He admitted that he was not the heroin dealer but that he was driving the heroin dealer, Mr. Smith, around so that he could sell his heroin. In exchange, he received $200.00. When Defendant was searched, he had on his person $50.00, which apparently was "what was left from the $200.00 that he had received to drive Mr. Smith around." In order to clarify Defendant's statements, Trooper Havens of the Pennsylvania State Police who spoke with Defendant specifically indicated that

Defendant admitted that he was driving Mr. Smith around for the purpose of conducting heroin related sales. As well, Mr. Smith told law enforcement that Defendant was driving him to the areas where he was conducting his heroin sales.

Defendant testified at the hearing in this matter. He indicated that he and Mr. Smith were "sharing a room" at the hotel. The day before he was arrested, he had arrived in Williamsport to obtain employment.

The morning of the incident, he and Mr. Smith had gotten up. They were too late to get breakfast. On their way to get breakfast they had forgotten something and then returned to the hotel. They were then arrested.

Mr. Smith had paid Defendant $200.00 to drop him off at places and to pick him up at places. They did not talk about what Mr. Smith was doing. Defendant indicated that "maybe [he] had an idea" that Mr. Smith was selling drugs but he "didn't ask him."

"[A] petition for writ of *habeas corpus* is the proper means for testing a pretrial finding that the Commonwealth has sufficient evidence to establish a *prima facie* case." **Commonwealth v. Black**, 108 A.3d 70, 77 (Pa. Super. 2015)(quoting **Commonwealth v. Fountain**, 811 A.2d 24, 25 (Pa. Super. 2002)).

> A prima facie case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of the crime and that the accused is probably the perpetrator of that crime. The Commonwealth need not prove the defendant's guilt beyond a reasonable doubt. Rather, the Commonwealth must show sufficient probable cause that the defendant committed the offense, and the evidence should be such that if presented at trial, and accepted as true, the judge would be warranted in allowing the case to go to the jury.

Id. (quoting **Fountain**, 811 A.2d at 25-26).

"In 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…." ***Commonwealth v. Hendricks***, 927 A.2d 289, 291 (Pa. Super. 2007)(citations omitted).

A prima facie case merely requires evidence of each of the element of the offense charged, not evidence beyond a reasonable doubt. ***Commonwealth v. Patrick***, 933 A.2d 1043, 1047 (Pa. Super. 2007) (en banc).

To prove a conspiracy, "the Commonwealth must establish that the defendant: 1) entered into an agreement to commit or aid in an unlawful act with another person or persons; 2) with a shared criminal intent; and 3)an overt act was done in furtherance of the conspiracy." ***Commonwealth v. Devine***, 26 A.3d 1139, 1147 (Pa. Super. 2011)(citations omitted).

Obviously, for prima facie purposes, the Commonwealth has established a conspiracy. It was agreed between the parties that Defendant would drive his co-conspirator around for the unlawful purpose of selling controlled substances, namely heroin. There obviously was a shared criminal intent and the overt act was the driving.

With respect to the remaining charges of possession with intent to deliver, possession of controlled substances and possession of drug paraphernalia, Defendant argues that the Commonwealth has not presented a prima facie case. Specifically, Defendant argues that he did not possess any of the controlled substances.

Because no controlled substances or paraphernalia were found on the Defendant's person, the Commonwealth must satisfy its burden of proving knowing or intentional possession of a controlled substance 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 conscience dominion over the substance, the power to control the contraband, and the intent to exercise such control. Constructive possession may be established by the totality of the circumstances." ***Commonwealth v. Perez***, 931 A.2d 703, 708 (Pa. Super. 2007)(quoting ***Commonwealth v. Bricker***, 882 A.2d 1008, 1104 (Pa. Super. 2005)).

While there is no direct evidence that Defendant actually possessed the controlled substance on his person, there is more than sufficient evidence to prove, for prima facie purposes, that Defendant is liable on all of the possession charges as an accomplice. With the intent of facilitating the commission of these offenses, Defendant aided or agreed or attempted to aid another in planning or committing them. 18 Pa. C.S.A. § 306. The evidence is clear that Defendant was sharing a room with someone who the Defendant knew possessed controlled substances, namely heroin, for the purpose of delivering that heroin to other individuals. Defendant aided Mr. Smith in conducting his delivery business by driving him to and from customers. Clearly, the evidence is sufficient to prove a prima facie case that Defendant is liable as an accomplice for these offenses.

ORDER

AND NOW, this ____ day of November 2015, following a hearing and argument, Defendant's omnibus pretrial motion in the nature of a motion for writ of habeas corpus is **DENIED**.

By The Court,

_____
Marc F. Lovecchio, Judge

cc: Nicole Ippolito, ADA
       Jerry Lynch, Esquire
       Gary Weber, Esquire (Lycoming Reporter)
       Work File