

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

**COMMONWEALTH OF PENNSYLVANIA** : **CR-2153-2017**  
v. :  
:   
**JEROME WILLIAMS** : **HABEAS**  
**Defendant** :

**OPINION AND ORDER**

Jerome Williams (Defendant) filed an Omnibus Pretrial Motion petitioning for a Writ of Habeas Corpus on February 15, 2018. A hearing on the motion took place on June 22, 2018. Defendant challenges the Commonwealth's evidence on the three counts of Possession with the Intent to Deliver a Controlled Substance,<sup>1</sup> three counts of Possession of a Controlled Substance,<sup>2</sup> and five counts of Possession of Drug Paraphernalia.<sup>3</sup> For the following reasons, the charges are dismissed.

**Preliminary Hearing Testimony**

**Testimony of Affiant, Officer Joshua Bell**

Officer Joshua Bell testified on behalf of the Commonwealth. He testified that on the day of April 21, 2017, he responded to 2801 Linn Street the residence of Olivia Williams involving an incident that occurred a day prior involving her son Kenyata. P.H., 12/26/2017, at 1. Upon speaking to residents in the doorway, Officer Bell smelled marijuana. He then conducted a safety sweep of the residence before calling Officers Karita, Hitesman, and Miller to stay in the residence while he procured a search warrant. *Id.* at 2. During this time Officer Karita observed a male, later identified as Defendant, attempting to enter a bedroom window. *Id.* Officer Karita advised Defendant that he could not enter the residence. *Id.* at 2-3. As a result of the search warrant, officers found a digital scale in Ms. Williams bedroom, and in the bedroom where

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<sup>1</sup> 35 P.S. § 780-113(a)(30).

<sup>2</sup> 35 P.S. § 780-113(a)(16).

<sup>3</sup> 35 P.S. § 780-113(a)(32).

Defendant was attempting to enter the residence, officers found one hundred and seventy-one (171) baggies of a mixture of Fentanyl, Tramadol, and Ketamine, one hundred (100) unused identical baggies, another digital scale containing controlled substance residue, and a clear plastic bag of cocaine. *Id.* at 3. Officer Bell is unaware of the relationship between Ms. Williams and Defendant. *Id.* at 5. In the bedroom where the drugs were found, officers found men's clothing, children's clothing, and toys. *Id.* Another male Aaron Williams was present and is believed to be dating Ms. Williams. *Id.* at 6. During the entire initial sweep of the house and following the search, Defendant was not present. *Id.* at 8.

Q: And again this Jerome Williams is not present, correct?

A: That's correct, yes sir.

Q: Did you find any identification of his being a resident at that place? For example, drivers license, mail, anything like that?

A: No, nope. When I – the only items I found that indicated – or the only evidence I had found at the time that Jerome Williams had any relation to the house was with his contact with Officer Karita and subsequently when [Ms. Williams] testified a hearing in front of Mr. Judge Anderson, um, she has indicated then that he had contact or ties to the residence at the time.

Q: And ties to the residence are his child resides there correct?

A: I assume that is a possibility, like I testified earlier, there was some children's toys in the bedroom.

*Id.* at 8-9.

The room appeared to be occupied by someone on a regular basis. *Id.* at 11. In addition, Defendant presented Ms. Williams's Custody Complaint signed April 26, 2017, stating Defendant lived at an address in Bronx, New York, they had divorced in February of 2015, and listed four other individuals living in the residence with Ms. Williams, which Defendant was not included.

## **Discussion**

At the preliminary hearing stage of a criminal prosecution, the Commonwealth need not prove Defendant's guilt beyond a reasonable doubt, but rather, must merely put forth sufficient

evidence to establish a *prima facie* case of guilt. *Commonwealth v. McBride*, 595 A.2d 589, 591 (Pa. 1991). A *prima facie* case exists when the Commonwealth produces evidence of each of the material elements of the crime charged and establishes probable cause to warrant the belief that the accused likely committed the offense. *Id.* Furthermore, the evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to be decided by the jury. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001). *Prima facie* in the criminal realm is the measure of evidence, which if accepted as true, would warrant the conclusion that the crime charged was committed.

While the weight and credibility of the evidence are not factors at this stage, and the Commonwealth need only demonstrate sufficient probable cause to believe the person charged has committed the offense, the absence of evidence as to the existence of a material element is fatal. *Commonwealth v. Ripley*, 833 A.2d 155, 159-60 (Pa. Super. 2003). Moreover, "inferences reasonably drawn from the evidence of record which would support a verdict of guilty are to be given effect, and the evidence must be read in the light most favorable to the Commonwealth's case." *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003).

Williams argues there was insufficient evidence to hold he possessed a controlled substance, which is required for all three charges. In drug possession cases it is the Commonwealth's responsibility to show "that a defendant had knowing or intentional possession of a controlled substance, and if the substance is not found on the defendant's person, then the Commonwealth must satisfy the burden of proof of constructive possession." *Commonwealth v. Valette*, 613 A.2d 548, 549-50 (Pa. 1992). Constructive possession is demonstrated by "the ability to exercise a conscious dominion over the illegal substance: the power to control the illegal substance and the intent to exercise that control." *Commonwealth v.*

*Johnson*, 26 A.3d 1078, 1093 (Pa. 2011). This may be proven through circumstantial evidence by a totality of circumstances and may be found in multiple actors. *Id.* at 1094.

In *Valette*, police conducted a search of a residence and at that time the defendant was eating in the living room. 613 A.2d at 548. There was a large amount of drugs found in the house as well as paraphernalia and evidence tying co-defendants to the residence. *Id.* at 548-49. The Court found that being “present in an apartment in which drugs were found” was not enough to establish constructive possession when “[i]n order to find the drugs, the police were required to make a full search, and the most significant quantity of drugs was found in a room on a separate floor in a closed case located beneath floorboards.” *Id.* at 551.

As in *Valette*, Officer Bell testified there was no evidence tying Defendant to the residence, other than his child resided there. Defendant was not present at the time officers conducted the search and instead was found trying to enter the residence. There was no testimony establishing that Defendant possessed the drugs and in fact his person was not searched. Likewise, there is no testimony creating any constructive ties to the room in which the drugs were found on the date of the search and no testimony provided connecting him to the room days or times prior to when the search occurred.

### **Conclusion**

Therefore, this Court finds the Commonwealth presented nothing at the preliminary hearing to establish a *prima facie* case of constructive possession. As this is an essential element required to establish the crimes of Possession with the Intent to Deliver a Controlled Substance, Possession of a Controlled Substance, and Possession of Drug Paraphernalia, the Omnibus Pretrial Motion is granted and the charges are dismissed.

**ORDER**

**AND NOW**, this 13th day of September, 2018, based upon the foregoing Opinion, Defendant's Motion for Habeas Corpus is hereby **GRANTED** and all charges against Defendant are hereby **DISMISSED**.

BY THE COURT,

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Nancy L. Butts, P.J.

cc: DA  
Robert Hoffa, Esq.