

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CP-41-CR-1371-2018
v.	:	
	:	
SHYNNELL WALKER,	:	OMNIBUS PRETRIAL
Defendant	:	MOTION

OPINION AND ORDER

Shynnell Walker (Defendant) was arrested on August 19, 2018 on one count of Persons not to Possess a Firearm,¹ one count of Firearms not to be Carried without a License,² two counts of Possession of a Controlled Substance with the Intent to Deliver,³ and two counts of Possession of a Controlled Substance.⁴ The charges arise from a traffic stop that occurred in the area of William St. and North St., Williamsport, PA 17701. Defendant filed this Omnibus Pretrial Motion on November 22, 2018. A hearing on the motion was initially held by this Court on January 8, 2019, at which time it was continued for additional testimony and evidence that took place on February 15, 2019.

In his Omnibus Pretrial Motion, Defendant challenges whether a *prima facie* case has been established for the charges of Persons not to Possess a Firearm, Firearms not to be Carried without a License, and the two counts of Possession of a Controlled Substance with the intent to Deliver. Additionally, Defendant challenges whether police had reasonable suspicion of a traffic violation to conduct a stop and probable cause to seize Defendant. Defendant contends any evidence obtained as a result should therefore be suppressed.

¹ 18 Pa. C.S. § 6105(a)(1).

² 18 Pa. C.S. § 6106.

³ 35 P.S. § 780-113(a)(30).

⁴ 35 P.S. § 780-113(a)(16).

Background and Testimony

Officers Ryan Brague (Brague) and Michael Corter (Corter) of the Williamsport Bureau Police testified on behalf of the Commonwealth. Additionally, the Commonwealth provided a copy of the video from the Motion Video Recorder (MVR) of the patrol vehicle and a transcript of the preliminary hearing as exhibits. Based on this evidence the following was established. On August 19, 2018 around 2:15 a.m., Brague and Corter were acting in their official capacity as police officers in full uniform and in a marked police vehicle at the stop sign on Memorial Ave. and Hepburn St. The officers observed a tan vehicle traveling past them on Hepburn St. and smelled the odor of burnt marijuana. The officers turned and followed the vehicle and a continual smell of marijuana lingered. No other vehicles or persons were near at the time. Brague could not remember whether the windows in the police vehicle were up or down, but Corter testified that he always keeps his windows down. The tan vehicle then turned left onto Fifth Ave. before taking a sharp right onto William St. without signaling. At this time Corter activated his lights and the officers conducted a traffic stop. Brague testified at the preliminary hearing that he could smell marijuana coming from the vehicle as he made contact with Defendant, who was the passenger. Corter had the driver of the vehicle get out and Brague immediately saw a baggie of marijuana on the driver's floorboard. Defendant was then asked to exit the passenger side. Corporal Schon, who was on the scene that evening, observed Defendant "squirming around in the vehicle turning his hip toward the inside of the console area." P.H. 9/6/19, at 2. Officers found a loaded handgun between the center console and the passenger seat right next to a pill bottle, which was on the passenger seat. The pill bottle contained a little baggie of marijuana and twelve bags of heroin weighing approximately 3.27 grams. There was also rice within the pill bottle. Upon further search, a digital scale was found

under the driver side floor mat and unused blue zip top bags, like those found on the driver, were found behind the passenger seat. A search incident to arrest was conducted on Defendant and officers found a pill bottle containing three baggies of marijuana of similar size and weight, collectively weighing approximately nine grams.

Whether the Commonwealth has Satisfied a *Prima Facie* Case of Probable Cause

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, but 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).

When contraband is not found on a defendant's person, the Commonwealth must establish “constructive possession,” that is, the “power to control the contraband and the intent to exercise that control.” *Commonwealth v. Valette*, 613 A.2d 548, 550 (Pa. 1992). As with any other element of a crime, constructive possession may be proven by circumstantial evidence. *Commonwealth v. Macolino*, 469 A.2d 132, 134-35 (Pa. 1983). The requisite knowledge and intent necessary for constructive possession may be inferred from a totality of the circumstances. *Commonwealth v. Parker*, 847 A.2d 745, 750 (Pa. Super. 2004).

Defendant challenges the sufficiency of the evidence that he possessed the firearm required under 18 Pa. C.S. § 6106 and § 6105(a)(1). In the present case, the firearm was located within reach of Defendant, it was directly next to where he was sitting, and the movements observed by Corporal Schon are consistent with an individual attempting to place a firearm in the area where the firearm was found. Based on the totality of that evidence and viewing reasonable inferences in a light most favorable to the Commonwealth, a *prima facie* threshold has been met to show Defendant constructively possessed the firearm. *Huggins*, 836 A.2d at 866. Defendant also challenges the sufficiency of the evidence showing he possessed both heroin and marijuana with the intent to deliver. For a *prima facie* case of Possession of a Controlled Substance with the Intent to Deliver, the Commonwealth must show Defendant “possess[ed] with intent to manufacture or deliver, a controlled substance by a person not registered.” 35 P.S. § 780-113(a)(30). At the preliminary hearing Detective Curtis Loudenslager (Loudenslager) testified as an expert in the area of narcotics. He opined that the evidence was consistent with possession of both marijuana and heroin with the intent to distribute/deliver. This opinion was based on the presence of a firearm, a scale in the vehicle, and the individual packaging of the drugs. Specifically as to the marijuana, Loudenslager

distinguished between possession and possession with the intent to deliver based on the presence of a firearm, the fact that the marijuana was packaged in three different baggies of same or similar size, and that packaging and weighing materials were found in close proximity. As for the heroin, Loudenslager distinguished between possession and possession with the intent to deliver based on the firearm and the packaging and weighing materials present in the vehicle. The most distinguishing feature Loudenslager pointed out was the rice in the pill bottle:

Individuals with heroin addiction often times use that product immediately upon receiving it. The presence of the rice would be there to prevent moisture from overtaking that product because they planned on having it with them for some time. Furthermore, no testimony was given as far as of any paraphernalia being present for the ingestion of heroin.

P.H. 9/6/19, at 9.

As weight and credibility of testimony is not at issue at this stage and all reasonable inferences are to be drawn in favor of the Commonwealth, the testimony of Loudenslager is sufficient to establish that the evidence shows the marijuana and heroin was possessed with the intent to deliver.

Whether Officers had Reasonable Suspicion to Effectuate a Traffic Stop

Police officers are granted the authority to effectuate stops pursuant to violations of the motor vehicle code. 75 Pa. C.S. § 6308(b). “Whenever a police officer . . . has reasonable suspicion that a violation of this title is occurring or has occurred, he may stop a vehicle.” *Id.* An officer may also stop a vehicle for an investigatory detention upon reasonable suspicion that criminal activity is afoot. *Commonwealth v. Gutierrez*, 36 A.3d 1104, 1109. In order to demonstrate reasonable suspicion that criminal activity is afoot, an officer must point to “specific and articulable facts and reasonable inferences” drawn from those facts.

Commonwealth v. Holmes, 14 A.3d 89, 95-96 (Pa. 2011). “It is the duty of the suppression court to independently evaluate whether, under the particular facts of a case, an objectively reasonable police officer would have reasonably suspected criminal activity was afoot.” *Id.* at 96.

Defendant argues that the officers did not have reasonable suspicion of a traffic stop based on an alleged smell of marijuana. Defendant pointed out that the vehicle was moving approximately 30-35 miles per hour when officers testified that they smelled the marijuana and that it had rained on that day, which was raised to question whether the windows were down in the police vehicle. The Court disagrees with Defendant. Officer Corter testified that he always keeps his windows at least cracked to hear what is going on while he is patrolling. Both officers testified that after turning behind the vehicle and following it the odor continued while this was the only vehicle around. There is no reason to disbelieve the testimony of the officers and “the odor of marijuana alone, particularly in a moving vehicle, is sufficient to support at least reasonable suspicion, if not the more stringent requirement of probable cause.” *In Interest of A.A.*, 195 A.3d 896, 904 (Pa. 2018). Setting aside the evidence of the smell of marijuana, it can clearly be seen at 1:55 of the MVR that the vehicle makes a quick right turn onto William St. from 5th St., without using a turn signal. An objectively reasonable police officer would then have reasonable suspicion of a motor vehicle violation under 75 Pa. C.S. § 3334(b) and therefore justification to perform a valid traffic stop. 75 Pa. C.S. § 3334(b) (“an appropriate signal of intention to turn right or left shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning”).

Conclusion

The officers had the requisite reasonable suspicion that criminal activity was afoot to stop Defendant and an objectively reasonable officer would have had reasonable suspicion of a motor vehicle violation, making the stop permissible. Additionally, the Commonwealth has provided sufficient evidence to establish a *prima facie* case that Defendant both constructively possessed the firearm and that he possessed heroin and marijuana with the intent to deliver both substances. Therefore, there is no violation of Defendant's constitutional rights, the charges shall not be dismissed, and the resulting evidence obtained shall not be suppressed.

ORDER

AND NOW, this 8th day of March, 2019, based upon the foregoing Opinion, Defendant's Omnibus Pretrial Motion, in the nature of a Petition for Writ of Habeas Corpus and a Motion to Suppress, is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge

cc: Neil Devlin, Esquire, ADA
Robert Hoffa, Esquire

NLB/kp