

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-1053-2019
 :
 KENNETH BONAPARTE, :
 Defendant :

OPINION AND ORDER

This matter came before the court on Defendant’s omnibus pretrial motion, which consisted of a petition for writ of habeas corpus, a motion to suppress evidence, and a motion for additional discovery. In the petition for writ of habeas corpus, Defendant asserted that the Commonwealth failed to establish that Defendant actually or constructively possessed the controlled substances and paraphernalia found in the vehicle. In the motion to suppress, Defendant asserted that the trooper lacked reasonable suspicion or probable cause to stop the vehicle in which Defendant was traveling. In the motion for additional discovery, Defendant requested that the Commonwealth produce the motor vehicle recording (MVR) prior to the omnibus hearing. The motion for additional discovery is moot, as the MVR was provided to Defendant and it was introduced as Commonwealth Exhibit 2 at the omnibus hearing.

The court held a hearing on Defendant’s omnibus pretrial motion on January 29, 2020. At the close of the hearing, the parties indicated that they wanted to file briefs. Defendant filed his brief on February 12, 2020, and the Commonwealth filed its brief on February 26, 2020. The matter is now ripe for decision.

The Commonwealth called Trooper Luke Straniere as its only witness at the

hearing. Trooper Staniere testified that he was assigned to a highway interdiction unit. He was positioned perpendicularly between the eastbound and westbound lanes of I-180 in Fairfield Township, Lycoming County. He was watching westbound traffic and “systematically profiling” drivers’ behaviors and vehicles.

Trooper Staniere observed a blue sedan in the left lane of traffic pass by his location. He believed the vehicle was a rental vehicle, possibly involved in drug trafficking. He testified that the vehicle fit the description of a rental vehicle because it was very clean, it lacked any license plate trim, and it was devoid of any personal artifacts. He believed the vehicle may have been involved in drug trafficking because it was a rental vehicle and all four side windows as well as the rear window were heavily tinted. In Trooper Staniere’s training and experience, rental vehicles with tinted windows are frequently used in criminal activity. Trooper Staniere testified that, as the vehicle went by his position, he could not see the occupants inside the vehicle and he could not see through the vehicle due to the window tint.

Although it did not appear that the vehicle was speeding as it drove in front of Trooper Staniere’s location, the vehicle slowed and moved to the right lane after it went past him, which made Trooper Staniere think that the vehicle had been going at a high rate of speed earlier.

Trooper Staniere pulled out and followed the blue vehicle. He testified that he attempted to catch up to the vehicle and clocked it for three-tenths of a mile at a speed of 70 miles per hour in 65 mile per hour zone. He could not recall how far behind the vehicle he

was while he clocked it, perhaps a few hundred feet. He also indicated that he could not recall if there were any vehicles between his vehicle and the blue vehicle, but he indicated that he had a clear line of sight. He then testified that several people passed him and then slowed down, which caused a big gap, such that he had to “catch” up to the vehicle to pull it over.

Defendant was the driver and sole occupant of the vehicle. Trooper Staniere asked to see Defendant’s license and the paperwork regarding the vehicle. Defendant indicated that his wife had rented the vehicle, and he did not have a copy of the rental paperwork. He produced a Pennsylvania ID card, but said he had a valid driver’s license. Defendant was smoking a cigar and seemed very nervous. Trooper Staniere also noticed that Defendant possessed three cellular telephones. Trooper Staniere testified that he asked Defendant to step out of the vehicle.

Based on an odor of marijuana, Trooper Staniere and Trooper Mark Conrad searched the vehicle. They noticed that a panel on the driver’s side of the gear shift was not seated properly;¹ it was not fully clicked into place. Behind the panel, they discovered a white athletic sock that contained several controlled substances. The troopers seized the sock with the controlled substances and the phones.

Trooper Staniere also contacted the rental company. He discovered that the

¹The gear shift was located on the floor. The panels surrounding the gear shift were connected to the center console between the driver’s seat and the passenger seat.

vehicle had been rented by Defendant's wife the day before the traffic stop and the vehicle did not have window tint at the time it was rented. The rental term was for one month.

The Commonwealth admitted three exhibits into evidence. Commonwealth Exhibit 1 was the transcript of Defendant's preliminary hearing. Commonwealth Exhibit 2 was the MVR from Trooper Staniere's marked police vehicle. Commonwealth Exhibit 3 consisted of two photographs. The left photograph was a picture of the partially removed driver's side of the gear shift panel with the bottom of the white sock protruding out from underneath it. The other photograph was an overhead view of the gear shift.

Defendant first argues that the Commonwealth has failed to establish a prima facie case that he possessed any of the controlled substances or the paraphernalia; therefore, the charges should be dismissed.

The proper means to attack the sufficiency of the Commonwealth's evidence pretrial is through the filing of a petition for writ of habeas corpus. *Commonwealth v. Marti*, 779 A.2d 1177, 1178 n. 1 (Pa. Super. 2001). At a habeas corpus hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a prima facie case against the defendant. *Commonwealth v. Williams*, 911 A.2d 548, 550 (Pa. Super. 2006). "A prima facie case consists of evidence, read in the light most favorable to the Commonwealth, that sufficiently establishes both the commission of a crime and that the accused is probably the perpetrator of that crime." *Commonwealth v. Packard*, 767 A.2d 1068, 1070 (Pa. Super. 2001). "Stated another way, a prima facie case in support of an accused's guilt consists of evidence of evidence that, if accepted as true, would warrant submission of the case to a

jury.” *Id.* at 1071.

When reviewing a petition for a writ of habeas corpus, the court must view the evidence and all reasonable inferences to be drawn from the evidence in a light most favorable to the Commonwealth. *Commonwealth v. Santos*, 876 A.2d 360, 363 (Pa. 2005). A prima facie case merely requires evidence of each of the elements of the offense charged, not evidence beyond a reasonable doubt. *Marti*, 779 A.2d at 1180.

Possession of a controlled substance can be established by showing either actual or constructive possession. Actual possession is established by showing that the defendant had the controlled substance on his person, while constructive possession can be proven through showing that the defendant exercised conscious dominion over the substance. See *Commonwealth v. Ocasio*, 619 A.2d 352, 354 (Pa. Super. 1993).

In a case such as this where contraband is not found on the defendant’s person, the Commonwealth must establish constructive possession of the contraband. *Commonwealth v. Haskins*, 677 A.2d 328, 330 (Pa. Super. 1996), appeal denied, 692 A.2d 563 (Pa. 1997). Constructive possession is defined as “the ability to exercise a conscious dominion over the illegal substance: the power to control the contraband and the intent to exercise that control.” *Commonwealth v. Macolino*, 469 A.2d 132, 134 (Pa. 1983)(citations omitted).

In *Commonwealth v. Mudrick*, 507 A.2d 1212 (Pa. 1986), the Pennsylvania Supreme Court described the concept as follows: “Constructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. Constructive

possession is an inference arising from a set of facts that possession of the contraband was more likely than not.” *Id.* at 1213. “An intent to maintain a conscious dominion may be inferred from the totality of the circumstances...[and], circumstantial evidence may be used to establish a defendant’s possession of drugs or contraband.” *Commonwealth v. Valette*, 613 A.2d 548, 550 (Pa. Super. 1992) (quoting *Macolino*, 469 A.2d at 134). However, mere presence or close proximity to the controlled substance is not enough to establish constructive possession. *Valette*, supra; *Commonwealth v. Keblitis*, 456 A.2d 149 (Pa. 1983); *Commonwealth v. Spencer*, 621 A.2d 153 (Pa. Super. 1993); *Commonwealth v. Juliano*, 490 A.2d 891 (Pa. Super. 1985).

Based on the totality of the circumstances, the court finds that the Commonwealth presented sufficient evidence to establish the element of possession. Trooper Staniere observed marijuana “shake” in the driver’s side door and on the driver’s side floor. The white sock contained crack cocaine, heroin, and a small bag of suspected fentanyl. Each individual drug was packaged separately inside a larger plastic bag. The larger bag also contained several dozen clear, empty baggies.

It is commonsense that vehicles do not generally come with controlled substances concealed behind the side panel of the gear shift; someone has to put them there. The panel was not completely locked or clicked into place. There was a gap of an eighth to a quarter of an inch. The panel behind which the white sock containing controlled substances and paraphernalia was concealed was located right next to the driver’s thigh. Defendant was the driver and only occupant of the vehicle. When the marijuana “shake” in the driver’s door

and floor area are considered, Defendant was surrounded by controlled substances and paraphernalia while he was sitting in the driver's seat.

The vehicle was a rental vehicle with heavily tinted windows. Rental vehicles and vehicles with tinted windows are frequently used in criminal activity, particularly drug trafficking. The vehicle did not have window tinting when it was rented to Defendant's wife.

Defendant possessed three cellular telephones. The phones continued to ring and/or text messages appeared on the screen throughout Trooper Staniere's interaction with Defendant. Drug deals are often arranged through calls and text messages using cellular telephones, and drug dealers have a tendency to possess multiple cellular telephones.

A reasonable inference which can be drawn from the totality of these circumstances is that Defendant possessed the controlled substances and paraphernalia that the troopers found in the vehicle. Accordingly, the court will deny Defendant's petition for writ of habeas corpus.

Defendant also contends that Trooper Staniere lacked reasonable suspicion or probable cause to stop the vehicle.

Trooper Staniere testified that he stopped the vehicle for speeding and illegal window tint. The court questions the speeding violation and Trooper Staniere's "clocking" of Defendant's vehicle for three-tenths of a mile. Defendant's vehicle cannot even be seen when the MVR begins and Trooper Staniere had to pass a tractor trailer and five passenger vehicles to catch up to Defendant's vehicle and pull it over.²

²Trooper Staniere testified that a few vehicles passed him while he was following Defendant's vehicle and

Nevertheless, the MVR supports Trooper Staniere's testimony regarding the window tint. The vehicle windows are heavily tinted. When Trooper Staniere pulls the vehicle over, one cannot see how many occupants are inside the vehicle due to the window tint. One cannot see Defendant inside the vehicle; one can only see Defendant after he exits the vehicle. Defendant can be heard answering Trooper Staniere's questions, but he cannot be seen.

While one can see some dark outlines through the windows in Defendant's Exhibit 1, the photograph is taken from only about two feet away and one cannot discern what the objects are. The "silver" object pointed out by defense counsel might be part of the dashboard as asserted by defense counsel or it might be the housing of the center brake light at the bottom of the rear window, which one can see illuminate on the MVR when Defendant slows down and pulls over.

Regardless, the window tint was dark enough for Trooper Staniere to stop the vehicle. Accordingly, the court will deny Defendant's motion to suppress.

ORDER

AND NOW, this ___ day of March 2020,

"clocking" it speeding at 70 miles per hour in a 65 mile per hour zone. One can see in the MVR that Trooper Staniere was in a marked Pennsylvania State Police (PSP) vehicle. The court finds it somewhat hard to believe that six different drivers passed a marked PSP vehicle when it was traveling 70 miles an hour clocking another driver. In the court's experience, drivers are exceedingly reluctant to pass a marked police vehicle due to a fear that they will be pulled over for speeding. Furthermore, Trooper Staniere indicated that the vehicle did not appear to be speeding as it passed him and once Defendant's vehicle passed his location, it slowed down and moved into the right lane. The court understands that the MVR may not contain the entire time that Trooper Staniere was following Defendant's vehicle, but it easily could have; all Trooper Staniere had to do was turn on his equipment.

1. The court denies Defendant's petition for writ of habeas corpus contained in Count I of his omnibus pretrial motion.
2. The court denies Defendant's motion to suppress contained in Count II of his omnibus pretrial motion.
3. The motion for additional discovery contained in Count III of the omnibus pretrial motion is moot.

By The Court,

Marc F. Lovecchio, Judge

cc: Lee Fry, Esquire (ADA)
Robert Hoffa, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File