

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : **No. CR-75-2021**
vs. :
:
:
:
LEAH DAVIS, :
Defendant : **Petition for Writ of Habeas Corpus**

OPINION AND ORDER

Defendant is charged by Information filed on February 4, 2021 with one count of criminal conspiracy to possess with intent to deliver crack cocaine, one count of conspiracy to possess with intent to deliver marijuana, and one count of drug paraphernalia. The charges arise out of a traffic stop that occurred on November 24, 2020 involving the defendant and her passenger Kasaan McKay.

Defendant filed a Petition for Writ of Habeas Corpus alleging that the Commonwealth failed to prove a *prima facie* case with respect to all of the elements of the conspiracy charges and all of the elements of the paraphernalia charge.

A hearing was scheduled for March 11, 2021. At the hearing, without objection of Defendant, the Commonwealth indicated that it was obtaining a transcript of the preliminary hearing and would submit such to establish its burden. The Commonwealth subsequently obtained the transcript and provided it to the court on or about April 9, 2021. Defendant did not seek to introduce any additional evidence.

According to the preliminary hearing testimony, on November 24, 2020, Officer Clint Gardner of the Williamsport Bureau of Police, specially assigned to the Lycoming County Narcotics Enforcement Unit (NEU), was on patrol in an unmarked unit, partnered with Detective Tyson Havens of the NEU. While patrolling, he observed a Jeep

rental vehicle with “out-of-state” tags. The vehicle committed a stop sign violation. The vehicle failed to come to a complete stop with approximately half of the vehicle being in the intersection. Accordingly, a traffic stop was initiated and the driver was identified as Defendant and the passenger was identified as Mr. McKay.

Upon approaching the vehicle, Officer Gardner immediately detected a strong odor of marijuana from within the vehicle. He also observed in plain view a marijuana roach on the driver’s floor below Defendant’s feet. After he detained Defendant and Mr. McKay, he conducted a preliminary search of the vehicle. Mr. McKay and Defendant were also searched.

Mr. McKay was found to possess about “an eighth” of marijuana in his underwear and cocaine that was concealed in his groin area. As well, an amount of new unused packaging material (zip top style with graphics on the front) for marijuana was recovered from within the vehicle. Defendant admitted that the packaging material was “hers.” Mr. McKay was also found in possession of a cell phone and approximately \$5,000.00 in cash.

Mr. McKay was transported to City Hall in Officer Gardner’s unmarked unit. When Officer Gardner searched his patrol unit the following morning, he found two separate packages of cocaine where McKay had been seated.

While in custody and after being mirandized, Defendant had “an inconsistent story” of when and how she met and knew Mr. McKay. She claimed that some of the currency on Mr. McKay’s person was hers but she did not specify the amount. On November 25, 2020, she spoke with Officer Bell and “made statements to him about trafficking

marijuana from California to New York.”

A search warrant was approved for the Jeep on November 25, 2020. Upon searching the vehicle pursuant to the search warrant, a snorting straw with cocaine residue was located in Davis’ purse. Also located in the vehicle were numerous mason jars commonly used with the packaging of bulk marijuana.

Where a defendant seeks to challenge the sufficiency of the evidence presented by the Commonwealth, she may do so by the filing of a writ of habeas corpus. *Commonwealth v. Landis*, 48 A.3d 432, 444 (Pa. Super. 2012) (en banc). At a habeas corpus hearing, the issue is whether the Commonwealth has presented sufficient evidence to prove a *prima facie* against the defendant. *Commonwealth v. Hilliard*, 172 A.3d 5, 10 (Pa. Super. 2017).

The definition of *prima facie* is not precise or without difficulty. On the one hand, it has been described as evidence, read in a 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), abrogated on other grounds by *Commonwealth v. Dantzler*, 135 A.3d 1109, 1112 n. 5 (Pa. Super. 2016).

On the other hand, it has been defined as evidence, that if accepted as true, would warrant submission of the case to a jury. *Packard*, *id.* at 1071; *Commonwealth v. Karetny*, 880 A.2d 505, 514 (Pa. 2005); *Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2001).

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 has committed the offense. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2011). The evidence must be read in a light most favorable to the Commonwealth and inferences reasonably drawn from the evidence of record which would support a verdict of guilty, must be given effect. *Id.*

To meet the Commonwealth's burden, it may utilize the evidence presented at the preliminary hearing. *Commonwealth v. Lambert*, 244 A.3d 38, 42 (Pa. Super. 2020). In support of its burden in this case, and as referenced above, the Commonwealth introduced into evidence a copy of the preliminary hearing transcript before MDJ Christian Frey on January 11, 2021.

To sustain a conviction for criminal conspiracy, the Commonwealth must establish that the defendant: (1) intended to commit or aid in the commission of the criminal act; (2) entered into an agreement with another (a "co-conspirator") to engage in the crime; and (3) he or one or more of the other co-conspirators committed an overt act in furtherance of the agreed upon crime. *Commonwealth v. Rosario*, 2021 PA Super 52, 2020 WL 1096679, *7 (Pa. Super. March 23, 2021); 18 Pa. C.S.A. § 903.

The essence of a criminal conspiracy is the agreement between co-conspirators. *Rosario, id.* In most cases of conspiracy, it is difficult to prove an explicit or formal agreement. The agreement is generally established via circumstantial evidence, such as by the relations, conduct, or circumstances of the parties or overt acts on the part of the co-conspirators. *Commonwealth v. Golphin*, 161 A.3d 1009, 1019 (Pa. Super. 2017); *Commonwealth v. Sanchez*, 82 A.3d 943, 973 (Pa. 2013).

A conspiracy may be inferred where it is demonstrated that the relation, conduct, or circumstances of the parties, and the overt acts of the coconspirators, are sufficient to prove the formation of a criminal confederation. *Commonwealth v. Reed*, 216 A.3d 1114, 1122 (Pa. Super. 2019).

In addition to the conspiracy, the Commonwealth must also prove that the parties agreed to commit the crime of possession with intent to deliver a controlled substance. To sustain such a conviction for possession with intent to deliver a controlled substance, the Commonwealth must prove both the possession of the controlled substance and the intent to deliver the controlled substance. *Commonwealth v. Bostick*, 958 A.2d 543, 560 (Pa. Super. 2008).

First, the Commonwealth must prove possession. In other words, the Commonwealth must prove the intent to exercise conscious dominion over an illegal substance. *Commonwealth v. Colon-Plaza*, 136 A.3d 521, 528 (Pa. Super. 2016). Intent to maintain conscious dominion over controlled substances may be inferred from the totality of the circumstances. *Id.*; *Commonwealth v. Macolino*, 469 A.2d 132, 134 (Pa. 1983).

Possession of controlled substances can be proven by showing actual possession, that is, controlled substances found on a defendant's person or by showing that the defendant constructively possessed the drugs. *Macolino, id.* Constructive possession of a controlled substance requires proof of the ability to exercise conscious dominion over the substance, the power to control the substance, and the intent to exercise such control. *Commonwealth v. Perez*, 931 A.2d 703, 708 (Pa. Super. 2007). Constructive possession may of course be established by the totality of the circumstances. *Id.*

With respect to Count 1, conspiracy to possess with intent to deliver cocaine, the court cannot conclude that the Commonwealth has established a *prima facie* case.

In explaining why Defendant was charged with conspiracy to distribute cocaine, Officer Gardner referenced her driving a rental vehicle, her inconsistent stories of how she knew Mr. McKay and why she was in Williamsport, her possession of the snorting straw with cocaine residue, the deactivation of her phone soon after the incident, her being in Williamsport longer than she claimed, her recently providing Penn College Police with a South Carolina ID but him with a New York ID, and his specific experience with “traffickers.”

In considering the totality of the circumstances, the court cannot conclude that the evidence establishes a *prima facie* case of an agreement between Defendant and Mr. McKay to possess with intent to deliver cocaine. The cocaine was found both on Mr. McKay and on the seat of Officer Gardner’s patrol unit where McKay was seated. While no means of ingesting cocaine were recovered from McKay, they were recovered from Defendant. Specifically, a snorting straw with cocaine residue was found in her purse. While admitting that the empty packaging bags of marijuana were hers and that some of the currency found on Mr. McKay was hers, there were no statements made by Defendant with respect to the cocaine.

Moreover, the court cannot conclude that Defendant’s inconsistent statements are sufficient to establish that she entered into an agreement with Mr. McKay for the specific purpose of possessing with intent to deliver cocaine. It is a rare person who is not agitated to some extent when stopped by the police, whether described as nervousness,

apprehension, concern or otherwise, forced interaction with a police officer is not an everyday occurrence for the average citizen. *Commonwealth v. Cartagena*, 63 A.3d 294, 305-06 (Pa. Super. 2013).

On the other hand, the court does find sufficient *prima facie* evidence to support Count 2, possession with intent to deliver marijuana. The odor of marijuana was emitting from the vehicle. Officer Gardner observed a roach on the driver's floor in front of Defendant. Defendant admitted that the empty packaging bags for marijuana were hers. She claimed some of the large amount of currency on Mr. McKay's person was hers as well. She deactivated her phone immediately after the incident and made admissions to Officer Bell about trafficking marijuana from California to New York.

The court also finds sufficient *prima facie* evidence to support Count 3, possession of drug paraphernalia. The roach was found on the front driver's floor. Defendant admitted that the empty packaging bags of marijuana were hers. She made statements about trafficking marijuana. The snorting straw with cocaine residue was found in her purse.

ORDER

AND NOW, this ___ day of April 2021, following a review of the preliminary hearing transcript in this matter, Defendant's Petition for Habeas Corpus with respect to Count 1, conspiracy to possession with intent to deliver cocaine is **GRANTED**. Defendant's Petition for Habeas Corpus with respect to Counts 2, possession with intent to deliver marijuana and Count 3, possession of drug paraphernalia, is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)
Paul Petcavage, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Judge Marc F. Lovecchio