

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

COMMONWEALTH OF PENNSYLVANIA	:	CRIMINAL DIVISION
	:	NO. CR-1417-2024
v.	:	
	:	
ROSEANNA GIRARDI,	:	Omnibus Motion
Defendant	:	

OPINION

On July 2, 2025, Counsel¹ filed a Motion for Extension of Time for Filing an omnibus motion. On August 5, 2025, the Court granted Defendant's request for additional time for filing the Omnibus Motion. The Court further noted that an omnibus motion was filed on July 30, 2025 on behalf of Defendant prior to the Court granting the request. The Omnibus Motion was deemed timely and accepted by the Court per the Order dated August 5, 2025.

This matter was before the Court on October 21, 2025, for a hearing and argument on Defendant's Omnibus Pretrial Motion filed on July 30, 2025, by counsel, Richard Dixon, Esquire, on behalf of Defendant. At the hearing on the Motion, Defendant appeared personally represented by Richard Dixon, Esquire. Assistant District Attorney Lindsay Sweeley appeared on behalf of the Commonwealth.

Under docket no. CR-1417-2024, Defendant is charged with a singular count of Contraband/Controlled Substance, felony of the second degree, pursuant to 18 Pa.C.S. Section 5123(a).

¹ Defendant was formally charged by way of the filing of the Criminal Complaint on October 14, 2024. Defendant was represented by Michael Morrone, Esquire, from the inception of the case until May 2, 2025, whereupon Attorney Morrone filed a Motion for Leave to Withdraw Representation. On June 3, 2025, Attorney Dixon entered his appearance on behalf of Defendant.

Background

The charges against the Defendant under docket no. CR-1417-2024 arise from a series of events that occurred on or around July 30, 2024. Additional charges against the Defendant are reflected at docket no. CR-1075-2024 and CR-838-2024. On or around July 30, 2024, following an investigation by law enforcement officers conducted at her residence, Defendant was charged with delivery and possession with intent to deliver substances in Lycoming County, Pennsylvania. The allegations in the instant matter arise from incidents that followed Defendant's arrest. She was transported to the Lycoming County Prison whereupon she was strip-searched and found to be in possession of a hair scrunchie that contained a zipper and a hidden compartment containing what appeared to be fentanyl and cocaine. The contents of the scrunchie field tested positive as cocaine and fentanyl. Law enforcement officers recovered eleven (11) bags of fentanyl and a glass vial of cocaine.

At the hearing on the Petition, the Commonwealth called Detective Tyson Havens to testify. Detective Haves was the arresting officer. Detective Havens stated that the scrunchie was on the Defendant's wrist at the time law enforcement officers interacted with her at her residence. Detective Havens testified that Defendant was arrested for delivering fentanyl, she was arraigned, and she was relinquished to the Lycoming County Prison. Detective Havens stated that the scrunchie was used to pull her hair back before she was taken to the prison. At the prison, the scrunchie was removed as part of the strip search. At that time, the scrunchie was discovered to have a hidden compartment containing the products listed above.

The Omnibus Motion contains one count for relief, labeled as a Motion to Dismiss. The Court interpreted the Motion to Dismiss as a Petition for Habeas Corpus on the basis that

Defendant alleges the Commonwealth has not provided sufficient evidence² to establish the Defendant acted with the requisite culpability to be charged under 18 Pa.C.S. 5123(a).

Standard of Review

In evaluating a petition for writ of habeas corpus, the court must examine the evidence in a light most favorable to the Commonwealth. *Commonwealth v. Starry*, 196 A.3d 649, 656 (Pa. Super. 2018). The Commonwealth bears the burden of establishing a *prima facie* case “that a crime has been committed and that the accused is probably the one who committed it.” *Id.*; Pa.R.Crim.P. 141(d). “To demonstrate that a *prima facie* case exists, the Commonwealth must produce evidence of every material element of the charged offense(s) as well as the defendant's complicity therein,” *id.*, and may do so by utilizing evidence presented at the preliminary hearing as well as submitting additional proof. *Id.* Weight and credibility of the evidence are not factors for the Court to consider. *Commonwealth v. Marti*, 779 A.2d 1177, 1180 (Pa. Super. 2001); *see also Commonwealth v. Huggins*, 836 A.2d 862, 866 (Pa. 2003) (holding that “[t]he evidence need only be such that, if presented at trial and accepted as true, the judge would be warranted in permitting the case to go to the jury”). “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. Owen*, 580 A.2d 412, 414 (Pa. Super. 1990).

Under 18 Pa.C.S. Section 5123(a):

[a] person commits a felony of the second degree if he sells, gives, transmits or furnishes to any convict in a prison, or inmate in a mental hospital, or gives away in or brings into any prison, mental hospital, or any building appurtenant thereto, or on the land granted to or owned or leased by the Commonwealth or county for the use and benefit of the prisoners or inmates, or puts in any place where it may be secured by a convict of a prison, inmate of a mental hospital, or employee thereof,

² Defendant's Motion argues the Commonwealth cannot establish that Defendant committed the enumerated offense beyond a reasonable doubt. At the hearing on the Motion, the Commonwealth argued the correct standard at this stage of the proceedings.

any controlled substance included in Schedules I through V of the act of April 14, 1972 (P.L. 233, No. 64),¹ known as The Controlled Substance, Drug, Device and Cosmetic Act, (except the ordinary hospital supply of the prison or mental hospital) without a written permit signed by the physician of such institution, specifying the quantity and quality of the substance which may be furnished to any convict, inmate, or employee in the prison or mental hospital, the name of the prisoner, inmate, or employee for whom, and the time when the same may be furnished, which permit shall be delivered to and kept by the warden or superintendent of the prison or mental hospital.

“When the culpability sufficient to establish a material element of an offense is not prescribed by [Title 18 offenses], such element is established if a person acts intentionally, knowingly, or recklessly.” 18 Pa.C.S. §302(c). The Pennsylvania Supreme Court has consistently held that Section 302 “provides the default level of culpability where a criminal statute does not include an express *mens rea*.” *Commonwealth v. Moran*, 629 Pa. 68, 89 (2014)(holding the omission of a *mens rea* from the definition of a criminal statute implies that a defect exists in the construction or language and is remedied by 18 Pa.C.S. §302)).

Application

Because the statute does not specify a *mens rea*, the Commonwealth must present sufficient evidence to establish the Defendant, at least recklessly, entered the Lycoming County Prison with a scrunchie containing controlled substances. Defendant argues that mere possession is not enough to establish a *prima facie* case the Defendant knowingly, intentionally, or recklessly entered the Lycoming County Prison with the scrunchie containing contraband. Defendant does not dispute that the remaining elements of the offense were established by the evidence posited by the Commonwealth. The legislature defines a defendant’s minimum culpability as acting recklessly as follows:

A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and intent of the actor's conduct and the circumstances known to him, its disregard

involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

18 Pa.C.S. §302(b)(3).

It is not disputed that Defendant was in possession of the scrunchie at the time she entered the prison. The issue turns to whether she consciously disregarded the substantial or unjustifiable risk that her possession of the scrunchie containing controlled substances as she was being committed to the prison resulted in her carrying the illicit substances into the prison. The Court finds that her conduct does meet the minimum required *mens rea* of recklessness under 18 Pa.C.S. Section 5123(a).

Detective Havens testimony provided that Defendant was wearing the scrunchie on her wrist for the duration of the investigation that occurred at her property. Moreover, the scrunchie was either created or altered to have a hidden compartment accessible via a zipper. Additionally, the testimony relates that Defendant had her hair pulled back with the scrunchie at the time the search occurred. The scrunchie presumably contained the controlled substances prior to the investigating officers presenting at the property on July 30, 2024. Without more to establish otherwise, and based on the conduct and circumstances known to the Defendant, the Court determines that the Defendant entering the prison in possession and control of the scrunchie containing controlled substances with such disregard was, at the minimum, a gross deviation from the standard of conduct a reasonable person in Defendant's position would have exercised. At this stage, the Commonwealth need only establish that a crime was committed and the defendant is the individual who committed the crime. The Commonwealth has satisfied its burden that a *prima facie* case exists for Section 5123, and the Defendant is the most likely individual who committed the offense. Therefore, Defendant's Motion to Dismiss on the basis that the Commonwealth failed to establish a

prima facie case for the material element of *mens rea* under 18 Pa.C.S. 5123(a) shall be denied.

Accordingly, the Court enters the following order:

ORDER

AND NOW, this 26th day of September, 2026, based on the foregoing, the Defendant's Motion to Dismiss is **DENIED**.

By the Court,

Hon. Ryan M. Tira, Judge

RMT/asw

CC: DA; CA; PD

Gary Weber, Esq.—Lycoming Reporter