

IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : CR-1423-2016
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 :
 ROBERT F. MITCHELL :
 Defendant :

OPINION AND ORDER

On June 12, 2017, this Court held a hearing on the Commonwealth’s Motion for Reconsideration of the Court’s Order of February 2, 2017, disallowing evidence that when Defendant was arrested he was in possession of a phone to which a confidential informant had previously called to arrange drug transactions.

At the hearing on June 12, 2017, the Commonwealth again presented the testimony of Officer Jeremy Brown of the Williamsport Bureau of Police. He testified to the contents of prison recordings made while Defendant was incarcerated at Lycoming County Prison. Commonwealth’s Exhibit #1. Mitchell’s conversations indicate

- 1. He is or has been in possession of various cellular phones. To Wit:

Mitchell: You got that little phone?
Female: Well yeah. Now I have both your phones. I didn’t know the boys had your 201 iPhone...
Mitchell: All right, Now you got the new ones too?
Femaile: I got the 201. I got both 201 number.
Mitchell: Don’t let that 201 number go off.

- 2. His reaction to the criminal charges:

Mitchell: Yea, yea, yea. Tell him I got caught with all of that shit. Mostly all that shit like...good thing I got caught with what I got caught with, you feel me, cause you just think about it, I probably be doing like three years.

3. His description of the arrest:

Mitchell: When I owed up, I should have just stayed there bro, but I was filthy....They tried to grab me. You know, like off the porch type shit, like. Come here, where you going? A random person, a random person bro....

Officer Brown, who has worked undercover in drug investigations for the past six years testified that when a person indicates they are “filthy” this indicates that they are holding an illegal substance. In this case, when arrested Defendant possessed three bundles of field test positive for Heroin. Though this could also indicate personal use, Defendant’s statement “I am happy right now....Cuz it would have been way worse than this...Cuz, look, what was on me, I didn’t even know was still on me. I didn’t...The main jawn, the main shit, gone.” Comm. Ex. 1, 8/3/2016, Phone Call #2.

Though the Court initially disallowed admission of the evidence that Defendant was arrested in possession of a cellular phone with a number used by drug purchasers to arrange transactions, as there was no evidence that he had actually been using that for that purpose. However, with the additional statements made by Defendant while incarcerated to others about drug dealing, the Court finds it a weight rather than an admissibility argument. As such, the evidence will be admitted.

ORDER

AND NOW, this 23rd day of June, 2017, after hearing, the Commonwealth's Motion for Reconsideration is hereby GRANTED. The Commonwealth is permitted to present evidence that when Defendant was arrested he was in possession of a phone to which a confidential informant had previously called to arrange drug transactions.

BY THE COURT,

Nancy L. Butts, P.J.

cc. DA (NI, MW)
Peter T. Campana, Esq. Defense Counsel