

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

<b>COMMONWEALTH OF PENNSYLVANIA</b>	<b>: No. 00-11,352</b>
	:
<b>vs.</b>	:
	:
	:
<b>GREGORY RUFF,</b>	:
<b>Defendant</b>	<b>: 1925(a) Opinion</b>

**OPINION IN SUPPORT OF ORDER IN  
COMPLIANCE WITH RULE 1925(a) OF  
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Order dated June 15, 2001, in which the Court denied the defendant's post verdict motions.

The defendant Gregory Ruff was found guilty of Possession and Delivery of 1.6 grams of cocaine at a jury trial held January 18, 2001. On April 19, 2001, the Court sentenced the defendant to a term of incarceration of fifteen to thirty (15-30) months in a state correctional institution. The defendant filed post-sentence motions challenging the weight and sufficiency of the evidence for the conviction. In an Order dated June 15, 2001, the Court denied the motions after reviewing its handwritten notes taken during the trial. Those notes indicated that Commonwealth witness William Adams testified at trial that it was the defendant who sold cocaine to him on the day in question.

In his Statement of Matter Complained of on Appeal, the defendant raises one of the same issue which was presented in his post-sentence motion, i.e, that "the verdict rendered was against the weight of the evidence presented at trial."<sup>1</sup>

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<sup>1</sup>The defendant in his post-sentence motion also raised the issue that the evidence presented at trial was insufficient to sustain the verdict. However, the defendant in his

A motion for a new trial based on a claim that the verdict was against the weight of the evidence is addressed to the discretion of the trial court. Such a motion concedes that there is sufficient evidence to sustain the verdict. A new trial should not be granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. Trial judges do not sit as the thirteenth juror. Rather, the role of the trial judge is to determine that notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or give them equal weight with all the facts is to deny justice. Stated another way, a court may grant such a motion only when the verdict rendered is so contrary to the evidence as to shock one's sense of justice such that right must be given another opportunity to prevail. Commonwealth v. Widmer, 560 Pa. 308, 319-20, 744 A.2d 745, 751-52 (2000); Commonwealth v. Foster, 764 A.2d 1076, 1083 (Pa.Super. 2000).

The testimony presented at trial established the following. William Adams, Sr. was arrested for a theft offense. Mr. Adams then agreed to cooperate with the Williamsport Police and serve as a confidential informant to aid himself in his own case. Officer Leonard Dincher of the Williamsport Police and the Lycoming Task Force, testified that he told Mr. Adams that he would inform the Court of the cooperation provided by Mr. Adams. When he was sentenced in his own case, Mr. Adams agreed to purchase drugs under police supervision to effectuate his cooperation.

On or about January 3, 2000, Mr. Adams contacted Officer Dincher and told

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Statement of Matters Complained of on Appeal only raises the weight of evidence issue.

him he could purchase cocaine from “Roach” who he also referred to as “Craig.”<sup>2</sup> Officer Dincher conducted a strip search of Mr. Adams and provided him with \$200 in currency to purchase the cocaine. Officer Dincher observed Mr. Adams walk to a double house on Memorial Avenue and Walnut Street in Williamsport.<sup>3</sup> Mr. Adams went in the north door of the house. Ten to fifteen (10-15) minutes later Mr. Adams came out of the house and the officer picked him up in his vehicle. Mr. Adams turned over baggie containing a white chunky substance to the officer. Officer Dincher tried to lift fingerprints from the baggie, but was unsuccessful. The baggie field tested positive for cocaine. Lab analysis indicated the baggie contained 1.6 grams of cocaine.

The informant provided a physical description of the seller of the cocaine as a light-skinned black male approximately five feet nine inches (5' 9") tall . At a later point, Mr. Adams identified a photograph of the defendant as the individual who sold him cocaine on January 3, 2000. See Kreisher Transcript at pp. 16-42.<sup>4</sup>

William Adams also testified as a witness for the Commonwealth at trial. Mr. Adams confirmed he offered to cooperate with Officer Dincher after his arrest for theft. He had prior retail theft convictions. There was no specific agreement regarding the sentence. However, Mr. Adams ultimately received a house-arrest and probation

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<sup>2</sup>Officer Dincher testified that Mr. Adams referred to the drug dealer as “Roach” and “Craig”. Mr. Adams in his testimony referred to the seller as Roach and Gregg. The Court does not believe the difference in first names is particularly significant because they sound so similar. The jury, of course, was aware of this discrepancy.

<sup>3</sup>The address of 701 Walnut Street was listed as the location of the sale.

<sup>4</sup>There are three different transcripts from January 18, 2001. For purposes of clarity, the Court will refer to the transcript of William Adams’ testimony as the Adams Transcript and will refer to the other two transcripts by the last name of the court reporter who prepared them, i.e., the Kreisher Transcript and the Diggan Transcript.

sentence. On January 3, 2001, Mr. Adams purchased cocaine from a man he knew as Greg, but also had a street name of Roach. Mr. Adams identified this man as Gregory Ruff. Mr. Adams testified he had obtained a white piece of paper from the defendant with a pager number written on it. After meeting with Officer Dincher, Mr. Adams went to a telephone and called the pager number, but did not receive an answer. Officer Dincher then transported Mr. Adams to a location close to the residence of the defendant to allow Mr. Adams to make contact with him.

Mr. Adams testified that at the residence he saw the defendant come out of the house. Greg told Adams he had paged someone to bring the cocaine to the house. Mr. Adams paid Greg \$200 for the cocaine. An individual then approached the defendant and handed him a packet. Mr. Adams and the defendant then entered the right side of the double house.

Once inside the house, Greg went into a bedroom, came out and handed a baggie of rock cocaine to Mr. Adams. Mr. Adams then left the home.

On cross-examination, Mr. Adams acknowledged he had a prior criminal record for the retail thefts and a 1991 conviction for criminal trespass. Mr. Adams also acknowledged he was a user of drugs.

Although Mr. Adams could not remember the exact address of the sale at the time of trial, he identified the location on a diagram. Mr. Adams also testified he had known the defendant socially for five (5) years, and he referred to him as Roach and Greg. Adams Transcript at pp. 2-16.

Officer James Douglas and Officer Dustin Kreitz were in plain clothes and an unmarked vehicle, conducting surveillance during the events of January 3, 2000. These

officers observed Mr. Adams place a phone call from the pay phone near Donna's restaurant at the corner of Park and Walnut. Then they saw Mr. Adams walk south to the house on the corner of Walnut Street. To gain a better vantage point, they drove closer to the house. There was a car with five (5) black males around the vehicle outside the residence and Mr. Adams was on the stoop of the residence. To avoid suspicion, the officers continued to drive around the corner. About ten (10) minutes later they saw the informant walking north on Walnut Street. The informant made contact with Officer Dincher. Kreisher Transcript at pp. 42-50.

The Commonwealth recalled the prosecuting officer, Leonard Dincher. Officer Dincher testified he arrested the defendant on August 13, 2000. He described the defendant as a sharp-looking black male with a brown complexion, a height of 5' 9", a weight 145 pounds and a thin build. Officer Dincher asked the defendant if he went by any nickname, and he replied Roach and Ruff. Kreisher Transcript at pp. 51-53. Officer Dincher testified that he was not able to trace the pager number that was found on the white piece of paper which Mr. Adams provided to him. Kreisher Transcript at pp. 53-54.

The only evidence presented by the defense was a stipulation that defense counsel determined the pager was registered to Abdul Hassan Miller, and the account was activated on December 3 and suspended June 16, 2000. The defense stipulation also included the specifics of Commonwealth informant Adams' criminal record. Diggan Transcript at pp. 14-16.<sup>5</sup>

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<sup>5</sup>The Court conducted an on-the-record colloquy with the defendant outside the presence of the jury to confirm his decision not to testify as a witness in his own defense. Diggan Transcript at 2-7.

The final evidence in the case was rebuttal testimony from Officer Leonard Dincher. Officer Dincher testified that when he contacted the pager company to try to determine to whom the pager was registered, he was not provided with the information that had just been provided to the defense. Therefore, he did not know the pager was registered to Abdul Hasson Miller. However, Officer Dincher was personally familiar with Mr. Miller, having arrested him for narcotics law violations in 1996 and 1998. He described the physical appearance of Mr. Miller as being a black male, six feet four inches tall, 190 pounds. He noted this description to be much different than the description of the individual who sold the cocaine to Mr. Adams. Officer Dincher also testified that, in his experience, it is not unusual for individuals trafficking in drugs to loan or provide pagers to other parties for their use. Diggan Transcript at pp. 19-22.

In this case there is ample testimony to support the jury's finding of guilt. Mr. Adams who purchased the drugs in question testified that it was the defendant who sold the cocaine to him on January 3, 2000. Mr. Adams has known the defendant socially for five (5) years. He referred to a street name for the defendant as "Roach". When Officer Dincher asked the defendant if he had any nicknames, the defendant referred to the name "Roach". The description given by Mr. Adams of the seller also was physically similar to the defendant's appearance. While the pager number given by the defendant to Mr. Adams was registered to a different individual, the defendant also could have used this pager. Therefore, the Court does not find that the evidence presented by the defense is of such greater weight than that provided by the Commonwealth that to ignore it or give it equal weight is to deny justice and the defendant is not entitled to a new trial.

Accordingly, the Court finds the verdict of the jury was not contrary to the

weight of the evidence.

DATE: \_\_\_\_\_

By The Court,

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Kenneth D. Brown, J.

cc: Colleen Eddinger, Esquire (APD)  
Robert Ferrell, Esquire (ADA)  
Work file  
Superior Court (original & 1)  
Gary Weber, Esquire (Lycoming Reporter)