IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	**No. 01-11769**
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	:	
vs.	:	**CRIMINAL DIVISION**
	:	
	:	
KEVIN WEBSTER,	:	
Defendant	:	**1925(a) Opinion**

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 Judgment of Sentence docketed December 18, 2002. The relevant facts follow. On April 30, 2001, Joseph Wiley was working as a confidential informant with the Lycoming County Drug Task Force. N.T., October 10, 2002, at 21, 48. He was strip-searched and given pre-recorded funds to purchase an eight ball of cocaine. The target of this controlled buy was the defendant. Id. at 21-22. Officers dropped Wiley off at the Williamsport Hospital parking lot. Id. at 23, 48. The officers had him under surveillance as he walked from that location to the 700 block of Locust Street. Id. at 23, 80-82. The defendant came down off the porch of 730 Locust Street, shook hands with Wiley and together they walked to 708 Locust Street. Id. at 80-82. Wiley purchased a baggie of crack cocaine from a black male inside 708 Locust Street for $225. Id. at 48-49. Wiley left 708 Locust Street and walked back to

the Williamsport Hospital parking lot, where Officer Mays picked him up. Wiley turned over the baggie of cocaine to Officer Mays. The substance in the baggie tested positive for cocaine. Id. at 27-28. Wiley then was strip-searched and debriefed. During his debriefing, Wiley gave a taped statement. Wiley stated he saw somebody on Locust Street, he went inside 708 Locust Street with him and made a buy of an eight ball. He said he wasn't sure if the individual was Kevin Webster. Although he would not name the individual from whom he purchased the drugs, he indicated the guy he did the deal with was the same guy he walked down the street with.

The next day the police came in contact with the defendant. Id. at 30. They searched him and found $100 of the pre-recorded funds on his person. Id.

In October, the police interviewed the defendant about the incident on April 30, 2001. Id. at 91-92. He told the police an eight ball was $125 to $150, but the actual sales price varied depending upon the buyer's sophistication. Id. at 93. If the buyer was a dumb white boy the price went up. If the buyer "knew the game," he would get a better price. Id. If somebody made a sale for $200 to $225, he would get to keep $75 to $100 dollars of it. Id. The defendant also stated that the coke was delivered from 730 Locust Street to 708 Locust Street. Id. Although the defendant admitted he

would meet up with the person and talk to him, he claimed he would not pass the drugs to this person. Id. at 95.

The defendant was charged with delivery of a controlled substance, possession with intent to deliver a controlled substance, possession of a controlled substance and possession of drug paraphernalia.

A jury trial was held on October 10, 2002. At trial, Wiley stated he did not purchase the drugs from the defendant and claimed he purchased them from a black male with braids. The Commonwealth presented the testimony of Robin Shifflett, an occupant of 708 Locust Street. Ms. Shifflett testified that the Wiley and the defendant were in 708 Locust Street together on only one occasion and they were the only males present. N.T. at 65-66. In addition to his surveillance of Wiley and his interview of the defendant in October 2001, Officer Ungard testified regarding drug dealing in Lycoming County. He stated it was very common for two residences to be used in dealing narcotics. It is a business type operation and the boss will distribute to another person to assume the risk and deliver the product to the buyer. Id. at 97.

The jury found the defendant guilty of possession with intent to deliver, possession of a controlled substance and possession of drug paraphernalia. The jury found the

defendant not guilty of delivery of a controlled substance.

On December 12, 2002, the Court held a sentencing hearing. The Court sentenced the defendant to undergo incarceration at a state correctional institution for a minimum of 26 months and a maximum of five years for possession with intent to deliver and a concurrent one to twelve months for possession of drug paraphernalia. The defendant filed a timely notice of appeal.

The first issue raised by the defendant is that the evidence was insufficient to sustain the guilty verdicts. In reviewing such a claim, the Court must view the evidence admitted at trial, and all reasonable inferences drawn from that evidence, in the light most favorable to the Commonwealth as verdict winner. Commonwealth v. Harvey, 812 A.2d 1190, 1194 (Pa. 2002); Commonwealth v. Jackson, 540 Pa. 556, 560, 659 A.2d 549, 550-51 (1995). The Court notes the defendant's allegation in his statement of matters complained of on appeal is boilerplate. It does not specify in what aspects the evidence was insufficient, making this Court's ability to adequately address this issue more difficult. Nevertheless, the Court will attempt to address this issue.

The jury found the defendant guilty of possession with intent to deliver cocaine. The Court believes the following evidence supports this verdict: (1) the defendant's

statement that on April 30, 2001 the cocaine was delivered from 730 Locust Street to 708 Locust Street; (2) the defendant came down off the porch of 730 Locust Street, shook hands with Wiley and they both went to 708 Locust Street; (3) the defendant was the only person the police observed going from 730 Locust Street to 708 Locust Street with Wiley; (4) Wiley purchased an “eight ball” of cocaine from 708 Locust Street; (5) the defendant’s statement that he would keep the extra $75 to $100 from a $200 to $225 sale of an eight ball of cocaine; (6) $100 of the $225 pre-recorded funds used to purchase the cocaine were found on the defendant; (7) common sense indicates that the defendant would not get to keep the extras if the cocaine wasn’t his or if he wasn’t involved in the transaction; and (8) Officer Ungard’s testimony that it was not unusual for the boss to give the drugs to someone else to deliver or pass them to the buyer. Based on this evidence the jury reasonably concluded that the defendant had actual possession, constructive possession or joint constructive possession of the cocaine that was delivered to Wiley.

The jury also convicted the defendant of possession of drug paraphernalia. The cocaine was in a plastic baggie. The baggie was utilized to store and transport the cocaine. Therefore, the baggie constituted drug paraphernalia.

The defendant next contends the Court erred in

ruling admissible the audio taped statement of the defendant, because it was evidence of prior bad acts other than acts occurring on April 30, 2001. The Court did not rule that the entire taped statement was admissible. The Court only ruled admissible that portion of the taped statement which related to April 30, 2001. The taped statement was transcribed. The Court marked the portions it found admissible and gave copies to counsel for the prosecution and the defense. The admissible portion was approximately six pages out of twenty-two. In light of the Court's ruling, the Commonwealth did not play the tape and it did not read the entire permitted portion into the record. Instead, Officer Ungard read into the record and testified to portions of the defendant's taped statement. See N.T. at 91-93 (direct examination), 93-96 (cross-examination). Since the Court only permitted those portions relating to April 30, 2001, it did not allow introduction of "prior bad acts."

DATE: _____ By The Court,

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Kenneth D. Brown, Judge

cc: William Simmers, Esquire
Public Defender
Law Clerk
Work file