

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

**COMMONWEALTH**

**v.**

**SHAKUR DARNELL,  
Defendant**

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**No.: 01-11,498; 01-11,602**

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

On March 8 2002, after non-jury trial this Court convicted the Defendant of Possession with the Intent to Deliver a Controlled Substance (2.9 grams of cocaine) and Delivery of a Controlled Substance (cocaine) in violation of the Controlled Substance Device and Cosmetic Act of 1972, Defendant had previously waived his right to a jury trial before the Honorable Dudley N. Anderson. Defendant was sentenced to a total of 24 to 60 months confinement in a State Correctional Facility on both informations. Defendant appeals his conviction and sentencing. Defendant has filed a "Statement of Matters Complained Of (sic)" which sets forth three issues. First, he asserts that there was insufficient evidence to support the guilty verdicts issued in his cases. Second, he asserts that his waiver of jury trial was invalid. Last, he claims that the Court erred in denying his Motion for a New Trial, which was premised on his allegation that his waiver of jury trial was invalid.

Defendant first claims that there was insufficient evidence presented to the court to convict him of the offenses charged. The standard

of review for the sufficiency of evidence requires this Court to “determine whether the evidence admitted at trial, and all reasonable inferences drawn from that evidence, when viewed in the light most favorable to the Commonwealth as verdict winner, was sufficient to enable the fact finder to conclude that the Commonwealth established all of the elements of the offense beyond a reasonable doubt.” Commonwealth v. Harvey, 571 Pa. 533, 812 A.2d 1190 (2002), citing Commonwealth v. Ockenhouse, 562 Pa. 481, 756 A.2d 1130 (2000).

Here, the Commonwealth first presented the testimony of Eric Fields, who testified that he knew the Defendant as one of a group of people that used to sell drugs at his apartment. Notes of Testimony, March 8, 2002, p. 4. He described the Defendant as a “pick-up guy, deliver guy”, and explained that the Defendant had been in the apartment when Fields had been taken into custody. Id., at pp. 4-5. Fields also stated that he had seen the Defendant in possession of drugs and had seen him transfer drugs to people that were in the apartment in exchange for money. Id., p. 21.

The Commonwealth next offered the testimony of Dustin Kreitz, a member of the Williamsport Bureau of Police assigned to the Lycoming County Drug Task Force. Officer Kreitz testified that he was an undercover officer working for the task force on August 15, 2001 when he went to the apartment of Eric Fields. Kreitz testified that the Defendant was inside the apartment and that the Defendant took \$100 from him. Officer Kreitz testified that he then saw the Defendant hand the money to another person, who

gave the Defendant ten clear vials with red caps in exchange. The Defendant then gave the vials to the undercover officer. The officer further testified that the \$100 he gave to the Defendant during the transaction was later found on the person who he had seen giving the Defendant the vials in the apartment. Id., p. 26. The red capped vials given to the officer were discovered to contain .52 grams of cocaine. Id., pp. 28 - 29. (Stipulation as to the testimony of Christopher Libus of the Pennsylvania State Police, Wyoming Laboratory.)

The Commonwealth then called Officer Donald Mayes of the Williamsport Bureau of Police, who is also a member of the Lycoming County Drug Task Force to testify. Officer Mayes stated that he had been part of the arrest team on August 15, 2002. Id., at p.39. When he entered the apartment, Mayes observed the Defendant move toward the couch in the living room and touch the back of the couch or the wall with his hand, despite the fact that everyone else in the apartment, including a Kyree Gardner, was going to the floor as directed by the officers. Id. at pp. 42, 54, 62. Mayes further testified that after the Defendant was placed on the floor Mayes went to the area where the Defendant had been when he first saw him. Mayes then discovered a bag that was filled with 67 vials of cocaine. Id. at pp.44, 49. Mayes also testified that the vials in the bag matched 50 additional vials found on Kyree Gardner, who was also arrested in this same incident. Id. at pp. 45, 47. It was later stipulated that the fifty vials contained 1.9 grams of crack cocaine. Id. at 48. Officer Mayes further testified that when the

Defendant was searched incident to arrest, the Defendant was found to have a “wad” of money on his person, totaling \$700, and an additional \$70 and a pager in his front pocket. Id. at pp.45-46. On cross-examination, the officer opined that based on his observations, he believed that the Defendant had placed or thrown the bag containing cocaine behind the couch. Id. at p.63.

Corporal Thomas Ungard of the Williamsport Bureau of Police, who is also the coordinator of the Lycoming County Drug Task Force, was then called to testify. He was qualified as an “expert in narcotics as an officer”. Id. at p. 66. Corporal Ungard testified that he, along with Officer Mayes, was one of the first officers in the apartment on August 15, 2002. He also observed the Defendant and described his activity as having “a purpose other than to get on the ground.” Id. at p. 68. He then testified that when Kyree Gardner was searched incident to arrest, 50 clear vials of crack cocaine with red caps were found on his person. Id. at p. 69. A stipulation was then entered that the 67 vials found behind the couch near where the Defendant had been seen contained crack cocaine with a weight of 2.9 grams. Id. at pp.72 – 73. Corporal Ungard reviewed the evidence presented by the Commonwealth prior to his testimony and his expert opinion was that someone carrying the amount of money found on the Defendant as well as a cell phone and who is also found in a “crack house” such as Defendant was found is “involved in dealing in narcotics.” Id. at pp. 69 – 71. Corporal Ungard then further offered his opinion that the Defendant had been in

possession of the 67 vials of crack cocaine found behind the couch, which would be held for resale or delivery, not personal use. Id. at p. 73.

The Defendant testified at the trial, saying that he was at the house because he was looking for a friend. He recalled Officer Kreitz at the door asking for “Eric”. He then recalled that the officer said “like I got a hundred, I looked at him, where, and he gave me the money. I gave it [the money] to Kyree, [and] he gave me the stuff. I handed it to the cop I didn’t know he was a cop, but I handed it to him and he left out.” Id. at p. 84. Defendant indicated that he believed that he had handed drugs to the undercover officer. Id. at p. 100. He further testified that at the time of his arrest he gave the name Shakur McNish because he was frightened. Id. at p. 98. He testified that although he uses marijuana, he is not a drug dealer and was not using any drugs that day. Id. at pp. 97, 100.

Given the totality of the evidence presented, both by the Commonwealth and also that part of the Defendant’s testimony that is credible, there is more than enough evidence to sustain the Defendant’s convictions on both the Delivery as well as the Possession with the Intent to Deliver charges. Officer Kreitz testimony about the Defendant handing him drugs and taking money is sufficient to establish the elements for the charge of Delivery of a Controlled Substance. The uncontradicted testimony of the Commonwealth’s expert witness, Cpl. Ungard also established the vials found in the separate bag were for resale and not personal use. All of the facts presented lead the Court to the conclusion that the bag was thrown to

its final resting place by Defendant. Therefore, his argument that the weight of the evidence in his cases is insufficient must fail.

In his next two assertions of error, the Defendant claims that his waiver of jury trial was invalid and that the lower court erred by denying his Motion for New Trial, which was based upon the invalidity of the jury waiver. The Honorable Dudley N. Anderson conducted the waiver of jury trial on December 18, 2001. Judge Anderson subsequently denied the Defendant's Motion for New Trial by an order filed on January 23, 2003 in which he stated "it appears the waiver of jury trial was not only informed and voluntary; it was done at the insistence of Defendant." Order of Judge Anderson, filed January 23, 2003. This Court will not disturb the findings of Judge Anderson.

By the Court,

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Nancy L. Butts, Judge J.

xc: DA  
PD  
Hon. Nancy L. Butts  
Diane L. Turner, Esquire  
Gary Weber, Esquire