

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,	: NO. 02-10,998
Plaintiff	:
	:
vs.	:
	:
JOSEPH KEVIN MOORE,	:
Defendant	:

OPINION IN SUPPORT OF ORDER  
DATED MARCH 21, 2003 IN  
COMPLIANCE WITH RULE 1925(A) OF  
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed this Court's sentencing Order of March 21, 2003, sentencing him to five to ten years incarceration for possession with intent to deliver a controlled substance and a concurrent sentence of six to twelve months for possession of a controlled substance, following a jury's verdict entered February 5, 2003. In his statement of matters complained of on appeal, filed May 8, 2003, Defendant raises three grounds for appeal: he contends the verdict was inconsistent, the Court erred in denying his Motion to Suppress Evidence, and the Court imposed a sentence which was excessive under the circumstances of this case.

With respect to his contention the verdict was inconsistent, the Court notes the jury found Defendant guilty of possession with intent to deliver heroin, not guilty of possession with intent to deliver cocaine, guilty of possession of heroin, guilty of possession of cocaine, and guilty of possession of drug paraphernalia. While consistency in verdicts between different counts of the criminal information is unnecessary, Commonwealth v Oliver, 693 A.2d 1342 (Pa. Super. 1997); Commonwealth v Bricker, 580 A.2d 388 (Pa. Super. 1990), the Court does not see any inconsistency in the jury's verdict in the instant matter. The Commonwealth presented testimony from one Thomas Heim that he purchased heroin from Defendant but did

not purchase cocaine from Defendant, but, rather, that he and Defendant used cocaine together. The Commonwealth also presented testimony from a police officer that items found in the kitchen suggested the use of controlled substances. While other testimony presented by the Commonwealth (that the quantity and packaging of the heroin indicated an intent for distribution of such) supports the jury's verdict with respect to the possession of heroin with intent to deliver, the former evidence supports its verdict of guilty with respect to simple possession of cocaine, while also supporting its not guilty verdict with respect to the count charging possession with intent to deliver cocaine. The Court thus finds no basis for appeal with respect to this first issue.

With respect to Defendant's Motion to Suppress Evidence, filed October 15, 2002, Defendant sought the suppression of drugs and paraphernalia found during a search of his residence, indicating that the search was conducted unlawfully. At a hearing on the matter held December 20, 2002, the Commonwealth presented evidence indicating that an outstanding arrest warrant and bench warrant were unable to be served on Defendant and therefore a search warrant for his person, to be executed at his residence, was obtained. In executing that search warrant, the officers observed drug paraphernalia and therefore, after arresting Defendant at his residence, secured the residence and obtained another search warrant to search for drugs. Execution of that second search warrant uncovered the drugs for which Defendant was charged in the instant matter. While Defendant contests the probable cause for the first warrant, as noted at pages 22 and 23 of the suppression hearing transcript, the Court found the warrant was properly obtained and the execution of that warrant was made in accordance with proper procedure, no violation of Defendant's rights having occurred. Defendant's Motion to Suppress Evidence was therefore denied. Upon further review, the Court finds no error in this regard.

Finally, with respect to the sentence, at the sentencing hearing on March 21, 2003, Defendant agreed that a school zone enhancement would apply. The standard range, based on the offense gravity score and prior record score, with which there was no dispute, was thus 36 to 66 months. The Court's sentence of 5 to 10 years was within the standard range, and it is noted that at sentencing, Defendant requested he be sentenced in the standard range. The Court therefore finds the sentence imposed was not excessive under the circumstances of this case.

Dated: October 2, 2003

By The Court,

Dudley N. Anderson, Judge

cc: DA  
PD  
Gary Weber, Esq.  
Hon. Dudley N. Anderson