IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	**:**	**No. CR-450-2004**
	:	**(04-10,450)**
	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
KAREEM GRAVES,	**:**	
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 the verdict and judgment of sentence dated October 18, 2004 and docketed October 19, 2004. The relevant facts follow. Appellant was a passenger in a vehicle involved in an accident. N.T. at p. 15. He walked away from the scene before the police could speak with him. Id. at pp. 15-16. Officer Eric Houseknecht provided a description of Appellant and indicated Appellant was walking down Harris Place. Id. at pp. 16, 21.

Corporal Raymond Kontz observed Appellant walking at the bottom of Harris Place and turning onto Hepburn Street. Id. at p. 21. Cpl. Kontz approached Appellant and asked him if he had just left the accident. Id. at p. 22. Appellant responded in the affirmative. Id. Cpl. Kontz asked Appellant if he was hurt and asked him for identifying information. Id. Appellant provided Cpl. Kontz with photo identification. Id. Cpl. Kontz requested a radio check to make sure there weren't any warrants for Appellant. Id. at p. 23. While Cpl. Kontz was speaking to him, Appellant was acting very nervous and fidgety. Id. When Appellant put his left arm inside his jacket and moved it down toward his waistband, Cpl. Kontz became

concerned for his safety. Id. at p. 24. He told Appellant to show him his left hand. Id. Appellant continued to act very nervous, so Cpl. Kontz asked for consent to search him. Id. at pp. 24-25. Appellant consented. Id. at p. 25. Cpl. Kontz first searched the area where Appellant had his left arm inside his jacket. In an inside left breast pocket, Cpl. Kontz found a large baggie containing a single rock of crack cocaine, which weighed 17.6 grams. Id. at pp. 3, 35-36, 43. He also found nine smaller sandwich bags and a cell phone in this pocket. Id. at pp. 27, 29-30. The cell phone was ringing and the lit display said CREAM. Id. at pp. 27, 29. Appellant admitted the cell phone was his and said CREAM meant 'cash rules everything around me.' Id. at p. 29. Cpl. Kontz placed Appellant under arrest and then continued to search him incident to that arrest. Id. at pp. 37-38. Cpl. Kontz found a two small baggies of marijuana (enough for just one joint or two Philly blunts), two blue Xanax pills, a second cell phone with a butterfly on it, and $128 and some change. Id. at pp. 38-41, 55. Appellant did not possess a pipe or any other implement to smoke or ingest the crack cocaine. Id. at pp. 50, 97.

The police charged Appellant with possessing the crack cocaine with intent to deliver it, possession of marijuana, possession of Xanax, and possession of drug paraphernalia. During booking the police asked Appellant whether he was addicted to any drugs. Id. at p. 85. Appellant said yes. When asked to which drugs he was addicted, Appellant stated marijuana and Xanax, but he did not mention cocaine. Id. The court conducted a jury trial in this case on October 18, 2004. Appellant admitted at trial that all the drugs were his, but claimed they were for his own personal use. Id. at 106, 109. The Commonwealth called Dustin Kreitz of the Williamsport police department and the Lycoming County Drug Task Force as an expert witness. He testified that the crack cocaine

was possessed with the intent to deliver and the amount was not consistent with personal use. Officer Kreitz stated the street value of this amount of crack cocaine would be $3,400 if you broke it down and sold it and it would cost $600-$800 to buy the rock. Id. at p. 67. Officer Kreitz also indicated the term CREAM was common street slang in reference to money and drug dealers. Id. at p. 70. He further stated the two cell phones (one for business and one for personal use), as well as the extra baggies and lack of paraphernalia to inhale or smoke the crack would support the conclusion that Appellant intended to deliver the cocaine. Id. at pp. 68-72. Officer Kreitz also testified that the 17.6 grams would be five to eight eight-balls and, in his experience, an addict could not use that amount of cocaine in a few days and an addict would not have the financial ability to purchase that amount of cocaine at one time. Id. at 137-139, 144.

The jury found Appellant guilty of all the charges. Appellant waived preparation of a pre-sentence investigation and requested immediate sentencing in light of the mandatory applicable to the possession with intent to deliver conviction.[1] The court sentenced Appellant to fines, costs and incarceration in a state correctional institution for a minimum of three years and a maximum of six years. Appellant filed a notice of appeal.

The sole issue presented in this appeal is whether the evidence was sufficient to support the jury's verdict. In reviewing the sufficiency of the evidence, the court considers

1 Appellant stipulated to the lab report, which showed the weight of the cocaine was 17.6 grams. The mandatory sentence for possession with intent to deliver 10 grams but not more than 100 grams of cocaine is three years incarceration and a $15,000 fine. 18 Pa.C.S.A. §7508.

whether the evidence and all reasonable inferences that may be drawn from the evidence, viewed in the light most favorable to the Commonwealth as verdict winner, would permit the jury to have found every element of the crime beyond a reasonable doubt. Commonwealth v. Davido, 868 A.2d 431, 435 (Pa. 2005); Commonwealth v. Murphy, 577 Pa. 275, 284, 844 A.2d 1228, 1233 (Pa. 2004); Commonwealth v. May, 540 Pa. 237, 246-247, 656 A.2d 1335, 1340 (Pa. 1995).

The Commonwealth establishes the offense of possession with intent to deliver when it proves beyond a reasonable doubt that the defendant possessed a controlled substance with the intent to deliver it. Commonwealth v. Jones, 874 A.2d 108, 121 (Pa.Super. 2005); Commonwealth v. Conway, 791 A.2d 359, 362 (Pa.Super. 2002). Possession with intent to deliver can be inferred from the facts and surrounding circumstances. Jones, supra; Conway, 791 A.2d at 362-363.

The Commonwealth presented ample evidence to prove Appellant possessed the crack cocaine with the intent to deliver it. Although he initially denied that the cocaine was his, Appellant admitted the cocaine was his to the police at the Magisterial District Judge's office and during his trial testimony. N.T. at pp. 49, 97, 106. Given the amount of cocaine (17.6 grams), its cost ($600-$800), its street value ($3,400), the extra baggies, the lack of paraphernalia to smoke the crack, the extra cell phone, the display of the word CREAM and its meaning, the jury could find beyond a reasonable doubt that Appellant possessed the crack cocaine with the intent to deliver it.

Possession of a controlled substance can be proven by showing actual possession, i.e., a controlled substance found on a defendant's person, or by showing that a defendant constructively possessed the drug. Commonwealth v. Macolina, 503 Pa. 210, 206,

469 A.2d 132, 134 (Pa. 1983). Not only did the police find crack cocaine, marijuana and Xanax on Appellant's person, but he also admitted in his trial testimony that he possessed these controlled substances. Therefore, the evidence was sufficient to sustain Appellant's convictions for possession of controlled substances.

The court also finds the evidence was sufficient to sustain Appellant's conviction for possession of drug paraphernalia. Drug paraphernalia includes materials of any kind that are used, intended for use, or designed for use in packaging, repackaging, storing, or containing a controlled substance. 35 P.S. §780-102. Given the evidence presented to support the conclusion that Appellant possessed the crack cocaine with the intent to deliver it and the evidence that nine plastic sandwich bags were found in the same pocket with the crack cocaine, the jury could find beyond a reasonable doubt that Appellant intended to use these sandwich bags to deliver the cocaine to others. Moreover, the larger baggie clearly packaged, stored or contained the crack cocaine and that evidence alone would be sufficient evidence to support the jury's verdict for possession of paraphernalia.

In light of the forgoing, the court finds Appellant's contention that the evidence was insufficient to support the verdict lacks merit.

DATE: _____ By The Court,

_____
Kenneth D. Brown, P. J.

cc: Henry W. Mitchell, Esquire (ADA)
Charles Brace, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)

Superior Court (original & 1)