

white vehicle driven by a black male later identified as the Defendant. Shortly after receiving the call, the Officers came upon a vehicle matching the description and conducted a felony stop of said vehicle. Officer Aldinger conducted a pat-down search of the Defendant (he found no contraband or weapons) and placed him in his cruiser for the duration of his involvement at the scene (about fifty minutes); Officer Aldinger testified that he was with the Defendant the entirety of his detention in the cruiser. During the ride to City Hall, Officer Aldinger testified that he observed the Defendant squirming in the back seat of the cruiser inducing him to request additional officers to assist in removing the Defendant from the cruiser and escorting into City Hall. Officer Aldinger testified that when he and the other officers at City Hall removed the Defendant, he did not notice any items in the back seat of the cruiser where the Defendant was detained, but that he only briefly glanced into the vehicle before securing it and escorting the Defendant into the building. Officer Aldinger did not conduct a post-shift search of the cruiser.

Prior to assuming his shift, Officer Kevin Stiles conducted a pre-shift search of cruiser 7-1 and found a plastic bag containing numerous smaller plastic bags, later determined to contain crack-cocaine, on the right rear floor board of the cruiser. Officer Stiles placed the bag in an evidence envelope and delivered it to Officer Aldinger who conducted a preliminary test of the substance inside the bag and determined that it was in fact crack-cocaine (the parties stipulated to a subsequent forensic test that also concluded that the substance in the bags was crack-cocaine). A warrant was issued that morning and the Defendant was promptly arrested for one count each of possession with intent to deliver a controlled substance, possession of a controlled substance, and possession of drug paraphernalia.

After a one-day trial on October 27, 2006, a jury found the Defendant guilty of one count each of possession with intent to deliver a controlled substance, possession of a controlled

substance, and possession of drug paraphernalia. On February 16, 2007, this Court sentenced the Defendant to undergo incarceration in a State Correctional Facility for an indeterminate period of time, the minimum of which shall be 38 months and the maximum of which shall be 10 years as to Count I, possession with intent to deliver a controlled substance; the Court determined that Count II, possession of a controlled substance, merged with Count I for purposes of sentencing; and the Court made a finding of guilt without further penalty with regard to County III, possession of drug paraphernalia. On February 26, 2007, the Defendant filed the instant Post Sentence Motion.

II. Discussion

A. *There was sufficient evidence for the jury to sustain the jury's verdict.*

In a criminal matter, the test utilized regarding a contention that there was insufficient evidence to convict the defendant, is “whether the evidence, and all reasonable inferences taken from the evidence, viewed in the light most favorable to the Commonwealth, as verdict-winner, were sufficient to establish all the elements of the offense beyond a reasonable doubt.” *Commonwealth v. Maloney*, 2005 PA Super 206, P15, 876 A.2d 1002, 1007 (Pa. Super. Ct. 2005) citing *Commonwealth v. Lawson*, 2000 PA Super 242, 759 A.2d 1 (Pa. Super. Ct. 2000). The elements of a charge of possession of a controlled substance are conscious possession of a controlled substance, 35 Pa.C.S. § 780-113(a)(16); the elements of a possession with intent to deliver charge are the same plus the specific intent to deliver said controlled substance to another, 35 Pa.C.S.A. § 780-113(a)(30); and the elements of a possession of drug paraphernalia charge are that the accused used or possessed with the intent to use an illegal drug and that the items used are

equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. 35 Pa.C.S. § 780-113(a)(32). Possession, for purpose of the preceding three charges, means, someone knowingly held, carried, or otherwise directly controlled the possession of an item.

Because the drugs the Defendant was convicted of possessing were not found on his person, the Commonwealth was required to establish that he constructively possessed them. *Commonwealth v. Petteway*, 2004 PA Super. 109, P7, 847 A.2d 713, 716 (Pa. Super. Ct. 2004). Constructive possession requires proof of the ability to exercise conscious dominion over the substance, the power to control the contraband, and the intent to exercise such control. *Id.* (citations omitted). Here, the Commonwealth presented adequate evidence to establish that the Defendant constructively possessed the contraband. At the October 27, 2006 trial, Officer Bolt testified that, after his pre-shift search of unit 7-1 revealed the vehicle was empty, and that the Defendant was the only person transported in that vehicle before Officer Stiles, during his pre-shift search, found the illegal drugs the Defendant was convicted of possessing. Also, Officer Aldinger testified that during the drive to City Hall, he observed the Defendant shifting and squiring in the back of the cruiser just prior to removing the Defendant and securing the vehicle for the remainder of his shift. In other words, prior to the Defendant

being transported in the police cruiser, it did not contain any contraband and before anyone else entered the cruiser, the contraband was found; therefore, the jury had sufficient evidence to conclude that the Defendant constructively possesses the contraband found in the police cruiser.¹ Viewed in a light most favorable to the Commonwealth, the Court finds that, in coordination with the Commonwealth case as a whole, and in particular, the above-cited evidence, there was sufficient evidence for the jury to find the Defendant guilty of possession of a controlled substance and drug paraphernalia.

In Pennsylvania, the intent to deliver may be inferred from possession of a large quantity of controlled substances; however, when it is not clear whether the substance is for personal use or distribution, other factors such as the manner in which the controlled substance was packaged, the behavior of the defendant, and, *inter alia*, expert opinions must be considered. *Commonwealth v. Jackson*, 435 Pa. Super. 410, 413, 645 A.2d 1366, 1368 (Pa. Super. Ct. 1994).

Instantly, the Commonwealth introduced into evidence that the contraband consisted of one large plastic baggie containing 65 smaller plastic baggie which contained approximately 1/10 g of crack-cocaine each totaling 6.3 grams of crack-cocaine. The Commonwealth's drug trafficking expert, Corporal Dustin Kreitz, testified that the aforescribed packaging of the substance was a strong indication that the possessor intended to sell/distribute the drugs. Specifically, in

¹ The Court also finds that, because the paraphernalia at issue was the baggies containing the contraband, the jury also had sufficient evidence to find the Defendant constructively possessed said paraphernalia.

response to a question regarding whether the facts of this particular case suggested possession for personal use, Corporal Kreitz stated,

. . . 65 bags of coke at \$20 apiece is worth approximately - - well, it's worth \$1300 on the street. I mean I've never in my experience had a user posses 65 bags of cocaine worth \$1300 on their person. Common sense would tell you if I have \$1300 to spend on cocaine I an go out and buy an ounce of cocaine for \$1200 that weighs 29 grams and that's five time the amount of cocaine. That doesn't happen but hypothetically if I had \$1300 to spend why would I go buy 65 20-dollar bags when I go buy an ounce at 29 grams and have five times the amount? In this case the 6.3 grams it was two eight balls probably somewhere around six and a half grams of cocaine it was broken down into 65, 70 bags of coke and then that individual can take that \$400 investment and flip that into \$1300. So the shear amount of the 65 bags is possessed with the intent to sell it and deliver it to other people.

N.T. 10/27/06, p.76. Viewed in a light most favorable to the Commonwealth, the Court finds that, in coordination with the Commonwealth case as a whole, and in particular, the above-cited evidence, there was sufficient evidence for the jury to find the Defendant guilty of possession with intent to deliver a controlled substance.

B. *The jury's verdict was not against the weight of the evidence.*

“The question of weight of the evidence is one reserved exclusively for the trier of fact who is free to believe all, part, or none of the evidence and free to determine the credibility of witnesses. *Commonwealth v. Champney*, 574 Pa. 435, 832 A.2d 403, 408 (Pa. 2003).” *Commonwealth v. Solano*, 588 Pa. 716, 726, 906 A.2d 1180, 1186 (Pa. 2006). The test to determine whether the jury's verdict was against the weight of the evidence is not whether the trial judge, based on the same facts, would have arrived at the same conclusion, but rather, “whether the jury's verdict is so contrary to the evidence so as to shock one's sense of justice

and the award of a new trial is imperative so that right may be given another opportunity to prevail.” *Commonwealth v. Edwards*, 588 Pa. 151, 168903 A.2d 1139, 1148 (Pa. 2006) (citations omitted).

Instantly, the jury’s verdict, in light of the physical evidence and the Commonwealth’s expert, does not shock the Court’s sense of justice. Consequently, the Court suggests that the Defendant’s contention that the jury’s verdict of guilt was against the weight of the evidence is not justified.

ORDER

AND NOW, this _____ day of April 2007, the Court hereby DENIES the Defendant’s February 26, 2007 Post Sentence Motion.

By the Court,

Nancy L. Butts, Judge

xc: DA
PD
Judges
Hon. Nancy L. Butts
Gary L. Weber, Esq. (Lycoming Reporter)
Laura R. Burd, Esq. (Law Clerk)