

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1427 – 2006
	:	
vs.	:	
	:	
NAVARRO BANKS,	:	
Defendant	:	

OPINION IN SUPPORT OF ORDER OF JULY 16, 2007,  
IN COMPLIANCE WITH RULE 1925(A) OF  
THE RULES OF APPELLATE PROCEDURE

Defendant has appealed this Court’s order of July 16, 2007, which sentenced him to two concurrent terms of two to five years incarceration on two charges each of delivery of a controlled substance, possession with intent to deliver and possession of cocaine, following a jury verdict rendered May 24, 2007. In his Statement of Matters Complained of on Appeal, Defendant contends (1) the evidence was insufficient to support the convictions of delivery, (2) the verdicts of guilty of delivery were against the weight of the evidence and (3) the mandatory minimum sentence was imposed improperly. These issues will be addressed seriatim.

With respect to the sufficiency of the evidence, viewing the evidence in the light most favorable to the Commonwealth as verdict winner, the Court believes the jury could have found that Defendant’s guilt of delivery of a controlled substance had been established beyond a reasonable doubt. See Commonwealth v. Collins, 702 A.2d 540 (Pa. 1997). The Commonwealth presented the testimony of the state trooper who arranged for controlled buys from Defendant using a confidential informant, who testified that on December 22, 2005, he provided the informant with buy money, observed her accompany an African-American male to a residence in a vehicle, observed the male exit the vehicle, observed the vehicle return to the original location and then shortly thereafter was provided with bags of cocaine and marijuana by the informant. The trooper also testified that on January 16, 2006, he met with the same confidential informant, provided her with buy money, followed her to a residence, observed her enter the residence and then leave the residence a short time later, and then was provided with cocaine by the informant. The stipulation with respect to the lab report evidenced the fact that

the substances were indeed cocaine. The confidential informant testified that on both occasions she obtained money from the trooper, went to the residence of a friend of hers and obtained cocaine from Defendant. All of this evidence provided the jury with a basis to find beyond a reasonable doubt that Defendant was guilty of the two deliveries of a controlled substance.

Defendant's weight of the evidence claim can prevail only if the verdict is so contrary to the evidence as to shock one's sense of justice. *See Commonwealth v. Dougherty*, 679 A.2d 7779 (Pa. Super. 1996). While Defendant testified that he did see the informant on the two dates in question but did not sell any controlled substances to her, the Court's sense of justice is not shocked by the jury's decision to believe the Commonwealth's witnesses rather than Defendant.

Finally, with respect to Defendant's claim that the imposition of a mandatory minimum sentence was improper, the Court first notes the mandatory sentence was imposed as a result of the Commonwealth's contention the drug transactions occurred within 1000 feet of a school zone, pursuant to 18 Pa.C.S. Section 6317. Defendant contends the Commonwealth failed to present any evidence of the distance component of the statute, and thus the statute could not be applied. Section 6317 provides, with respect to the burden of proof, as follows:

(b) PROOF AT SENTENCING.-- The provisions of this section shall not be an element of the crime. Notice of the applicability of this section to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine by a preponderance of the evidence if this section is applicable.

18 Pa.C.S. § 6317. At the time of sentencing, there was a discussion regarding whether the Commonwealth had issued the required notice of its intent to seek imposition of the mandatory minimum, and then defense counsel indicated she did not "have any dispute". N.T. July 16, 2007, at p. 5. The Court took that to mean that she did not dispute receiving notice, and also that she did not have any dispute that the transactions took place within 1000 feet of a school zone. After reviewing the transcript, the Court sees how it could have misunderstood, however,

and therefore believes it might be appropriate to remand for re-sentencing, giving both the Commonwealth and the defense the opportunity to present further evidence,<sup>1</sup> if there is no finding of waiver.<sup>2</sup>

Dated: August 23, 2007

Respectfully Submitted,

Dudley N. Anderson, Judge

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

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<sup>1</sup> While the evidence presented at trial establishes the location of the transactions, it is lacking as to the proximity of that location to any school zone.

<sup>2</sup> After stating she did not have any dispute, defense counsel did not address the matter further.