

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No. CR-256-2008
	:	CRIMINAL DIVISION
ARNELL MONROE,	:	
Defendant	:	APPEAL

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

The Defendant appeals this Court's Sentencing Order dated September 5, 2008. The Court notes a Notice of Appeal was timely filed on September 23, 2008, and that the Defendant's Concise Statement of Matters Complained of on Appeal was then filed on September 25, 2008. Defendant raises two issues on appeal; the Court will address each issue *seriatim*.

Background

Around 8:00 p.m. on January 30, 2008, Officer Dustin Reeder (Reeder) and Sergeant Timothy Miller (Miller) of the Williamsport Bureau of Police were on stationary patrol working for the Special Operations Group, in an area well known for heavy drug and prostitution activity. The Officers were in an unmarked but noticeable police unit located in the Mater Dolorosa Church parking lot when they observed a black male, who was wearing a dark puffy coat with a furry collar, later identified as Arnell Monroe (Defendant), walking south in the 800 block of Hepburn Street. The Defendant walked towards a second black male and a black female who were standing on the sidewalk talking, next to a silver four-door vehicle. The three individuals conversed for a minute and then the black female got into the front passenger seat, the second black male into the driver's seat, and the Defendant into the rear passenger seat. The Defendant

stayed in the vehicle about thirty seconds to one minute. During this time, Miller, through his binoculars, observed a handshake and some sort of exchange between the driver and Defendant.

Immediately after the exchange, the Defendant exited the vehicle and walked to the west side of Hepburn Street and continued to walk south in the direction of the Officers. As Defendant was walking, Miller pulled his unmarked cruiser from its parking spot and decided to drive north to see if he could identify the Defendant. Miller testified that when he was about seventy-five feet from the Defendant, he observed Defendant reach into his puffy coat and throw something white on the ground. Miller put the vehicle in reverse and yelled at the Defendant to stop so that he may investigate what was thrown. Miller, in full uniform, exited the vehicle and repeatedly commanded Defendant to stop; however, Defendant kept his hands in his pockets of his puffy coat, which caused Miller to be concerned about his safety. Miller took the Defendant to the ground at gun point, and then conducted a pat down, in which he felt what he believed were three sandwich bags, tied in knots in the corners in the right front pocket. Miller placed Defendant under arrest and a search incident to arrest was conducted in which Miller found a cell phone, two \$20 bills, and three sandwich bags tied in knots, containing suspected cocaine on the Defendant. Miller also identified the black male as the Defendant, Arnell Monroe.

After making sure the Defendant did not have any weapons on him, Reeder went to the location where the Defendant had thrown something on the ground. Reeder located two more sandwich bags, tied in knots in the corners, containing a white substance. The substance in the bags found on the Defendant's person and the substance in the bags discarded from the Defendant tested positively by the Pennsylvania State Police for cocaine, with the total weight being 8.1 grams, 6.8 grams of powder cocaine and the rest crack cocaine.

Defendant was taken back to City Hall where a booking sheet was completed. As part of the booking process, Reeder asked Defendant if he was addicted to narcotics and if he was under the influence of any narcotics. The Defendant responded in the negative. As part of the booking process, Defendant also reported that he was unemployed.

Sergeant John McKenna (McKenna) of the Williamsport Bureau of Police was called to testify as an expert. McKenna testified he is certified through the Pennsylvania State Police to conduct wire taps and electronic surveillance, which is typically involved with narcotics trafficking. He was assigned to the narcotics until in 1995 for approximately two and a half years. Before, during, and after that time, he attended numerous training seminars, schools, classes, and educational events, to educate officers on possession with the intent to deliver narcotics and identification of narcotics. McKenna has also been involved with hundreds of narcotics investigations, working with both state and federal agencies. He has also been certified as a possession with the intent to deliver expert in both the federal courts and state courts, including Lycoming County. He also related he currently assists narcotics officers with narcotics investigations. Finally, he testified that while he has not had any narcotics training since 2006, he has dealt with narcotics cases which keep him informed of the changes in the area of narcotics.

McKenna testified he read the written reports submitted by both Reeder and Miller and looked at all the evidence in order to arrive at his conclusion that the evidence was sufficient to be consistent with possession with the intent to deliver. He concluded that the amount of cocaine possessed, the way it was packaged, the lack of paraphernalia used for ingestion on Defendant's person, the fact that he carried a cell phone, and the two \$20 bills, all supported his professional opinion the drugs were possessed with the intent to deliver. McKenna also found it significant that the Defendant was unemployed, told police that night he was neither under the influence of

narcotics nor addicted to narcotics. Finally, he related that it was indicative of possession with the intent to deliver that the Defendant was found carrying both crack cocaine and powder cocaine.

On September 5, 2008, a jury trial was held before this Court, at which the Defendant was found guilty of one count of Possession with the Intent to Deliver (cocaine) at 35 P.S. § 780-113(a)(30), one count of Possession of a Controlled Substance (cocaine) at 35 P.S. § 780-113(a)(16), and one count of Possession of Drug Paraphernalia at 35 P.S. § 780-113(a)(32). On that same date, the Court imposed upon the Defendant a sentence of forty (40) months to ten (10) years in a State Correctional Institution, consecutive to any sentence he was already serving.

Discussion

The Court erred in denying Defendant's Motion to Suppress

By way of Opinion, this Court will rely on its previous Opinion and Order filed on August 26, 2008.

The Court erred by qualifying Sergeant McKenna as an expert in drug transactions

Defendant asserts this Court erred by qualifying McKenna as an expert in drug transactions as objected to during trial.

“The qualification of expert testimony lies within the sound discretion of the trial court and will not be reversed absent a clear abuse of that discretion. Commonwealth v. Echevarria, 575 A.2d 620, 623 (Pa. Super. Ct. 1990) “If a witness has any reasonable pretension to specialized knowledge on the subject under investigation he or she is qualified as an expert.” Commonwealth v. One 1988 Ford Coupe, 574 A.2d 631, 640 (Pa. Super. Ct. 1990) (quoting

Ragan v. Steen, 331 A.2d 724, 728 (Pa. Super. Ct. 1974)). “[E]xpert testimony may be based on knowledge acquired through practical experience rather than academic training.” Echevarria, 575 A.2d at 623.

McKenna testified he was assigned to the narcotics unit in 1995 for approximately two and a half years and before, during, and after that time, he attended numerous training seminars, schools, classes, and educational events, to educate officers on possession with the intent to deliver narcotics and identification of narcotics. McKenna also related he has been involved with hundreds of narcotics investigations, working with both state and federal agencies. He has also been certified as an expert in possession with the intent to deliver in Lycoming County as well as both the federal courts and other state courts. He related he **currently** assists narcotics officers with narcotics investigations and his dealing with narcotics cases have kept him informed of the changes in this area. The Court finds that based upon all of his training and experience, McKenna was well qualified to testify as an expert in this case.

Conclusion

As none of the Defendant’s contentions appear to have merit, it is respectfully suggested that the Defendant’s conviction be affirmed.

By the Court,

Dated: _____

Nancy L. Butts, Judge

xc: DA (KO)

PD (NS)
Hon. Nancy L. Butts
Trisha D. Hoover, Esq. (Law Clerk)
Gary L. Weber, Esq. (LLA)