

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF PA,	:	
Plaintiff	:	
	:	
v.	:	CR 575-2005
	:	
JEROME QUARTMAN,	:	
Defendant	:	

OPINION
Issued Pursuant to Pa. R.A.P. 1925(a)

The defendant has appealed this court's order of August 20, 2007, sentencing him after his conviction on June 20, 2007 for Possession with Intent to Deliver, Possession of a Controlled Substance, and Possession of Drug Paraphernalia.

The defendant first complains the suppression court erred by denying his motion to suppress evidence. The suppression hearing was held by the Hon. Nancy L. Butts, who issued a full opinion on January 31, 2006 stating in detail the reasons for denying the defendant's motion to suppress. This court defers to that opinion for purposes of appellate review.

The defendant next complains the court erred in denying his motion in limine to exclude evidence of prior bad acts in the nature of prior uncharged drug deliveries. Specifically, the defendant requested this court to exclude testimony from Elisa Gardner that at the time of the incident she bought crack and cocaine from the defendant a couple times a week.

Under Rule 403(b) of the Pennsylvania Rules of Evidence, "evidence of crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." However, evidence of other crimes, wrongs, or acts may be admitted for other purposes, examples of which are set forth in the rule.

The court permitted testimony from Ms. Gardner regarding past instances of purchasing drugs from the defendant not to establish the defendant's bad character, but

rather to show the relationship between the defendant and Ms. Gardner. This relationship was critical, as the defendant was driving Ms. Gardner's vehicle at the time of the arrest and the main question for the jury to decide was whose drugs were found in the glove compartment.

In support of our decision, the court cites Commonwealth v. Pattakos, 754 A.2d 679 (Pa. Super. 2000), in which similar evidence was admitted. In Pattakos, the Commonwealth introduced testimony of previous uncharged drug transactions between the confidential informant and the defendant. The Superior Court held that the establishment of a prior relationship between the parties was critical to the explanation of why the defendant had been targeted, and that the Commonwealth was entitled to show that the drug transaction was not a random meeting between the two parties but rather that the confidential informant would receive drugs from the defendant on a regular basis.

Similarly, in Commonwealth v. Echevarria, 575 A.2d 620 (Pa. Super. 1990), the Commonwealth was permitted to introduce testimony that an informant twice previously had purchased cocaine from the defendant prior to the sale that resulted in the defendant's arrest. The Superior Court held that the testimony was admissible as "probative of the defendant's status as a cocaine dealer." Id. at 623. Such is the case here.

Showing the relationship between Ms. Gardner and the defendant fits squarely into the exceptions listed in Rule 404(b), as it shows intent, knowledge, and absence of mistake or accident. The testimony that the defendant was a drug dealer who sold Ms. Gardner drugs tends to show the drugs found in Ms. Gardner's car were not there by accident, unbeknownst to the defendant. Rather, they belonged to the defendant, who knew they were in the glove compartment and fully intended to deliver them.

Moreover, the probative value of the evidence regarding the relationship between the defendant and Ms. Gardner far outweighed its potential for prejudice. The

central issue for the jury to decide was whether or not the defendant possessed the drugs found in Ms. Gardner's car. The exact nature of the relationship between Ms. Gardner and the defendant was absolutely critical in making this determination.

The defendant next contends the verdict was against the weight of the evidence because the testimony of Elisa Gardner was not credible. It is well settled that the court cannot substitute its judgment for that of a jury on issues of credibility. The jury is free to believe all, part, or none of the testimony presented. Commonwealth v. Trippett, 932 A.2d 188, 194 (Pa. Super. 2007). The trial court will award a new trial only when the jury's verdict is so contrary to the evidence as to shock one's sense of justice. Commonwealth v. Keaton, 729 A.2d 529, 540-541 (Pa. 1999).

In this case, the jury chose to believe Ms. Gardner, despite her previous use of drugs. Ms. Gardner testified openly and compellingly about her drug addiction at the time of the arrest, but stated that she was not a drug dealer, and that she never possessed more than one or two grams of drugs a day at most. She testified that she permitted the defendant to use her car, and that he had been in possession of the car since Wednesday.¹ She adamantly denied the drugs found in the glove box belonged to her.

The court also notes that Ms. Gardner's testimony was not the only evidence against the defendant. Both policemen, Eric Houseknecht and Craig Smeltz, testified they saw the defendant repeatedly attempt to conceal the plastic baggies in the glove compartment when asked to look for the registration and insurance, and that the defendant was extremely nervous. Moreover, when asked about the baggies, the defendant denied their existence even though he had obviously been trying to hide them.

Finally, the defendant contends the evidence was insufficient to prove his guilt beyond a reasonable doubt because the sole evidence of intent to deliver was the weight

¹ The arrest occurred on Friday morning. Ms. Gardner testified the defendant had also used her car the precious weekend, from Saturday night until late Monday. N.T. p. 123.

of the drugs found in the car. At trial, the Commonwealth presented testimony from Trooper Brett Herbst, an expert in “possession with intent to deliver” cases and drug activity. Trooper Herbst rendered his opinion that the offense in this case was possession with intent to deliver because of the amount of drugs found: 22.7 grams of crack in the first baggie and 27.1 grams of powdered cocaine in the second baggie. Trooper Herbst testified that amounts of drugs possessed by drug users are much smaller than the quantity found in this case, typically varying from one gram to two and one-half grams, with a value of approximately \$100 per gram. Trooper Herbst further testified that the “as-is” value of the drugs was \$2800 and if broken into smaller quantities the value would be \$5000. Trooper Herbst also testified that drugs possessed by users, as opposed to drug dealers, are typically broken down into useable amounts of drugs, but the drugs found in this case were not broken down. And finally, Trooper Herbst testified that it is very common for drug dealers to use other people’s cars, in an effort to hide their identity. This evidence, if believed by the jury, is sufficient to convict the defendant of possession with intent to deliver.

BY THE COURT,

Richard A. Gray, J.

cc: Nicole Spring, Esq.
District Attorney
Gary Weber, Esq.