

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-1223-2009
vs. :
 : CRIMINAL DIVISION
 :
 :
WAYMAN MOORE, :
Appellant : 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 this Court's judgment of sentence issued on March 30, 2010 and its Order dated April 27, 2010 that denied Appellant's post sentence motion. The relevant facts follow.

On June 19, 2009, Sergeant Chris Kriner of the Old Lycoming Township police department received a telephone call from Agent Kevin Stiles of the Williamsport Bureau of Police. Agent Stiles told Sergeant Kriner that he had a material witness warrant for Tricia Derr and had information that Ms. Derr was in Old Lycoming Township with her boyfriend. Agent Stiles described Ms. Derr's boyfriend as a tall, black male with a beard, who may go by the name of Wally. Agent Stiles also informed Sergeant Kriner that Ms. Derr drove a maroon Dodge Intrepid.

Sergeant Kriner remembered seeing a maroon Dodge Intrepid parked at the Bing's Motel earlier that morning, so he proceeded to the motel. The maroon Dodge Intrepid was still parked out front. Sergeant Kriner ran the plate on the vehicle and it was registered to Tricia Derr. Sergeant Kriner then called Agent Stiles and advised him that Ms. Derr's

vehicle was at the Bing's Motel. Agent Stiles asked Sergeant Kriner to watch the vehicle and contact the motel management to determine where Ms. Derr was staying in the motel.

Sergeant Kriner contacted the motel manager. The manager told Sergeant Kriner that Ms. Derr was staying in room 12 with a black male who had a beard. While waiting for Agent Stiles to arrive, Sergeant Kriner observed Ms. Derr and her companion exit room 12, get into her vehicle and drive away.

Agent Stiles and other police officers subsequently stopped the vehicle. Sergeant Kriner proceeded to the location of the vehicle stop. Ms. Derr's companion was identified as the defendant, Wayman Moore. When the police were speaking with Moore, he appeared very nervous and fidgety and acted as if he really wanted to leave the area. The police asked Ms. Derr for consent to search the motel room. Ms. Derr indicated to Sergeant Kriner that Moore had the key to the room. Sergeant Kriner asked Moore where the key was, but Moore denied having it. Sergeant Kriner then asked Moore if he had any property in the room. When Moore indicated he did, Sergeant Kriner asked if he wanted to come with them while they searched the room. Moore became even more nervous. He told Sergeant Kriner he did not want to come with them. Then he immediately made a phone call and left the area. Moore's nervousness and desire to leave as soon as possible led Sergeant Kriner to believe there might be something illegal in the motel room.

The police then went to room 12 at the Bing's Motel to conduct a consent search of the room. The manager unlocked the room. Once inside, the police found a small bag of marijuana in the pocket of a pair of extra large men's jean shorts. They also found packets of heroin and a counterfeit \$100 bill in a night stand. At that point, the police ceased the consent search, secured the room and obtained a search warrant.

When the police began the search pursuant to the warrant, they noticed that the items in the room generally were separated by the gender of the occupants. On the left side of the bed, there were female belongings, such as clothing and sneakers. The police found marijuana and rolling papers in a female sneaker on the left side of the bed.

On the right side of the bed where the nightstand was located, there were men's clothes and sneakers. On top of the nightstand, there were papers with Moore's name on it, papers with the name Wally Jones, and a paper with a phone number with the area code of Newark, New Jersey. Moore's photo identification showed that he was from Newark, New Jersey. Inside the nightstand, the police found men's athletic socks, rap CDs, a bundle (10 packets of heroin), and a yellow plastic bag that contained 230 packets of heroin.

The police obtained an arrest warrant for Moore. On July 21, 2009, Officer Joseph Ananea arrested Moore pursuant to the warrant. Back at the station, Officer Ananea and Officer Fred Miller conducted a strip search of Moore in the processing room to make sure he did not have any drugs or paraphernalia on his person. There were no drugs in the room before the officers took Moore inside. However, when Moore removed his pants, Officer Miller observed three packets on the floor. Officer Miller retrieved the packets and Officer Ananea field tested them. All the packets tested positive for heroin.

In case 1223-2009, the police charged Moore with possession with intent to deliver heroin, possession of heroin, possession of a small amount of marijuana, and possession of drug paraphernalia as a result of the search of room 12 at the Bing's Motel. In case 1465-2009, the police charged Moore with possession of heroin and possession of drug paraphernalia for the three packets of cocaine found during the strip search. The cases were consolidated for trial.

A jury trial was held on January 27, 2010. The jury found Moore guilty of all the charges, except possession of a small amount of marijuana.

On March 30, 2010, the Court sentenced Moore to an aggregate sentence of three years and six months to seven years in a state correctional institution, consisting of three to six years for possessing heroin with the intent to deliver it in case 1223-2009 and a consecutive six months to one year for possessing heroin in case 1465-2009.

On April 5, 2010, Moore filed post-trial motions, asserting that the evidence was insufficient to prove that he possessed the heroin found in room 12 of the Bing's Motel or, in the alternative, that the jury's verdict was against the weight of the evidence; therefore, according to Moore, the convictions for possession with intent to deliver and possession of the heroin from the Bing's Motel should be set aside or a new trial ordered. The basis for Moore's assertion was the room was registered in Derr's name and Derr made statements that the heroin was hers. After an argument held on April 27, 2010, the court denied Moore's motions.

On May 10, 2010, Moore filed a notice of appeal. In his appeal, Moore raises two issues: (1) the evidence was insufficient to support the jury's verdict of guilty on the charge of possession with intent to deliver; and (2) the verdict on the charge of possession with intent to deliver was against the weight of the evidence.

In reviewing the sufficiency of the evidence, the court considers whether the evidence and all reasonable inferences that may be drawn from that evidence, viewed in the light most favorable to the Commonwealth as the verdict winner, would permit the jury to have found every element of the crime beyond a reasonable doubt. Commonwealth v. Davido, 582 Pa. 52, 868 A.2d 431, 435 (Pa. 2005); Commonwealth v. Murphy, 577 Pa. 275,

844 A.2d 1228, 1233 (Pa. 2004). Circumstantial evidence can be as reliable and persuasive as eyewitness testimony and may be of sufficient quantity and quality to establish guilt beyond a reasonable doubt. Commonwealth v. Tedford, 523 Pa. 305, 567 A.2d 610, 618 (Pa. 1989)(citations omitted).

In order to prove Moore possessed the heroin with the intent to deliver it, the evidence presented by the Commonwealth must establish that: (1) the packets contained heroin; (2) Moore was aware there was heroin in the packets; (3) Moore possessed the packets; and (4) Moore intended to deliver the packets. See Pa.SSJI 16.01. The court found that the evidence presented at trial established all four elements.

The parties stipulated to the lab report from the Wyoming State Police laboratory. The lab report indicated that baggies and packets from the motel room and the strip search that appeared to contain marijuana and heroin were, in fact, heroin and marijuana.

There was both direct and circumstantial evidence that Moore possessed the packets and he was aware that they contained heroin. Tricia Derr testified that the heroin was Moore's. Moore was nervous, fidgety and in a hurry to leave when the police stopped Derr's vehicle. He became even more nervous after Derr gave consent to the police to search the motel room where Derr and Moore had been staying. The heroin was found in a nightstand on the right side of the bed, along with men's clothing and papers with Moore's name on them. Similar packets of heroin were found during a strip search when Moore was arrested. This evidence and the reasonable inferences that can be drawn from this evidence show that Moore possessed the heroin.

Finally, the parties stipulated that Agent Gary Heckman was an expert in

drugs and narcotics. Agent Heckman testified a heroin addict will only have several packets of heroin on their person, somewhere between one and five packets, but usually no more than a bundle, which is ten packets. Two hundred and forty packets of heroin were found in the motel room. The heroin was packaged in brick quantities. Agent Heckman testified that a brick was five bundles of ten packs rubber banded together, for a total of 50. This type of packaging could easily be broken down for sale and distribution in smaller amounts. Agent Heckman also testified that it was becoming more common for people involved in the drug culture to use counterfeit money to purchase drugs rather than spending their own money. Based on the amount of drugs, its packaging, and the counterfeit money found in the motel room, Agent Heckman's opinion was that the heroin was possessed with the intent to sell or distribute it.

Clearly, the evidence was sufficient for the jury to find Moore possessed the heroin with the intent to deliver it.

An allegation that the verdict is against the weight of the evidence is addressed to the sound discretion of the trial court. Commonwealth v. Sullivan, 820 A.2d 795, 805-806 (Pa. Super. 2003). A new trial is awarded only when "the jury's verdict is so contrary to the evidence 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." Id. at 806 (citation omitted). The evidence must be so tenuous, vague and uncertain that the verdict shocks the conscience of the court. Id.

The jury's verdict did not shock the court's conscience. Moore's claims revolve around the fact that Derr made statements prior to trial that the drugs were hers and the jury should have credited those statements instead of Derr's trial testimony. Derr,

however, explained that at the time she made those statements she was willing to lie for Moore because she cared for him, but once she got “help” for her addiction and got her “head on straight” she was no longer willing to say that the drugs were hers.

“Credibility determinations are strictly within the province of the finder of fact; therefore an appellate court may not reweigh the evidence and substitute its judgment for the finder of fact.” Commonwealth v. Gibson, 553 Pa. 648, 720 A.2d 473, 480 (Pa. 1998). The jury believed Derr’s trial testimony that the drugs belonged to Moore, which was within the jury’s province as finder of fact. Although the motel room was registered in Derr’s name, it was clear from all the evidence presented that Moore also was staying in motel room. Moreover, Derr’s trial testimony that the heroin belonged to Moore was supported by Moore’s nervous and fidgety behavior at the traffic stop, as well as the fact that the heroin was found among or near Moore’s clothing and papers in the motel room.

Based on the foregoing, the court found the evidence was sufficient to support the jury’s verdict and the verdict was not against the weight of the evidence.

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Paul Petcavage, Esquire (ADA)
Andrea Pulizzi, Esquire
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)