

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA :
vs. : **No. CR-989-2010**
:
CHALMUS PECK, :
Defendant :

OPINION AND VERDICT

Defendant is charged by Information filed on July 30, 2010 with Fleeing or Attempting to Elude a Police Officer, Careless Driving, Reckless Driving, Obedience to Traffic-Control Devices, Driving on Right side of Roadway, Stop Signs and Yield Signs, Possession with Intent to Deliver Heroin, Possession of a Controlled Substance, and Possession of Drug Paraphernalia.

A non-jury trial was held before the Court on November 17, 2010. Following the trial, Defendant conceded his guilt with respect to all of the traffic summaries as well as the Possession of a Controlled Substance and Possession of Paraphernalia counts. At issue are Counts 1, Fleeing or Attempting to Elude a Police Officer and Count 7, Possession with Intent to Deliver Heroin.

With respect to the Fleeing or Attempting to Elude Police Officer charge, the Defendant concedes he is guilty of this offense, but contends it should be graded as a misdemeanor of the second degree, not as a felony of the third degree. More specifically, Defendant contends that he did not endanger a law enforcement officer or member of the general public due to engaging in a high speed chase. 75 Pa. C.S.A. § 3733 (a.2) (2) (iii). The Court cannot agree.

Defendant fled from the police through residential and commercial sections of the City of Williamsport over a distance of 1.6 miles. During this chase, Defendant failed to stop at numerous stop signs, failed to obey traffic signals, drove his vehicle in the opposite lane of traffic, struck a moving vehicle, and generally drove with a willful disregard for the safety

of the police attempting to apprehend him and the general public traveling on the roadways. Further, the testimony was clear that the Defendant drove at excessive speeds as high as 75 mph in areas where the posted speed limit was 25 mph, 35 mph or 45 mph. By the Defendant's own admission, he traveled at speeds as high as approximately 60 mph.

The Traffic Code does not define a high speed chase. Considering, however, the context in which it is utilized in the statute, the Court interprets it to mean a chase manifestly in excess of what is reasonable under the circumstances. Commonwealth Exhibit 2 is a recording of the chase. Clearly, the Defendant's vehicle traveled at speeds manifestly in excess of what was reasonable under the circumstances. Accordingly, the Court finds the Defendant Guilty of Count 1, Fleeing or Attempting to Elude a Police Officer, a felony of the third degree.

With respect to Count 7, the only contested issue is whether the Defendant possessed the heroin with the intent to distribute it. The Commonwealth has to prove this through circumstantial evidence. The Commonwealth argues that many different factors point to the Defendant's intent including the number of bags, the unusual packaging, the amount of money the Defendant had in his possession, the lack of personal use paraphernalia, the lack of any empty used bags, the amount in each bag, the Defendant's lack of steady employment, the fact Defendant was not under the influence, the Defendant's answers on the booking sheet, the fact that Defendant was in someone else's car, numerous inconsistencies in the Defendant's testimony and the Defendant's flight as consciousness of guilt.

Further, the Commonwealth presented expert testimony from Detective Al Diaz who indicated that in his opinion based upon the totality of the circumstances, the Defendant was not a user and that he possessed the heroin, "most likely", for sale.

Defendant, however, contends that he possessed the heroin for personal use and not with the intent to deliver it. Defendant argues that the amount and number of the bags was low, that the one bag contained only residue, that given how heroin is used, there was no need for use paraphernalia, that there was no other indicia of deliveries, that there was no evidence that the Defendant previously engaged in sales, that the currency that was confiscated from the Defendant was in abnormal denominations and that the Defendant fully admitted to what he did.

With respect to the Defendant's testimony, the Court concludes that it is not credible. Many of the Defendant's answers were vague, evasive, and inconsistent with other evidence or internally inconsistent or illogical. Defendant clearly testified that he purchased 20 bags of heroin for \$200.00 in Philadelphia and brought them all here to the Williamsport area. He noted that he was curious as to why the police only found 19 bags, yet later in his testimony he stated that on the afternoon of the incident he used 8 or 9 bags in the bathroom. As the Commonwealth noted, the "math doesn't end up." Further, the Defendant testified that he got high by using the 8 to 9 bags but, when he was apprehended by the police, he failed to admit that he used any substances and showed no signs of intoxication.

The Defendant further testified that he used heroin as a party drug. This is contrary to what the expert testified to with respect to how the drug is used and not at all consistent with what the Court's experience has been in similar matters.

Finally, and perhaps determinatively, Defendant's flight was clear evidence of his consciousness of guilt. The Defendant's reason why he chose to flee was lacking in clarity and substance. The Court finds that the Defendant knew that he had heroin on him, knew that he possessed the heroin intending to sell it and fled from the police hoping not to get caught.

The Court finds beyond a reasonable doubt that the Commonwealth has proven the elements of Possession with Intent to Deliver.

ORDER

AND NOW, this 22nd day of November 2010 following a Trial, the Court finds the Defendant **GUILTY** of Counts 1, 2, 3, 4, 5, 6, 7, 8 and 9 of the Information. Sentencing is scheduled for **December 15, 2010 at 1:30 p.m. in Courtroom No. 4** of the Lycoming County Courthouse. Prior to sentencing, the Lycoming County Adult Probation Office shall prepare a Presentence Report.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: PD (NS)
DA (AMK)
APO
CA
Gary Weber, Esquire (Lycoming Reporter)
Work File