

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA

vs.

**HAKIM PRICE,
Defendant**

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: No. CR-376-2010

OPINION AND ORDER

Before the Court is Defendant's Post Sentence Motion filed on December 21, 2010. Following a non-jury trial on October 13, 2010, Defendant was found guilty of Possession with Intent to Deliver Heroin, Possession of Heroin, Possession of Drug Paraphernalia, Escape and two Traffic Summaries. On December 15, 2010, Defendant was sentenced to an indeterminate term of incarceration in a State Correctional institution, the minimum of which was twenty-seven (27) months and a maximum of which was five (5) years. Defendant was deemed ineligible for the Recidivism Risk Reduction Incentive (RRRI).

Defendant's timely Post Sentence Motion raises several issues. Defendant requests a new trial on two separate grounds. First, Defendant claims the Court erred in permitting the Commonwealth to introduce evidence related to controlled substances found in the residence of Kareem Ray. Defendant further argues that the evidence was insufficient to establish the elements of Possession with Intent to Deliver, Possession and Possession of Drug Paraphernalia. Defendant also requests that the guilty verdict be arrested on the basis that it was against the weight of the evidence with respect to the Possession with Intent to Deliver, Possession and Possession of Paraphernalia counts.

Defendant's first claim challenges the Court's denial of Defendant's Motion In Limine requesting that the Court preclude evidence related to controlled substances found in the residence of Kareem Ray. Defendant contends that the evidence was not relevant or in the

alternative, if it was relevant, its prohibitive value was outweighed by the danger of unfair prejudice.

The admission of testimony is a matter within the trial court's discretion and will not be disturbed absent an abuse of that discretion. Commonwealth v. Hoover, 2011 PA Super 42 (March 7, 2011), citing Commonwealth v. Morgan, 559 Pa. 248, 739 A.2d 1033, 1035 (Pa. 1999). Moreover, a discretionary ruling cannot be overturned simply because the reviewing court disagrees with the trial court's conclusion. Commonwealth v. Lomax, 8 A.3d 1264, 1266 (Pa. Super. 2010), citing Commonwealth v. O'Brien, 836 A.2d 966, 968 (Pa. Super. 2003), appeal denied, 845 A.2d 817 (Pa. 2004).

An abuse of discretion is not a mere error in judgment but, rather, involves bias, ill will, partiality, prejudice, manifest unreasonableness, or misapplication of law. Hoover, supra., citing Commonwealth v. Bradford, 2 A.3d 628, 632-33 (Pa. Super. 2010).

By Opinion and Order of this Court dated October 12, 2010, the Court denied Defendant's Motion In Limine with respect to the questioned evidence. The Court reaffirms that decision. The evidence was probative to Defendant's intent to deliver controlled substances. It tended to show that the Defendant possessed heroin of a sufficient quantity and type for the purpose of delivering it. The evidence was also relevant to intent when placed in the context of the allegation that Defendant fled from the police. Moreover, while there was some potential for prejudice, the Court was convinced that the jury would not convict the Defendant because it perceived the Defendant had bad character or a propensity to commit crimes based on the disputed evidence. Furthermore, the Court having heard the issue non-jury, was clearly aware of the limited purpose for which the evidence was admissible.

Defendant next argues that the evidence was insufficient to establish the elements of Possession with Intent to Deliver, Possession of a Controlled Substance and Possession of Drug Paraphernalia. The standard for assessing a challenge to the sufficiency of evidence is as follows: whether, in viewing all of the evidence admitted at trial in a light most favorable to the verdict winner, there is sufficient evidence to enable the factfinder to find every element of the crime beyond a reasonable doubt. Commonwealth v. Muniz, 5 A.3d 345, 348 (Pa. Super. 2010), citing Commonwealth v. Hennigan, 753 A.2d 245, 253 (Pa. Super. 2000).

“Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Nevertheless, the Commonwealth need not establish guilt to a mathematical certainty and may sustain its burden by means of only circumstantial evidence.” Commonwealth v. Brewer, 876 A.2d 1029, 1032 (Pa. Super. 2005)(citations omitted).

Furthermore, the fact that the evidence establishing Defendant’s guilt is circumstantial does not preclude a conviction where the evidence coupled with the reasonable inferences drawn therefrom overcomes the presumption of innocence. Commonwealth v. Moran, 5 A.3d 273, 278 (Pa. Super. 2010), citing Commonwealth v. Brewer, supra.

Defendant argues that the evidence was insufficient to prove that the Defendant possessed the heroin in the vehicle including the baggies which packaged the heroin. Defendant argues that he was merely present in the vehicle, that no drugs or money were found on his person, that Mr. Ray testified Defendant had no knowledge of the drugs or

paraphernalia, that a large sum of money was found on Mr. Ray and that the other heroin was found in Mr. Ray's house.

Because neither the drugs nor paraphernalia were found on the Defendant's person, the Commonwealth was required to prove that the Defendant constructively possessed the drugs and paraphernalia. Commonwealth v. Gutierrez, 969 A.2d 584, 590 (Pa. Super. 2009). "In order to prove that a defendant had constructive possession of a prohibited item, the Commonwealth must establish that the defendant had both the ability to consciously exercise control over it as well as the intent to exercise such control." Id., citing Commonwealth v. Sanes, 955 A.2d 369 (Pa. Super. 2008). "An intent to maintain a conscious dominion may be inferred from the totality of the circumstances, and circumstantial evidence may be used to establish a defendant's possession of drugs or contraband." Id., citing Commonwealth v. Valette, 613 A.2d 548, 550 (Pa. 1992).

In this case, the Court concludes that all of the facts and circumstances prove the Defendant's ability and intent to exercise control over the drugs and paraphernalia.

Defendant was the driver of the vehicle in which the drugs and paraphernalia were found. Obviously, he had the ability to control the drugs and paraphernalia. Moreover, he displayed behaviors indicative of consciousness as guilt. He refused to comply with the officer's request to put the window down, instead opening the door a little. Upon exiting the vehicle and being further questioned, he pushed the police officer back and ran refusing to obey commands to stop. Defendant eventually eluded apprehension.

Moreover, some of the bags of heroin seized from the vehicle were marked with a "Pepsi" logo similar to the logo found on the bags of heroin located in the residence of

Kareem Ray. After the initial arrest, Ray provided a written statement contrary to what he testified to in Court stating that the Defendant was going to a house on Locust Street to sell the heroin while Ray waited in the car. Ray also indicated in his statement that he had no knowledge about the bags in the car.

The Court notes that at trial Mr. Ray testified that the drugs in the car were his, contrary to his prior written statement. During Mr. Ray's trial testimony, however, he appeared to be tailoring his answers solely toward exculpating the Defendant. The Court concluded, based upon his answers as well as his demeanor, that his trial testimony was not truthful.

Mr. Ray's prior written statement to the police, which was used to impeach him, also was utilized by the Court as substantive evidence of Defendant's guilt. Pa.R.E. 803.1. It was within the Court's discretion, as a factfinder, to believe all, part or none of Mr. Ray's testimony.

Following the Defendant evading the police, he contacted Mr. Ray's mother and informed her that she should not worry because there was nothing in the car. He also informed her that he needed to call an attorney for Mr. Ray, further evidencing the Defendant's consciousness of guilt and more specifically, his knowledge that drugs and/or paraphernalia were in the car.

As well, Defendant showed up at Mr. Ray's residence, asked if he could leave some stuff in the house and went into the room alone, where the heroin was eventually found. Also found in the room was a pair of boots belonging to the Defendant.

Defendant also argues that there was insufficient evidence upon which the Court could conclude that the Defendant possessed the heroin with the intent to deliver it. The Court disagrees.

The police found twelve bags of heroin in the vehicle that the Defendant had been driving. The bags were all separately packaged and found in a distribution bag. Mr. Ray noted in a prior written statement that the Defendant was going to a home on Locust Street to sell the heroin. Some of the heroin that was located in the vehicle was marked with a “Pepsi” logo similar to the “Pepsi” logo found on a majority of the approximately 55 packets of heroin found in Mr. Ray’s residence. Moreover, the Defendant behaved in a manner which clearly evidenced consciousness of guilt as set forth above. Finally, the Commonwealth presented credible evidence from an expert opining that the drugs were possessed with the intent to deliver.

Defendant also argues that the guilty verdict was against the weight of the evidence. More specifically, Defendant argues that because no drugs were found on the Defendant’s person, Mr. Ray testified that the Defendant had no knowledge of the controlled substance or paraphernalia in the vehicle, no money was found on Defendant’s person rather a large sum of money was found on Mr. Ray, and a large amount of drugs were found in Mr. Ray’s house to which he pled guilty and took responsibility, the verdict of guilty with respect to the Possession with Intent to Deliver, Possession and Possession of Drug Paraphernalia counts was against the weight of the evidence.

The weight of the evidence is exclusively for the finder of fact who is free to believe all, part, or none of the evidence and to determine the credibility of the witness.

Commonwealth v. Champney, 574 Pa. 434, 444, 832 A.2d 403, 408 (2003), cert. denied, 542 U.S. 939 (2004). In order to prevail on a claim that the verdict is against the weight of the evidence, the Defendant must prove that the verdict was so contrary to the evidence as to shock one's sense of justice. Commonwealth v. Moreno, 2011 PA Super 25 (February 4, 2011), citing Champney, supra.

Clearly and in light of the discussion above, the Defendant's weight claim fails. The verdict which was supported by substantial credible evidence was not so contrary to the law as to offend this Court's sense of justice.

Accordingly, Defendant's Post Trial Motion shall be denied.

ORDER

AND NOW, this ____ day of March 2011, upon consideration of Defendant's Post Sentence Motion and following argument of counsel, said Motion is **DENIED**.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Trisha Hoover, Esquire (PD)
Mary Kilgus, Esquire (DA)
Gary Weber, Esquire (Lycoming Reporter)
Work File