

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : NO. CP-41-CR-609-2009  
:   
vs. : CRIMINAL DIVISION  
:   
:   
KATINA ROBINSON, :   
Defendant : 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 dated March 22, 2011 and its amended Order dated June 2, 2011 after granting Defendant's Motion for Reconsideration of Sentence Nunc Pro Tunc. The relevant facts follow.

On March 6, 2009 at approximately 9:00 p.m., the Williamsport police were dispatched to the 1400 block of Memorial Avenue for a report of shots fired. As police officers approached the area, they observed a silver Oldsmobile in the 500 block of Cemetery Street, containing two occupants.<sup>1</sup> As the officers got out of their vehicle and began walking toward the Oldsmobile to inquire if the occupants heard any shots, the police observed furtive movements inside the vehicle. When the officers identified themselves as police, the individual in the driver's seat started the vehicle and peeled out without turning on the vehicle's lights. A high speed chase ensued through the city of Williamsport. During the chase, the driver stopped just long enough for the passenger to jump out.<sup>2</sup>

As the chase continued, the driver threw a bag of drugs out of the passenger

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<sup>1</sup> Cemetery Street intersects Memorial Avenue at the 1400 block.

window. When the bag struck the pavement, some of the packets of drugs were strewn across the roadway. The police returned to the area following the chase and discovered 71 orange Ziploc baggies of crack cocaine and 6 white glassine packets of heroin. The crack cocaine weighed 5.2 grams and the heroin weighed .12 grams.

The driver continued to flee, ignoring stop signs and red lights. At the intersection of Third and Mulberry Streets, the driver ran a red light and struck a station wagon, in which the Shaffer family was riding. The Shaffer's minor daughter had to be extricated from the vehicle with the "jaws of life," but luckily only suffered minor injuries. The station wagon sustained significant damage. Still, the driver did not stop.

Eventually, the driver lost control of the vehicle and took out a utility pole, a sign and part of the fence at the Genetti Hotel parking lot. The driver jumped out of the vehicle and fled on foot. Police caught the driver about a block away, but she flailed and fought the police who were trying to handcuff her. The driver was identified as Defendant, Katina Robinson.

The police discovered a cell phone beneath Defendant after they got her in handcuffs and up off the ground. The police searched Defendant incident to arrest and discovered \$90 in her left jacket pocket, \$260 in her left front jeans pocket, and \$406 in her right front jeans pocket. A second cell phone was discovered in the vehicle when the police executed a search warrant. A small bag of powder cocaine was found on Defendant's person when she was processed at City Hall.

The police charged Defendant with two counts of possession with intent to deliver a controlled substance, three counts of possession of a controlled substance, three

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<sup>2</sup> The passenger was detained and identified as Daniel Scott.

counts of possession of drug paraphernalia, fleeing and eluding, recklessly endangering another person, accident resulting in injury, accident causing damage to an attended vehicle, accident involving injury when not properly licensed, and criminal mischief.

A jury trial was held on January 25-26, 2011. The jury found Defendant guilty of all the charges.

On June 2, 2011, the Court sentenced Defendant to an aggregate term of incarceration of 5 years and 9 months to 11 years and 6 months.<sup>3</sup>

Defendant filed a notice of appeal on June 29, 2011. On appeal, Defendant challenges the weight and sufficiency of the evidence for her convictions for possession with intent to deliver controlled substances and the sufficiency of the evidence for two of her convictions of possessing drug paraphernalia.

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). Furthermore, circumstantial evidence 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).

First, Defendant contends the evidence was insufficient to support the jury's verdict on Count 1, possession with intent to deliver crack cocaine and count 4, possession

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<sup>3</sup> This case has a somewhat confusing history due to an illegal sentence being imposed on the fleeing and eluding conviction, see Commonwealth v. Ruffin, 2011 PA Super 38 (February 25, 2011), and private counsel failing to follow Rule 120 regarding appearances and withdrawals, which resulted in various motions being filed

with intent to deliver heroin, because the Commonwealth presented insufficient evidence to show that Defendant possessed these controlled substances. The Court cannot agree.

Although the crack cocaine and heroin were not found on Defendant's person, the testimony presented at trial clearly showed Defendant possessed these substances.

Constructive possession of controlled substances or paraphernalia "requires proof of the ability to exercise conscious dominion over the illegal substance, the power to control the contraband, and the intent to exercise such control." Commonwealth v. Perez, 931 A.2d 703, 708 (Pa. Super. 2007), quoting Commonwealth v. Bricker, 882 A.2d 1008, 1014 (Pa. Super. 2005). Constructive possession may be established by the totality of the circumstances. Id.

The testimony presented at trial established that as Defendant was fleeing from the police she threw a bag containing 71 packets of crack cocaine and 6 packets of heroin out of the window of her vehicle. Defendant stipulated to the lab report, which stated the 71 small orange Ziploc baggies contained 5.2 grams of crack cocaine and the six packets stamped "play ball" contained .12 grams of heroin. Moreover, Defendant's own trial testimony established that she possessed the crack cocaine and heroin. Despite the fact that Defendant claimed she was buying powder cocaine and not selling any drugs, she admitted in her trial testimony that after Mr. Scott jumped out of her vehicle she realized that he left a bag of drugs in her car and, afraid that the police would catch her and think the drugs belonged to her, she picked them up and threw them out of the window of the vehicle she was driving. N.T., January 25, 2011, at pp. 203-204. Clearly, such evidence shows Defendant not only had the power and intent to control the contraband, but her own testimony, as well

as the testimony of several police officers, shows she actually possessed and controlled them by discarding them out of the passenger window.

Defendant next asserts the evidence was insufficient to show she intended to deliver the heroin. Again, the Court cannot agree.

Intent to deliver can be inferred from all the facts and circumstances in this case. Although six packets containing .12 grams of heroin considered in isolation may be insufficient to show intent to deliver, when one examines the totality of the circumstances, the Commonwealth presented ample evidence to show that Defendant intended to deliver the heroin.

In addition to possessing six packets of heroin, Defendant possessed 71 small Ziploc baggies of crack cocaine, a plastic bag containing .44 grams of powder cocaine, two cell phones, and over \$700 in cash. The cash was not held all in one place in a wallet, but rather Defendant carried \$90 in her left jacket pocket, \$260 in her left front jeans pocket, and \$406 in her right front jeans pocket. The street value of all the drugs exceeded \$1400. Noticeably absent was any paraphernalia to ingest the controlled substances.

Defendant also fled when she saw the police, and during the high-speed chase that ensued, she threw the crack cocaine and heroin out of the passenger window. These actions show Defendant's consciousness of guilt.

The Commonwealth also presented expert testimony from Corporal Kris Moore that explained how these facts and circumstances supported his opinion that Defendant possessed the crack cocaine and the heroin with the intent to deliver them. N.T., January 25, 2011, at pp. 175-196.

Defendant also contends the evidence was insufficient to sustain her

conviction for possession of drug paraphernalia with respect to the crack cocaine and heroin baggies. For the same reasons that Defendant possessed the crack cocaine and heroin, she also possessed the baggies which contained those substances, i.e., Defendant possessed the baggies when she picked them up and threw them out of the passenger window of the vehicle she was driving.

Finally, Defendant asserts the guilty verdicts for possession with intent to deliver the crack cocaine and the heroin were against the weight of the evidence.

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. The court acknowledges that Defendant testified the drugs were not hers and she did not intend to possess or deliver them. Nevertheless, the verdict is not against the weight of the evidence.

The credibility of a witness is within the sole province of the jury who is free to believe all, part or none of any witness’s testimony. Commonwealth v. Spotz, 552 Pa. 499, 510, 716 A.2d 580, 585 (Pa. 1998); Commonwealth v. Gibson, 553 Pa. 648, 664, 720 A.2d 473, 480 (Pa. 1998). Apparently, the jury did not believe Defendant’s testimony, which did not shock or surprise the Court given Defendant’s conduct evincing consciousness of guilt, the amount of cash Defendant possessed and the manner in which she possessed it, the

number of individual packets of drugs, the street value of the drugs, and the lack of personal use paraphernalia.

DATE: \_\_\_\_\_

By The Court,

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Marc F. Lovecchio, Judge

cc: Kirsten Gardner, Esquire (APD)  
District Attorney  
Work file  
Gary Weber, Esquire (Lycoming Reporter)  
Superior Court (original & 1)