

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1462 – 2010
	:	
vs.	:	CRIMINAL DIVISION
	:	
TROY MATTY,	:	
Defendant	:	Post-Sentence Motions

OPINION AND ORDER

Before the Court are Post-Sentence Motions filed by Defendant on July 13, 2011. Argument thereon was heard September 19, 2011.

After a bench trial on May 12, 2011, Defendant was found guilty of four counts of possession of a small amount of marijuana, two counts of possession of drug paraphernalia, and various traffic offenses, in connection with a traffic stop on July 4, 2010, and a subsequent vehicle search which revealed small packages of marijuana in the console between the front seats. Defendant was sentenced to pay a fine and undergo probation supervision for nine months. In the instant post-sentence motion, Defendant seeks a judgment of acquittal on the basis that the evidence was insufficient to sustain the conviction, a new trial on the grounds that the physical evidence seized from the vehicle should have been suppressed, and a stay of execution of sentence pending appeal. As the suppression motion was heard by the Honorable Nancy Butts, the motion for a new trial has been referred to her and a separate opinion will be issued by Judge Butts on that matter. This court will address only the motion for judgment of acquittal and the motion for stay.

In support of his contention the evidence was insufficient to support the conviction, Defendant cites Commonwealth v. Chenet, 373 A.2d 1107 (Pa. 1977). The Court there found insufficient the evidence that marijuana was found in the vehicle driven by the defendant, as it was shown that the vehicle belonged to the defendant's attorney and that defendant had picked it up and driven it to his house to repair it. In the instant case, however, although it was shown that the vehicle driven by Defendant belonged to his father, the Commonwealth also presented the testimony of two state troopers that when approaching the vehicle after the stop, they both

smelled an “overwhelming” odor of marijuana emanating from the vehicle. The Court believes such evidence is sufficient to infer Defendant’s knowledge and intent to possess, and such distinguishes the matter from Chenet. Therefore, the motion will be denied.

With respect to the Motion for stay, since the Commonwealth indicated at argument that there was no objection to the request, the motion will be granted

ORDER

AND NOW, this 21st day of September 2011, for the foregoing reasons, the motion for judgment of acquittal is hereby DENIED. The Motion for Stay of Execution of Sentence is GRANTED. The sentence imposed in this matter on July 6, 2011, shall be stayed pending further Order of court and Defendant shall continue on bail as previously set.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
Peter Campana, Esq.
Cost Clerk
APO
Gary Weber, Esq.
Hon. Dudley Anderson