

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 1502 – 2010
	:	
vs.	:	CRIMINAL DIVISION
	:	
LEJER WEBB,	:	
Defendant	:	Post-Sentence Motions

OPINION AND ORDER

Before the Court are Post-Sentence Motions filed by Defendant on April 2, 2012. Argument was held April 23, 2012, at which time the court requested the preparation of a trial transcript to aid in the decision. That transcript was completed July 11, 2012.

After a jury trial on December 12 and 13, 2012, Defendant was found guilty of one count of possession of a controlled substance, two counts of possession of drug paraphernalia, and one count of driving under the influence of a controlled substance. The jury could not return a verdict on one count of possession with intent to deliver. Defendant was sentenced on the DUI to Intermediate Punishment of five years (one year at PRC), on the possession of paraphernalia counts to concurrent intermediate punishment, and fined. In the instant Post-Sentence Motions, Defendant seeks a Judgment of Acquittal on the grounds that his conviction for DUI was not supported by sufficient evidence, and a new trial based on the following alleged errors: denial of his continuance request, denial of his request for dismissal, and his contention the verdict was against the weight of the evidence.

First, with respect to Defendant's contention that the conviction of DUI was not supported by sufficient evidence, Defendant specifically alleges that the Commonwealth failed to establish that he had controlled substances in his system because "none of the lab techs remembered performing tests on Mr. Webb's blood." After each lab technician explained on direct examination her role in the processing and testing of blood samples received by the lab, on cross-examination defense counsel asked her whether she "actually remember[ed] dealing with Mr. Webb's blood". N.T., December 12, 2011, at p.44, 52, 60. Each technician answered that she did not remember the specific blood sample. As the paperwork submitted into

evidence showed that the blood which was tested and produced the reported results was Defendant's blood, however,¹ the fact that the technicians could not specifically remember the blood sample is of no moment. Since the test results indicated that the blood tested showed a cannabinoid metabolite (Delta 9 carboxy THC) and since it was explained that the presence of such a metabolite indicates that the person had used marijuana, the court believes there was sufficient evidence to establish that Defendant had a controlled substance in his system.

With respect to the allegation of error in denying Defendant's request for a continuance of the trial, the continuance request was made by Defendant on December 7, 2011, after a jury had been selected and just five days before trial. Defendant indicated on the request form that he "wishe[d] to hire private counsel² due to a complete disagreement between Defendant and counsel on how Defendant's defense can proceed at trial". The request was denied based on the lateness of such. The issue was revisited at the beginning of trial, with a renewed motion made by defense counsel. Defendant stated that he wanted to obtain a private attorney because defense counsel did not have a defense. He stated that he believed that he "should have some kind of defense by now". Id. at p. 4-5. Defendant did not indicate what that defense might be, or what the disagreement was. He also did not have any plan for hiring any specific private counsel. As two days had been set aside and numerous Commonwealth witnesses had appeared, the court believes it was not an abuse of discretion to deny the continuance request.

With respect to the request for dismissal, such was made on the basis that Defendant was not sentenced within ninety (90) days of the date of the conviction. After the jury returned the verdict and the Commonwealth indicated it would pursue a re-trial on the possession with intent to deliver charge (on which the jury was hung), it was agreed by defense counsel that sentencing should be deferred pending that re-trial as the sentences were dependent.³ As soon as it became clear that the Commonwealth was not going to re-try the charge but instead *nol pros* it, sentencing was immediately scheduled for the next available date. See Order of

¹ There was no evidence that the sample received by the lab from the state police was not what it purported to be, a sample of Defendant's blood. Julia Smith, a specimen processor for the lab, testified that when the lab received the sample in a FedEx package it was sealed and labeled with Defendant's name, and that it was then labeled with a work order number which number was placed on the smaller samples which were tested. N.T., December 12, 2011, at p.41-42. That work order number appeared on the results introduced into evidence. Id. at p. 76.

² Defense counsel is a public defender.

³ N.T., December 13, 2012, at p. 110.

December 21, 2011. Considering Defendant's agreement to defer sentencing, the court believes the actions taken are free from error.

Finally, with respect to the contention that the verdict was against the weight of the evidence, Defendant specifically asserts that "the weight of the evidence at trial established that it was unclear if Mr. Webb's [blood] was properly tested." The court does not agree. The lab technician responsible for review of the testing procedure testified that there were no errors in the testing procedure, *Id.* at p. 58, and the lab director testified that all quality control and chain of custody procedures were followed in this case. *Id.* at p. 75. There was no evidence at all that made it "unclear" that Defendant's blood was properly tested. The weight of the evidence, including the troopers' observations of Defendant's appearance at the time of the vehicle stop, their observations of the smell of burnt marijuana emanating from Defendant's vehicle when stopped, their discovery of a marijuana blunt still wet on one end in the driver's side door compartment, the drug recognition expert's opinion that Defendant was under the influence of marijuana at the time of the stop,⁴ and the test results (which showed both Delta 9 THC and Delta 9 carboxy THC in Defendant's blood) all weigh in favor of the jury's verdict and the court was not shocked when that verdict was rendered.⁵

ORDER

AND NOW, this 18th July 2012, for the foregoing reasons, Defendant's Post-Sentence Motions are hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
PD
Gary Weber, Esq.
Hon. Dudley Anderson

⁴ *Id.* at p. 134.

⁵ See Commonwealth v. Dougherty, 679 A.2d 779 (Pa. Super. 1996) (A "weight of the evidence" claim contends the verdict is a product of speculation or conjecture, and requires a new trial only when the verdict is so contrary to the evidence as to shock one's sense of justice.)