

COMMONWEALTH OF PA,

vs.

DELORES BRYANT,
Defendant

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA
:
: NO. 300-2010
:
:
: 1925(a) OPINION

Date: May 28th, 2014

OPINION IN SUPPORT OF THE ORDER OF FEBRUARY 4, 2011, APRIL 7, 2011 AND APRIL 20, 2011, IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Defendant Delores Bryant (hereinafter Defendant) has appealed this Court's April 26, 2011 verdict in which she was found guilty of the following counts and crimes: Count 2, Possession with Intent to Deliver; Count 3, Possession with Intent to Deliver; Count 4, Possession of a Controlled Substance, cocaine; Count 5, Possession of a Controlled Substance, marijuana; and Count 6, Possession of Drug Paraphernalia.

In her Concise Statement of Matters Complained of on Appeal, filed April 4, 2014, Defendant raised the two following issues:

- 1) The Defendant avers the Trial Court erred by denying her motion to suppress when the police entered her residence allegedly with the permission of Housing Authority Manager and then further searched her residence under the guise of a protective sweep.
- 2) The Defendant avers that the evidence presented at trial was insufficient to prove that she constructively possessed the controlled substances found in her residence when she was not present at the time the police entered.

Defendant's appeal should be denied and the verdict and sentence affirmed.

I. FACTS AND PROCEDURAL HISTORY

On Tuesday, April 26, 2011 during a nonjury trial of *Commonwealth v. Bryant* the following facts were determined to have occurred.

On the afternoon of October 21, 2009, Tyson Havens, Pennsylvania State Trooper, observed a white Nissan Maxima in the area of the Penn Vale Housing Development in Williamsport, Lycoming County, Pennsylvania. Prior to October 21, 2009, Trooper Havens had spoken with Christy Limbach, manager of the Penn Vale Housing Development, regarding a suspicious white Nissan Maxima which she had observed frequenting the housing development. On the day in question, the driver of the Nissan parked and exited the vehicle. Trooper Havens proceeded to drive past the driver and greet him. A conversation ensued which at some point Trooper Havens became aware of the fact that the driver did not have a driver's license. At that point Trooper Havens initiated a traffic stop. The individual identified himself as Izone Jackson and indicated that he was going to visit his girlfriend Delores Bryant at her place of residence, 1814 Hazel Drive. Mr. Jackson further indicated that his girlfriend was not home and that he did not have a key to her residence but a friend of his, Raymond Jones, was inside the residence. Trooper Havens gave Mr. Jackson a verbal warning and indicated that Mr. Jackson was free to leave.

Mr. Jackson proceeded to walk away heading in the direction of Ms. Bryant's residence. He then veered south away from the residence. Trooper Havens called out to Mr. Jackson "Hey, weren't you going to 1814? You passed it." Mr. Jackson indicated that he was not going to

1814 that he was going to pick up his son from daycare. Mr. Jackson then walked around the back of the building and out of sight.

Trooper Havens proceeded to 1814 Hazel Drive and knocked on the door. The door was opened approximately six inches and then slammed closed. Trooper Havens stayed at the door announcing himself and asking for someone to come outside or indicate that they were alright for approximately ten minutes. After his attempts proved unsuccessful, Trooper Havens contacted Ms. Limbach. Ms. Limbach arrived and at that time requested Trooper Havens make entry to the residence due to the fact that she was concerned that someone inside was injured or that there was a burglary in progress.

Trooper Havens and Trooper Rankey made entry into the residence. Upon entry, Trooper Havens encountered an individual by the name of Raymond Howard in the kitchen. Mr. Howard was placed under arrest after indicating erroneously that he was in Terra Smith's house. After the downstairs portion of the residence was cleared the officers proceeded upstairs. Trooper Havens entered the master bedroom and observed in plain view a pair of black Timberland boots. Inside one of the boots was a plastic bag. The bag contained nineteen (19) smaller ziplock bags which contained crack cocaine. A second bag, also in the boot, contained four smaller ziplock bags that contained crack cocaine. By the window in the master bedroom Trooper Havens observed a stack of approximately fifteen (15) shoe boxes the top shoebox was open and contained money. It was later determined that it contained one hundred thirty dollars (\$130). The shoebox directly below the top shoebox had holes in the side of the box. Through the holes a stack of money was evident. It was later determined that it was the sum of seven hundred dollars (\$700). The officers continued to clear the residence to make sure that there was no one

else present. After the residence was secured Trooper Havens left and proceeded to apply for a search warrant.

After the search warrant was obtained the following evidence was recovered from Defendant's residence:

Kitchen:

- In the kitchen drawer there was a plastic bag with marijuana dime bags and a grocery bag containing marijuana dime bags.
- In the kitchen cabinet there was a paper bag that contained a plastic bag containing marijuana and between 1,000 -2,000 little plastic ziplock bags commonly used for distributing crack cocaine and marijuana.
- In a trash box there were four clear yellow bags containing crack cocaine.

Living Room:

- One hundred and thirty-one dollars (\$131) in a pair of white Adidas sneakers
- A silver Page Plus cell phone
- A blue Virgin Mobile cell phone

Dining Room:

- On the dining room table was a wallet that contained identification for Izone Jackson.

Master Bedroom:

- Large Tupperware tote containing men's clothing and an Astra A-100 9mm handgun
- Black wallet containing two forms of identification for Delores Bryant.

Additionally, the master bedroom showed signs of use. It contained a dresser; ironing board; and a photo of Delores Bryant and Mr. Jackson. Delores Bryant and her minor child, who was approximately five or six years of age at the time, were the only individuals listed on the lease. During an interview with Trooper Havens Ms. Bryant stated that the items found in the residence belonged to her boyfriend, Earnest Jackson.

At the close of the trial the Trial Court found Defendant guilty of Count 2, Possession with Intent to Deliver; Count 3, Possession with Intent to Deliver; Count 4, Possession of a Controlled Substance, cocaine; Count 5, Possession of a Controlled Substance, marijuana; and Count 6, Possession of Drug Paraphernalia.

On May 8th, 2012, Defendant was sentenced to serve an aggregate period of state incarceration the minimum of which shall be four years and the maximum of which shall be eight years.

Counsel for the Defendant filed a Post Sentence Motion filed on May 25, 2012 which was denied by this Court on August 2, 2012. Counsel for the Defendant filed a Notice of Appeal to the Superior Court of Pennsylvania on August 9, 2012. Counsel then filed a Statement of Matters Complained of on Appeal August 20, 2012. On September 13, 2013 the Superior Court of Pennsylvania entered an Order finding the Notice of Appeal filed by counsel for the Defendant was not filed within 30 days of the sentencing held May 8, 2012 as well as finding the Post Sentence Motion filed May 25, 2012 was not filed within the requisite ten day period from sentencing and thus the Superior Court held the Notice of Appeal was untimely and quashed the Defendant's appeal.

On March 13, 2013, this Court entered the following Order:

“AND NOW, this 13th day of March, 2013 after stipulation, it is hereby Ordered and Directed that because of trial counsel's failure to timely file Notice of Appeal, and appellant counsel will raise sufficiency of the evidence on direct appeal, the appellant's appeal rights are hereby reinstated. Appellant counsel had thirty days from today's date to file Notice of Appeal.”

The March 13, 2013 Order was entered without Defendant having filed a PCRA petition alleging ineffective assistance of her prior counsel. Counsel for the Defendant file a Notice of

Appeal to the Superior Court on March 15, 2013 and a Statement of Matters Complained of on Appeal on March 28, 2013. The Superior Court ordered Defendant's counsel to file a Brief in Support of Appeal no later than July 1, 2013. On July 2, 2013 Defendant's counsel filed the Brief in Support. On October 28, 2013 the Superior Court entered a Memorandum Opinion and Order dismissing Ms. Bryant's second appeal filed March 15, 2013 because this Court lacked jurisdiction to enter its Order of March 13, 2013 reinstating direct appeal rights. Ms. Bryant filed a pro se PCRA petition on November 20, 2013. Counsel for Ms. Bryant filed an Amended PCRA Petition on December 9, 2013. A conference on the Petition was held February 3, 2014. The Trial Court through Orders filed March 24, 2014 and April 1, 2014 reinstated the Defendant's right to file a direct appeal with the Superior Court, nunc pro tunc. Defendant filed her Notice of Appeal April 3, 2014. Defendant filed her Statement of Matters Complained on Appeal Pursuant to Pennsylvania Rule of Appellate Procedure 1925(b) on April 14, 2014.

II. DISCUSSION

II. DISCUSSION

- 1. The Defendant avers the Trial Court erred by denying her motion to suppress when the police entered her residence allegedly with the permission of Housing Authority Manager and then further searched her residence under the guise of a protective sweep.*

The Court relies on the Order and Opinion of the Honorable Judge Marc Lovecchio for this matter and kindly refers the Appellate Court to the Order and Opinion dated June 30, 2010.

2. *The Defendant avers that the evidence presented at trial was insufficient to prove that she constructively possessed the controlled substances found in her residence when she was not present at the time the police entered.*

A claim challenging the sufficiency of the evidence is a question of law. *Commonwealth v. Sullivan*, 820 A.2d 795, 805 (Pa. Super. 2003). When reviewing a challenge to the sufficiency of the evidence, the following standard of review is employed:

‘The standard we apply when reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt. In applying the above test, we may not weigh the evidence and substitute our judgment for the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. Any doubts regarding a defendant’s guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced is free to believe all, part or none of the evidence.’

Commonwealth v. Gray, 867 A.2d 560, 567 (Pa. Super. 2005) (*quoting Commonwealth v. Nahavandian*, 849 A.2d 1221, 1229-30 (Pa. Super. 2004)). Direct and circumstantial evidence receive equal weight when assessing the sufficiency of the evidence. *Commonwealth v. Grekis*, 601 A.2d 1275, 1280 (Pa. Super. 1992). Whether it is direct, circumstantial, or a combination of

both, what is required of the evidence is that it taken as a whole links the accused to the crime beyond a reasonable doubt. *Commonwealth v. Robinson*, 864 A.2d 460, 478 (Pa. 2004). In Defendant's case, there was more than sufficient evidence to prove that Defendant was in possession of controlled substances and in possession with the intent to deliver.

1. Possession of a Controlled Substance

35 P.S. § 780-113 describes the offense Possession of a Controlled Substance as the following:

- (a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:
- (16) Knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.

Possession of a controlled substance can be established by showing either actual or constructive possession. Actual possession is established by showing that the defendant had the controlled substance on his person, while constructive possession can be proven through showing that the defendant exercised dominion over the substance. *Commonwealth v. Ocasio*, 619 A.2d 352 (1993). *See also Commonwealth v. Mercado*, 617 A.2d 342 (1992).

In a case such as this where contraband is not found on the defendant, the Commonwealth must establish constructive possession of the contraband. *Commonwealth v. Haskins*, 450 Pa. Super. 540, 677 A.2d 328, 330 (Pa. Super. 1996), *appeal denied*, 547 Pa. 751, 692 A.2d 563 (1997). Constructive possession is defined as "the ability to exercise a conscious dominion over the illegal substance: the power to control the contraband and the intent to exercise that control." *Commonwealth v. Macolino*, 469 A.2d 132, 134 (1983). The Pennsylvania Supreme Court, in *Commonwealth v. Mudrick*, 507 A.2d 1212 (1986), described

the concept of "constructive possession" as follows: "[it] is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. Constructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not." *Id.* at 1213. "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." *Commonwealth v. Valette*, 613 A.2d 548 (1992) (quoting *Macolino* at 134). *See also Ocasio*, 619 A.2d 352. In addition, multiple people may be found to constructively possess contraband in situations where the contraband is found in an area of joint control and equal access. *Haskins* at 330.

When analyzing the evidence and the totality of the circumstances it is evident that the Commonwealth met its burden beyond a reasonable doubt that Defendant constructively possessed the drugs and drug paraphernalia. All of the evidence retrieved was from common areas in the home and the master bedroom. In Defendant's bedroom in plain view there was crack cocaine and shoeboxes containing money. N.T. April 26, 2011, p. 34. Inside the kitchen drawer, right on top was a plastic bag containing marijuana dime bags and a grocery bag containing marijuana dime bags. N.T. April 26, 2011, p. 15-16. In the kitchen cabinet there was a paper bag containing marijuana and little drug packaging bags. N.T. April 26, 2011, p. 16. These are all areas that as the lease holder Defendant would have access to and would be under her control. These items were not hidden, the contraband in the kitchen drawer were on top mixed in with the other items; the contraband in the kitchen cabinet was in the top left of the cabinet; and the contraband in the bedroom was in plain view. N.T. April 26, 2011, p. 18, 19, 34. The Commonwealth clearly demonstrated that Defendant had "the ability to exercise a conscious

dominion over the illegal substance: the power to control the contraband and the intent to exercise that control.” *Macolino* at 134. Defendant constructively possessed the controlled substances, money, and paraphernalia recovered from her residence.

CONCLUSION

Given the overwhelming evidence of Defendant’s guilt, this Court’s verdict of April 26, should be affirmed and Defendant’s appeal dismissed.

BY THE COURT,

Joy Reynolds McCoy, Judge

cc: Superior Court
Donald Martino, Esquire
DA
Judges
Gary L. Weber, Esquire (Lycoming Reporter)
Jerri Rook, Executive Secretary to Judge McCoy