

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH :
 :
 vs. : No. CR-590-2013
 :
 TIRRELL WILLIAMS, :
 Defendant : Post-Sentence Motion

OPINION AND ORDER

On September 16, 2014, following a jury trial, Defendant was convicted of one count of Possession with Intent to Deliver Heroin and an additional count of Possession with Intent to Deliver Cocaine. Following his conviction and upon his request, the Court proceeded directly to sentencing. After considering the relevant and appropriate sentencing factors, the Court sentenced Defendant to a period of State incarceration, the minimum of which was 1 ½ years and the maximum of which was 3 years.

Defendant filed a timely Post-Sentence Motion on September 24, 2014, which was heard by the Court on December 2, 2014. The sole issue raised in Defendant's Post-Sentence Motion is that the Court erred in denying Defendant's Motion in Limine. Specifically, on or about September 15, 2014 immediately prior to trial, Defendant orally raised a Motion in Limine requesting the Court to preclude the Commonwealth from introducing at trial any evidence of Possession of Controlled Substances by other occupants of the vehicle driven by the Defendant.

Defendant argued that such evidence was not relevant, but if so, it was only minimally relevant and substantially outweighed by any prejudicial impact. The Court agreed only in part with Defendant. While the Court precluded the Commonwealth from introducing

evidence of possession of controlled substances by the other occupants to the extent said controlled substances were different than those allegedly possessed by the Defendant, the Court did permit the Commonwealth to present evidence of possession of controlled substances by the other occupants of controlled substances similar in packaging and/or content to that found to have been possessed by the Defendant.

By way of background, on November 3, 2012, law enforcement officers legally stopped an automobile being driven by the Defendant. The vehicle was occupied by five individuals. The Defendant was removed from the vehicle and placed in custody on an outstanding arrest warrant. He was initially patted down and placed in the back of a police cruiser.

Upon eventually transporting the Defendant to police headquarters, he was removed from the back of the cruiser. They found in the backseat area of the cruiser where the Defendant was sitting was a clear plastic sandwich baggie containing two additional sandwich baggies one which contained 21 pre-packaged bags of heroin and the other which contained 20 pre-packaged bags of cocaine.

Based on the controlled substances that the police located near where the Defendant was seated as well as police also finding on Defendant a cell phone and approximately \$110.00 in U.S. currency, the police charged the Defendant with Possession with Intent to Deliver the specified controlled substances. At trial in addition to the aforementioned evidence against the Defendant, the Commonwealth also introduced, over Defendant's objection as set forth in his Motion in Limine, evidence that at least two other

occupants of the vehicle possessed cocaine and heroin similar to the cocaine and heroin alleged to have been possessed with intent to deliver by the Defendant.

The admissibility of evidence is within the discretion of the Trial Court. Commonwealth v. Johnson, 42 A.3d 1017, 1027 (Pa. 2012). The determinative standard is relevancy. See Pa. R. E. 402 (“all relevant evidence is admissible, except as otherwise provided by law”). Evidence is relevant if it tends to prove or disprove a fact at issue. See Pa. R. E. 401 (“relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence”).

The evidence of possession of similar drugs and packaging by the other occupants of the vehicle was admitted in evidence as circumstantial evidence that the Defendant possessed with intent to deliver those substances that were found on him. The fact that others who were with the Defendant and in the same vehicle possessed controlled substances similar in packaging and type to those possessed by the Defendant had a tendency to establish that those controlled substances possessed by the Defendant were with the intent to deliver such. The fact that others possessed similar drugs made it more probable that the Defendant possessed those drugs with the intent to deliver them. A jury could easily conclude that the Defendant gave and/or sold the drugs to the others because in his possession were a distribution bag with said drugs, money and a cellphone.

Defendant argues however, that even if the evidence was relevant, its

probative value substantially outweighed the prejudice. In determining the admissibility of evidence, the Court must determine if the probative value of the relevant evidence might be outweighed by the danger of unfair prejudice. Pa. R.E. 403. Unfair prejudice means the tendency to suggest a decision on an improper basis or to divert the jury's attention away from its duty of weighing the evidence impartially. Pa. R.E. 403 comment; Commonwealth v. Page, 965 A.2d 1212 (Pa. Super. 2009).

Evidence will not be prohibited merely because it is harmful to the Defendant. Exclusion is limited to evidence so prejudicial that it would enflame the jury to make a decision based upon something other than the legal propositions relevant to the case. Page, supra., citing Commonwealth v. Owens, 926 A.2d 1187, 1191 (Pa. Super. 2007).

The evidence in this case admitted by the Court did not suggest a decision on any improper basis. It did not suggest a decision based upon any sympathy for anyone or any animus toward the Defendant. Indeed, the evidence was highly probative and the Court fails to see how there was any danger of undue prejudice. The fact that others had in their possession drugs similar to those possessed by the Defendant went directly to the issue in this case, that being whether the drugs possessed by the Defendant were with the intent to deliver them. The effect of the evidence was to prove the Commonwealth's case. The Court avoided any prejudice by not permitting the Commonwealth to introduce evidence of controlled substances or other items by the others which would not have been similar to those possessed by the Defendant and which formed the basis of the charges.

ORDER

AND NOW, this ____ day of December 2014, following an argument,
Defendant's Post-Sentence Motion is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: DA (MW)
PD (JF)
Gary Weber, Esquire (Lycoming Reporter)
Work file