

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| COMMONWEALTH OF PENNSYLVANIA | : | |
| | : | CR-1495-2014 |
| v. | : | |
| | : | |
| NAFIS ANTUAN FAISON, | : | CRIMINAL DIVISION |
| Defendant | : | |

OPINION AND ORDER

On May 7, 2015, the Defendant filed a timely post-sentence motion. Argument on the motion held on June 25, 2015. During argument, Defense Counsel stated that the Defendant was relying on the motion and the trial transcript.

I. Background

A. Convictions

On April 20, 2015, a jury found the Defendant guilty of Possession of a Controlled Substance with Intent to Deliver,¹ Possession of a Controlled Substance,² and Possession of Drug Paraphernalia.³

B. Testimony of Officer Justin Snyder

Justin Snyder (Snyder) has been an officer with the Williamsport Bureau of Police since January of 2006. He is also a member of the Lycoming County Narcotics Enforcement Unit (NEU). Snyder has gone to “several schools for conducting controlled buys, undercover buys doing interdiction, drug recognition, packaging, and schools on drug trafficking, the norms of drug trafficking.” N.T., 4/20/15, at 24. He has been involved in more than 100 illegal narcotics investigations. He knows the signs exhibited by someone who has ingested cocaine.

¹ 35 P.S. § 780-113(a)(30).

² 35 P.S. § 780-113(a)(16).

³ 35 P.S. § 780-113(a)(32).

On August 6, 2014, Snyder was conducting an investigation of apartment number 3 of 326 Bridge Street, Williamsport. A lot of drug trafficking occurs in the area of 326 Bridge Street. Snyder saw the Defendant exit apartment number 3. The Defendant did not appear to be under the influence of cocaine when Snyder came into contact with him.

C. Testimony of Corporal Jeff Paulhamus

Jeff Paulhamus (Paulhamus) is a corporal in the Williamsport Bureau of Police. At the time of trial, he had been employed by the Bureau for about 10 years. He has taken “a few criminal interdiction courses focusing on narcotic investigation.” N.T., 4/20/15, at 28.

Paulhamus has worked with the Lycoming County Drug Task Force and the Lycoming County NEU. He has had contact with individuals under the influence of cocaine.

On August 6, 2010, Paulhamus detained the Defendant, who did not appear to be under the influence of narcotics. The Defendant had a cell phone and \$503.00 in cash. The cash was “mostly in the 20s, two ten dollar bills and three singles.” N.T., 4/20/15, at 32. The Defendant also had a plastic sandwich bag tied to the top button of the pants that he was wearing. The bag contained an off-white substance, which Paulhamus recognized as cocaine.

D. Stipulations

The parties stipulated that “there was no break in the chain of custody regarding the illegal narcotics associated with the above-captioned matter.” N.T., 4/20/15, at 22. They also stipulated that a sandwich bag contained 6.89 grams of cocaine.

E. Testimony of Detective John Ferster

John Ferster (Ferster) is a detective in the Lycoming County NEU. At the time of the trial, he had been employed by the NEU for 11 months. Before being a detective in the NEU,

Ferster was a special agent with the United States Drug Enforcement Administration. Before he was an agent with the DEA, Ferster worked for the Pennsylvania Bureau of Narcotics. While working at the Bureau, Ferster “attended a three month school, an academy in the methods of conducting drug investigations, how to identify drugs, the way it’s commonly used.” N.T., 4/20/15, at 37. While working in the DEA, Ferster attended numerous schools “along the same lines.” Id. at 37-38.

Ferster has been involved in several hundred illegal narcotics investigations. He has debriefed informants and has done undercover work, which has given him insight into the way people use and sell drugs. He has seen people under the influence of cocaine. Somebody under the influence of cocaine is “jittery, like agitated.” N.T., 4/20/15, at 41. A person can develop a tolerance to cocaine. Whether somebody would exhibit signs of cocaine use depends on (1) how long it has been since the use, (2) the person’s tolerance to cocaine, (3) the amount of cocaine consumed, (4) the cocaine’s purity, and (5) how the cocaine is processed by the person’s body.

On August 6, 2014, Ferster came into contact with the Defendant. The Defendant did not appear to be under the influence of drugs; he was not jittery or agitated.

F. Testimony of Officer Jeremy Brown

Jeremy Brown (Brown) is an officer with the Williamsport Bureau of Police. He has been employed by the Bureau since January of 2001. He has attended several schools dealing with narcotics and has been trained in narcotic identification, use, and abuse. Brown has been involved in at least 500 investigations of illegal drugs and paraphernalia.

The Defendant’s phone has a burner application. The application allows a person to “burn” the record of a phone number. It is a “method of making it more difficult to track numbers to dealers or to track numbers to the phone to the dealer.” N.T., 4/20/15, at 52. Seven

grams of cocaine is “a lot in dealing with drugs.” Id. at 53. Drug users have smaller amounts of drugs. Seven grams of cocaine in one bag is worth between \$300 and \$400. If the seven grams is divided and then sold in smaller amounts, the seller would make more than \$400. The lack of personal use paraphernalia on the Defendant is an indicator that the cocaine in the bag was intended for delivery. The bag being in the Defendant’s crotch is also an indicator that the cocaine was intended for delivery since users put it in their pockets. Users are not “carrying with it all day long.” N.T., 4/20/15, at 58. They use the drugs as soon as they can. Five hundred dollars is a significant amount of money; users are broke. The Defendant had bills of various denominations, but “he did not have a dollar bill that was consistent with use and to ingest cocaine.” N.T., 4/20/15, at 63. Brown described the bills that the Defendant had:

His were in a wad in his pocket. I’ve found on users they – they have a wad – they have one one by itself rolled up because when they’re rolled up they’re rolled up tight, stay rolled up. You’d have to like rub it across a corner desk to get it to straighten out. I find that they’re still usually rolled up and they still have white powder residue inside of them.

Id. In Brown’s opinion, the cocaine was possessed with the intent to deliver.

G. Defendant’s Arguments

The Defendant argues that the Commonwealth failed to present sufficient evidence to prove Possession with Intent to Deliver. In addition, the Defendant argues that the verdict is inconsistent and contrary to the weight of the evidence.

II. Discussion

A. The Evidence was Sufficient for Possession with Intent to Deliver.

“When reviewing the sufficiency of the evidence, [a reviewing] court must determine whether the evidence, and all reasonable inferences deducible from that, viewed in the light most favorable to the Commonwealth as verdict winner, are sufficient to establish all of the elements

of the offense beyond a reasonable doubt.” Commonwealth v. Weiss, 776 A.2d 958, 963 (Pa. 2001). “In applying this standard, [the reviewing court must] bear in mind that: the Commonwealth may sustain its burden by means of wholly circumstantial evidence; the entire trial record should be evaluated and all evidence received considered, whether or not the trial court’s rulings thereon were correct; and the trier of fact, while passing upon the credibility of witnesses and the weight of the proof, is free to believe all, part, or none of the evidence.” Commonwealth v. Watkins, 843 A.2d 1203, 1211 (Pa. 2003).

“To establish the offense of possession of a controlled substance with intent to deliver, the Commonwealth must prove beyond a reasonable doubt that the defendant possessed a controlled substance with the intent to deliver it. The trier of fact may infer that the defendant intended to deliver a controlled substance from an examination of the facts and circumstances surrounding the case. Factors to consider in determining whether the drugs were possessed with the intent to deliver include the particular method of packaging, the form of the drug, and the behavior of the defendant.” Commonwealth v. Kirkland, 831 A.2d 607, 611 (Pa. Super. 2003) (citations omitted). “[P]ossession of a large quantity of narcotics is a circumstance from which the trier of fact may infer that the narcotics were intended for delivery.” Id. “[P]ossession with intent to deliver can be inferred from the quantity of the drugs possessed and other surrounding circumstances, such as lack of paraphernalia for consumption.” Commonwealth v. Torres, 617 A.2d 812, 814 (Pa. Super. 1992).

Here, the evidence is sufficient for a jury to find beyond a reasonable doubt that the Defendant possessed a controlled substance. Corporal Paulhamus testified that a sandwich bag containing an off-white substance was tied to a button of the Defendant’s pants. The parties

stipulated that there was no break in the chain of custody of the bag, which contained 6.89 grams of cocaine.

The evidence is also sufficient for a jury to find beyond a reasonable doubt that the Defendant possessed the cocaine with the intent to deliver. Snyder, Paulhamus, and Ferster testified that Defendant did not appear to be under the influence of drugs when they came into contact with him on August 6, 2014. Officer Brown qualified as an expert in the field of possession and distribution of illegal narcotics. In Brown's opinion, the cocaine was intended for delivery. The following circumstances led him to that opinion. The Defendant had a burner application on his phone. Seven grams of cocaine is a large quantity of cocaine, and drug users have smaller amounts. The cocaine was worth \$300 to \$400 and could have been worth more if it was divided and sold in smaller amounts. The Defendant did not have personal use drug paraphernalia. He did have bills, which are commonly used as drug paraphernalia for cocaine, but none of the bills looked as if they had been used to ingest cocaine. Users put drugs in their pockets, but the cocaine was found in the Defendant's crotch. Users are broke, but the Defendant had \$503.00. With the evidence discussed in this paragraph, a jury could find beyond a reasonable doubt that the Defendant possessed cocaine with intent to deliver.

B. The Verdict is not Inconsistent.

The Defendant argues that the verdict is inconsistent. The verdict is not inconsistent.

C. The Verdict is not Contrary to the Weight of the Evidence.

The following is the standard that courts apply when reviewing weight of the evidence claims:

The finder of fact is the exclusive judge of the weight of the evidence as the fact finder is free to believe all, part, or none of the evidence presented and determines the credibility of the witnesses.

[A] new trial [should be granted] only where the verdict is so contrary to the evidence as to shock one's sense of justice. A verdict is said to be contrary to the evidence such that it shocks one's sense of justice when 'the figure of Justice totters on her pedestal,' or when 'the jury's verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience.'

Commonwealth v. Boyd, 73 A.3d 1269, 1275-76 (Pa. Super. 2013).

The following evidence supports that the cocaine was not possessed with intent to deliver. The cocaine was in one bag. The Defendant had only one phone. The Defendant had bills, which are commonly used to ingest cocaine. A person can develop a tolerance to cocaine. Whether somebody would exhibit signs of cocaine use depends on (1) how long it has been since the use, (2) the person's tolerance to cocaine, (3) the amount of cocaine consumed, (4) the cocaine's purity, and (5) how the cocaine is processed by the person's body. The Court has considered the evidence supporting that the cocaine was not possessed with the intent to deliver, but, given the evidence discussed in Section II. A., the verdict does not shock this Court's sense of justice.

III. Conclusion

The evidence is sufficient for Possession with Intent to Deliver. The verdict is not inconsistent. After considering all of the evidence, the Court finds that the verdict is not contrary to the weight of the evidence.

ORDER

AND NOW, this _____ day of August, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Post-Sentence Motion is hereby DENIED. Pursuant to Pennsylvania Rule of Criminal Procedure 720(B)(4), the Defendant is hereby notified of the following: (a) the right to appeal this Order within thirty (30) days of the date of entry of this Order; (b) the right to assistance of counsel in the preparation of the appeal; (c) if indigent, the right to appeal in forma pauperis and to proceed with assigned counsel as provided in Pennsylvania Rule of Criminal Procedure 122; and (d) the qualified right to bail under Pennsylvania Rule of Criminal Procedure 521(B).

By the Court,

Nancy L. Butts, President Judge