

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 147 – 2014
:
vs. :
:
NAFIS ANTUAN FAISON, :
Defendant : CRIMINAL DIVISION

OPINION IN SUPPORT OF ORDER OF APRIL 22, 2015,¹
IN COMPLIANCE WITH RULE 1925(A) OF
THE RULES OF APPELLATE PROCEDURE

After a jury trial on February 23, 2015, Defendant was convicted of four counts of possession with intent to deliver heroin, four counts of delivery of heroin, four counts of possession of heroin and four counts of criminal use of a communication facility, in connection with drug transactions on four different occasions. He was sentenced on April 22, 2015, to state incarceration of twenty-eight months to eight years. Defendant's post-sentence motion was denied on June 23, 2015. In the instant appeal, Defendant raises two issues: the sufficiency of the evidence and the denial of his motion for mistrial.

Sufficiency of the evidence:

A review of the evidence presented at trial shows that the evidence was sufficient to support the conviction. A confidential informant testified that she arranged by cell phone call to meet with Defendant in order to purchase heroin from him, that she did meet with him on four separate occasions and did purchase heroin from him on those occasions, that she used buy money to make the

¹ Although the Notice of Appeal purports to appeal from the Order of June 23, 2015, which denied Defendant's Post-Sentence Motion, the appeal properly lies from the sentencing Order. See Commonwealth v. Dreeves, 839 A.2d 1122 (Pa. Super. 2003).

purchases and that she turned over the heroin to police after the transactions were completed. A state police trooper testified that he observed Defendant walking near the informant's vehicle, talking on a cell phone, at the time that the informant was waiting in her vehicle to meet with Defendant as had been prearranged. Another trooper testified that he attempted to arrest Defendant near the informant's vehicle after the fourth purchase but that Defendant fled, that he chased Defendant and during the chase found a sweatshirt he had been wearing at the bottom of a fence Defendant had jumped over, that a cell phone was in the pocket of that sweatshirt and that the cell phone number of that phone was the number used by the informant to call Defendant when arranging the transactions. Another trooper testified that he observed Defendant being chased, and that he knew Defendant from a previous identification of him during the investigation. It was stipulated that the substances recovered from the informant after the purchases were in fact heroin. Considering all of this evidence, the jury easily could have found beyond a reasonable doubt that Defendant sold heroin to the informant on the four occasions at issue.

Denial of the motion for mistrial:

Defense counsel made a motion for mistrial based on the fact that the confidential informant's criminal record was provided to him the morning of trial. In his statement of matters complained of on appeal, he argues that such action violated his right to confrontation. The court fails to see how this right was violated, however. Through questioning of the informant, the Commonwealth presented evidence that the informant had pled guilty to theft by deception, forgery and theft by unlawful taking in 2008. On cross-examination, defense

counsel elicited an admission that the charges arose because the informant had stolen money to satisfy a drug addiction to crack cocaine, and that she became an informant while she was on probation related to those offenses. He also elicited an admission that she had been using crack during the period of time the controlled buys were occurring. As Pa.R.E. 608 prohibits the character of a witness for truthfulness from being attacked by cross-examination concerning specific instances of the witness' conduct,² the court could not see how having the information sooner would have made a difference to the defense strategy, and in the instant appeal Defendant has provided nothing to enlighten the court in that regard. The motion for mistrial was denied as no prejudice to the Defendant was apparent.

Dated: _____

Respectfully submitted,

Dudley N. Anderson, Judge

cc: District Attorney
PD
Gary Weber, Esq.
Hon. Dudley N. Anderson

² Pa.R.E. 608(b)(1).