

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-825-2013
v.	:	
	:	
TERRANCE TERRELL HOPSON,	:	CRIMINAL DIVISION
Defendant	:	

OPINION AND ORDER

The Defendant filed a Post-Sentence Motion on October 31, 2014. A hearing on the motion was held on December 5, 2014.

I. Background

On May 2, 2013, the mother of the Defendant's girlfriend called the Pennsylvania State Police (PSP) barracks in Milton. The mother told police that the Defendant was smoking marijuana with her daughter and selling narcotics in West Milton, Pennsylvania. The barracks in Milton contacted PSP Trooper John Whipple (Whipple). Whipple talked with the mother, who said that her daughter and the Defendant had borrowed the mother's car, which was a black Buick Rendezvous. The mother said that her daughter and the Defendant had gone to Williamsport, Pennsylvania to purchase drugs to sell in Milton. She told Whipple that her daughter and the Defendant were returning to West Milton around 5:30 P.M. or 6:00 P.M. The mother gave Whipple addresses in Williamsport where she thought her daughter and the Defendant might be. Whipple went to those addresses but did not find the black Rendezvous.

Whipple then parked beside State Route 15 to look for the black Rendezvous. Whipple saw a black Rendezvous travelling south on Route 15. Whipple testified that a young woman was driving the vehicle and the Defendant was in the front passenger seat. Whipple followed the vehicle to daughter's address in West Milton. PSP Trooper Mitchell McMunn (McMunn) and

Trooper Samuel Fishel (Fishel) were already at the address when the Rendezvous and Whipple arrived.

McMunn approached the passenger side of the Rendezvous. As he approached, he observed the Defendant grabbing a black duffle bag. When the Defendant began to exit the Rendezvous, McMunn noticed a strong odor of marijuana emanating from the vehicle. McMunn testified that the Defendant appeared very nervous and was fidgeting. McMunn asked the Defendant whether there was anything in the duffle bag. The Defendant said there was nothing in the bag and told McMunn that he could search it. The Defendant went to open the bag, but McMunn told the Defendant not to open it. McMunn then asked if he could search the bag and the Defendant said he could not.

McMunn then decided to detain the Defendant because of the odor of marijuana. McMunn testified that the Defendant was giving non-verbal indicators that he wanted to flee. Fishel told the Defendant to get up against the car. Fishel put handcuffs on one hand of the Defendant, but as he tried to put the cuffs on the other hand, the Defendant threw an elbow and “began to fight with” the troopers. Fishel and McMunn wrestled the Defendant to the ground. The Defendant attempted to keep his arms under him, but after 30 seconds, the troopers were able to place the Defendant in handcuffs. McMunn testified that once the Defendant was in handcuffs, the Defendant did not have access to his front pockets.

After placing the Defendant in handcuffs, McMunn searched the Defendant. McMunn found a sandwich bag in the Defendant’s left front pants pocket. The bag contained marijuana. McMunn found a wallet, loose currency, and a cigarette box in the Defendant’s right front pants pocket. A glass device for smoking marijuana was found in the cigarette box. During trial, McMunn testified that he did not remember whether he told the Defendant what he found. The

Defendant was placed in the back of a patrol car and transported to a location where the Lycoming County Adult Probation Office (APO) could take custody of him.

Lycoming County Probation Officer Bryan Bower (Bower) testified that when he arrived to take custody of the Defendant, the Defendant was handcuffed in the back of a PSP patrol car. Bower placed his handcuffs on the Defendant and then removed the PSP handcuffs. Bower did not search the Defendant because he presumed he was already searched by PSP. Bower did not ask the Defendant whether he had drugs in his possession.

Lycoming County Corrections Officer Michael Swain (Swain) testified that he was the intake officer at the Lycoming County Prison on May 2, 2013. He testified that as an intake officer, he “take[s] new commitments from the arresting agency as they come in the back door, verif[ies] confinement orders, search[es] the inmate, process[es] them, everything up to the point where they go to medical and then assign[s] them a bed to go upstairs.” Swain testified that the Defendant was in handcuffs when APO brought him to the prison. Immediately after the handcuffs were removed, the Defendant placed his hands on the wall. Swain conducted a pat-down of the Defendant. During the pat-down, Swain felt a little bulge in the front right watch pocket of the Defendant’s pants. Swain found a clear plastic bag in the watch pocket. The bag contained marijuana.

Whipple testified that he received all of the evidence. The bag found by McMunn had 20 grams of marijuana in it. The bag found by Swain was one inch by one inch, smaller than the bag found by McMunn. Whipple testified that he believe the marijuana found by Swain was for resale because it was in a separate and smaller bag. The duffle bag contained a clear plastic bag. This bag contained smaller clear plastic bags. Half of the smaller bags were one inch by one inch. The other half was one inch by 1.5 inches.

During the preliminary arraignment, the Defendant commented that the marijuana found at the Lycoming County Prison was “from the same stuff.” Whipple believed this comment showed that Hopson believed the small bag of marijuana in the watch pocket “was just an extension or from the big bag of weed that Trooper McMunn found in his left pocket.”

On March 13, 2014, after a non-jury trial, this Court found the Defendant guilty of Contraband – Controlled Substances,¹ Possession of Controlled Substance Contraband by Inmate Prohibited,² Possession of Marijuana,³ and Possession of a Small Amount of Marijuana.⁴ Sentencing was originally scheduled for June 26, 2014. On June 10, 2014, the Defendant filed a Motion for Arrest of Judgment / New Trial. This Court denied the motion on June 23, 2014. On June 26, 2014, this Court ordered that the Defendant be transported to the State Correctional Institution at Camp Hill to be evaluated for 60 days. On October 21, 2014, the Defendant was sentenced on the Contraband – Controlled Substances offense to four years in the Lycoming County Intermediate Punishment program. This Court ordered that the first two years be served in county prison. The Court found that the other offenses merged with Contraband – Controlled Substances for sentencing purposes. On December 5, 2014, after it appeared to this Court that it imposed an illegal sentence, the Court resentenced the Defendant on the Contraband – Controlled Substances offense to incarceration in a state correctional institution for a minimum of two years and a maximum of four years. The Court again found that the other offenses merged with Contraband – Controlled Substances for sentencing purposes.

In his motion, the Defendant argues that the evidence was insufficient to sustain a verdict of guilty. Specifically, the Defendant argues that the Commonwealth failed to present sufficient

¹ 18 Pa. C.S. § 5123(a).

² 18 Pa. C.S. § 5123(a.2).

³ 35 P.S. § 780-113(a)(16).

⁴ 35 P.S. § 780-113(a)(31)(i).

evidence that he knowingly possessed marijuana when he was being processed through intake at the county prison. The Defendant argues that he did not know that he possessed the marijuana because McMunn did not tell him what was found during the search in West Milton. The Defendant asks for a judgment of acquittal or, alternatively, an arrest of judgment.

II. Discussion

“A motion for judgment of acquittal challenges the sufficiency of the evidence to sustain a conviction on a particular charge, and is granted only in cases in which the Commonwealth has failed to carry its burden regarding that charge.” Commonwealth v. Emanuel, 86 A.3d 892, 894 (Pa. Super. 2014).

“The standard we apply in 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. Hutchinson, 947 A.2d 800, 805-06 (Pa. Super. 2008) (quoting Commonwealth v. Andrulewicz, 911 A.2d 162, 165 (Pa. Super. 2006)).

The evidence was sufficient to prove that the Defendant knowingly possessed the marijuana found by Swain. The marijuana was found in a pocket of the pants that the Defendant was wearing. The Defendant was present during McMunn's search. The Defendant was able to see and feel what McMunn removed from his pockets. Therefore, the Commonwealth presented sufficient evidence that the Defendant knowingly possessed the marijuana found by Swain.

III. Conclusion

The Commonwealth presented sufficient evidence that the Defendant knowingly possessed the marijuana because the marijuana was found in a pocket of the pants that the Defendant was wearing.

ORDER

AND NOW, this _____ day of February, 2015, based upon the foregoing Opinion, it is ORDERED and DIRECTED that the Defendant's Post-Sentence Motion is hereby DENIED.

By the Court,

Nancy L. Butts, President Judge