

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	NO. CR – 823 – 2014
	:	
vs.	:	CRIMINAL DIVISION
	:	
DARIUS WALKER,	:	
Defendant	:	Post-Sentence Motion

OPINION AND ORDER

Before the Court is Defendant's Post Sentence Motion, filed November 6, 2014. Argument was heard December 11, 2014, at which time the court directed the preparation of a transcript of the trial held on October 30, 2014. That transcript was completed January 13, 2015, and the matter is now ripe for decision.

After a jury trial on October 30, 2014, Defendant was convicted of possession with intent to deliver heroin, possession of drug paraphernalia, corruption of minors, and two counts of criminal use of a communications facility. On October 31, 2014, Defendant was sentenced to three to seven years incarceration. In the instant Post Sentence Motion, Defendant contends the evidence was insufficient to support the verdict and that the court erred in admitting evidence of phone conversations between Defendant and other individuals recorded at the county prison.

The charges of possession with intent to deliver heroin, possession of drug paraphernalia and corruption of minors were based on events alleged to have occurred on March 24 and 25, 2014. According to the testimony of one Brandon Love, he had been asked (and paid) by Defendant to drive him to Philadelphia, he

did drive Defendant and three others to Philadelphia, he dropped Defendant and one Aaron Pinkney (the minor who was the subject of the corruption charge) off at a house in Philadelphia, they went into the house carrying a black duffle bag which Defendant had placed in the trunk of the car prior to leaving Williamsport, after 15 to 20 minutes they returned to the car and Defendant was carrying a plastic bag which he placed in the trunk, and on the way back to Williamsport they were stopped for speeding. Aaron Pinkney testified that he is age 16, he and Defendant had taken a gun to “some dude” in Philadelphia to exchange for some heroin, the gun was in a duffle bag in the trunk on the way to Philadelphia, Defendant handed the heroin to him to hold on the way back, he fell asleep on the way back and woke up when they were pulled over, and the police found 30 bundles of heroin in his pocket when they were stopped. Mr. Pinkney testified that he was arrested at the stop but Defendant was not. He also testified that he planned to help Defendant sell the heroin, but it had been Defendant’s idea and he was doing it to help him out. The Commonwealth also introduced the testimony of one Melissa Hill, who testified that she is Aaron Pinkney’s mother, Defendant came to her house the day after the arrest and told her that they had gone to Philadelphia “to go cop”, he had traded a gun for the drugs, he had taken Aaron to meet the man in Philadelphia because Aaron was to take over his drug dealing business “while he was locked up”, and he said “I had to put ‘em on him because he’s only 16 and I’ll get more time than what he’ll get.” N.T., October 30, 2014, at p. 82.

Officer Bachman was called to testify that he had extracted the contents of Defendant’s cell phone and referred certain portions to Officer Hockman. Officer Hockman was called to testify to the details of the vehicle stop (which occurred in

the early morning hours of March 25, 2014), the discovery on Mr. Pinkney of the heroin, the seizure from Defendant of two cell phones, and the content of certain text messages extracted from Defendant's cell phone. As evidence of possession, the following text messages were introduced:

Walker to Lady: Wassup?
Lady to Walker: Chillen eating ice cream hbu?
Walker to Lady: Just got to philly and thought of you. Lol.
Lady to Walker: Aww lol how come? && Why u there?
Walker to Lady: Because this where we originally came to before
we came to see you. And I had to grab
something.
Walker to Lady: Lol. Im just tryina make some money. ya mean?

Commonwealth Exhibit No. 24. The messages indicate they would have been sent and received on March 24, 2014, between 8:18 p.m. and 8:26 p.m., about five hours prior to the stop. Officer Hockman also testified that in the trunk of the car officers had found a black plastic bag with repackaging materials in it, specifically a rubber stamp, rubber bands, wax wrappers, and small glassine bags. The items were explained by a final witness, Alberto Diaz, a detective with the District Attorney's office, who was qualified as a narcotics expert, to constitute drug paraphernalia and also evidence that the heroin was possessed with intent to deliver rather than for merely personal use. Detective Diaz also explained that "grab" (as in "I had to grab something") means "to get the product". N.T., October 30, 2014, at p. 181. Finally, the Commonwealth introduced a stipulation that the substance contained in the packages was heroin.

The court believes the evidence was nearly overwhelming that Defendant possessed the heroin and paraphernalia,¹ and that he corrupted the morals of a minor, Aaron Pinkney, by having him hold the drugs in the vehicle. Defendant's contention that it was insufficient to support the jury's verdict is thus without merit. And, to the extent Defendant argues that Aaron Pinkney's morals were already corrupted because the evidence showed he had smoked marijuana prior to leaving Philadelphia, without addressing that particular issue, the court simply notes that the statute is in the alternative- corruption of morals of a minor is established by proof that a defendant *either* committed any act which corrupts or tends to corrupt the morals of any minor *or* aided, abetted, enticed or encouraged a minor in the commission of any crime. Clearly, the latter was established here.

The charges of criminal use of a communications facility were based on text messages sent and received by Defendant on March 23, 2014. Commonwealth Exhibit 25 evidences messages sent and received from 9:39 p.m. through 9:50 p.m., as follows:

Jena to Walker:	Hey
Walker to Jena:	Whats up?
Jena to Walker:	Nm you?
Jena to Walker:	Can you meet Hun?
Walker to Jena:	Where at? And how many?
Jena to Walker:	I can come wherever and 3 please.
Jena to Walker:	?
Walker to Jena:	Who u with?
Jena to Walker:	Uh myself lol
Jena to Walker:	I'm grabbin for my roommate and she's gonna give me one then.
Walker to Jena:	Come to memorial and oliver
Jena to Walker:	Alright I'll call you when I get down there Hun.

¹ Defendant did not contest that the heroin was possessed by someone *with intent to deliver*, only that he himself did not possess it.

Commonwealth Exhibit 26 evidences messages sent and received from 3:09 p.m. through 7:55 p.m., as follows:

Nye to Walker: Would you be able to helped out til tomorrow. I'm getting 300 but not til alittle after 5 but I would need more then anyway. If you can help me I'll get 2 buns² off you. And of course pay you back. If not I'll see if I can get someone else... I was suppose to get it today. But Allen won't be done driving til 11 and everything is closed by then.

Nye to Walker: He's going to send it tomorrow he's on the road in Texas lol

Nye to Walker: by the time he gets where he's going western union is closed.

Nye to Walker: I wanted you to help me out til tomorrow when he can send money then I'll call you to give you your money and get 2 buns off you

Nye to Walker: I'm not going to do you dirty first of all your family and second you know where I live and I deal with you. Just like 3-4 just enough to get by

Nye to Walker: I can let you hold something if you want but I would never do anything like that to you or anyone else

Nye to Walker: No my friend left already

Nye to Walker: I'll let you hold the xbox 360 Dalton isn't going to let me hold his PS 3 Not that on going to do anything but it's worth way more then 30-40\$ but you'll get your money I don't need my kids flipping out on me pry husband beating my ass lol. I'm good on all that.

Nye to Walker: Are you going to come up cuz

Nye to Walker: Thank you love I really have tried everyone I could without asking ones that would need to

² Detective Diaz testified that "buns" means "bundles". N.T., October 30, 2014, at p. 170.

know why and all the 1000 ?s they have to ask.
 All to say no anywau
 Nye to Walker: When are you coming
 Nye to Walker: I hope you can soon on in so much pain
 Nye to Walker: Are you coming
 Walker to Nye: My ride just got off. Waiting for them.
 Nye to Walker: oh ok so like hr? Hopefully sooner but
 Walker to Nye: Yea.
 Nye to Walker: Thank you baby..
 Nye to Walker: Did they get there in sorry it's just been sense you
 came up last and I feel so bad I don't want to be a
 pain. But omg I'm in so much pain
 Walker to Nye: Waiting on her.
 Nye to Walker: Holy shit, if you cant so it please tell me so I can
 try someone else before its to late.on not going to
 get through tonight. I'm tired of throwing up and
 all this shit.
 Walker to Nye: U can call someone. Im waiting on my ride.
 Nye to Walker: I want to deal with you. I'm just saying if you
 don't think she going to come.
 Nye to Walker: Will you meet my boyfriend
 Walker to Nye: Whose your boyfriend?
 Nye to Walker: Greg... He was with me before...
 Nye to Walker: He is on his way and he has a hugh blk truck
 Walker to Nye: Yea.
 Nye to Walker: He's at anns where are you
 Walker to Nye: By choice.
 Walker to Nye: Ok.
 Nye to Walker: its nice not shitty
 Walker to Nye: Ok.
 Nye to Walker: As soon as he gets there he's going to call me and
 I'll let you know. For you doing this for me I'll
 even throw you some extra money. Because this
 was really nice of you.
 Walker to Nye: Ok.
 Nye to Walker: I'll give you a extra 20

Walker to Nye: Aite.³
 Nye to Walker: When you get on the Blvd let me know
 Walker to Nye: Aite.
 Nye to Walker: I'll tell him your there
 Nye to Walker: If he says anything just say he lived further away
 and was going to meet because of gas
 Walker to Nye: Aite.
 Walker to Nye: What?
 Nye to Walker: Oops was talking to someone else
 Nye to Walker: I didn't know your shit ass open nothing he's on
 his way to choice
 Walker to Nye: What?
 Nye to Walker: My boyfriend is on his way to choice don't pay
 the other shit no,mind.
 Nye to Walker: What are you in
 Nye to Walker: He will be pulling in anyone he has to get gas
 anyway.

These conversations clearly evidence two people requesting drugs from Defendant and Defendant making arrangements to provide such. Defendant's contention that the charges are not supported by the evidence is thus without merit.

Finally, Defendant contends the court erred in permitting the Commonwealth to introduce into evidence the content of two telephone conversations Defendant had while in the county prison. In the first conversation, a transcript of which is contained in Commonwealth Exhibit 21, Defendant and another individual discuss a list of names which is apparently being read from Defendant's cell phone by the other individual. Defendant advises the individual regarding the role each of the names has in his business. For example, Aaron "runs money in" and E "grabs the breezy". Exhibit 21, p. 6. Jena "owe me 50"

³ Officer Hockman testified that "aite" means "all right". N.T., October 30, 2014, at p. 140.

and Rick will “grab”. *Id.*, p. 7. In the second conversation, also contained in Exhibit 21, Defendant tells the other individual that Dot is not “doing it right”, p. 8, and that he wants him to tell Dot to text everyone in the phone and pretend to be him (Defendant) and tell them “yo, this Neph, I’m back out, if you need anything.” P. 10. These conversations are clearly evidence that Defendant had been selling drugs prior to his incarceration and thus evidence that he did possess the heroin and paraphernalia found in the car and on Aaron Pinkey’s person on March 25, 2014. Even were the court to find that the conversations are more prejudicial than probative, however, their admission into evidence is harmless error in light of the text messages which themselves proved that Defendant was involved in drug dealing.⁴

As none of Defendant’s arguments has merit, the court enters the following:

ORDER

AND NOW, this day of January 2015, for the foregoing reasons, Defendant’s Post-Sentence Motion is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA
 PD
 Gary Weber, Esq.
 Hon. Dudley Anderson

⁴ The text messages were admitted without objection.