

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1107 – 2014  
:   
vs. :   
:   
DWAYNE ORLANDO MAYS, :   
Defendant : CRIMINAL DIVISION

OPINION IN SUPPORT OF ORDER OF APRIL 25, 2016  
IN COMPLIANCE WITH RULE 1925(A) OF  
THE RULES OF APPELLATE PROCEDURE

After a non-jury trial on February 29, 2016, Defendant was convicted of two counts of possession with intent to deliver heroin, two counts of possession of heroin and two counts of criminal use of a communication facility, in connection with drug transactions on two different occasions. He was sentenced on April 25, 2016, to state incarceration of two to seven years. In the instant appeal, Defendant raises two issues: the sufficiency of the evidence and the denial of his pre-trial motion to dismiss.

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 he arranged by cell phone call to meet with Defendant in order to purchase heroin from him, that he did meet with him on two separate occasions and did purchase heroin from him on those occasions, that he used buy money to make the purchases and that he turned over the heroin to police after the transactions were completed. The informant testified that he was familiar with Defendant as they had a business history (prior purchases). A state police trooper testified that he observed Defendant walking into the building where the informant had arranged

to meet Defendant, shortly before the informant entered the building and then returned with the heroin. Another trooper testified that he also observed Defendant entering the building. Finally, it was stipulated that the substances recovered from the informant after the purchases were in fact heroin. All of this evidence supports a finding beyond a reasonable doubt that Defendant possessed heroin with intent to deliver it and used a communications facility to commit a violation of the Controlled Substance Act, sufficient to support the convictions.

Denial of the motion to dismiss:

Defendant moved to dismiss the charges under 18 Pa.C.S. Sections 109 and 110 because the instant charges relate to drug sales on March 13 and April 2, 2013, but he was subsequently charged in a different Information with drug sales alleged to have occurred between May 1, 2012 and July 2013, which period encompasses the dates of the instant charges. The motion was heard by the Honorable Marc F. Lovecchio and an Order denying that motion was entered by Judge Lovecchio on December 24, 2015. In response to the instant appeal, Judge Lovecchio was consulted and indicates that he wishes to rely on the Opinion entered in support of that Order.

Dated: July 22, 2016

Respectfully submitted,

Dudley N. Anderson, Judge

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Hon. Dudley N. Anderson