

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0002154-2017
vs. :
 : CRIMINAL DIVISION
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 :
 :
 : 1925(a) Opinion

**OPINION IN SUPPORT OF ORDER IN
COMPLIANCE WITH RULE 1925(a) OF
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this court's judgment of sentence dated November 20, 2018 and docketed on December 3, 2018. The relevant facts follow.

Following a nonjury trial on September 4, 2018, Appellant David Lopez (hereinafter "Lopez") was convicted of Count 1, delivery of a controlled substance (less than one gram of fentanyl), an ungraded felony; Count 2, possession with intent to deliver a controlled substance (less than one gram of fentanyl), an ungraded felony; and Count 3, criminal use of a communication facility, a felony of the third degree.

On November 20, 2018, following a sentencing hearing, the court sentenced Lopez to two to five years' incarceration on Count 1 and a consecutive one to two years' incarceration on Count 3 for an aggregate term of state incarceration of three to seven years. Possession with intent to deliver merged with the delivery for sentencing purposes.

Lopez did not file any post-sentence motions, but filed an appeal on December 6, 2018. The court directed Lopez to file a concise statement of errors complained of on appeal. In his concise statement, Lopez "appeals his sentence" based on the following:

(1) sufficiency of evidence; (2) lack of photographic evidence; (3) lack of DNA evidence; (4) bias by the court; and (5) never being advised of plea offer before trial. No other specifics were provided. Defense counsel noted in the statement that the issues raised were the ones that Lopez wished to raise on appeal but that defense counsel was likely to file an Anders brief.

Pursuant to Pa. R.A.P. 1925(a), the sentencing judge, as in this case, must at least write a brief opinion of the reasons for the order or for the ruling or other errors complained of or shall specify in writing the place in the record where such reasons may be found.

Prior to doing so, however, the appellant may be directed to file of record in the trial court and serve on the judge a concise statement of the errors complained of on appeal. Pa. R.A.P. 1925(b). The statement shall concisely identify each ruling or error that the appellant intends to challenge with sufficient detail to identify all issues for the judge. Pa. R.A.P. (b)(4)(ii). Issues not raised in accordance with Rule 1925(b)(4) are deemed waived. Pa. R.A.P. 1925(b)(4)(vii).

This court is unable to address the issues presented by Lopez because the statement is entirely too vague. Except for the sufficiency of evidence claim, the court is left guessing as to what error, if any, Lopez complains of. The lack of photographic evidence and the lack of DNA evidence claims appear to relate to the sufficiency of evidence and not an error by the court, but this is speculation. The bias by the court claim is without any specifics whatsoever. The “never being advised of plea offer before trial” at this stage is nonsensical. The court would certainly not be involved in plea negotiations and would have no responsibility to advise a defendant of any plea. Again, the court is left guessing. Is

Lopez raising a PCRA claim or an alleged error against the court?

A Rule 1925(b) statement must be specific enough for the trial court to identify and address the issues an appellant wishes to raise on appeal. *Commonwealth v. Reeves*, 907 A.2d 1, 2 (Pa. Super. 2006), *appeal denied*, 919 A.2d 956 (Pa. 2007). A concise statement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent of no concise statement at all. *Id.* The court's review and legal analysis can be fatally impaired when the court has to guess at the issues raised. *Id.* Thus, if a concise statement is too vague, the court may find waiver. *Id.*; see also *Commonwealth v. Hansley*, 24 A.3d 410, 415 (Pa. Super. 2011), *appeal denied*, 32 A.3d 1275 (Pa. 2011).

The sufficiency of evidence claim on its face appears to be somewhat less boilerplate but it too lacks any specifics sufficient enough for this court to address the claim in any meaningful manner.

A claim challenging the sufficiency of the evidence is a question of law. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused beyond a reasonable doubt. *Commonwealth v. Karkaria*, 533 Pa. 412, 625 A.2d 1167, 1170 (1993). When reviewing a sufficiency claim, the court is required to view the evidence in the light most favorable to the Commonwealth as verdict winner, giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. *Commonwealth v. Watley*, 81 A.3d 108 113 (Pa. Super. 2013).

Where the evidence to support the verdict is in contradiction to the physical facts or in contravention to human experience and the laws of nature, the evidence is insufficient as a matter of law. *Commonwealth v. Widmer*, 560 Pa. 308, 744 A.D 745, 751

(2000).

Lopez was convicted of three separate charges. Each of those charges have different elements. Lopez has not identified which elements or any elements to which he claims there was insufficient evidence.

Contrary to Lopez's general claim, however, at a nonjury trial this court concluded beyond a reasonable doubt that on September 19, 2017 he delivered 14 bags of fentanyl to a confidential informant. As the court additionally noted during the sentencing hearing, it was convinced beyond a reasonable doubt based upon the circumstantial and direct evidence that the transaction occurred and was set up by the use of a telephone.

The incident occurred on or about September 19, 2017. Members of the Lycoming County Narcotics Enforcement Unit, many of who testified, utilized a confidential informant. The confidential informant testified that he contacted Lopez to arrange for the purchase of heroin. He identified Lopez as opening the door to the residence and inviting him in. The residence was 220 Lincoln Street in Williamsport, Lycoming County. The confidential informant provided Lopez with \$100 in pre-recorded funds in exchange for 14 bags of purported heroin. Following the transaction, the confidential informant returned to law enforcement and turned over the bags of purported heroin. The confidential informant eventually identified Lopez through a photograph taken from a law enforcement officer. Other photographs of the surveillance were also presented at trial and viewed by the court.¹

Finally, the court notes that the law does not require corroboration via photographs, DNA evidence or any other documentary or physical evidence. In fact, there is

¹ The court is unable to provide citations to where in the record these facts can be found, because no one requested a transcript of the nonjury trial in this case.

no particular type or class of evidence that, alone, is per se insufficient as a matter of law.

See Commonwealth v. Brown, 617 Pa. 107, 52 A.3d 1139, 1165 (2012).

DATE: _____

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Dance Drier, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)
Superior Court (original & 1)