

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-640-2016
:
:
DOMINIC McLaurin :
Appellant : Post-Sentence Motion

OPINION AND ORDER

Following a non-jury trial on February 8, 2019, Defendant was found guilty of Count 1, possession with intent to deliver .49 grams of heroin, an ungraded felony; Count 2, possession within intent to deliver .32 grams of cocaine, an ungraded felony; Count 3, possession of a controlled substance, heroin, an ungraded misdemeanor; Count 4, possession of a controlled substance, cocaine, an ungraded misdemeanor; Count 5, possession of drug paraphernalia, an ungraded misdemeanor; and Count 6, driving without a license, a traffic summary.

Defendant was sentenced on April 4, 2019 to an aggregate period of state incarceration, the minimum of which was 2 ½ years and the maximum of which was 5 years. More specifically, on Count 1, Defendant was sentenced to 2 ½ to 5 years, on Count 2, Defendant was sentenced to 2 ½ to 5 years to run concurrent, Counts 3 and 4 merged with Counts 1 and 2 for sentencing purposes and on Count 5 Defendant was sentenced to guilt without further penalty. Defendant was sentenced to pay a fine in the amount of \$25.00 on Count 6.

On April 15, 2019, Defendant filed a post-sentence motion alleging that he was entitled to a new trial because the evidence was insufficient to prove that he possessed the controlled substances with the intent to deliver them. Argument on Defendant's motion

was held before the court on May 3, 2019. Defendant orally amended his post-sentence motion to allege that the evidence was insufficient to find him guilty of any of the offenses arguing that the element of possession which was required for Counts 1, 2, 3, 4 and 5 was not sufficiently established and the element of intent was not sufficiently established with respect to Counts 1 and 2.

In reviewing the sufficiency of the evidence, [the court] must determine whether the evidence admitted at trial and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, were sufficient to prove every element of the offense beyond a reasonable doubt. “[T]he facts and circumstances established by the Commonwealth need not preclude every possibility of innocence.” It is within the province of the fact-finder to determine the weight to be accorded to each witness's testimony and to believe all, part, or none of the evidence. The Commonwealth may sustain its burden of proving every element of the crime by means of wholly circumstantial evidence.

Commonwealth v. Russell, 2019 PA Super 143 at 8, 2019 WL 1967823 at *4 (May 3, 2019)(citations omitted).

Counts 1, 2, 3, 4 and 5 all required the Commonwealth to prove possession. 35 P.S. § 780-113 (a) (16), (30) and (32).

The Commonwealth may meet its burden of proving a possessory crime by showing actual possession, constructive possession, or joint constructive possession. “Constructive possession” is “the ability to exercise a conscious dominion over” the contraband. It usually comes into play when police find contraband somewhere other than on the defendant's person. Constructive possession requires proof that the defendant had knowledge of the existence and location of the item. The Commonwealth may prove such knowledge circumstantially. That is, it may prove that the defendant had knowledge of the existence and location of the items at issue “from examination of the totality of the circumstances surrounding the case,” such as whether the contraband was located in an area “usually accessible only to the defendant.”

Commonwealth v. Hall, 199 A.3d 954, 960-961 (Pa. Super. 2018)(citations omitted).

The evidence in this case when taken in a light most favorable to the Commonwealth is sufficient to prove that Defendant constructively possessed the heroin, cocaine and paraphernalia.

On February 3, 2016, at approximately 12:35 in the morning, Troopers Edward Dammer and Tyson Havens of the Pennsylvania State Police, Troop F in Montoursville, were on duty and pulled into the Uni-Mart parking lot at Sixth and High Streets in the City of Williamsport. The testimony from the troopers as well as the video recording from the Uni-Mart verify that when the troopers pulled into the parking lot, a black sedan was at the gas pumps. Once the troopers pulled near to the black sedan, Defendant exited walking behind the patrol vehicle as well as the sedan. Defendant walked close to his vehicle, then in front of it, then toward the store. From the video, it appeared that as Defendant was walking close to the side and front of his vehicle his one arm and shoulder dipped as if he was dropping something.

As Defendant was walking toward the store, despite being told to stop previously, he did not comply until confronted by Trooper Havens at which time he was escorted back to the vehicle where he was confronted by Trooper Dammer. While Trooper Dammer was speaking with Defendant, Trooper Havens retraced Defendant's path from the vehicle, around it and toward the store and found a cigarette pack underneath the front of the vehicle exactly where Defendant was seen dipping his shoulder and arm. Trooper Havens opened the pack, immediately noticed that it most likely contained controlled substances and showed the contents to Defendant, who immediately fled on foot.

The cigarette pack was found to contain 16 bags of heroin in a bundle of 10 and a bundle of six, as well as two small red plastic Ziploc bags containing crack cocaine.

The Uni-Mart video also showed the area of the Uni-Mart prior to Defendant pulling in. One could see that prior to Defendant pulling in, there were no cigarette packs lying in the parking lot. One could also verify that no pedestrians had walked in the area either before Defendant pulled in, while Defendant was walking around his vehicle, when Defendant was returned to the vehicle or after Defendant was confronted with the cigarette pack and then fled.

Although Defendant's mere presence at the scene, standing alone, is insufficient to prove guilt, the factfinder does not have to ignore the defendant's presence. *Commonwealth v. Vargas*, 108 A.3d 858, 869 (Pa. Super. 2014). "Indeed, presence at a scene where drugs [are found] is a material and probative factor which the [factfinder] may consider." *Id.* (citation omitted). All of the evidence, taken together, clearly links Defendant to the specific, if not exact, area where the illegal items were found and was sufficient circumstantial evidence of his possession of them.

Moreover, the court concluded that Defendant's flight was consciousness of guilt. Prior to Defendant arriving at the Uni-Mart, there was no cigarette pack. Defendant was seen exiting his car, walking around it and engaging in conduct which was consistent with him dropping something. His refusal to adhere to the police directives to stop showed that he was avoiding them in order to hide something. Once he returned to the vehicle, he was confronted with the items which were found directly where he was walking and where it appeared he was dropping something. He then fled. No other individuals were even remotely near where the cigarette pack was found.

Defendant also challenges the element of intent, maintaining that the Commonwealth failed to prove he intended to deliver the drugs found in the cigarette pack.

The evidence established that there were 16 bags of heroin found in two separate bundles—one bundle of 10 and one bundle of six. These were contained in a cigarette pack wrapper bound with a rubber band. Furthermore, there were two small red plastic Ziploc bags which contained crack cocaine. When Defendant first was confronted by Trooper Dammer, he was found to have several hundred dollars in his pocket and a cell phone. No items for ingesting of either heroin or crack cocaine, such as a needle, a kit, a straw, a rolled up bill, a mirror or something similar were found on Defendant or in his vehicle. Defendant ran when he was confronted with the items. When he was arrested and admitted to the Lycoming County Prison approximately one month later, he specifically denied any past street drug use. Over the next few days, he showed no symptoms whatsoever of opiate withdraw.

The Commonwealth presented expert testimony from Trooper Havens that explained how the facts and circumstances as set forth above supported his opinion that Defendant possessed the items with the intent to deliver them.

The intent to deliver may be inferred from possession of a large quantity of controlled substances. *Commonwealth v. Brockman*, 167 A.3d 29, 39 (Pa. Super. 2017)(citing *Commonwealth v. Lee*, 956 A.2d 1024, 1028 (Pa. Super. 2008)). Furthermore, in considering whether a defendant intended to deliver controlled substances, the factfinder may consider the manner in which the controlled substances were packaged, the behavior of the defendant, the presence of drug paraphernalia and the sums of cash found in possession of the defendant. *Commonwealth v. Ratsamy*, 934 A.2d 1233, 1237-38 (Pa. 2007). The final factor to be considered is expert testimony. Expert opinion testimony is admissible concerning whether the facts surrounding the possession of controlled substances are

consistent with an intent to deliver rather than with an intent to possess it for personal use. *Id.* at 1238.

Contrary to Defendant's argument, the evidence when considered in its totality and in a light most favorable to the Commonwealth, clearly was sufficient to establish that Defendant intended to deliver the controlled substances he possessed.

ORDER

AND NOW, this 14th day of June 2019, following a hearing and argument, Defendant's Post-Sentence Motion filed on April 15, 2019 is **DENIED**.

By The Court,

Marc F. Lovecchio, Judge

cc: Nicole Ippolito, Esquire (ADA)
Matthew Welickovitch, Esquire (APD)
Work file
Gary Weber, Esquire (Lycoming Reporter)