

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CP-41-CR-0000876-2017  
vs. :  
: CRIMINAL DIVISION  
: JOHN COBB,  
: Appellant : 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 the court’s judgment of sentence dated October 8, 2019 and docketed October 18, 2019.

By way of background, on or about March 29, 2017, the police filed a criminal complaint against Appellant charging him with possession of a controlled substance and possession of drug paraphernalia. Various members of the Lycoming County Public Defender’s Office represented Appellant until April 29, 2019; thereafter Appellant represented himself.

Following a trial held on June 19, 2019, the jury convicted Appellant of both charges. On October 8, 2019, the court sentenced Appellant to six months to one year of incarceration in the Lycoming County Prison for possession of a controlled substance (cocaine). The court imposed guilt without further punishment for possession of drug paraphernalia.

Appellant submitted a “Petition For Allowance of Appeal” to the court. The court, however, could not decipher what, if anything, Appellant was requesting or asserting.

The court indicated that it would take no action on the filing but the ruling was without prejudice to Appellant filing an amended document.

Appellant filed the same “Petition for Allowance of Appeal” with the clerk of courts. The court still could not decipher what issues Appellant was asserting. The court issued an order directing Appellant to file a concise statement of errors on appeal. The court specifically notified Appellant that any issue not included in a timely statement “shall be deemed waived.” Appellant never filed a concise statement. Therefore, Appellant has not preserved any issues for appeal.

Nevertheless, the court will endeavor to address the sufficiency of the evidence and the Commonwealth’s use of the lab report in lieu of expert testimony with respect to the cocaine.

When evaluating a sufficiency of the evidence claim, the court must view the evidence and all reasonable inferences therefrom in the light most favorable to the verdict winner, which was the Commonwealth in this case. *Commonwealth v. Thomas*, 215 A.3d 36, 40 (Pa. 2019)(“In conducting our review, we view the evidence in the light most favorable to the Commonwealth as the verdict winner in order to determine whether the jury could have found every element of the crime beyond a reasonable doubt.”); *Commonwealth v. Gomez*, 224 A.3d 1095, 10099 (Pa Super. 2019)(“[A] reviewing court views all the evidence and reasonable inferences therefrom in the light most favorable to the Commonwealth.”).

On March 1, 2017, Constable Hugh Umpstead and Constable William Welteroth went to Appellant’s residence to serve a warrant on him for failure to appear at a court hearing. Constable Welteroth went to the front door and Constable Umpstead went to the back door. Constable Umpstead encountered Appellant as he was walking near the rear

of the residence trying to depart. Constable Umpstead took Appellant into custody and searched him incident to arrest. During the search, Constable Umpstead discovered a knotted sandwich baggie containing a chunky, crystal-type substance inside a cigarette box in Appellant's pants pocket.

Constable Umpstead believed that the crystal-type substance was illegal drugs. Constable Umpstead called the Williamsport police. Officer Laura Miller Kitko responded. Constable Umpstead gave the substance to Officer Kitko, who field-tested it. The substance tested positive for cocaine.

Officer Kitko placed the substance in an evidence envelope. Officer Joseph Ananea transported the substance to the Pennsylvania State Police Wyoming Regional lab for testing.

Jennifer Libus, a forensic scientist at the lab, weighed and tested the substance. The substance was .87 grams of cocaine.

As the evidence presented established that Appellant possessed a knotted baggie that contained .87 grams of cocaine, the evidence was sufficient to support the jury's verdict in this case.

Appellant claimed that he was innocent. Appellant testified that his apartment and another apartment were on the second floor above the Elks Club. He came out of the back door of his apartment and walked down the steps. At the bottom of the steps by the trashcan or dumpster, he picked up the cigarette pack and a bag with a can in it. He threw the can on the dumpster and he started to walk down the alley on his way to his mother's house when he heard Constable Umpstead call out to him. Constable Umpstead asked Appellant how he got down there as he was just knocking at Appellant's door and he told

Appellant that he had a warrant for Appellant's eviction. Appellant told Constable Umpstead that he already corrected the eviction.

Appellant claimed that Constable Umpstead was knocking on the other apartment door, not his. He also claimed that he had the cigarette pack in his hand when Constable Umpstead took him into custody and that he did not know that the cigarette pack contained drugs. Later in his testimony, however, Appellant claimed that there were all kinds of illegal activity in that alley and he picked up stuff all the time in the alley, like drugs and needles, and threw them in the dumpster because school kids walked by there. He indicated that he probably was going to throw the cigarette pack in the dumpster.

Appellant's testimony was inconsistent. On the one hand, he stated he threw the can in the dumpster and was walking down the alley toward his mother's house. On the other hand, he claimed he probably was going to throw the cigarette pack in the dumpster but Constable Umpstead took him into custody before he could do so. Similarly, on the one hand Appellant claimed he did not know that there were drugs in the cigarette pack. On the other hand, he claimed he picked up the cigarette pack, as well as other drugs and drug paraphernalia, because school kids walked in that area.

Appellant's claims that he just picked up the cigarette pack and he did not know its contents were not credible. By his own testimony, he had the opportunity to throw out the cigarette pack in the dumpster just as he had thrown out the can prior to starting to walk down the alley toward his mother's house.

The jury was free to believe all, part or none of the testimony presented. *Gomez*, 224 A.3d at 1099. Based on the verdict, it appears that the jury accepted the Commonwealth's evidence and rejected Appellant's testimony, which was within the jury's

province.

The only objection that Appellant made during the trial was to the Commonwealth's use of the lab report without Ms. Libus testifying in court. On March 28, 2019, however, the Commonwealth gave written notice of its intent to use the forensic laboratory report and certification in lieu of testimony by the person who performed the analysis pursuant to Rule 574 of the Pennsylvania Rules of Criminal Procedure.

Rule 574 states:

**(A)** In any trial, the attorney for the Commonwealth may seek to offer into evidence a forensic laboratory report supported by a certification, as provided in paragraph (E), in lieu of testimony by the person who performed the analysis or examination that is the subject of the report.

**(B) Notice**

(1) If the attorney for the Commonwealth intends to offer the forensic laboratory report and accompanying certification as provided in paragraph (A) as evidence at trial, the attorney for the Commonwealth shall file and serve, as provided in Rule 576, upon the defendant's attorney or, if unrepresented, the defendant a written notice of that fact at the time of the disclosure of the report but no later than 20 days prior to the start of trial.

(2) The notice shall include a statement informing the defendant that, as provided in paragraph (C)(3), if no written demand for testimony by the person who performed the analysis or examination that is the subject of the forensic laboratory report is made within 10 days of the service of the notice, the forensic laboratory report and accompanying certification are admissible in evidence without the person who performed the analysis or examination testifying.

(3) Except as provided in paragraph (C), the laboratory report and accompanying certification are admissible in evidence to the same effect as if the person who performed the analysis or examination had personally testified.

**(C) Demand**

(1) Within 10 days of service of the notice provided in paragraph (B), the defendant's attorney, or if unrepresented, the defendant may file and serve, as provided in Rule 576, upon the attorney for the Commonwealth a written demand for the person who performed the analysis or examination that is the subject of the forensic laboratory report to testify at trial.

(2) If a written demand is filed and served, the forensic laboratory report and accompanying certification are not admissible under paragraph (B)(3) unless the person who performed the analysis or examination

testifies.

(3) If no demand for live testimony regarding the forensic laboratory report and accompanying certification is filed and served within the time allowed by this section, the forensic laboratory report and accompanying certification are admissible in evidence without the person who performed the analysis or examination testifying.

(D) For cause shown, the judge may extend the time period for filing the notice or the demand for live testimony, or may grant a continuance of the trial.

(E) **Certification.** The person who performed the analysis or examination that is the subject of the forensic laboratory report shall complete a certification in which the person shall state:

(1) the education, training, and experience that qualify him or her to perform the analysis or examination;

(2) the entity by which he or she is employed and a description of his or her regular duties;

(3) the name and location of the laboratory where the analysis or examination was performed;

(4) any state, national, or international accreditations of the laboratory at which the analysis or examination was performed; and

(5) that the analysis or examination was performed under industry-approved procedures or standards and the report accurately reflects the findings and opinions of the person who performed the analysis or examination regarding the results of the analysis or examination.

Pa. R. Crim. P. 574.

The trial in this case occurred on June 19, 2019. The Commonwealth filed its notice on March 28, 2019, and it served the notice on the assistant public defender who was representing Appellant at that time. Therefore, the Commonwealth complied with the 20-day notice requirement of Rule 574(B)(1).

The notice included the following statement: “ If no written demand for testimony by the person who performed the analysis that is the subject of the forensic laboratory report is made within 10 days of the service of this notice, the forensic laboratory report and accompanying certification are admissible in evidence without the person who performed the analysis testifying.” Therefore, the Commonwealth complied with the

requirements of Rule 574(B)(2).

Neither defense counsel nor Appellant (once he was representing himself) filed a written demand for Ms. Libus to testify at trial. Similarly, neither offered any cause for failing to file a written demand in accordance with Rule 574. Instead, Appellant made an oral objection at trial when the Commonwealth moved for the admission of the certification after Officer Kitco had already testified regarding the contents of the forensic laboratory report without Appellant lodging an objection to her testimony.

As the Commonwealth met the requirements of Rule 574 and Appellant failed to file a timely written demand for Ms. Libus to testify at trial, the forensic lab report and certification were admissible in evidence without Ms. Libus testifying at trial.

Even if the court had precluded the Commonwealth from introducing the certification, the Commonwealth had already published the laboratory report to the jury and Officer Kitco testified about its contents without any objection from Appellant. The lab report and Officer Kitco's testimony established that the chunky substance was .87 grams of cocaine. Therefore, the evidence was sufficient to show that the substance was cocaine. Appellant's failure to object or move to strike the forensic laboratory report and Officer Kitco's testimony regarding its contents constitutes a waiver on appeal of any claim that the report or Officer Kitco's testimony regarding it were inadmissible. *Commonwealth v. Smith*, 213 A.2d 307, 309 (Pa. Super. 2019) ("The absence of a contemporaneous objection below constitutes a waiver of the claim on appeal").

DATE: \_\_\_\_\_

By The Court,

\_\_\_\_\_  
Marc F. Lovecchio, Judge

cc: Joseph Ruby, Esquire (ADA)  
John Cobb, QA8181  
SCI Mercer, 801 Butler Pike, Mercer PA 16137  
Work file  
Gary Weber, Esquire  
Superior Court (original & 1)