

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PA : No. CR-1758-2019  
:   
vs. :   
: CRIMINAL DIVISION  
NATHANIEL N. HILL, :   
Defendant : Motion for New Trial

**OPINION AND ORDER**

Before the Court is a Motion for New Trial filed by Defendant on September 22, 2021. For the reasons set forth below, Defendant’s Motion is denied.

**I. Procedural Background**

On December 5, 2019, Defendant was charged with the following five (5) counts for allegedly selling drugs to a Confidential Informant [hereinafter “CI”] on July 17, 2019:

Count 1 – Possession with Intent to Deliver;<sup>1</sup>

Count 2 – Delivery of a Controlled Substance;<sup>2</sup>

Count 3 – Criminal Use of a Communication Facility;<sup>3</sup>

Count 4 – Possession of a Controlled Substance;<sup>4</sup> and

Count 5 – Possession of Drug Paraphernalia.<sup>5</sup>

Prior to trial, at the Commonwealth’s request, the Court issued a material witness warrant for Amber Lynn Fisher, the CI in this case. After the CI was found and brought before the Court, she was detained in the Lycoming County Prison pending her testimony at the time of trial. Defendant waived his right to a jury trial on August 13, 2021 and the case proceeded to a bench trial before this Court on September 13, 2021 at which time Defendant

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<sup>1</sup> 35 P.S. § 780-113(a)(30).

<sup>2</sup> 35 P.S. § 780-113(a)(30).

<sup>3</sup> 18 Pa.C.S.A. § 7512.

was found guilty of all of the above charges. Defendant filed a Motion for New Trial on September 22, 2021 arguing that the verdict rendered by the Court was against the weight of the evidence. After several continuances, argument was held on January 14, 2022.

## **II. Facts Established at Trial**

The evidence and testimony presented at trial established the following:

On July 16, 2019, Trooper Andrew Corl of the Pennsylvania State Police was working with the CI, as he had done twice before, to arrange a purchase of heroin. The following day, July 17, 2019, Trooper Corl instructed the CI, who goes by the name “Amy” when purchasing drugs, to reach out to her dealer who she stated she knew as “Naz.” At 2:06 p.m., the CI texted a number she used to arrange for the purchase of drugs, which had a 272 area code, and asked for a “honey bun,” which is a bundle of heroin.<sup>6</sup> *See Commonwealth Exhibit 1A*. The CI received a text back instructing her to call the number, which she did, and at which point a meeting location for the sale of the drugs was determined.

Thereafter, Trooper Corl took the CI to Rural Avenue between Fifth and Fourth Streets. Trooper Corl parked his unmarked car along Fifth Street and Louisa Street, such that Rural Avenue was to the north and 4<sup>th</sup> Street was to the east. Trooper Corl provided the CI with \$70.00 of pre-recorded money and the CI texted the 272 number that she had arrived at 2:43 p.m.<sup>7</sup> *See Commonwealth Exhibit 1D and 3*. Between approximately 2:51 p.m. and 2:54 p.m., the CI texted Naz to inquire when he would be at the meeting location because it was “about to pour again.” *See Commonwealth Exhibit 1E*.

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<sup>4</sup> 35 P.S. § 780-113(a)(16).

<sup>5</sup> 35 P.S. § 780-113(a)(32).

<sup>6</sup> The cell phone number the CI used to contact Naz was never determined to be exclusively associated with the Defendant.

At some point thereafter, Trooper Corl observed two black males walk past his vehicle and then walked east on an unnamed alley between Rural Avenue and Louisa Street. Both males were wearing black button down shirts and one of them had on a white undershirt and a ball cap. Trooper Corl later determined that the male wearing the white undershirt was the Defendant based on his own comparison of Defendant's license and JNET photographs.<sup>8</sup> *See Commonwealth Exhibits 8 and 9.* The next thing Trooper Corl saw was the CI walking back toward him at which time she gave him ten (10) small blue bags containing a white powder<sup>9</sup> later determined to be a combination of heroin, cocaine, and fentanyl.<sup>10</sup> *See Commonwealth Exhibits 4, 5, and 7.* Trooper Corl did not see the buy occur, but when the CI was briefed, she told him that she dealt with the male with the white undershirt, known to her as Naz.

Detective Tyson Havens of the Lycoming County Narcotics Enforcement Unit testified that he witnessed the same two males that walked by Trooper Corl's vehicle walking south on Fourth Street at which time he was able to obtain video surveillance of them as well as still shots. *See Commonwealth Exhibits 10-13.* Detective Havens testified that he "knew [defendant's] face from prior contact but that there were no tattoos on Naz's neck as of July 17, 2019.

The CI testified that on July 17, 2019, she texted the 272 number, which she used frequently to purchase heroin and that in the past, she has dealt with many people using that

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<sup>7</sup> This money was never recovered.

<sup>8</sup> The other male was identified as Bernard Benjamin by Detective Dent, another member of the Lycoming County Narcotics Enforcement Unit who was running surveillance.

<sup>9</sup> Detective Sarah Edkin testified that she strip-searched the CI both before and after the buy and that the CI was free of drugs each time.

<sup>10</sup> Defendant stipulated to the lab results and chain of custody at the time of trial.

same number. When she was directed to call the person with whom she was texting, she knew she was speaking with Naz because she recognized his voice. Naz said he would send someone to sell her the drugs, but that he ended up coming himself with another individual unknown to the CI. When Naz arrived, he was wearing a white undershirt and was taller than the other individual. After the three of them had turned down the alley, the CI gave the \$70 to Naz and Naz is the one who handed her the drugs.<sup>11</sup>

The CI testified that she knew the person in the white undershirt to be Naz because she has bought drugs from him for two years on and off<sup>12</sup> and because of the gap in his teeth. At the time of trial, the CI identified the Defendant as the person she knows to be Naz and the person who sold her the drugs on July 17, 2019. The CI later admits, though, that at the time of trial, Defendant's teeth "did not look as gapped out" as they did at the time of the buy. The CI admitted that she was using drugs as of July 2019 but even so, she was able to interact with others and know with whom she was speaking.

At the time of trial, the Commonwealth introduced two (2) surveillance videos. On the first video, the CI is seen walking north on Fifth Street with two black males, their backs facing the camera. The males are both wearing black button down shirts with black pants. One of them has a hat on and is taller than the other. Eventually, the three make a right hand turn onto the unnamed alley running parallel between Rural Avenue and Louisa Street, leaving the camera's line of sight. No transaction is captured on video. *See Commonwealth Exhibit 10.*

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<sup>11</sup> The CI also testified that Defendant attempted to give her fifty (50) bags of the drugs, which is equal to five (5) bundles, but the CI indicated to him that she only needed one (1) bundle, or ten (10) bags.

<sup>12</sup> It was later determined, though, that Defendant was just released on July 2, 2019 after being incarcerated for approximately two (2) years. *See Defense Exhibits 1 and 2.*

The second video, taken by Detective Havens, shows the same two males walking south on Fourth Street without the CI, toward the camera. It is clear in the video that the male wearing the white undershirt and hat has a large circular tattoo on the under part of his left forearm, closer to his elbow than to his wrist. *See Commonwealth Exhibit 11.*

The JNET photographs taken of Defendant on July 2, 2019 as well as Defendant's driver's license photograph, compared with the still shots of the video taken by Detective Havens, shows that the male in the white undershirt is the Defendant. Additionally, the JNET photographs clearly show a large, round tattoo on the left underside of Defendant's forearm. However, it does not appear that Defendant had a tattoo on his neck as of July 2, 2019. *See Commonwealth Exhibits 8, 9, 12, and 13.*

### **III. Discussion**

“A motion for a new trial based on a claim that the verdict is against the weight of the evidence is addressed to the discretion of the trial court.” *Com. v. Clay*, 64 A.3d 1049, 1054–55 (Pa. 2013). A challenge to the weight of the evidence “concedes that the Commonwealth has produced sufficient evidence of each element of the crime, but questions which evidence is to be believed.” *Com. v. Kinney*, 157 A.3d 968, 971 (Pa.Super. 2017). A new trial, therefore, should only be awarded when “notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice,” or when a verdict is so contrary to the evidence that it “shocks one's sense of justice.” *Com. v. Widmer*, 5744 A.2d 745, 751–52 (Pa. 2000); *Com. v. Brown*, 648 A.2d 1177, 1189 (Pa. 1994).

Here, the Commonwealth had to prove, beyond a reasonable doubt, that Defendant possessed a controlled substance with the intent to deliver it,<sup>13</sup> possessed drug paraphernalia, delivered a controlled substance,<sup>14</sup> and used a communication facility to commit, cause, or facilitate the commission of a felony.<sup>15</sup> It is well settled that, “[t]o determine whether the Commonwealth presented sufficient evidence to sustain [a] conviction for possession with intent to deliver, all of the facts and circumstances surrounding the possession are relevant and the elements of the crime may be established by circumstantial evidence.” *Com. v. Little*, 879 A.2d 293, 297 (Pa.Super. 2005).

Had this case been tried by a jury, they would have been instructed regarding the credibility of witnesses. Specifically, if they found part of a witness’s testimony to be inaccurate, then they should “consider whether the inaccuracy casts doubt upon the rest of his or her testimony. This may depend on whether he or she has been inaccurate in an important matter or a minor detail and on any possible explanation. For example, did the witness make an honest mistake or simply forget or did she deliberately falsify?” 4 Pa. SSJI (Crim), §4.17.

Defendant argues that the testimony of the Commonwealth’s CI who purchased the drugs and who identified the Defendant as the seller was inconsistent and incredible. In identifying the Defendant, the CI stated that he had a gap in his teeth and that she recognized his neck tattoo. However, although Defendant had a neck tattoo at the time of trial, he did not have it at the time of the drug purchase. The CI also stated that, after looking at Defendant’s

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<sup>13</sup> “[T]he intent to deliver may be inferred from possession of a large quantity of controlled substances.” *Com. v. Lee*, 956 A.2d 1024, 1028 (Pa.Super. 2008).

<sup>14</sup> “[F]or a defendant to be liable as a principal for the delivery of a controlled substance there must be evidence that he knowingly made an actual, constructive, or attempted transfer of a controlled substance to another person without the legal authority to do so.” 35 P.S. § 780–102; *Com. v. Murphy*, 844 A.2d 1228, 1233–34 (Pa. 2004).

<sup>15</sup> Possession with intent to deliver a controlled substance and delivery of a controlled substance are felonies.

teeth during trial, his teeth were not the same as they were when she purchased the drugs. Additionally, the CI admitted that she was most likely under the influence of drugs at the time of the purchase. Defendant further asserts that there is no evidence of the buy itself and that the only photographs are of himself in the area where the buy occurred and around the same time of the buy.

With this last assertion, Defendant purports to admit that the photographs introduced as Commonwealth's Exhibits 12 and 13 in fact depict him. Either way, as explained above, the male depicted in the photographs wearing the white undershirt is clearly the Defendant when compared with his JNET and driver's license photographs and because of his forearm tattoo. Additionally, the CI specifically testified that the person who handed the drugs to her was the man in the white undershirt and that the man the in the white undershirt was the Defendant.

The Court agrees that the CI is a less than perfect witness, and while she may have been inaccurate on some details including Defendant's neck tattoo and exactly when she had purchased drugs from the Defendant in the past, these are minor details when viewed in the grand scheme of the facts. The Court found that the CI had not deliberately testified falsely, but rather misremembered some of the details.

It is important to note that the CI also testified to the following specific facts: that she recognized Defendant's voice when they spoke on the phone to arrange the drug buy; that she recognized him when he showed up to sell her the drugs, even though she was expecting someone else; that it was Defendant who handed her the drugs; and that Defendant tried to give her significantly more drugs than what she had originally wanted.

The CI's testimony, when corroborated with the other evidence and testimony

presented at trial, the Court was convinced, and remains convinced beyond a reasonable doubt that Defendant committed the crimes with which he was charged. The CI did not have drugs on her person before she left Trooper Corl's vehicle but had them when she came back from her meeting with the two males. Defendant and his companion arrived at the exact same location as was pre-arranged between the CI and Naz. The timeline of text messages and phone calls between the CI and Naz line up with when Naz and his companion arrived. Although there is no surveillance of the drug transaction itself, this is not necessary for the Commonwealth to prove its case. Taking into consideration all of the evidence presented, the Court finds that the Commonwealth has proven its case beyond a reasonable doubt.

#### **IV. Conclusion**

In reviewing the facts of this case again, the Court finds that the evidence established is sufficient to support the verdict that Defendant, beyond a reasonable doubt, sold heroin and other controlled substances possessed by him, and which was contained in baggies, to a CI and that he arranged the purchase using a cellular telephone.

#### **ORDER**

**AND NOW**, this 25<sup>th</sup> day of **January, 2022**, upon consideration of Defendant's Motion for New Trial and for the reasons set forth above, Defendant's Motion is **DENIED**.

By The Court,



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Ryan M. Tira, Judge

cc: DA (MS)  
Andrea Pulizzi, Esquire  
Gary Weber, Esquire  
Alexandra Sholley – Judge Tira’s Office