

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

COMMONWEALTH OF :
PENNSYLVANIA, :
 : 94-11,268
 :
LEROY BROWN, :
Defendant :
 :

OPINION

Issued Pursuant to Pa. R.A.P. 1925(a)

This is an appeal nunc pro tunc from this court's judgment of sentence issued on 14 July 1995. In his Concise Statement of Matters Complained of on Appeal the defendant has raised six issues for appellate review. None of these issues have been preserved for appeal except the first issue, which contests the sufficiency of the evidence. The remaining five issues have therefore been waived, and may be raised only through an ineffectiveness of counsel claim on a Post Conviction Relief Act petition. Commonwealth v. Kilgore, 690 A.2d 229 (Pa. 1997).

In evaluating a challenge to the sufficiency of the evidence the court must view the evidence presented and all reasonable inferences in the light most favorable to the Commonwealth, as verdict winner. The test is whether the evidence, viewed in this way, is sufficient to prove guilt beyond a reasonable doubt. Commonwealth v. Taylor, 324 Pa. Super. 420, 471 A.2d 1228 (1984). The defendant contends there was insufficient evidence to support the charge of conspiracy to deliver a controlled substance. Conspiracy is defined in 18 Pa.C.S.A. § 903:

Definition of conspiracy.—A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

The existence of an agreement may be inferentially established by showing the relation, conduct, or circumstances of two or more individuals. Commonwealth v. Lawson, 437 Pa. Super. 521, 650 A.2d 876 (1994). The Commonwealth must also show that one of the co-conspirators committed an overt act in furtherance of the conspiracy. Commonwealth v. McKeever, 455 Pa. Super. 604, 689 A.2d 272 (1997).

A review of Agent Gordon Mincer's testimony reveals that the defendant's contention has no merit whatsoever. Agent Mincer testified that he was working with a confidential informant to purchase cocaine from an individual named "Poncho," whose true name was Nelder Wooden. Mr. Mincer met with Mr. Wooden around 3:15 p.m. at a residence to purchase cocaine. Mr. Wooden told him to return around 4:30 p.m. N.T. 1/19/95, p. 16. When Agent Mincer returned, Mr. Wooden was at the top of the steps. He pointed to the defendant, who was downstairs and said, "There's the man." N.T. 1/19/95, p. 17. Agent Mincer walked over to the defendant, who invited him into his bedroom. The defendant asked Agent Mincer what he wanted and the Agent asked if he had 10 or 20 dollar bags. N.T. 1/19/95, p. 18. At that point, the defendant called for Mr. Wooden to come into the room. Agent Mincer told Mr. Wooden that he wanted ten \$10 bags and gave him \$100. N.T. 1/19/95. Mr. Wooden went up the stairs to get the cocaine. While Mr. Wooden was gone, Agent Mincer told the defendant he would like to purchase an additional five bags of cocaine and he

gave the defendant \$50. N.T. 1/19/95, p. 21. The defendant took the money, went upstairs, and yelled something to Mr. Wooden. When Mr. Wooden returned with the 10 bags, the defendant gave him the \$50 and told him Agent Mincer wanted five more bags. N.T. 1/19/95, p. 27. Mr. Wooden again left the room and returned with six bags of cocaine. N.T. 1/19/95, p. 23.

Agent Mincer's testimony was supported by the defendant's co-conspirator, Nelder Wooden. Mr. Wooden testified that when Agent Mincer entered the house the second time, he pointed to the defendant and stated, "There's the man." N.T. 1/19/95, p. 87. Mr. Wooden claims to have said this so Agent Mincer would not think he was the one selling the drugs. N.T. 1/19/95, p. 88. Mr. Wooden also testified that in the transaction involving the additional five bags, the defendant gave him the \$50.00, and that he gave Agent Mincer an additional bag which was intended for the defendant, for making the transaction. N.T. 1/19/95, p. 93.

In light of this wealth of evidence of a working relationship between Mr. Wooden and the defendant toward a common purpose of selling drugs, it is ridiculous for the defendant to argue insufficiency of the evidence. As to the rest of the defendant's contentions, as mentioned above they have been waived. However, the court will briefly address them as follows.

Regarding Agent Mincer's testimony regarding the presence of a prostitute at the scene, that statement was made to explain why he left quickly with the sixth bag of cocaine, which was intended for Mr. Brown: "There happened to be a hooker in there that saw me that I had previous contact with out in the street . . . I was totally shocked that she was there, and I was not really feeling comfortable knowing she was likely to at that time tell people who I was" N.T. 1/19/95, p. 35. Moreover, there

is no reason why this testimony would have prejudiced the defendant to the point of causing an unfair trial.

Regarding the delay in sentencing, the record shows that the first delay was due to the defendant's request. See order of 30 March 1995. There is no explanation as to why the further delay occurred. However, even if there was no good cause for the delay, that does not give the defendant a right to have the charges dismissed.

Com. v. Thompson, 701 A.2d 1367 (Pa. Super. 1997). Pennsylvania appellate courts have ruled that there is no remedy per se for a Pa.R.Crim.P. 1405(A) violation.

Rather, it forms just one part of the court's analysis as to when a defendant's right to a speedy trial or to due process has been violated. Commonwealth v. Anders, 699 A.2d 1258 (Pa. Super. 1997). The defendant has not shown that he was in any way prejudiced by the delay.

The defendant's contention that the court permitted him to appear at trial in front of the jury wearing prison clothes is completely belied by the record. Agent Mincer identified the defendant by describing him as the person "who's wearing the Penn State shirt, next to the attorney." N.T. 1/19/95, p. 18. Furthermore, in the nearly twenty years that this court has presided over criminal trials, the court has never once permitted a defendant to appear in front of a jury wearing prison garb.

Finally, the court notes that even assuming any of the alleged errors occurred, it is inconceivable that they could have affected the outcome of the defendant's trial, given the overwhelming evidence presented against the defendant.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Stuchell, Esq.
Hon. Clinton W. Smith
G. Scott Gardner, Esq.
District Attorney
Gary Weber, Esq.