

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 98-11,525

VS :

KEVIN ROBERT HOUSEKNECHT : NON JURY TRIAL VERDICT

OPINION AND ORDER

This matter is before the Court for non jury trial disposition. The trial in this matter was held on April 26, 1999. After a review of the evidence presented at the trial, the Court makes the following findings of fact. On September 17, 1997, Charles Schriener, (Schriener) a confidential informant with the Pennsylvania State Police, contacted Trooper Nicholas Madigan to inform him that he had arranged for the purchase of an amount of cocaine from Walter Meyer (Meyer). Trooper Madigan and Corporal Scott Hunter met Schriener at his house. Schriener was strip searched and given \$460.00 of marked bills for the purchase of two eight balls of cocaine. Trooper Madigan drove Schriener to the Meyer address and dropped him off at approximately 4:30 p.m. Corporal Hunter observed the scene from a separate vehicle.

Schriener entered the Meyer residence and was greeted by Meyer at the door. As the two men were standing in the living room, Schriener observed the Defendant sitting at the kitchen table in the adjoining room. Schriener testified that the Defendant appeared to be doing a line of cocaine at the kitchen table. Schriener asked Meyer whether he had what they had discussed. Schriener testified that Meyer first questioned whether he was a cop, and requested that Schriener lift up his shirt to reveal whether he was wearing a wire. Meyer produced a baggie containing several small baggies from the pocket of his pants. Schriener then produced and exchanged the cocaine for the \$460.00 of marked money. In addition, Meyer gave Schriener a small baggie of

marijuana. Schriener testified that the Defendant gave him \$10.00 in change.

Before leaving the residence, Schriener testified that the Defendant asked him from the adjoining room whether he wished to weigh the cocaine before leaving in order to determine whether he had received the appropriate weight. Schriener testified that he initially declined, but after the Defendant asked him a second time, he agreed to have the cocaine weighed. Schriener testified that the Defendant placed the baggie on a set of digital scales that sat on the kitchen table and verified that the weight was correct. The Defendant then handed the cocaine back to Schriener. Schriener then left the apartment at 4:48 p.m.

Trooper Madigan and Corporal Hunter then took Schriener to the Pennsylvania State Police, Montoursville Barracks for a debriefing. Schriener immediately named Meyer and the Defendant as the actors in the transaction. Schriener turned over the baggie of cocaine which contained seven small blue baggies of cocaine totaling 5.9 grams, and the baggie of marijuana totaling 1.8 grams. The parties stipulated that if called to testify, forensic scientist John Kelton would testify that the white substance in the small blue baggies tested positive for the presence of cocaine, and the plant material in the other baggie tested positive for marijuana. The Defendant was charged with Delivery of a Controlled Substance, Possession with the Intent to Deliver a Controlled Substance, Possession of a Controlled Substance, and Criminal Conspiracy.

Another witness called by the Commonwealth was the co-conspirator, Walter Meyer. After being advised of his 5th Amendment Rights since his own case has not yet been resolved, Meyer testified about his relationship with the Defendant and his Amemory@ of the events of this transaction. He repeatedly testified about how the Defendant Aand his girlfriend were driving him

crazy. He further testified that he thought Schriener was a jerk and they wanted to strip him off ... give him poor quality stuff. He also testified he believed both the Defendant and his girlfriend were there and they had an argument ... she counted the money ... Kevin weighed the coke on a digital scale. Although the many years of drug use have not been kind to Meyer, it was clear to the Court he was reluctant to testify generally, but wanted to straighten out his life since his life was pretty messed-up with drugs. Furthermore, he was made no specific promises for his testimony save that of letting his cooperation be made known to his sentencing judge once he pled guilty to his charges.

The Defendant testified that he arrived at the Meyer residence sometime after 2:30 p.m.. He testified he knew Meyer casually, as he was the one that was supplying him with much of the cocaine that he used. On that date, he went to see Meyer to see if he would give him some money to get his girlfriend out of jail. While at the residence, he went into the bathroom to clean himself up, then went into the bedroom to use some cocaine that Meyer had given him. The Defendant admitted that he was using cocaine at the Meyer residence at the time that Schriener was at the residence.

The Defendant also testified he had been using cocaine for about 5 days, had not slept in that time and had even had an accident traveling to Meyer's house on the beltway (Interstate 180) which resulted in his girlfriend being arrested at the scene for disorderly conduct. Defendant also testified that after he received cocaine and \$200 in bail money from Meyer, he would have traveled back to unknown locations in the city and was able to meet up with individuals who would give him free cocaine so he could keep the bail money for his girlfriend. The Defendant at no time testified to how Schriener would have known Defendant was at the

residence or why Schriener would have chosen to implicate him in this specific offense.

In order to find the Defendant guilty of the offense of Delivery of a Controlled Substance, the Commonwealth must prove beyond a reasonable doubt that the Defendant knowingly, intentionally and unlawfully delivered a controlled substance, 35 P.S.' 780-113. Delivery is defined in 35 P.S.' 780-102 as ~~A~~the actual, constructive, or attempted transfer from one person to another...@

Although the Defendant argued that he had no contact with Schriener while he was at the Meyer residence, the Court did not find his testimony credible. The Defendant argued that he was in the bedroom the entire time during which the transaction took place, and only stepped out of the bedroom for a second. The Defendant testified that upon seeing Meyer with Schriener at the end of the hallway, he immediately returned to the bedroom. However, both Schriener and Meyer placed the Defendant at the kitchen table at the time the transaction took place, and both testified that the Defendant weighed the cocaine for Schriener to ensure the proper weight. Additionally, the Court found it unlikely that Schriener would have ever seen the Defendant under his version of the facts, yet Schriener immediately named the Defendant as one of the actors involved in the transaction. Also, Meyer's testimony supports the Court's belief there was more than just a casual relationship between the Defendant and Meyer. As such, the Court finds the Defendant's version of the facts not credible. The Court finds the transaction occurred as Schriener testified, the Defendant weighed the drugs and gave change. The Commonwealth has met its burden on the charge of delivery.

In order to find the Defendant guilty of possession of a controlled substance, the Commonwealth must prove beyond a reasonable doubt that the Defendant had the controlled

substance in his possession. Instantly, the Court finds beyond a reasonable doubt that the Defendant possessed cocaine. The evidence established that the Defendant was involved in the transaction, and that after the exchange, he asked whether Schriener would like to have the cocaine weighed to ensure that he had received the amount that he had paid for. Schriener testified that he initially declined to have the cocaine weighed, but then agreed after the Defendant asked a second time. The Defendant then took the cocaine from Schriener and put it on the scales. After ensuring that it was the proper weight, the Defendant returned the baggie to Schriener. Clearly, the Defendant possessed the cocaine before he gave it to Schriener.

In order to find the Defendant guilty of Possession with the Intent to Deliver, the Commonwealth must prove beyond a reasonable doubt that the Defendant possessed the controlled substance, and did so with the intent to deliver it. Intent to deliver may be inferred from examining all of the facts and circumstances surrounding the case. Commonwealth v. Harper, 416 Pa. Super. 608, 611 A.2d 1211 (1992). Since the Court found that the Defendant possessed the cocaine that was given to Schriener and he was involved in the transaction by offering to weigh the baggies to ensure that Schriener was receiving the amount that he had paid for and gave to Schriener the change owed to him, the Court finds sufficient evidence to believe the Defendant committed the offense of possession with the intent to deliver.

In order to find the Defendant guilty of Conspiracy to Deliver a Controlled Substance, the Commonwealth must prove beyond a reasonable doubt that the Defendant, with the intent to commit the crime of delivering a controlled substance, agreed with another person to engage in conduct which constitutes the crime and one or both of the parties acted in furtherance of the agreement. As the Court found the Defendant weighed the cocaine to ensure that Schriener was

receiving the accurate amount and then he gave Schriener the change that was owed to him from the transaction, the Court finds the Commonwealth has met its burden on this offense. See *A/so Commonwealth v. Davenport*, 307 Pa. Super 102, 452 A.2d 1058 (1982).

ORDER

AND NOW, this ____ day of April, 1999, after a non jury trial, this Court finds beyond a reasonable doubt the Defendant guilty of the following: Delivery of a Controlled Substance, Possession of a Controlled Substance, Possession With the Intent to Deliver a Controlled Substance, and Conspiracy to Deliver a Controlled Substance. It is ORDERED and DIRECTED that within thirty (30) days of this Order the Commonwealth notify this Court and the Defendant of its intention to pursue the specific mandatory which may be applicable. Further it is ORDERED and DIRECTED that the Pennsylvania Board of Probation and Parole prepare a Pre-Sentence Investigation Report for sentencing. Sentencing is scheduled for the next available sentencing date, **June 28, 1999, at 3:30 p.m.**

By The Court,

Nancy L. Butts, Judge

xc: Michael Dinges, Esquire
Elizabeth. Bartolai, Esquire
Nancy L. Butts, Judge
Judges
Law Clerk
Gary Weber, Esquire
Adult Probation Office
PBPP