IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	**:**	**No. 00-10,057**
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	:	
vs.	**:**	**CRIMINAL DIVISION**
	:	
	:	
WILLIAM GRIFFIN,	**:**	
Defendant	**:**	**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 this Court's Verdict dated June 9, 2000 and its Order dated September 15, 2000 denying Defendant's Post Sentence Motions.

The relevant facts are as follows: On December 12, 1999 at approximately 12:30 a.m., Officer Delker investigated an assault that occurred at Locust and High Street in the City of Williamsport. The victim stated he was jumped by a group of young, black males, one of whom was wearing a tan, Muslim-style hat. Shortly after 1:05 a.m., Officer Delker observed a group of black males walking south from Locust and High Street who fit the age and general description given by the victim. Corporal Gary Whiteman approached the group in a marked patrol unit to determine if any of them had been involved in the assault. When Corporal Whiteman asked the group to 'hold up a minute,' Officer Delker observed Defendant drop a clear, cellophane baggy and run south. Officer Delker chased Defendant on foot. When Defendant darted behind a tractor trailer, Officer Delker saw him reach into his pants pocket as if to retrieve something. When Defendant emerged running from the other end of the tractor trailer, Officer Eric Houseknecht and Officer Delker tackled him and took him into custody.

The cellophane baggy contained 14 individually wrapped packets of marijuana,

totaling 11.5 grams. In the area of the tractor trailer, the police found two straws and a small baggy of cocaine. The total amount of cocaine was 1.6 grams.

The police arrested Defendant for possession of marijuana with the intent to deliver it, possession of marijuana, possession of cocaine, and two counts of possession of drug paraphernalia, which consisted of the packaging materials for the marijuana and cocaine, respectively. Defendant told the police his name was Patrick L. Griffin.[1] It was not until after he was booked and his fingerprints were electronically transmitted to Harrisburg that the police discovered Defendant was really William G. Griffin, and he was wanted by the Pennsylvania State Board of Probation and Parole. When Defendant was searched incident to his arrest, the police discovered a pager, cellular phone, and a poem describing packaging, transporting and selling drugs, among other things. Noticeably absent from the objects found on Defendant's person were any items of paraphernalia to ingest controlled substances.

Defendant was charged with the drug offenses listed above and also unsworn falsification to authorities. A non-jury trial was held June 8, 2000. The Court found Defendant guilty of the drug offenses.[2] On September 6, 2000, the Court sentenced Defendant to an aggregate term of incarceration in a state correctional institution of not less than one (1) year nor more than three (3) years.

On September 12, 2000, Defendant filed Post Sentence Motion. The Court summarily denied this motion in its Order dated September 15, 2000.

On September 27, 2000, Defendant filed a notice of appeal. Defendant alleges the following issues on appeal: (1) the evidence was insufficient to establish Defendant

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[1]Patrick L. Griffin is Defendant's brother.

[2]The Commonwealth agreed to dismiss the unsworn falsification charge.

possessed the marijuana with the intent to deliver it; (2) the Court erred in denying his motion to suppress the contents of the poem/song found on his person after his arrest; and (3) the Court erred by permitting Officer Leonard Dincher to testify as an expert witness. The Court will address these issues seriatim.

Defendant first asserts the evidence was insufficient to convict him of possession with intent to deliver marijuana. The Court cannot agree. The Pennsylvania Superior Court has set forth the standard for deciding a sufficiency claim as follows:

> When considering whether evidence introduced at trial is sufficient to sustain a conviction, this court must view all evidence and reasonable inferences therefrom in the light most favorable to the Commonwealth, as the verdict winner, and consider whether the trier of fact could have found that each element of the offense charged was supported by evidence and inference sufficient to prove guilt beyond a reasonable doubt. The Commonwealth may sustain its burden by proving the crime's elements with evidence which is entirely circumstantial and the trier of fact, who determines credibility of witnesses and the weight to give the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Brown, 701 A.2d 252, 254 (Pa.Super. 1997)(citations omitted).

In order to convict an individual of possession with intent to deliver, the Commonwealth must prove that the individual "possessed the controlled substance and had an intent to deliver that substance." Commonwealth v. Torres, 421 Pa.Super. 233, 237, 617 A.2d 812, 814 (1992). An intent to deliver can be inferred from the quantity of the drugs possessed and other surrounding circumstances, such as a lack of paraphernalia for consumption. Id. at 237-38, 617 A.2d at 814. The court must consider all the facts and circumstances surrounding the possession of the controlled substance when determining whether it was possessed with the intent to deliver. Id.

Here, Defendant possessed fourteen (14) individually wrapped packets of marijuana in a larger sandwich bag, as well as two (2) straws of cocaine and a small baggy of

cocaine. Although the amounts of each substance were not large (11.5 grams of marijuana and 1.6 grams of cocaine), the totality of the circumstances indicated that Defendant possessed the marijuana with the intent to deliver it. For example, a pager and cellular phone were found on Defendant's person. These items are commonly used by drug dealers to arrange sales transactions. The fourteen packets of marijuana were individually wrapped and placed in a larger distribution bag. While a user of marijuana may possess several packets of marijuana, he generally would not place them in a larger bag. Also, it would be more economical for a user to purchase a single bag containing an eighth or quarter ounce of marijuana as opposed to fourteen separate packets. Furthermore, although Defendant told the police the substances were for his personal use, he did not possess any paraphernalia with which he could ingest the marijuana, such as rolling papers or a pot pipe. Defendant's flight and use of a false name also indicate a guilty conscience. Defendant also possessed a quantity of cocaine with a street value of $200-$250. The individually packaged marijuana had a street value of $140-$280. It is unlikely that a user would possess two (2) different controlled substances of such value at one time. Moreover, both substances were packaged consistent with distribution. Finally, Defendant possessed a poem or rap song which described getting rich from the packaging and distributing ounces of controlled substances. Although the quantity of drugs alone may be consistent with personal use, the surrounding circumstances were not. Therefore, the Court appropriately found that Defendant possessed the marijuana with the intent to deliver it.

Defendant next asserts the Court erred in failing to suppress the poem/rap song found on Defendant's person after his arrest. Again, the Court cannot agree. In Commonwealth v. Williams, the Pennsylvania Superior Court stated:

It is well established that a warrantless search incident to a lawful arrest is

> reasonable and no justification other than that required for the arrest itself is necessary to conduct a search. Stated another way, in all cases of lawful arrests, police may fully search the person incident to the arrest. . . . Consequently, any evidence seized as a result of a search incident to a lawful arrest is admissible in later proceedings.

390 Pa.Super. 493, 497-98, 568 A.2d 1281, 1283 (1990)(citations omitted). Defendant was searched incident to a lawful arrest. During the search the police found the poem/rap song, among other things. Defense counsel argued that, in order to read the paper containing the poem, the police had to get a warrant. However, since the search was incident to a lawful arrest, no warrant or other justification was needed to read the paper.

The Court also believes the police could read the document in an attempt to ascertain Defendant's true identity, since he did not possess a driver's license or other form of identification. The only way the police would know if the paper contain information regarding Defendant's identity was to examine its contents.

Defense counsel argues that this case is analogous to Commonwealth v. Kendall, 649 A.2d 695 (Pa.Super. 1994). The Court finds Kendall distinguishable in several respects. In Kendall, the search was not of the defendant's person, but a change purse found in the defendant's pocketbook. Here, the search was only of Defendant's person; the poem was not found in any type of container Defendant was carrying. Furthermore, the Superior Court in Kendall found that the change purse could not have contained a weapon or evidence of the crime for which the defendant was being arrested, namely driving under the influence of alcohol. Here, the paper could and, in fact, did contain evidence related to the offenses for which Defendant was being charged. The poem was about packaging and distributing drugs for profit and Defendant was charged with possession of marijuana with the intent to deliver it.

Defendant also claimed any relevance of the poem was outweighed by its

prejudicial effect. At the time the Court ruled on Defendant's motion, the case was going to be a jury trial. The Court redacted all the references in the poem that would in any way indicate criminal activity other than that with which Defendant was charged. The Court redacted all references to weapons, whores, and North Brick (a Philadelphia gang). After the Court made its ruling on the suppression, Defendant elected to proceed with a bench trial. Although the Court saw the unredacted poem, it did not consider any of the extraneous references in making its decision. In fact, the Court would have found Defendant guilty of possession with intent to deliver based on the other facts and circumstances of this case even if the poem had been suppressed.

Defendant's final claim is that the Court erred in permitting Officer Leonard Dincher to testify as an expert witness. In his testimony, Officer Dincher discussed the facts of this case and whether those facts would be consistent with personal use or intent to deliver. Officer Dincher opined that Defendant possessed the marijuana with the intent to deliver it. This opinion was based on the fact that the marijuana was in fourteen individually wrapped packets, most users have a single drug of choice, the street value of the drugs and the like. Police officers are permitted to render expert opinions regarding whether the controlled substances were possessed with the intent to deliver them. Commonwealth v. Brown, 408 Pa.Super. 246, 249-55, 596 A.2d 840, 841-44 (1991); Commonwealth v. Ariondo, 397 Pa.Super. 364, 383, 580 A.2d 341, 350-51; Commonwealth v. Johnson, 358 Pa.Super. 435, 517 A.2d 1311 (1986). Therefore, Officer Dincher's expert testimony was admissible.

The Court notes Defendant's reliance on Commonwealth v. Carter, 403 Pa.Super. 615, 589 A.2d 1133 (1991) and Commonwealth v. Montavo, 439 Pa.Super 216, 653 A.2d 700 (1995) is misplaced. In Carter and Montavo, the Superior Court held that the police could not give an expert opinion whether the activity they observed was drug trafficking as the proffered

opinion involved a matter which could be easily assessed by an ordinary layperson. Assessment of the facts surrounding the possession of a controlled substance to determine whether the individual possessed them for person use or intended to distribute them is not within the knowledge of an ordinary layperson. In fact, the Superior Court in both Carter and Montavo noted that expert testimony was admissible regarding whether the facts surrounding the possession of the controlled substance were consistent with an intent to deliver. Carter, 403 Pa.Super. at 619, 589 A.2d at 1135; Montavo, 439 Pa.Super at 225 n.5, 653 A.2d at 705 n.5.

For the forgoing reasons, the Court found Defendant guilty and denied Defendant's Post Sentence Motion.

DATE: _____

By The Court,

_____
Kenneth D. Brown, J.

cc: Michael Dinges, Esquire (ADA)
Nicole Spring, Esquire (APD)
Law Clerk
Gary Weber, Esquire (Lycoming Reporter)
Work file
Superior Court (original & 1)