

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA	: NO. 99-11,618
	: NO. 99-11,635
	:
vs.	: CRIMINAL DIVISION
	:
MIKAIL TALIB HANDY,	:
Defendant	: Post Sentence Motion

OPINION AND ORDER

Before the Court is Defendant’s Post Sentence Motion, filed October 19, 2000. Defendant filed a brief on December 1, 2000 and argument was heard December 20, 2000.

After trial, Defendant was convicted of delivery of a controlled substance, possession with intent to deliver a controlled substance, possession of a controlled substance and possession of drug paraphernalia, based upon evidence which showed that Defendant sold cocaine to a confidential informant in a “controlled buy”. He was also convicted of possession with intent to deliver a controlled substance, possession of a controlled substance and possession of drug paraphernalia, based upon evidence which showed that a subsequent consensual search of the residence where Defendant had been staying uncovered a quantity of cocaine, a set of scales and hundreds of black zip lock bags commonly used to package cocaine. Defendant was sentenced to a term of two (2) to four (4) years for the delivery and a consecutive term of one (1) to three (3) years for possession with intent to deliver the cocaine found at the residence.

Defendant contends the Court erred in consolidating the delivery and related charges with the possession with intent to deliver and related charges, in allowing the arresting officer to testify as an expert witness with respect to the element of intent to deliver as it relates to the second set of charges and in imposing consecutive sentences. These contentions will be addressed seriatim.

With respect to the issue of consolidation, the Court granted the Commonwealth’s Motion to Consolidate the two (2) matters under Pa.R.Crim.P. Rule 1127 A (1), which provides that offenses

charged in separate indictments or informations may be tried together if the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion, or the offenses charged are based on the same act or transaction. Since in the instant matter the same evidence would be admissible in each trial and the facts in each case are easily separable by the jury, the Court sees no error in having granted the Motion to Consolidate the matters. See Commonwealth v Schilling, 458 A.2d 226 (Pa. Super. 1983).

With respect to Defendant's contention the Court erred in allowing Officer Ungard to testify as an expert witness respecting Defendant's intent to deliver the cocaine found in the residence, Defendant cites Commonwealth v Carter, 589 A.2d 1133 (Pa. Super. 1991) in support of his position. In Carter, the Court held that although expert testimony may be offered by narcotics detectives concerning whether the facts surrounding the possession of the controlled substance were consistent with an intent to deliver rather than an intent to possess for personal use where an accused is found with a certain quantity of drugs, where that detective has observed a sale by the defendant of that controlled substance, such testimony that he possessed that particular controlled substance with an intent to deliver such is cumulative and not beyond the average layman's appreciation and should not be admitted. The instant matter is distinguishable from the facts in Carter, however. In the instant matter, Officer Ungard did not testify regarding Defendant's intent to deliver the cocaine which he actually delivered. Officer Ungard testified regarding Defendant's intent to deliver the cocaine found in the residence, which had not yet been delivered. This testimony was therefore not cumulative with respect to that particular charge and provided the jury with information which has been considered by the Court to be beyond an average layman's knowledge and appreciation. See also Commonwealth v Montavo, 653 A.2d 700 (Pa. Super. 1995).

Finally, with respect to the imposition of consecutive sentences, Defendant does not point this Court to any particular error but in his brief simply appeals to the Court's discretion, asking the Court to consider his age, the fact that he has a small child, and that he does not present a danger to the community. The Court disagrees that dealing cocaine does not present a danger to the community and believes that the imposition of consecutive sentences is appropriate under the circumstances.

ORDER

AND NOW, this 9<sup>th</sup> day of January, 2001, for the foregoing reasons, Defendant's Post Sentence Motion is hereby denied. Defendant's sentence, imposed October 18, 2000, is hereby affirmed.

By the Court,

Dudley N. Anderson, Judge

cc: DA  
Nicole Spring, Esq., PD  
Gary Weber, Esq.  
Hon. Dudley N. Anderson