

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
ORLANDO STANFORD,	:	
	:	
Appellant	:	No. 1083 WDA 2012

Appeal from the Judgment of Sentence entered on May 23, 2012
in the Court of Common Pleas of Fayette County,
Criminal Division, No. CP-26-CR-0001581-2011

BEFORE: BENDER, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.:

Filed: April 26, 2013

Orlando Stanford ("Stanford") appeals from the judgment of sentence imposed after he was convicted of possession of a controlled substance, possession with intent to deliver a controlled substance ("PWID"), and criminal conspiracy to commit PWID.¹ We affirm.

The pertinent facts of this case are as follows:

On May 8, 2012, [Stanford] was convicted in a jury trial of [PWID] six point zero six (6.06) grams of heroin, Possession of six point zero six (6.06) grams of heroin, and Criminal Conspiracy to [PWID] six point zero six (6.06) grams of heroin as the result of an incident that took place on August 7, 2011, at the Sheetz Gas Station in the City of Connellsville, Fayette County, Pennsylvania. Commonwealth witness Andrew Beucher ["Beucher"] (written as "Andrew Bisher" in the Notes of Testimony) told the jury that, on that date, prior to arriving at Sheetz in Connellsville, he drove a blue Volkswagen beetle-type car to Wilkinsburg, Allegheny County, to pick up [Stanford], a black male, who said he had a drug delivery to

¹ 35 P.S. § 780-113(a)(16), (a)(30); 18 Pa.C.S.A. § 903.

make. [N.T., 5/7-8/12, at] 52. [Stanford] agreed to pay Beucher fifty dollars (\$50.00) in exchange for the transportation. *Id.* During the ride from Wilkinsburg to Connellsville, [Stanford] was seated in the back seat of the car, and talked on a phone a couple of times, telling the unseen person on the other end that he had stamped bags to sell. *Id.* [at] 54-55.

A confidential informant (hereinafter "CI") working on behalf of the Fayette County Drug Task Force through Connellsville Police Detective Christopher N. Koslowsky and Connellsville police officer Ryan Reese,^[2] arranged to purchase the heroin from [Stanford]. Prior to the controlled purchase, the CI was thoroughly searched by Detective Koslowsky [] to make sure that he had no drugs or money on his person. [*Id.* at] 17-20. Detective Koslowsky and the CI sat in an undercover vehicle parked at the Sheetz Gas Station, from which the police officer could witness the transaction. Soon after they arrived, the blue Volkswagen beetle-type vehicle driven by [] Beucher ... pulled alongside their car so that the driver's side of the Volkswagen was next to the passenger seat of the unmarked police vehicle where the CI was seated. The CI then exited the police vehicle and approached the Volkswagen, where he had a conversation with [Stanford], who was seated in the rear passenger side of that car. *Id.* [at] 23. The undercover detective yelled over to the Volkswagen loud enough for [Stanford] to hear, that he wanted to see what the drug seller had. Detective Koslowsky could clearly see [Stanford] in the back seat then lean[] over to hold up to the window a plastic bag containing small baggies that the officer presumed contained heroin. *Id.* [at] 24, 39-40. [] Beucher also observed [Stanford] holding the bag containing the heroin up to the car window so Detective Koslowsky could see it. *Id.* [at] 57, 63.

Officer Reese, qualified as an expert in narcotics investigation, was in charge of the buy/bust operation. *Id.* [at] 76. As he explained, if he does not have enough money in his budget to actually buy the quantity of drugs that has been ordered by the CI, then as soon as the CI or a police officer sees the drugs, the arrests are made immediately. *Id.*

² Officer Reese was also a detective with the Fayette County Drug Task Force.

[at] 78-79. Detective Koslowsky and other plain[-]clothes officers set up in the Sheetz parking lot, the former in a police vehicle, the latter on foot. *Id.* [at] 81. When Detective Koslowsky gave the pre-arranged signal, all of the officers, including Officer Reese, began the arrest. *Id.* [at] 82.

Trial Court Opinion, 8/29/12, at 1-3 (footnote added). After the suspects were arrested, Officer Reese and Detective Koslowski searched the Volkswagen. N.T., 5/7-8/12, at 84. Officer Reese found four individual stamped packets of suspected heroin on the floor of the rear passenger side, where Stanford had been sitting. *Id.* Officer Reese also discovered a large clear plastic bag containing two hundred individual packets of heroin, or four “bricks,” in the area of the trunk “directly behind the left shoulder area of the passenger seated behind the driver” *Id.* at 84-85. Officer Reese seized the suspected heroin and sent it for laboratory analysis. *Id.* at 85. One hundred seventy-two of the individual packets in the large plastic bag and the four packets seized from the floor of the rear seat were stamped identically with the stamp “Wal-Mart.” *Id.* at 142. The parties stipulated that the total amount of heroin seized was 6.06 grams. *Id.* at 113.

After Stanford’s conviction, the trial court imposed a sentence of a prison term of three to six years for Stanford’s conviction of PWID, and imposed “no further penalty” for Stanford’s other convictions. Stanford then filed this timely appeal of the judgment of sentence.³

³ Although Stanford filed a Concise Statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b), the record does not reflect the filing of an order by the trial court requiring such Concise Statement.

Stanford raises the following claim on appeal:

1. The Commonwealth presented insufficient evidence that [Stanford] committed the violations of the Controlled Substance, Drug, Device and Cosmetic Act, namely [PWID,] possession of a controlled substance, and criminal conspiracy to [PWID], in that:

A. The civilian witness contradicted the statements of the undercover officer;

B. No drugs were found on [Stanford's] person; [and]

C. No evidence was presented that a conspiracy existed between the parties.

Brief for Appellant at 11.

Stanford contends that the evidence was insufficient to support the guilty verdicts. Stanford argues the evidence was insufficient because the testimony of Beucher was contradictory to the testimony of Detective Koslowsky. Stanford asserts that (1) Detective Koslowsky testified that he yelled to Stanford to show him the drugs, while Beucher testified that the CI asked Stanford to show him the drugs; (2) Detective Koslowsky testified that Stanford showed him the drugs through the back window of the Beetle, while Beucher testified that Stanford showed the drugs through the front window; and (3) Beucher did not testify that Stanford showed him the large bag, containing four bricks of heroin, although Detective Koslowski did testify to that occurrence. Brief for Appellant at 15. Stanford also contends that there was no evidence of conspiracy with his fiancée and co-defendant, Stanton, or with the CI.

When evaluating a sufficiency [of the evidence] claim, our standard is whether, viewing all the evidence and reasonable inferences in the light most favorable to the Commonwealth, the factfinder reasonably could have determined that each element of the crime was established beyond a reasonable doubt. This Court considers all the evidence admitted, without regard to any claim that some of the evidence was wrongly allowed. We do not weigh the evidence or make credibility determinations. Moreover, any doubts concerning a defendant's guilt were to be resolved by the factfinder unless the evidence was so weak and inconclusive that no probability of fact could be drawn from that evidence.

Commonwealth v. Kane, 10 A.3d 327, 332 (Pa. Super. 2010). The finder of fact is free to believe all, part or none of the evidence presented at trial.

Commonwealth v. Hogentogler, 53 A.3d 866, 875 (Pa. Super. 2012). Circumstantial evidence alone can be sufficient to support a conviction.

Commonwealth v. Rivera, 773 A.2d 131, 135 (Pa. 2001).

A person may be convicted of possession of a controlled substance where he/she knowingly or intentionally possesses a controlled substance, when not registered to do so under the Controlled Substance, Drug, Device and Cosmetic Act. 35 P.S. § 780-113(a)(16). To be convicted of PWID, the Commonwealth must prove that the accused "both possessed the controlled substance and had an intent to deliver that substance." ***Commonwealth v. Koch***, 39 A.3d 996, 1001 (Pa. Super. 2011).

"A conviction for criminal conspiracy, 18 Pa.C.S.A. § 903, is sustained where the Commonwealth establishes that the defendant entered an

agreement to commit or aid in an unlawful act with another person or persons with a shared criminal intent and an overt act was done in furtherance of the conspiracy.” ***Commonwealth v. Lambert***, 795 A.2d 1010, 1016 (Pa. Super. 2002).

Stanford’s claim that the evidence was contradictory and therefore did not support the verdicts is actually a claim challenging the weight of the evidence. ***See, e.g., Commonwealth v. Knox***, 50 A.3d 732, 737-38 (Pa. Super. 2012) (discussing the standard of review of a claim alleging conflicting evidence). Such a claim must be preserved either in a post-sentence motion, or in a written or oral motion prior to sentencing. Pa.R.Crim.P. 607; ***Commonwealth v. Priest***, 18 A.3d 1235, 1239 (Pa. Super. 2011). The failure to properly preserve such claim will result in waiver. ***Commonwealth v. Griffin***, 2013 PA Super 70, 2013 WL 131089, at 5. Here, Stanford did not properly preserve this claim. Therefore, it is waived.⁴

Stanford also alleges that the evidence was insufficient to support his conviction because no drugs were found on his person, and no evidence was presented that a conspiracy existed between himself and any other person.

Our review of the record demonstrates that the evidence supported Stanford’s convictions. The trial court has correctly addressed these issues,

⁴ We note that the trial court found that this claim lacked merit. ***See*** Trial Court Opinion, 8/29/12, at 3-4.

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and we affirm on the basis of the trial court's Opinion with regard to Stanford's claims. **See** Trial Court Opinion, 8/29/12, at 4-5.

Judgment of sentence affirmed.

IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
V. :
ORLANDO STANFORD : NO. 1581 OF 2011

OPINION AND ORDER

Wagner, J.

Before the Court is Defendant's Rule 1925(b) Concise Statement of Issues Raised on Appeal filed on August 27, 2012 which raises as the sole ground a challenge to the sufficiency of the evidence. In support of the same, Defendant alleges in boilerplate fashion that the civilian witness contradicted the statements of the undercover officer, no drugs were found on Defendant's person, and no evidence of conspiracy was presented.

On May 8, 2012, Defendant was convicted in a jury trial of Possession with Intent to Deliver six point zero six (6.06) grams of heroin, Possession of six point zero six (6.06) grams of heroin, and Criminal Conspiracy to Possess with the Intent to Deliver six point zero six (6.06) grams of heroin as the result of an incident that took place on August 7, 2011, at the Sheetz Gas Station in the City of Connellsville, Fayette County, Pennsylvania. Commonwealth witness Andrew Beucher (written as "Andrew Bisher" in the Notes of Testimony) told the jury that, on that date, prior to arriving at Sheetz in Connellsville, he drove a blue Volkswagen beetle-type car to Wilkinsburg, Allegheny County, to pick up Defendant Orlando Stanford, a black male, who said he had a drug delivery to make. Id. p.52. Defendant agreed to pay Beucher fifty dollars

(\$50.00) in exchange for the transportation. Id. During the ride from Wilkinsburg to Connellsville, Defendant was seated in the back seat of the car, and talked on a phone a couple of times, telling the unseen person on the other end that he had stamped bags to sell. Id. pp. 54 -55.

A confidential informant (hereinafter "CI") working on behalf of the Fayette County Drug Task Force through Connellsville Police Detective Christopher N. Koslowsky and Connellsville police officer Ryan Reese, arranged to purchase the heroin from Defendant. Prior to the controlled purchase, the CI was thoroughly searched by Detective Koslowsky involved to make sure that he had no drugs or money on his person. N. T., pp. 17- 20. Detective Koslowsky and the CI sat in an undercover vehicle parked at the Sheetz Gas Station, from which the police officer could witness the transaction. Soon after they arrived, the blue Volkswagen beetle-type vehicle driven by witness Beucher ("Bisher" in the N.T.) pulled alongside their car so that the driver's side of the Volkswagen was next to the passenger seat of the unmarked police vehicle where the CI was seated. The CI then exited the police vehicle and approached the Volkswagen, where he had a conversation with Defendant, who was seated in the rear passenger side of that car. Id. p. 23. The undercover detective yelled over to the Volkswagen loud enough for Defendant to hear, that he wanted to see what the drug seller had. Detective Koslowsky could clearly see Defendant in the back seat then leaned over to hold up to the window a plastic bag containing small baggies that the officer presumed contained heroin. Id. pp. 24, 39-40. Andrew Beucher also observed Defendant holding the bag containing the heroin up to the car window so Detective Koslowsky could see it. Id. pp. 57, 63.

Officer Reese, qualified as an expert in narcotics investigation, was in charge of the buy/bust operation. Id. p.76. As he explained, if he does not have enough money in his budget to actually buy the quantity of drugs that has been ordered by the CI, then as soon as the CI or a

police officer sees the drugs, the arrests are made immediately. Id. pp. 78-79. Detective Koslowsky and other plain clothes officers set up in the Sheetz parking lot, the former in a police vehicle, the latter on foot. Id. p.81. When Detective Koslowsky gave the pre-arranged signal, all of the officers, including Officer Reese, began the arrest. Id. p. 82.

In light of the above evidentiary summarization, the Court will now discuss the three supporting grounds raised by Defendant in support of his claim of insufficiency of the evidence. In reviewing a claim of insufficient evidence, the issue is whether viewing all of the evidence admitted at trial in the light most favorable to the Commonwealth as verdict winner and giving it the benefit of all reasonable inferences based thereon, there is sufficient evidence to enable the fact-finder to find every element of the crime charged beyond a reasonable doubt.

Commonwealth v. LaBenne, __A.3d __, 2011 WL 2078746 (Pa.Super). The facts and circumstances established by the Commonwealth need not preclude every possibility of innocence, and it may sustain its burden wholly through circumstantial evidence. Id.

1. Contradictions in testimony

Defendant initially asserts that the evidence presented against him at trial was insufficient because the civilian witness contradicted the undercover police officer. As stated above, this is a boilerplate claim, and Defendant has not identified the “civilian witness” by name, nor has he set forth the specific contradictions to which he is referring. The Court will assume that Defendant is referring to witness Andrew Beucher (misspelled as “Bisher” in the Notes of Testimony). The Court is unable to recall any material contradictions in the testimony of the two men. Assuming for argument’s sake that there were material differences between Beucher's testimony and that of the police officer, it was up to the jury to resolve the conflicts. Conflicts in the evidence and contradictions in the testimony of any witnesses are for the factfinder to resolve. Commonwealth

v. Sanders, 42 A.3d 325 (Pa.Super. 2012). The initial determination of credibility and weight to be afforded the evidence is for the factfinder, who is free to believe all, part, or none of the evidence presented. Commonwealth v. Kane, 10 A.3d 327 (Pa.Super.2010). A court must not reverse a verdict on this type of claim unless that verdict is so contrary to the evidence as to shock one's sense of justice. Id. The Court's sense of justice was not shocked at all by the verdict rendered in this case based on the evidence summarized above.

2. No drugs found on Defendant's person

Defendant's contention that the evidence was insufficient to sustain his convictions because no drugs were "found on his person" is so lacking in merit as to be almost frivolous. As set forth above, Detective Koslowsky clearly testified that Defendant himself held up to the car window a plastic bag containing small baggies packaged with heroin, in response to the officer asking him to show him what he had to sell. Additionally, witness Andrew Beucher told the jury that he also observed Defendant holding the bag full of heroin in his hand. N.T. p. 63. The necessary element for the crimes of Possession and Possession with Intent to Deliver is that the person charged be in control of the contraband substance or in a position to exercise dominion over it, not that the substance be found on his person. The trial testimony amply demonstrates that Defendant had the heroin in his hands and exercised control and dominion over it.

3. Conspiracy

Conspiracy is defined by 18 Pa.C.S. § 903 as an agreement with another person or persons that they or one or more of them will engage in conduct which constitutes a crime or an attempt to commit such crime, or an agreement to aid such other person or persons in the planning and commission of the crime or the attempt to commit the crime. The statute requires an overt act by the person charged or his co-conspirator in pursuance of the conspiracy be proven. As the

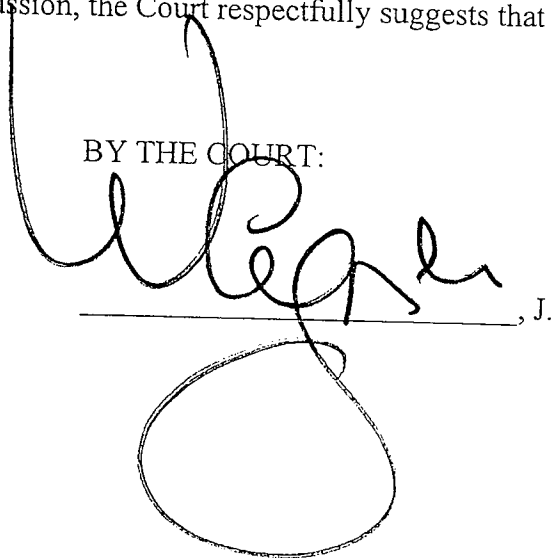
verdict winner, the Commonwealth is entitled to have the record reviewed in the light most favorable to it and to receive the benefit of all reasonable inferences arising from the evidence.

Commonwealth v. Brown, __ A.3d __, 2012 WL 2020529 (Pa.Super. 2012).

Application of this standard to the record of this case establishes that the Commonwealth presented evidence that Defendant made an agreement with the CI such that Defendant traveled to Fayette County from a residence in Allegheny County to effectuate the sale of the heroin that Defendant possessed. The testimony of record also demonstrates that Defendant made an agreement with witness Andrew Beucher to pay him fifty dollars (\$50.00) if Beucher would drive him to Fayette County so Defendant could make the illegal sale, Defendant would. N.T. pp. 52.

WHEREFORE, in light of the foregoing discussion, the Court respectfully suggests that Defendant's appeal be denied.

BY THE COURT:



_____ , J.

ATTEST:

Jamice Snyder
Clerk of Courts

FILED

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JAMICE SNYDER
CLERK OF COURTS
FAYETTE COUNTY, PA