NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. WILLIAM JEFFREY WATSON, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1358 WDA 2011

Appeal from the Judgment of Sentence June 3, 2011
In the Court of Common Pleas of Allegheny County
Criminal Division at No(s): CP-02-CR-0010607-2009

BEFORE: STEVENS, P.J., MUNDY, J., and FITZGERALD, J.*

MEMORANDUM BY STEVENS, P.J. Filed: February 25, 2013

This is an appeal from the judgment of sentence entered by the Court of Common Pleas of Allegheny County after a jury convicted Appellant, William Jeffrey Watson, of Possession with Intent to Manufacture a Controlled Substance, *to wit*, marijuana,[1] Simple Assault,[2] Possession of a Controlled Substance,[3] and Possession of Drug Paraphernalia.[4] Sentenced to not less than one nor more than two years' incarceration, Watson challenges the sufficiency of the evidence offered to support his convictions on

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* Former Justice specially assigned to the Superior Court.

[1] 35 P.S. § 780-113(a)(30).
[2] 18 Pa.C.S.A. § 2701(a)(1).
[3] 35 P.S. § 780-113(a)(16).
[4] 35 P.S. § 780-113(a)(32).

possession with intent to manufacture marijuana and simple assault. We affirm.

The trial court has provided an apt recitation of fact and procedural history as follows:

> On December 9, 2011, the appellant, William Jeffrey Watson, (hereinafter referred to as "Watson"), was convicted following a jury trial of the crimes of possession with intent to [manufacture] a controlled substance, simple assault, possession of a controlled substance, possession of a small amount of a controlled substance, and possession of drug paraphernalia. The jury found Watson not guilty of the charge of possession of instruments of a crime and was unable to reach a verdict on the crime of aggravated assault. A presentence report was ordered and sentencing took place on June 3, 2011, at which time Watson was sentenced to a period of incarceration of not less than one nor more than two years to be followed by a period of probation of three years, during which he was to undergo random drug screening and have drug and mental health evaluations performed by the probation office. He was to have no contact with the victim and was to pay restitution to the victim in the amount of $1,346.00.
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> Watson filed timely post-sentence motions which, following a hearing, were denied. Watson then filed an appeal to the Superior Court and was directed to file a concise statement of matters complained of on appeal, with which directive he has complied. In his initial claim of error, Watson maintains that the verdicts with respect [to] drug offenses were against the weight of the evidence since it was never demonstrated that he was in control of the marijuana plants that were found in his apartment. Watson next maintains that the evidence was insufficient to establish that he intended to manufacture marijuana and, finally, he maintains that the Commonwealth did not disprove that Watson was acting in justifiable self-defense when he attacked his victim.
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> In June of 2009, Michael Crooks, (hereinafter referred to as "Crooks"), became employed as a handyman/superintendent of an apartment building located at 1203 Vosskamp Street in the City of Pittsburgh. Crooks and his girlfriend lived on the fourth

floor of that apartment building and Watson lived on the second floor, which was actually the ground floor of the apartment building. Crooks and his girlfriend installed a bird feeder outside the window of their apartment and would refill the bird feeder, much to the consternation of Watson. Watson and Crooks had several arguments about the manner in which Crooks refilled the bird feeder since he caused it to spill birdseed into what Watson perceived to be his yard.

On June 23, 2009, Crooks went to the roof of the building to repair a roof leak and after he had completed his repair work, he was coming down the fire escape and asked his girlfriend to give him the birdseed so that he could refill the bird feeder. Crooks apparently spilled some birdseed onto the ground and this caused Watson to get irritated and he then began a shouting match with Crooks. Crooks came down the fire escape with two empty cans of roof cement and was met by Watson who was sitting in a chair where he had his leg up on a railing thereby preventing Crooks from getting into the apartment [house]. Crooks pushed Watson's leg away and then Watson charged at him and Crooks felt a pain in his chest. Initially he thought Watson had scratched him and it was only after he was going to get a shovel to strike back at Watson that he noticed that he was bleeding.

Crooks then went into his apartment and called 911 and waited for the paramedics to arrive. The police arrived first as a result of information that was passed along that Crooks had been stabbed and he identified Watson as his attacker. He also told the police where Watson lived. Detective Richard Ford was the first officer on the scene and knocked on the door and told him that he was there to arrest him for the assault that he had perpetrated on Crooks. Watson opened the door and then backed into his apartment. Detective Ford told Watson to get down on the ground so that he could handcuff him. While handcuffing Watson, Detective Ford observed Watson's hands and did not see any signs of defensive wounds. [Ford] also noticed a knife on a table and as he went over to get the knife, Watson said "That's the knife I stabbed him with."

After Watson was handcuffed and after backup police officers arrived on the scene, they performed a preventative sweep to insure that there was nobody else in the apartment who might be able to injure them while they were attempting to take

> Watson into custody. During this sweep they came across a closet for which the door had been removed and was covered with some type of drape. In the closet were what appeared to be five marijuana plants and additionally, they found in a planter in what appeared to be twenty additional plants. They also found grow lights, potting material, a thermometer, an empty bag of potting soil and other items used to cultivate plants.

Trial Court Opinion dated 4/26/12 at 2-5.

Appellant raises the following two issues for our review:

> **I. DID THE COMMONWEALTH FAIL TO PROVE BEYOND A REASONABLE DOUBT THAT WILLIAM WATSON MANUFACTURED OR INTENDED TO MANUFACTURE MARIJUANA?**
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> **II. DID THE COMMONWEALTH FAIL TO DISPROVE BEYOND A REASONABLE DOUBT THAT WILLIAM WATSON ACTED IN SELF-DEFENSE IN INFLICTING BODILY INJURY ON MICHAEL CROOKS?**

Brief for Appellant at 6.

In his first issue, Appellant challenges the sufficiency of the evidence to support his convictions for possession with intent to manufacture marijuana. Our standard of review in addressing this challenge is well-settled:

> In evaluating a challenge to the sufficiency of the evidence, we must determine whether, viewing the evidence in the light most favorable to the Commonwealth as verdict winner, together with all reasonable inferences therefrom, the trier of fact could have found that each and every element of the crimes charged was established beyond a reasonable doubt. ***Commonwealth v. Montini****,* 712 A.2d 761, 767 (Pa. Super. 1998); ***Commonwealth v. Swann****,* 431 Pa.Super. 125, 635 A.2d 1103, 1105 (1994), *appeal denied,* 538 Pa. 669, 649 A.2d 671 (1994). In making this determination, we must evaluate the entire trial record and consider all the evidence actually received. ***Commonwealth v. DiStefano****,* 782 A.2d 574, 582 (Pa. Super.

> 2001); ***Commonwealth v. Rodriquez****,* 449 Pa.Super. 319, 673 A.2d 962, 965 (1996). "[T]he facts and circumstances established by the Commonwealth need not be absolutely incompatible with the defendant's innocence, but the question of any doubt is for the trier of fact unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances." ***Commonwealth v. Seibert****,* 424 Pa.Super. 242, 622 A.2d 361, 363 (1993), *appeal denied,* 537 Pa. 631, 642 A.2d 485 (1994) (citing ***Commonwealth v. Sullivan****,* 472 Pa. 129, 371 A.2d 468, 478 (1977) and ***Commonwealth v. Libonati****,* 346 Pa. 504, 31 A.2d 95, 97 (1943)). "This standard is equally applicable to cases where the evidence is circumstantial rather than direct so long as the combination of the evidence links the accused to the crime beyond a reasonable doubt." ***Commonwealth v. Swerdlow****,* 431 Pa.Super. 453, 636 A.2d 1173, 1176 (1994) (citing ***Commonwealth v. Hardcastle****,* 519 Pa. 236, 546 A.2d 1101, 1105 (1988)).

Commonwealth v. Murphy, 795 A.2d 1025, 1029 -1030 (Pa. Super. 2002)

We first consider whether the evidence was sufficient to sustain Appellant's conviction for manufacture of a controlled substance under Section 780-113(a)(30) of "The Controlled Substance, Drug, Device and Cosmetic Act" (hereinafter the "Act"). This portion of the Act provides:

> (30) Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance.

35 P.S. § 780-113(a)(30). Providing as such, the Act criminalizes the manufacture of controlled substances. "Manufacture" is further defined by the Act as follows:

> **"Manufacture"** means the production, preparation, propagation, compounding, conversion or processing of a

> controlled substance, other drug or device or the packaging or repackaging of such substance or article, or the labeling or relabeling of the commercial container of such substance or article, but does not include the activities of a practitioner who, as an incident to his administration or dispensing such substance or article in the course of his professional practice, prepares, compounds, packages or labels such substance or article. The term "manufacturer" means a person who manufactures a controlled substance, other drug or device.

35 P.S. § 780-102 The statute further defines "production" to encompass the "manufacturing, **planting, cultivation, growing** or harvesting of a controlled substance ..." *Id.* (emphasis added). It is undisputed that, for purposes of the Act, marijuana is a controlled substance. 35 P.S. § 780–104(1)(iv). Growing a small amount of marijuana for one's personal use comes under the ambit of Section 780-113(a)(30):

> The statute does not fix any requirements governing the quantity manufactured; presumably, had the Legislature contemplated a minimum quantity requirement, it would have included one. Finally, we note our Supreme Court has held that a harsher penalty for the manufacture (versus simple possession) of marijuana is a rational deterrent to the increased production and sale of an illegal drug and the attendant social harm. ***Commonwealth v. Burnsworth***, 543 Pa. 18, 669 A.2d 883, 889 (1995).
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> We hold that growing even a small amount of marijuana solely for personal use constitutes the "manufacture" of a controlled substance within the meaning of, and in violation of, 35 P.S. § 780–113(a)(30).

Commonwealth v. Van Aulen, 952 A.2d 1183, 1185 (Pa. Super. 2008).

Read in a light most favorable to the Commonwealth as verdict winner, the evidence established that Watson was growing 20 marijuana plants in his apartment. Specifically, the Commonwealth produced evidence that

Watson was not merely present in the apartment, but was its primary resident (see recitation of facts, *supra*). The marijuana plants, moreover, were not secluded within an area exclusive to his roommate at the time, Roberta Edmon, but were instead grown in a common area closet located between the dining room and living room. While Watson testified in his own behalf that it was Edmon who grew the marijuana, Edmon countered that Watson had, sometime in April of 2009, taken a grow light she had purchased earlier that year in preparation for growing various perennials and set it up in the closet for the marijuana. N.T. 12/9/10 at 46-48. She admitted she "probably" watered the plants, but testified it was Watson who owned the plants and was growing them for at least three months prior to their discovery by police. N.T. at 46-50.

This evidence, if accepted as true by the jury within its province as sole finder of fact, permitted the determination that Watson owned and exercised control over the growing of marijuana plants discovered in his apartment. The jury clearly made this finding. Accordingly, because Watson's conduct ran afoul of Section 780-113(a)(30)'s proscription against possession with intent to manufacture a controlled substance, Appellant's sufficiency challenge fails. ***Cf. Commonwealth v. Tizer***, 525 Pa. 315, 319-320, 580 A.2d 305, 307 (1990) (holding jury could reasonably convict non-resident person as part of home's methamphetamine manufacturing

enterprise where her presence in kitchen where methamphetamine was cooking was consistent with overseeing process).

Watson's remaining sufficiency challenge posits that his conviction for Simple Assault may not stand where the Commonwealth failed to disprove that he acted in self-defense when he stabbed Michael Crooks in the chest. With regard to self-defense, we note the following:

> The use of force against a person is justified when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by the other person. *See* 18 Pa.C.S. § 505(a). When a defendant raises the issue of self-defense, the Commonwealth bears the burden to disprove such a defense beyond a reasonable doubt. While there is no burden on a defendant to prove the claim, before the defense is properly at issue at trial, there must be some evidence, from whatever source, to justify a finding of self-defense. *If there is any evidence that will support the claim, then the issue is properly before the fact finder*.
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> Finally, we note that the Commonwealth cannot sustain its burden of proof solely on the fact finder's disbelief of the defendant's testimony. The "disbelief of a denial does not, taken alone, afford affirmative proof that the denied fact existed so as to satisfy a proponent's burden of proving that fact." The trial court's statement that it did not believe Appellant's testimony is no substitute for the proof the Commonwealth was required to provide to disprove the self-defense claim.

Commonwealth v. Torres, 564 Pa. 219, 766 A.2d 342, 344-45 (2001) (case citations omitted) (emphasis added).

The Commonwealth presented evidence by way of Michael Crooks and detectives of the Pittsburgh City Police Department who arrived at the scene after the altercation. As recounted *supra*, Crooks testified that he was on

the fourth floor fire escape filling a bird feeder with seed when Watson began to holler invectives at Crooks warning him about spilling birdseed on the concrete "yard" outside Watson's apartment. Crooks, who was superintendent of the apartment house, started to come down the fire escape holding two empty buckets of concrete mix he had just used to repair the roof and encountered Watson sitting in a lawn chair with his left foot on the railing of the fire escape. According to Crooks, he told Watson to move his leg, and Watson sprang at him in anger. Crooks testified he grabbed Watson's hand but simultaneously felt a burning in his torso.

Noticing a hole in his shirt, Crooks lifted it to find a stab wound underneath. He admitted he started for a shovel located on the concrete yard where the two men were, but stopped when his girlfriend yelled "Michael, no." N.T. 12/8/10 at 34. "[T]he hell with you, you can go to jail" Crooks said to Watson as he then used his cell phone to call 9-1-1.

During both direct and cross-examination, Crooks admitted both men were exchanging foul language but he denied using racial epithets. He also denied racing at Watson as he descended the fire escape, saying the escape would be too narrow to accomplish the move even if he had attempted to do so. He likewise denied knocking Watson aside at the foot of the fire escape stairs. N.T. at 41.

Detective Richard Ford of the Pittsburgh City Police Department testified that he responded to the dispatch regarding the altercation. A

police officer at the time, Detective Ford testified he arrived and took Crooks statement while waiting for medics to arrive. Crooks statement to him was consistent with what Crooks had offered in his trial testimony in all but one respect. Ford's recollection at trial was that Crooks said he had not touched Watson prior to Watson initiating the conflict, but defense counsel produced Ford's police report indicating Crooks stated "he pushed [Watson's] leg aside to get by Watson when he lunged at him." N.T. 12/9/10 at 11.

Viewing this evidence in a light most favorable to the Commonwealth as verdict winner, we find that the Commonwealth disproved Watson's defense of self-defense with testimony offered by Crooks that Watson stabbed him not under the belief that such force was necessary to his protection but in an act of frustration and aggression over the verbal dispute the two men were having. Indeed, the jury was free to accept Crooks' testimony to this effect and reject Watson's self-defense testimony that Crooks was in the process of overpowering him when he resorted to his knife.

Contrary to Watson's argument, moreover, such a credibility determination was not invalidated simply because Crooks' statement recorded in the police report contradicted his testimony that he never touched Watson prior to Watson's attack. Even when read in a light most favorable to Watson, the report stated only that Crooks had pushed Watson's leg aside so Crooks could get by him. Though a discrepancy did,

therefore, emerge on whether Crooks had touched Watson prior to the fight, Crooks' statement in the police report and his testimony at trial were consistent on the critical point that he simply wished to pass by Watson and did not rush Watson as Watson claimed. If the report were taken as true, the fact remains that Crooks' pushing Watson's legs aside so that he could pass simply failed to create a circumstance calling for an act of self-defense through use of a knife to the chest. The jury's verdict on Simple Assault thus being supported by the evidence, we reject Appellant's sufficiency challenge.

Judgment of sentence is affirmed.