

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
JASMINE RAYON STANTON,	:	
	:	
Appellant	:	No. 1425 WDA 2012

Appeal from the Judgment of Sentence entered on May 18, 2012  
in the Court of Common Pleas of Fayette County,  
Criminal Division, No. 1582 of 2011;  
CP-26-CR-0001582-2011

BEFORE: BENDER, ALLEN and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: FILED: May 8, 2013

Jasmine Rayon Stanton (“Stanton”) appeals from the judgment of sentence imposed after she was convicted of criminal conspiracy.<sup>1</sup> We affirm.

The trial court set forth the pertinent facts of this case as follows:

On May 8, 2012, [Stanton] was convicted in a jury trial of 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, he drove a blue Volkswagen beetle-type car to Wilkinsburg, Allegheny County, to pick up co-conspirator and co-defendant Orlando Stanford, who said he had a drug delivery to make. When co-conspirator Stanford came out of the building in Wilkinsburg to get into the Volkswagen, [Stanton] was with him, and she also got into the

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<sup>1</sup> 18 Pa.C.S.A. § 903.

car and rode to the Sheetz gas station in Connellsville.<sup>[2]</sup> During the ride from Wilkinsburg to Connellsville, [Stanton] was seated beside co-conspirator Stanford in the back seat of the car, while Stanford talked on a phone a couple of times, telling the unseen person on the other end that he had stamped bags to sell.

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 Stanford at the Sheetz gas station in Connellsville [from Stanton's] co-conspirator. Prior to the controlled purchase, the CI was thoroughly searched to make sure that he had no drugs or money on his person. Detective Koslowsky and the CI sat in an undercover vehicle parked at the Sheetz location, from which the police officer could witness the transaction. Soon after they arrived, the Volkswagen beetle-type vehicle driven by witness 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 co-conspirator Stanford, seated in the rear passenger side of that car. The undercover detective yelled over to the Volkswagen that he wanted to see what the drug seller had, and Detective Koslowsky could clearly see Stanford then hold up in the window a plastic bag containing small baggies that the officer presumed contained heroin. When Stanford leaned over to hold the bag in the window, [Stanton], who was seated between him and the window of the Volkswagen, leaned back in her seat to enable him to do so. As soon as Detective Koslowsky saw the presumptive heroin in the bag, he gave a pre-arranged signal, and he and many other police officers began the arrests, including that of [Stanton].

Trial Court Opinion, 9/26/12, at 1-2 (citations omitted).

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<sup>2</sup> Beucher testified that Stanton was Stanford's girlfriend. N.T., 5/7-8/12, at 53. Stanford testified that Stanton was his fiancée. *Id.* at 120.

The Commonwealth charged Stanton with possession of a controlled substance, possession of a controlled substance with intent to deliver, and criminal conspiracy. During the trial, the charges of possession and possession with intent to deliver against Stanton were dismissed. N.T., 5/7-8/12, at 116. The jury convicted Stanton of criminal conspiracy.

The trial court sentenced Stanton to a prison term of one to two years. Stanton filed post-sentence Motions, which the trial court denied. Stanton then filed this timely appeal. The trial court ordered Stanton to file a Pa.R.A.P. 1925(b) concise statement. Stanton complied with that Order in a timely fashion.

Stanton raises the following issues on appeal:

1. Was the evidence legally and factually insufficient to prove that [Stanton] was guilty of criminal conspiracy? Specifically[,] can [Stanton] be convicted of conspiracy simply by association and/or merely being present at the scene?
2. Did the Commonwealth fail to prove beyond a reasonable doubt that [Stanton] committed the crime of criminal conspiracy?
3. Whether the trial court erred in refusing to grant [Stanton's] Motion to modify the sentence? Specifically[,] did the trial court err in sentencing [Stanton] to a mandatory sentence of three (3) to six (6) years for a conviction of criminal conspiracy?

Brief for Appellant at 7.

Stanton's first two arguments on appeal challenge the sufficiency of the evidence to support her conviction of criminal conspiracy. Our standard of review of a claim challenging the sufficiency of the evidence is as follows:

When evaluating a sufficiency 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).

Circumstantial evidence alone can be sufficient to convict a person of a crime. ***Commonwealth v. Rivera***, 773 A.2d 131, 135 (Pa. 2001).

The crime of conspiracy is defined as follows:

**(a) Definition of conspiracy.**--A person is guilty of conspiracy with another person or persons to commit a crime if with the intent of promoting or facilitating its commission he:

(1) agrees with such other person or persons that they or one or more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or

(2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt or solicitation to commit such crime.

...

**(e) Overt act.**--No person may be convicted of conspiracy to commit a crime unless an overt act in pursuance of such conspiracy is alleged and proved to have been done by him or by a person with whom he conspired.

18 Pa.C.S.A. § 903.

[A conviction of conspiracy] requires proof that: 1) the defendant entered into an agreement with another to commit or aid in the commission of a crime; 2) he shared the criminal intent with that other person; and 3) an overt act was committed in furtherance of the conspiracy. "This overt act need not be committed by the defendant; it need only be committed by a co-conspirator."

**Commonwealth v. Knox**, 50 A.3d 749, 755 (Pa. Super. 2012) (citation omitted). "Because it is difficult to prove an explicit or formal agreement to commit an unlawful act, such an act may be proved inferentially by circumstantial evidence, *i.e.*, the relations, conduct or circumstances of the parties or overt acts on the part of the co-conspirators." **Commonwealth v. Thoeun Tha**, 2013 WL 131091, 4 (Pa. Super. 2013). "The conduct of the parties and the circumstances surrounding their conduct may create a 'web of evidence' linking the accused to the alleged conspiracy beyond a reasonable doubt." **Commonwealth v. Lambert**, 795 A.2d 1010, 1016 (Pa. Super. 2002). Such evidence must rise above the level of mere suspicion or possibility of guilty collusion. **Id.**

Among the circumstances which are relevant, but not sufficient by themselves, to prove a corrupt confederation are: (1) an association between alleged conspirators; (2) knowledge of the commission of the crime; (3) presence at the scene of the crime; and (4) in some situations, participation in the object of the conspiracy. The presence of such circumstances may furnish a web of evidence linking an accused to an alleged conspiracy beyond a reasonable doubt when viewed in conjunction with each other and in the context in which they occurred.

*Id.*

In the instant case, Stanton argues that the record contained no evidence of an agreement between her and her co-defendant "McClain," and that the trial testimony revealed only that Stanton and "McClain were in a romantic relationship and she was driving the vehicle when the drug transaction occurred between McClain and the confidential informant." Brief for Appellant at 11, 13 (alleging that Stanton had not conspired with "McClain").

Stanton's argument is unavailing as the evidence before this Court does not include any reference to a co-defendant named "McClain." In fact, the evidence shows that Stanton's co-defendant was Orlando Stanford ("Stanford"). **See** Trial Court Opinion, 9/26/12, at 1; N.T., 5/7-8/12, at 24-26. Further, the evidence shows that Stanton was not the driver of the vehicle, but instead, she was sitting behind the driver of the vehicle. *Id.* Thus, because Stanton's arguments do not relate to the evidence in this case, she is not entitled to relief on her first two arguments on appeal. **See Commonwealth v. Rhodes**, 54 A.3d 908, 909 (Pa. Super. 2012) (holding that a claim is waived where the appellant failed to adequately develop it in his appellate brief).

Moreover, even if Stanton had properly identified her co-defendant, and made an argument based on the actual facts of this case, we would

conclude that her claim of insufficient evidence lacks merit for the following reasons stated by the trial court:

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.... Application of this standard to the record in this case establishes that the Commonwealth presented evidence that [Stanton] willingly accompanied ... Stanford from Wilkinsburg to Connellsville when he was carrying stamped bags of heroin, she had knowledge of his intention to sell those bags, and she overtly acted in such a way as to facilitate what she and he thought was a sale when she voluntarily leaned back in her seat to allow Stanford to show his wares to Detective Koslowsky. Such evidence is legally and factually sufficient to sustain the verdict of the jury relative to its determination that [Stanton] conspired in the possession of the heroin with the intent to deliver it.

Trial Court Opinion, 9/25/12, at 3-4 (citations omitted); *see also Lambert*, 795 A.2d at 1021-22 (holding that the defendant was not merely present at the scene where his actions were not "spontaneous" and not "independent" of the co-defendant; finding that the circumstantial evidence was sufficient to establish defendant's guilt, where it demonstrated a prior close association between the defendant and co-defendant, defendant was present at the scene, defendant must have been aware of the co-defendant's actions in forcefully entering the house, and defendant drove the co-defendant to and from the burglary scene).

In her third argument on appeal, Stanton contends that the trial court erred in sentencing her to a mandatory sentence of one to two years on her

conviction of criminal conspiracy.<sup>3</sup> Claims relating to the imposition of a mandatory minimum sentence raise questions as to the legality of sentence. ***Commonwealth v. Manahan***, 45 A.3d 413, 415 (Pa. Super. 2012). In such a case, we must determine if the trial court erred as a matter of law, and our scope of review is plenary. ***Commonwealth v. Marion***, 981 A.2d 230, 242 (Pa. Super. 2009).

Under section 7508 of the Crimes Code, a person convicted of violating 35 P.S. § 780-113(a)(30) (possession with intent to deliver), where the controlled substance is heroin weighing between five and fifty grams, is subject to a mandatory prison term of three years. 18 Pa.C.S.A. § 7508(7)(ii).

At the sentencing hearing, counsel for Stanton argued that the mandatory sentencing provisions of 18 Pa.C.S.A. § 7508 did not apply to Stanton's conviction of conspiracy. N.T., 5/23/12, at 2. The trial court stated that, if counsel found authority holding that "criminal conspiracy to possess with intent to deliver does not trigger the mandatory sentencing [provision]," the court would adjust the sentence to the standard range minimum sentence under the sentencing guidelines of six to fourteen months. ***Id.*** at 5. The trial court then sentenced Stanton on the record to a

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<sup>3</sup> We note that in the Statement of Questions section of her appellate brief, Stanton contended that the trial court erred in sentencing her to a mandatory sentence of three to six years for her conviction of criminal conspiracy. ***See*** Brief for Appellant at 7. The main thrust of Stanton's argument is that the trial court erred in imposing a mandatory sentence.



prison term of three to six years, pursuant to section 7508(7)(ii). N.T., 5/23/12, at 6.

However, by written Order, the trial court sentenced Stanton to a prison term of one to two years.<sup>4</sup> In its Opinion in connection with this appeal, the trial court indicated that it had not imposed a mandatory sentence. **See** Trial Court Opinion, 9/26/12, at 4. Based on the trial court's statements at the sentencing hearing and in its Opinion, we conclude that the trial court did not impose a mandatory sentence upon Stanton. Thus, her third claim on appeal lacks merit.

In addition, we note that Stanton has not set forth a specific challenge to the discretionary aspects of her sentence. However, even if she had raised such a claim, her brief fails to set forth a substantial question that the sentence imposed was inconsistent with a specific provision of the Sentencing Code or contrary to the fundamental norms underlying the sentencing process. **See Commonwealth v. Mastromarino**, 2 A.3d 581, 585-86 (Pa. Super. 2010) (setting forth the requirements for the right to appeal the discretionary aspects of sentence; "[a]t a minimum, the Rule 2119(f) statement must articulate what particular provision of the code is violated, what fundamental norm the sentence violates, and the manner in which it violates that norm."); **see also Commonwealth v. Mouzon**, 812 A.2d 617, 627-28 (Pa. 2002) (plurality) (holding that a claim of

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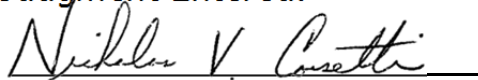
<sup>4</sup> This Order was originally dated May 18, 2012; however, the trial court subsequently amended the date of the Order to May 23, 2012.

excessiveness of sentence will raise a substantial question only where the appellant “sufficiently articulates the manner in which the sentence violates either a specific provision of the ... Sentencing Code or a particular fundamental norm underlying the sentencing process....”).<sup>5</sup>

Judgment of sentence affirmed.

Bender, J. filed a Dissenting Memorandum.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casatti", is written over a horizontal line.

Deputy Prothonotary

Date: 5/8/2013

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<sup>5</sup> Stanton’s brief also fails to include the required Rule 2119(f) statement. **See** Pa.R.A.P. 2119 (“An appellant who challenges the discretionary aspects of a sentence in a criminal matter shall set forth in his brief a concise statement of the reasons relied upon for allowance of appeal with respect to the discretionary aspects of a sentence”).