

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

CLAYTON BAYLOR,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1458 EDA 2012

Appeal from the Judgment of Sentence Entered December 13, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0000036-2011

BEFORE: BENDER, P.J., OTT, J., and STRASSBURGER, J.*

MEMORANDUM BY BENDER, P.J.

FILED DECEMBER 17, 2013

Appellant, Clayton Baylor, appeals from the judgment of sentence of three to six years' incarceration, imposed following his conviction for possession and possession with intent to deliver crack cocaine. Appellant contends that the evidence was insufficient to sustain his conviction. After careful review, we affirm.

Appellant proceeded to a nonjury trial on December 13, 2011. The facts adduced at trial were as follows:

On December 15, 2010, at approximately 8:10 p.m.[,] Philadelphia Police Officer [Raymond] Heim was on duty near 100 Hansberry Street, Philadelphia. Based on information he received, Officer Heim set up narcotic surveillance ... where he observed [Appellant], wearing a blue jacket, black hooded sweatshirt, and black boots, standing on the corner of Keyser

* Retired Senior Judge assigned to the Superior Court.

Street and Hansberry Street. Approximately one minute after Officer Heim set up surveillance, he observed a black Ford Taurus pull up across Hansberry Street, on the north side, across from Keyser Street. At that time, Officer Heim observed that [Appellant] was the only person on the block. Officer Heim observed a black female with a black coat and fur around her collar exit the passenger side of the vehicle, and a black male with blue sweat pants exit the driver side. [Appellant] walked across Hansberry Street, and had a brief conversation with the two people that had exited the car. The two people then handed [Appellant] an unknown amount of United States [c]urrency. Officer Heim testified [Appellant], "walked back across the street to basically the first house at Keyser and Hansberry It's an abandoned house right there He walked up the steps and out of my view for a couple seconds." Officer Heim testified he then observed [Appellant] walk down the stairs, and hand the two people small objects. The two people from the car[] reentered their vehicle and drove away, and [Appellant] walked Eastbound on Hansberry Street and then Northbound on Knox Street. At approximately 8:13 p.m., Officer Heim radioed Officer Leonard Wright to tell him to stop [Appellant]. Officer Heim also radioed Officers Oronde Watson and Kiana Richardson to tell them to stop the Black Ford Taurus with the two people in it. Officer Heim then radioed Officer Brian Outterbridge, telling him to[] "go to the rear lot of the abandoned house at Keyser and Hansberry[]" that [Appellant] had gone to.

Officer Heim testified [Appellant] went to the yard at 5158 Keyser Street. Officer Heim testified that the [] incident report indicated the yard was at the property of 5128 Keyser Street, but this was a mistake

Officer Wright responded to flash information to stop a black male who was wearing a blue jacket and black hooded sweatshirt. Officer Wright stopped [Appellant], who matched the flash information, and confiscated \$330.00 from [Appellant's] person

Officer Watson responded to a radio call and stopped the black female in the black Ford Taurus. Officer Watson confiscated two pink-tinted ziplock packets containing a white chunky substance, alleged[ly] crack cocaine Officer Richardson stopped the black male in the driver side of the black Ford Taurus, and confiscated one pink-tinted ziplock packet

containing an off-white chunky substance, which tested positive for crack cocaine

Officer Outerbridge testified he was directed by Officer Heim, over the radio, to enter the yard next to 5158 Keyser Street. Once in the yard, Officer Outerbridge recovered a clear sandwich bag containing twenty-five [] pink-tinted Ziploc packets containing an off-white chunky substance, alleged crack cocaine. Officer Outerbridge described the location of 5158 Keyser Street as "[t]he front of the property faces Hansberry, and the rear of the property is on Keyser Street." On the property receipt for the confiscated drugs, the location is listed at 5128 Keyser Street. Officer Outerbridge testified he noticed the discrepancy in the address shortly after the investigation took place, but it was too late to change the paperwork... Officer Outerbridge also went out to the property the night before testifying ... to verify the address with his partner, Officer Wright.

Trial Court Opinion (TCO), 1/17/13, at 1 - 4 (citations to the record omitted).

At the conclusion of Appellant's trial, the court found him guilty of both the charges and sentenced him to a term of three to six years' incarceration.

Appellant now presents the following question for our review:

[I.] Was not the evidence insufficient to establish [A]ppellant's guilt of possession with intent to deliver and simple possession inasmuch as [A]ppellant was not in possession of any controlled substance when stopped by police, the denominations of the currency possessed by [A]ppellant at the time of his arrest disputed alleged police observations and police testimony was contradicted by their own paperwork?

Appellant's Brief at 3.

Our standard of review of sufficiency claims on appeal is well-established:

A claim challenging the sufficiency of the evidence is a question of law. Evidence will be deemed sufficient to support the verdict

when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt When reviewing the sufficiency claim the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence.

Commonwealth v. Widmer, 744 A.2d 745, 751 (Pa. 2000) (citations omitted).

The crime of possession is defined by 35 Pa.C.S. § 780-113(a)(16):

(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

...

(16) Knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.

The crime of possession with intent to deliver is defined by 35 Pa.C.S. § 780-113(a)(30):

(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

...

(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.

Appellant claims that the evidence was insufficient to support his conviction, as narcotics were not recovered from Appellant's person, much of the currency seized from Appellant were bills in large denominations, and the address of the house where the police found narcotics was misidentified in police reports. We conclude this claim is meritless.

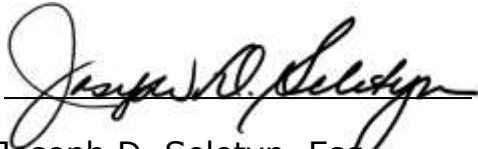
The law applicable to the instant case is well-settled. "When the contraband a person is charged with possessing is not found on the person of the defendant, the Commonwealth must establish that the defendant had constructive possession of it." ***Commonwealth v. Clark***, 746 A.2d 1128, 1136 (Pa. Super. 2000). Constructive possession is established where the defendant had "the power to control the contraband and the intent to exercise that control," and "may be inferred from examination of the totality of the circumstances." ***Id.***

Here, the Commonwealth offered witnesses who testified that two people handed Appellant money. Appellant went into a house, returned to the two people, and then handed them small objects. Police recovered a pink bag of crack cocaine from each of the two people. Police also recovered pink bags of crack cocaine from the house that Appellant entered, and money was recovered from Appellant's person in a variety of denominations: three \$50 bills, six \$20 bills, three \$10 bills, five \$25 bills, and five \$1 bills. N.T. Trial, 12/13/11 at 32. The trial court found that the police testified credibly to the relevant details about the house where the crack was recovered, notwithstanding any error they made recording its address in

their own records during their investigation. TCO at 8. This evidence, taken in the light most favorable to the Commonwealth, established Appellant's constructive possession of narcotics, and that he possessed those narcotics with the intent to deliver them. As such, the evidence was sufficient to support Appellant's conviction.

Judgment of sentence ***affirmed***.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/17/2013