NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. MICHAEL PRICE, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1478 WDA 2012

Appeal from the Judgment of Sentence September 17, 2012
In the Court of Common Pleas of Fayette County
Criminal Division at No.: CP-26-CR-0002303-2011

BEFORE: DONOHUE, J., MUNDY, J., and PLATT, J.[*]

MEMORANDUM BY PLATT, J. Filed: March 6, 2013

Appellant, Michael Price, appeals from the judgment of sentence imposed after his jury conviction of criminal attempt[1] to commit the acquisition or obtaining of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge,[2] and forgery[3]. Specifically, he challenges the sufficiency of the evidence. We affirm.

The facts of this case are not in dispute. On September 15, 2011, Appellant drove his girlfriend, Paula Jackson, to the MedMart Pharmacy in

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[*] Retired Senior Judge assigned to the Superior Court.

[1] 18 Pa.C.S.A. § 901.

[2] 35 P.S. § 780-113(a)(12).

[3] 18 Pa.C.S.A. § 4101(a)(3).

Connellsville, Pennsylvania. There, Ms. Jackson presented a prescription dated the same day, in the name of Appellant, for 120 thirty-milligram tablets of Roxicodone,[4] a narcotic pain reliever which is a Schedule II controlled substance.

The pharmacist, Tim Muccino, did not recognize the name of the purported prescribing physician, Dr. F. Scott Sherman of the Therapeutic Interventional Pain Center. When Mr. Muccino called the telephone number provided he reached a disconnected number. He then contacted the Therapeutic Interventional Pain Center. Meg Burton, a medical assistant at the center, confirmed that Dr. Sherman had not been affiliated with the center since December 2010, that Appellant was not a patient at the center, and that the format of the prescription, typewritten and computer generated instead of handwritten, indicated it was not from the center. She advised Mr. Muccino to call the police. He did.

A few minutes later, Pennsylvania State Police Trooper Scott Williams approached Ms. Jackson and Appellant in the pharmacy parking lot and advised them of the problem. Appellant told Trooper Williams that the prescription was forged but that his girlfriend Ms. Jackson had nothing to do with it. Trooper Williams arrested both of them. At the barracks, after

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[4] We note for clarity that while the record before us uses the spelling "Roxycodone," the more common spelling is "Roxicodone." The prescription at issue is for "Roxicodone."

receiving ***Miranda***[5] warnings, Appellant wrote out and signed another statement, again assuming all responsibility for the prescription and seeking to exculpate his girlfriend.

After his conviction, the court sentenced Appellant to a term of not less than three nor more than seven years' incarceration. This timely appeal followed.[6]

Appellant raises one question for our review:

> Did the Commonwealth fail to prove that the Appellant was the person that forged or passed the prescription and/or that Appellant had the intent to obtain the controlled substance by fraud in the instant case?

(Appellant's Brief, at 7).

Appellant argues that "[n]one of the witnesses . . . with the exception of Trooper Williams . . . could say that [A]ppellant had any part in the crimes alleged, short of driving Ms. Jackson to the pharmacy." (***Id.*** at 11). He notes that he never entered the pharmacy, and mentions, albeit without substantiation, that Ms. Jackson had prior convictions for prescription forgery. He believes that the Commonwealth failed to meet its burden of proof. (***See id.*** at 12). We disagree.

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[5] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[6] Appellant filed a timely concise statement of errors pursuant to Pa.R.A.P. 1925(b). The trial court filed a Rule 1925(a) opinion on October 23, 2012.

> Our standard of review of a challenge to the sufficiency of the evidence is well settled. In reviewing the sufficiency of the evidence, we view all the evidence admitted at trial in the light most favorable to the Commonwealth, as verdict winner, to see whether there is sufficient evidence to enable the jury to find every element of the crime beyond a reasonable doubt. 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. Although a conviction must be based on more than mere suspicion or conjecture, the Commonwealth need not establish guilt to a mathematical certainty. The trier of fact is free to believe all, some, or none of the testimony presented.

Commonwealth v. Martuscelli, 54 A.3d 940, 947 (Pa. Super. 2012) (citations and internal quotation marks omitted). (citations omitted).

Here, Appellant's only ostensible argument to support a claim of insufficiency is the assertion that, **except for Trooper Williams**, no witness could testify to Appellant's direct involvement in the forgery and attempt to obtain the Roxicodone, "**short of driving Ms. Jackson to the pharmacy**." (Appellant's Brief, at 11) (emphasis added). Appellant misapprehends our standard of review.

Viewing the evidence in the light most favorable to the Commonwealth as verdict winner, not only was the circumstantial evidence sufficient to convict Appellant, but his uncontested confession alone would have been sufficient. The jury as trier of fact was free to believe all, part, or none of the evidence, without regard to the exclusions now suggested by Appellant. ***See Martuscelli***, ***supra***.

The sole case cited by Appellant in support of his argument, ***Commonwealth v. Farone***, 808 A.2d 580 (Pa. Super. 2002), is readily

distinguished and offers no ground for relief. In ***Farone***, a panel of this Court decided that, on evidence a pharmacist-employee was caught (and admitted) pocketing and consuming a controlled substance, Hydrocodone, the additional element of "a deceptive scheme or subterfuge" within the meaning of 35 P.S. § 780-113(a)(12) was not present. ***Id.*** at 581. Nevertheless, the ***Farone*** Court decided that the evidence did support Farone's conviction of theft by unlawful taking, and it remanded for re-sentencing. ***See Farone***, ***supra*** at 583. In this case, unlike ***Farone***, there was ample evidence of a deceptive scheme or subterfuge, including the forged prescription itself, not to mention Appellant's confession that the prescription was his, and his girlfriend didn't know "what I was up to." (N.T. Trial, 9/05/12, at 53). Appellant's authority does not merit relief.

Nevertheless, in this appeal Appellant seeks to shift criminal responsibility exclusively to Ms. Jackson, despite his ***Mirandized*** confession, exonerating her. (***See*** Appellant's Brief, at 11). This Court will not reweigh the evidence and substitute our judgment for that of the factfinder. ***See Commonwealth v. Williams***, 854 A.2d 440, 445 (Pa. 2004), *cert. denied*, 546 U.S. 829 (2005).

Accordingly, Appellant's claim does not merit relief.

Judgment of sentence affirmed.