NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. ZAAMAR B. STEVENSON, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1744 WDA 2012

Appeal from the Judgment of Sentence Entered August 31, 2011
In the Court of Common Pleas of Lawrence County
Criminal Division at No(s): CP-37-CR-0000665-2009

BEFORE: BENDER, P.J., GANTMAN, J., and OLSON, J.

MEMORANDUM BY BENDER, P.J. FILED: December 5, 2013

Appellant, Zaamar B. Stevenson, appeals from the judgment of sentence of 4 – 17 years' incarceration, imposed following his conviction for Possession of a Controlled Substance, Possession with Intent to Deliver a Controlled Substance (PWID), Delivery of a Controlled Substance, and Criminal Use of a Communication Facility. Appellant contends that the trial court erred in denying his Motion for Judgment of Acquittal, as the evidence presented at trial was sufficient as a matter of law to support his entrapment defense, and that it was error for a witness to offer testimony about Appellant's prior bad acts. After careful review, we affirm.

Appellant was charged with the above-stated offenses, and tried before a jury on April 15 - 19, 2010. The facts adduced at trial were as follows:

> This matter arises out of two controlled drug purchases that took place on December 22, 2008 and December 31, 2008. On December 22, 2008, Agent Jason Hammerman of the Office of the Attorney General directed a confidential informant to call [Appellant] for the purpose of purchasing crack cocaine. As a result of the telephone call, a drug purchase was organized where the confidential informant would purchase half an ounce of crack cocaine from [Appellant] . . . at the McDonald's and Pilot Gas Station on Route 422 in Butler County. The confidential informant would pay $300.00 for the crack cocaine and an additional $300.00 for a debt the confidential informant owed to [Appellant]. The confidential informant and Agent Hammerman drove to the agreed-upon location and, upon arrival, the confidential informant was searched and found to be free of drugs, money, and contraband. The confidential informant then received a call from the same number used to organize the drug transaction, and the confidential informant indicated that he was to meet [Appellant] in the McDonald's bathroom. The confidential informant entered the McDonald's followed shortly thereafter by a black male identified as [Appellant]. Agent Benjamin Waugaman was present in the McDonald's bathroom when [Appellant] met with the confidential informant and positively identified [Appellant] as the individual who sold the crack cocaine. After the confidential informant exited the bathroom, he returned to Agent Hammerman's vehicle and produced the crack cocaine. On December 31, 2008, the confidential informant was again directed by Agent Hammerman to call [Appellant] to set up a drug deal. The second controlled drug purchase proceeded in a similar manner to the December 22, 2008 purchase.

Trial Court Opinion (TCO), 3/28/11, at 2 – 3 (citations to the record omitted). The jury found Appellant guilty of all charges. On August 31, 2010, Appellant was sentenced to an aggregate term of 4 – 17 years' incarceration.

Appellant filed a timely notice of appeal, as well as a timely concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant now presents the following questions for our review:

I. WHETHER THE EVIDENCE PRESENTED AT TRIAL WAS SUFFICIENT AS A MATTER OF LAW TO SUPPORT [APPELLANT]'S ENTRAPMENT DEFENSE?

II. WHETHER THE TRIAL COURT ERRED BY PERMITTING THE CONFIDENTIAL INFORMANT TO TESTIFY CONCERNING UNRELATED INSTANCE [*sic*] OF BAD ACTS?

Appellant's Brief at 4.

Appellant first argues that the trial court erred when it denied his Motion for Judgment of Acquittal, as the evidence submitted at trial was sufficient to support his entrapment defense. We conclude this claim is meritless.

Entrapment is defined in applicable part as follows:

> A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting such offense by . . . employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

18 Pa.C.S. § 313(a)(2). We note that the use of "artifice and stratagem" by police "are legitimate tactics that may be employed . . . to detect and combat crime," and do not by themselves amount to entrapment. ***Commonwealth v. Thompson***, 484 A.2d 159, 166 (Pa. Super. 1984). Moreover, "merely affording opportunities or facilities for the commission of crime by one who already ha[s] the criminal intent to engage in such a crime" does not constitute entrapment. ***Commonwealth v. Lee***, 396 A.2d 724, 725 (Pa. Super. 1978). Rather, entrapment is proven when a preponderance of the evidence establishes "that police conduct would have

induced an innocent person to commit a crime." ***Commonwealth v. Wilson***, 553 A.2d 452, 454 (Pa. Super. 1989).

The trial court summarized Appellant's entrapment defense at trial as follows:

> [Appellant] claimed that the Attorney General's office "used the fact that the confidential informant owed [Appellant] money, it was around Christmas [and Appellant] needed money to buy his children toys and a Christmas tree." The Court concluded that portions of the testimony elicited were inconsistent with [Appellant]'s claims of inducement and persuasion. For example, Agent Hammerman testified that the Attorney General's office generally does not consider the personal life of the subject of an investigation. In addition, the confidential informant was hesitant to testify that [Appellant] was "getting out of dealing drugs." Furthermore, the confidential informant indicated that [Appellant] called him prior to the drug transactions at issue and asked the confidential informant to sell crack cocaine for [Appellant] in Butler County. As a result, there was a dispute regarding whether the Attorney General's office induced or encouraged [Appellant] to sell the confidential informant crack cocaine. Because an operative fact was in dispute at the time [Appellant]'s Motion was made, the Court properly denied [Appellant]'s Motion. Whether the conduct of the Attorney General's office constituted entrapment was a question for the jury to decide.

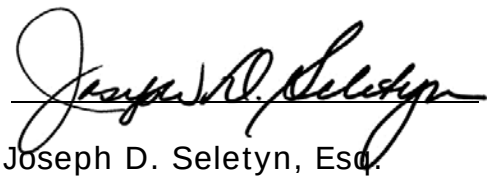
TCO at 9 – 10 (citations to the record omitted). As noted by the trial court, there was conflicting testimony regarding the subject of inducement. Entrapment is established as a matter of law only "where the evidence is so overwhelming that no reasonable fact[-]finder could fail to find entrapment." ***Commonwealth v. Morrow***, 650 A.2d 907, 913 (Pa. Super. 1994). Where the evidence fails to meet that standard, and there is conflicting testimony regarding inducement, the issue is a question of fact, not of law, and must

be submitted to the factfinder. ***Id***. at 12. In light of the foregoing, we conclude it was not error for the trial court to submit the question of whether Appellant was entrapped to the jury, and we uphold the jury's determination on appeal.

Appellant also claims that the trial court erred by permitting a witness to testify to Appellant's prior bad acts. As noted by both the trial court and Appellee, no objection was made to this testimony at trial. Accordingly, this issue is waived, and we may not address it in the instant appeal. ***See*** Pa.R.A.P. 302(a) ("Issues not raised in the lower court are waived and cannot be raised for the first time on appeal.")

Judgment of sentence ***affirmed***.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/5/2013