NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. AMIN L. OWENS, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1984 MDA 2011

Appeal from the Judgment of Sentence entered on August 4, 2011
In the Court of Common Pleas of Lancaster County
Criminal Division at No(s): CP-36-CR-0001748-2010

BEFORE: OLSON, OTT and FITZGERALD,* JJ.

MEMORANDUM BY OLSON, J.: **FILED MAY 08, 2013**

Appellant, Amin L. Owens, appeals from the judgment of sentence entered on August 4, 2011, as made final by the denial of his post-sentence motion on October 14, 2011, following his jury trial convictions for corrupt organizations, criminal conspiracy, criminal use of a communication facility, and five counts of delivery or possession with intent to deliver a controlled substance.[1] Upon careful consideration, we affirm.

This case involved a criminal conspiracy engaged in trafficking cocaine and marijuana to customers in several counties from Philadelphia to

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[1] 18 Pa.C.S.A. §§ 911, 903, 7512, and 35 P.S. 780-113(a)(30), respectively.

*Former Justice specially assigned to the Superior Court.

Lancaster.[2] On appeal, Appellant presents the following issues for our review:

> I. Did not the lower court err in overruling [Appellant's] objection and in permitting Agent David Carolina to state his impressions of 151 telephone conversations that he interpreted to be the precursor and aftermath of various drug deliveries involving five co-defendants, when such testimony was the sole evidence against [Appellant], when such evidence constituted the witness's personal opinion beyond the scope of his expertise, when it usurped the fact-finding function of the jury, and when such opinion was irrelevant and highly prejudicial?
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> II. Were not the guilty verdicts against the weight of the evidence when the sole evidence in a felony-drug prosecution was the lead agent's impressions of telephone conversations which he interpreted as the precursor or aftermath to five drug deliveries?

Appellant's Brief at 6 (complete capitalization omitted).

With regard to Appellant's first issue, our decision in ***Huggins*** is dispositive. Appellant was one of Huggins' co-conspirators. On appeal, Huggins presented the identical issue as presented by Appellant in his first issue above. In ***Huggins***, we determined that the Pennsylvania Rules of Evidence do not preclude a single witness from testifying as both a lay witness and an expert; however, we cautioned that the trial court's gatekeeping functions were imperative. Therein, we ultimately determined

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[2] A more detailed factual recitation of this case may be found in our published companion decision. ***See Commonwealth v. Huggins***, 2012 PA Super --.

the trial court took significant steps to minimize any juror confusion. The jury received multiple cautionary instructions throughout trial. The trial court specifically directed the Commonwealth to delineate between Agent David Carolina's expert and fact-based opinions, which it did. Finally, defense counsel was permitted to engage in rigorous cross-examination of Agent Carolina regarding his expertise and the substance of his testimony. Hence, we rejected Huggins' assertion that Agent Carolina's testimony in dual capacities usurped the jury's fact-finding. As our decision in ***Huggins*** is directly on point, we rely on it in denying Appellant relief on his first issue.

Next, Appellant contends that his verdict was against the weight of the evidence as presented. Appellant's Brief at 37-38. More specifically, Appellant argues, "the Commonwealth produced no direct evidence or probative circumstantial evidence that [the] five drug deals occurred." ***Id.*** at 37. He maintains that there was no: (1) police seizure of significant amounts of narcotics or money from his person or his residence; (2) direct testimony of his criminal involvement presented at trial; (3) police surveillance of a drug transaction or a controlled narcotics purchase; (4) evidence that Appellant knew six of the seven named co-defendants; and/or (5) incriminating statement attributable to Appellant. ***Id.*** at 37-38.

The Pennsylvania Supreme Court recently re-examined the standard of review regarding weight of the evidence claims and determined:

> A motion for a new trial based on a claim that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. A new trial should not be

granted because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion. Rather, the role of the trial judge is to determine that notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice. It has often been stated that a new trial should be awarded when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail.

* * *

Appellate review of a weight claim *is a review of the exercise of discretion, not of the underlying question of whether the verdict is against the weight of the evidence.* Because the trial judge has had the opportunity to hear and see the evidence presented, an appellate court will give the gravest consideration to the findings and reasons advanced by the trial judge when reviewing a trial court's determination that the verdict is against the weight of the evidence. One of the least assailable reasons for granting or denying a new trial is the lower court's conviction that the verdict was or was not against the weight of the evidence and that a new trial should be granted in the interest of justice.

This does not mean that the exercise of discretion by the trial court in granting or denying a motion for a new trial based on a challenge to the weight of the evidence is unfettered. In describing the limits of a trial court's discretion, [our Supreme Court has] explained:

> The term discretion imports the exercise of judgment, wisdom and skill so as to reach a dispassionate conclusion within the framework of the law, and is not exercised for the purpose of giving effect to the will of the judge. Discretion must be exercised on the foundation of reason, as opposed to prejudice, personal motivations, caprice or arbitrary actions. Discretion is abused where the course pursued represents not merely an error of judgment, but where the judgment is manifestly unreasonable

> or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill-will.

Commonwealth v. Clay, 2013 WL 474441, at *5 (Pa. 2013) (internal citations and quotations omitted) (emphasis in original).

In this case, with regard to Appellant's weight claim, the trial court concluded:

> The fact that no agent ever saw actual drugs exchange hands between [Appellant] and [co-defendant, David] Lambert is not a fact that shocks the conscience. The totality of the evidence presented to the jury outweighs this fact raised by [Appellant].
>
> The Commonwealth's evidence at trial included: intercepted telephone conversations between Lambert, [Appellant] and other individuals; interpretation of language used in these conversations by Agent David Carolina, who had been qualified as an expert in "the interpretation of drug and street jargon[;]" testimony of surveillance agents; testimony of agents who conducted search warrants and seized various items which included cocaine; and the testimony of Felicia Cooper and Justin Judd, who were co-conspirators in the corrupt organization. This evidence, when considered in its entirety, clearly presented sufficient circumstantial evidence from which the jury could conclude that Lambert and [Appellant] engaged in each controlled substance delivery for which they were charged. The calls set up the players, the time, the drug, the quantity, and the price. The deliveries were confirmed in various instances by follow-up calls complaining about the quantity or the quality of the drug, by calls which asked to do it again, or by agents who were surveilling the meet[ing] as explained in the telephone conversations.
>
> Felicia Cooper and Justin Judd confirmed the fact that Lambert delivered cocaine and marijuana, as well as the fact that they had used the substances and knew from personal use that the substances, in fact, were cocaine and marijuana. Additionally, cocaine and marijuana were seized

from Judd, who testified that Lambert had delivered them, which was corroborated by telephone calls. These substances tested positive for cocaine and marijuana. Cocaine was also recovered from co-defendant David Huggins which tested positive for cocaine. The co-conspirators' testimony, as well as the drug seizures, corroborates the fact that Lambert sold cocaine, which corroborates the interpretations by Agent Carolina that [Appellant] sold some of that cocaine to Lambert.

* * *

It is correct that when Agent Nehemiah Haigler executed a search warrant on October 10, 2008, at [Appellant's] home, he found only a small quantity of cocaine and a scale in one bedroom, and no large quantities of money. However, [Appellant] was not present at the time of the search and the home was shared with seven or eight other people. It simply does not shock the conscience that a drug dealer would not store his drugs in a house which he shared with seven or eight people, particularly when he was not there. As there was never any suggestion that the agents ever searched Lambert with regard to this investigation, [Appellant's] claim [that there was no evidence of cocaine or money found on Lambert after a purported exchange] has no basis in fact.

Additionally, the allegation that [Appellant] knew nothing of Lambert's business or organization is also without basis. The Commonwealth's evidence showed that Lambert originally purchased cocaine from [Appellant] through an individual named Ace. Ace then put Lambert directly in touch with [Appellant], who asked Lambert in their first conversation: "Yo, is this Ace folks?" In at least one subsequent conversation, Lambert refers to the customer for whom he is buying cocaine from [Appellant]. Moreover, the weight being purchased from [Appellant] and the frequency of purchases clearly would provide [Appellant] with the information that Lambert was not using all the cocaine but rather what he was distributing it to others – the other members of the organization that [Appellant] claims he did not know. The fact that [Appellant] did not know his co-conspirators in a drug

> organization by name is not a fact that shocks the conscience.
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> Based upon the totality of the evidence, the jury properly convicted [Appellant] of corrupt organizations, criminal conspiracy, criminal use of [a] communication facility, and delivery or possession with intent to deliver a controlled substance and these verdicts were not so unreliable as to shock one's sense of justice.

Trial Court Opinion, 10/14/2011, at 6-9 (record citations and some quotations omitted).

Upon independent review of the certified record, the Commonwealth presented the following evidence at trial. Agent David Carolina testified that he spoke directly with Appellant on the telephone and was then able to identify his voice on intercepted conversations with David Lambert. N.T., 4/6/2011, at 466-467. Police surveillance also observed Appellant. ***Id.*** at 467. Agent Carolina identified Appellant at trial. ***Id.*** Agent William Ralston testified regarding a series of telephone calls between Lambert, an unidentified intermediary named "Ace," and Appellant, setting up the sale of 14 grams of cocaine. N.T., 4/11/2011, at 980-996. Agent Ralston opined that Appellant was the supplier. ***Id.*** at 987. The Commonwealth presented intercepted conversations directly between Lambert and Appellant. N.T., 4/12/2011, at 1143; N.T., 4/15/2011, at 1356-1357. Agent Carolina testified that the calls established meetings for Lambert to purchase three ounces of cocaine from Appellant on two separate occasions. N.T., 4/12/2011, at 1144; N.T., 4/15/2011, at 1357. Agent Thomas Hazell observed a meeting between Lambert and Appellant that confirmed a

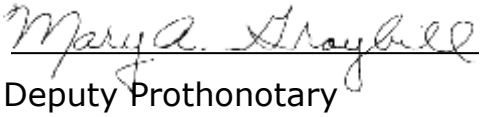
previous intercepted drug-related call between the two men setting up the rendezvous. N.T., 4/13/2011, at 1191-1201. Likewise, Agent Freddy Chavez observed Lambert entering Appellant's residence that confirmed an earlier intercepted conversation. N.T., 4/15/2011, at 1363-1365. Agent Carolina further testified regarding follow-up conversations between Lambert and Appellant, wherein Lambert complained that he was shorted cocaine from at least one previous delivery. N.T., 4/13/2011, at 1221-1223, 1288-1290. Felicia Cooper testified she was selling cocaine for co-defendant, Lambert. ***Id.*** at 1244-1262. Justin Judd established that cocaine and marijuana sales had transpired between Lambert and him. ***Id.*** at 1293-1320. Further, Agent Nehemiah Haigler executed a search warrant at Appellant's residence and recovered identification confirming his address, a digital scale, and two glass pans with a powdery residue. N.T., 4/15/2011, at 1419-1422. Forensic tests confirmed the powdery substance was cocaine. ***Id.*** at 1403-1404.

Based upon the foregoing, and employing our deferential standard of review, we discern no abuse of discretion in denying relief on Appellant's weight of the evidence claim. The jury's verdict is not so contrary to the evidence as to shock one's sense of justice to award a new trial. The trial court reached a dispassionate conclusion within the framework of the law in denying Appellant relief. The certified record shows that the trial court's action was not a result of partiality, prejudice, bias or ill-will. Hence, we

determine no abuse of discretion in denying Appellant's weight of the evidence issue.

Judgment of sentence affirmed.

Judgment Entered.



Deputy Prothonotary

Date: 5/8/2013