NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA Appellee v. LAMONT LORRICK Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 3124 EDA 2015

Appeal from the Judgment of Sentence Entered April 20, 2015
In the Court of Common Pleas of Philadelphia County
Criminal Division at No: CP-5-CR-0008869-2013

BEFORE: STABILE, DUBOW, JJ., and STEVENS, P.J.E.*

MEMORANDUM BY STABILE, J.: **FILED DECEMBER 22, 2016**

Appellant, Lamont Lorrick, appeals from the April 20, 2015 judgment of sentence imposing concurrent sentences of four to eight years of incarceration for possession with intent to deliver a controlled substance, conspiracy, and unlawful possession of a firearm.[1] We affirm.

The trial court, sitting as fact finder, found Appellant guilty of the aforementioned offenses and several related offenses[2] at the conclusion of a March 3, 2015 trial. The trial court summarized the pertinent facts, which are not in dispute:

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* Former Justice specially assigned to the Superior Court.

[1] 35 P.S. § 780-113(a)(30), 18 Pa.C.S.A. §§ 903 and 6105, respectively.

[2] The trial court imposed no further punishment for the related offenses.

On April 2, 2013, Philadelphia Police Officer Joseph McCook, assigned to the Narcotics [Field] Unit, along with Police Officer [William] Beck, went to the 2600 block of North 8th Street in Philadelphia and met with a confidential informant (hereinafter "CI"). During the meeting, Officer Beck searched the CI and after ascertaining that he did not have money or contraband in his possession, gave the CI pre-recorded 'buy' money. The CI then walked to the east side of the 2600 block of North 8th Street where approached a Hispanic male named Raphael Rondon Rivera who engaged him in a brief conversation. Rivera then accepted the buy money from the CI and walked to the west side of North 8th Street where he approached Appellant, who was standing in front of 2636 North 8th Street. Rivera handed Appellant the buy money. Appellant entered of [sic] 2636 North 8th Street for a short time and thereafter emerged handing a small bundle to Rivera who then walked back to the CI and handed him the bundle. Once the CI retrieved the bundle, he returned to Officer McCook and handed him the bundle. The bundle contained what later testing revealed to be marijuana.

Officer McCook returned to the area on April 9, 2013, and again met a CI. As was the case on April 2, 2013, the CI was searched and given $20.00 in buy money which he handed to Rivera who gave it to Appellant who then retrieved a small object from inside of 2636 North 8th Street that was transferred to Rondon and then the CI. The CI surrendered the object to Officer McCook and he determined that it contained marijuana.

As a result of the CI's buy, Officer McCook obtained a search warrant for 2636 North 8th Street, which was executed on April 12, 2013, by Officer McCook and other officers. Inside the residence police encountered Appellant, co-defendant Stanley Harrison, and a third male sitting around a table in the dining room eating chicken. On the table, police discovered a scale, two large bags filled with marijuana, and a jar of codeine syrup all of which was seized. From inside a clothes dryer situated about six feet from where the men were seated, police seized four bags of marijuana and a nine millimeter handgun that was under the bags of marijuana and from the second floor a digital scale.

Philadelphia Police Officer Bill Bolds participated in the execution of the search warrant and placed Appellant under arrest. Incident to that arrest, Officer Bolds seized $842.00 in

> U.S. currency from Appellant. The money, along with the items described above were placed on property receipts.

Trial Court Opinion, 1/21/16, at 2-3 (record citations omitted).

After sentencing, Appellant filed a timely post-sentence motion that was denied by operation of law on August 31, 2015. This timely appeal followed. Appellant raises two issues for our review:

> 1. Was the evidence presented at trial by the Commonwealth insufficient to sustain [Appellant's] conviction for criminal conspiracy?
>
> 2. Was the evidence insufficient to sustain a conviction for possession of the firearm found in the dryer of a residence sustain [sic] [Appellant's] conviction [for unlawful possession of a firearm and possession of an instrument of crime]?

Appellant's Brief at 4.

The applicable standard of review is well-settled:

> 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), *appeal denied*, 29 A.3d 796 (Pa. 2011).

Appellant first challenges the sufficiency of the evidence in support of his conspiracy conviction. The Pennsylvania Crimes Code defines criminal conspiracy 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.

18 Pa.C.S.A. § 903(a). Appellant argues the Commonwealth failed to produce sufficient evidence that he entered a criminal conspiracy with anybody. After thorough review, we have concluded that the trial court accurately addressed this issue in its January 21, 2016 opinion. In particular, we note that the record plainly evidences conspiratorial conduct between Appellant and Rivera. We reject Appellant's argument on the basis of the trial court's opinion.

Next, Appellant argues the Commonwealth did not produce sufficient evidence of Appellant's constructive possession of the firearm police seized from inside the clothes dryer.

> Constructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. Constructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not. We have defined constructive possession as conscious dominion. We subsequently defined conscious dominion as the power to

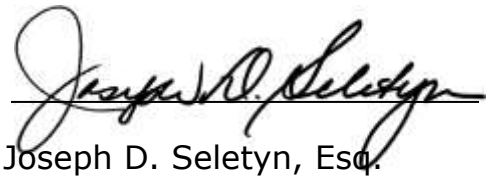
> control the contraband and the intent to exercise that control. To aid application, we have held that constructive possession may be established by the totality of the circumstances.

Commonwealth v. Hopkins, 67 A.3d 817, 820 (Pa. Super. 2013), *appeal denied*, 78 A.3d 1090 (Pa. 2013). "Additionally, it is possible for two people to have joint constructive possession of an item of contraband." ***Id.*** Appellant argues the Commonwealth produced insufficient evidence tying him to the house police searched. Appellant also argues the Commonwealth produced insufficient evidence of constructive possession given the presence of other persons when police seized the gun. Once again, after thorough review, we conclude that the trial court's opinion accurately applied the law to the facts. We note that police observed Appellant selling drugs out of the house in question on several occasions, and more than one person can have constructive possession of an unlawful item. We reject Appellant's argument on the basis of the trial court's January 21, 2016 opinion.

In summary, we affirm the judgment of sentence for the reasons set forth on pages 5 to 8 of the trial court's January 21, 2016 opinion. We direct that a copy of the trial court's opinion be filed along with this memorandum.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/22/2016

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
TRIAL DIVISION-CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA	**: PHILADELPHIA COURT**
	: OF COMMON PLEAS
	: CRIMINAL TRIAL DIVISION
	:
v.	**: CP-51-CR- 0008869-2013**
	:

LAMONT LORICK

OPINION

MCCAFFERY, J

Lamont Lorick (hereinafter "Appellant") appeals from the judgment of sentence imposed by this Court on September 12, 2014. For the reasons set forth below, it is suggested that the judgment of sentence be affirmed.

PROCEDURAL HISTORY

On March 3, 2015, following a waiver trial, Appellant was found guilty of Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver Cocaine (hereinafter "PWID"), 35 P.S. § 780-113 § (A)(30), Knowing and Intentional Possession of a Controlled Substance, 35 P.S. § 780-113 § (A)(16), Criminal Conspiracy to Commit PWID, 18 Pa.C.S. § 903, Possession of a Firearm Prohibited, 18 Pa.C.S. § 6105, and Possession of an Instrument of Crime, Generally, 18 Pa.C.S. § 907.[1] On April 20, 2015, this Court imposed concurrent sentences of four to eight years' incarceration on the PWID, Conspiracy, and Possession of a Firearm Prohibited charges respectively. Verdicts without further penalty were imposed on the remaining charges.

[1] Appellant was tried together with Stanley Harrison, who was convicted of Possession of a Controlled Substance and acquitted of all other charges that included PWID, Conspiracy, and weapons offenses. (N.T. 94).

Following the imposition of sentence, Appellant filed a post-sentence motion that was denied by operation of law on August 31, 2015. Appellant thereafter filed a notice of appeal and a court ordered Pa.R.A.P. 1925(b) statement. In his 1925(b) statement, Appellant asserts that the evidence was insufficient to support the PWID charge.

FACTUAL HISTORY

On April 2, 2013, Philadelphia Police Officer Joseph McCook, assigned to the Narcotics Filed Unit, along with Police Officer Beck, went to the 2600 block of North 8th Street in Philadelphia and met with a confidential informant (hereinafter "CI").[2] (N.T. 13-14). During the meeting, Officer Beck searched the CI and after ascertaining that he did not have money or contraband in his possession, gave the CI pre-recorded "buy" money. The CI then walked to the east side of the 2600 block of North 8th Street where approached a Hispanic male name Raphael Rondon Rivera who engaged him in a brief conversation. (N.T. 14). Rivera then accepted the buy money from the CI and walked to the west side of North 8th Street where he approached Appellant, who was standing in front of 2636 North 8th Street. Rivera handed Appelant the buy money. Id. Appellant entered of 2636 North 8th Street for a short time and thereafter emerged handing a small bundle to Rivera who then walked back to the CI and handed him the bundle. Id. Once the CI retrieved the bundle, he returned to Officer McCook and handed him the bundle. Id. The bundle contained what later testing revealed to be marijuana. (N.T. 14-15).

Officer McCook returned to the area on April 9, 2013, and again met a CI. As was the case on April 2, 2013, the CI was searched and given $20.00 in buy money which he handed to Rivera who gave it to Appellant who then retrieved a small object from inside of 2636 North 8th Street that was transferred to Rondon and then the CI. (N.T. 15-16). The CI surrendered the object to Officer McCook and he determined that it contained marijuana. (N.T. 16).

[2] All references to the record refer to the transcript of Appellant's trial recorded on March 3, 2015.

As a result of the CI's buy, Officer McCook obtained a search warrant for 2636 North 8th Street, which was executed on April 12, 2013, by Officer McCook and other officers. (N.T. 16). Inside the residence police encountered Appellant, co-defendant Stanley Harrison, and a third male sitting around a table in the dining room eating chicken. (N.T. 17-18). On the table, police observed a scale, two large bags filled with marijuana, and a jar of codeine syrup all of which was seized. Id. From inside a clothes dryer situated about six feet from where the men were seated, police seized four bags of marijuana and a nine millimeter handgun that was under the bags of marijuana and from the second floor a digital scale. (N.T. 23, 26, 58).[3]

Philadelphia Police Officer Bill Bolds participated in the execution of the search warrant and placed Appellant under arrest.[4] Incident to that arrest, Officer Bolds seized $842.00 in U.S. currency from Appellant. (N.T. 47-48). The money, along with the items described above were placed on property receipts.

DISCUSSION

In his 1925(b) statement, Appellant first complains that the trial court erred by denying his motion to suppress. Appellant did not litigate a motion to suppress either before this Court or any other judge. Therefore, Appellant cannot obtain relief on this non-existent claim.

Second, Appellant makes a general claim alleging that the Commonwealth failed to present sufficient evidence to sustain the five charges he was convicted of committing. By failing to set forth what elements of those crimes the Commonwealth failed to establish, Appellant waived review of this claim.

In order to preserve a challenge to sufficiency of the evidence on appeal, an appellant must state with specificity the element or elements of the crime upon which he alleges the

[3] The firearm was later examined and deemed to be operable.
[4] Appellant identified himself by the last name "Jacobs." (N.T. 46).

evidence was insufficient. See Commonwealth v. Veon, 109 A.3d 754, 775 (Pa. Super. 2015), citing Commonwealth v. Garland, 63 A.3d 339, 344 (Pa. Super. 2013), and Commonwealth v. Gibbs, 981 A.2d 274, 281 (Pa. Super. 2009). Here, Appellant's 1925(b) Statement fails to identify which specific element of his conviction lacked sufficient evidence. See Garland. Accordingly, it is suggested that Appellant's second claim be deemed waived.

Third, Appellant contends that the verdict was against the weight of the evidence. Although Appellant preserved the claim by raising it in his post-sentence motion, it is suggested that he still waived it because he failed to state why he believed this to be the case. A "boilerplate" post-sentence motion merely stating that "'the verdict was against the weight of the evidence,' preserves no issue for appellate review unless the motion specifies why the verdict was against the weight of the evidence." Commonwealth v. Holmes, 461 A.2d 1268, 1270 (Pa. Super. 1983) (en banc) (emphasis in the original). Accordingly, it is suggested that Appellant be deemed to have waived his weight of the evidence claim.[5]

[5] Even had Appellant preserved the claim, it is suggested that he still would not be entitled to any relief. "[A] new trial based on a weight of the evidence claim is only warranted where the jury's verdict is so contrary to the evidence that it shocks one's sense of justice." Commonwealth v. Houser, 18 A.3d 1128, 1135-36 (Pa. 2011). Instantly, the uncontroverted evidence established that Appellant participated in two drug sales and then was found inside a residence in which it was clear that a drug operation was taking place. Further proof of his guilt is the discovery of a large amount of marijuana and a handgun all of which were in close proximity to Appellant when police first arrested him.

Next, Appellant claims that the evidence fails to establish that he was a co-conspirator of Stanley Harrison, Raphael Rondon Rivera, and/or Michael Hall. In reviewing a claim that alleges that the evidence was insufficient to support a verdict, the Pennsylvania Supreme Court provided the following standard of review:

> [T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction... does not require a court to 'ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt. Instead, it must determine simply whether the evidence believed by the fact-finder was sufficient to support the verdict... [A]ll of the evidence and any inferences drawn therefrom must be viewed in the light most favorable to the Commonwealth as the verdict winner.

Commonwealth v. Ratsamy, 934 A.2d 1233, 1235-1236 (Pa. 2007) (emphasis in original).

The Commonwealth need not establish guilt to a mathematical certainty, and it may sustain its burden by means of wholly circumstantial evidence. Commonwealth v. Duncan, 932 A.2d 226, 231 (Pa. Super. 2007) (citation omitted). A reviewing court may not substitute its judgment for that of the fact finder, and where the record contains support for the convictions, they may not be disturbed. Id. Finally, the finder of fact is free to believe some, all, or none of the evidence presented. Commonwealth v. Hartle, 894 A.2d 800, 804 (Pa. Super. 2006).

"To sustain a conviction for Criminal Conspiracy, the Commonwealth must prove beyond a reasonable doubt that the defendant (1) entered into an agreement to commit or aid in an a [sic] criminal act with another person or persons (2) with a shared criminal intent and that (3) an overt act was done in furtherance of the conspiracy." Commonwealth v. Bostick, 958 A.2d 543, 560 (Pa. Super. 2008) (quoting Commonwealth v. Johnson, 920 A.2d 873, 878 (Pa.Super. 2007)).

The Commonwealth may sustain its burden of proving a conspiracy wholly by means of circumstantial evidence. Commonwealth v. Perez, 931 A.2d 703, 708 (Pa. Super. 2007).

> An agreement to commit a criminal act may be proven by reasonable inferences, but not by suspicion or speculation. Id. An agreement can be inferred from a variety of circumstances including, but not limited to, the relation between the parties, knowledge of and participation in the crime, and the circumstances and conduct of the parties surrounding the criminal episode. These factors may coalesce to establish a conspiratorial agreement beyond a reasonable doubt where one factor alone might fail.
>
> * * *
>
> Circumstances like an association between alleged conspirators, knowledge of the commission of the crime, presence at the scene of the crime, and/or participation in the object of the conspiracy, are relevant when taken together in context, but individually each is insufficient to prove a conspiracy.

Id.

Applying the foregoing standard to the evidence presented at trial, this Court concluded that the Commonwealth sustained its burden of proving that Appellant conspired with Rivera to sell marijuana. On two separate occasions, a CI gave Rivera $20.00. Rivera then walked to Appellant, handed him the money and Appellant immediately walked inside 2636 North 8th street remaining for a brief time before exiting that residence carrying small objects that he handed to Rivera, who in turn, handed them to the CI. The CI surrendered the items to Officer McCook, who determined that they contained marijuana. Based on this evidence it is reasonable to conclude that Appellant and Rivera were working in tandem to sell narcotics to the CI. Moreover, there were two overt acts, namely the sale of the marijuana to the CI. Therefore, it is suggested that Appellant's claim with respect to this issue be denied.

Appellant next asserts the evidence failed to establish that he possessed a firearm either in actuality or constructively. Because the gun was not found on Appellant's person, the Commonwealth was required to prove that he had constructive possession over the gun. Commonwealth v. Macolino, 469 A.2d 132, 134 (Pa. 1983). To prove constructive possession,

the Commonwealth must show that the accused "exercise[d] a conscious dominion over the illegal [contraband.]" Commonwealth v. Valette, 613 A.2d 548, 550 (Pa. 1992). Conscious dominion is the "power to control the contraband and the intent to exercise that control." Id., citing Commonwealth v. Mudrick, 507 A.2d 1212, 1213 (Pa. 1986). In addition, the Commonwealth may demonstrate that a defendant had joint constructive possession of the firearm, which means that more than one person can have control and access to the contraband. Commonwealth v. Davis, 480 A.2d 1035, 1045 (Pa. Super. 1984).

Joint constructive possession can be inferred from the totality of the circumstances. Id. In Commonwealth v. Macolino, 469 A.2d 132, (Pa. 1983), the court held that "it was reasonable for the fact-finder to conclude that the appellee maintained a conscious dominion over the cocaine found in the bedroom closet which he shared solely with his wife." Id. at 136. The Court also noted that the law prohibiting possession of contraband would not make sense if a person could store the contraband in a shared space to avoid prosecution. Id. Regardless, "the fact that another person may also have control and access does not eliminate the defendant's constructive possession; two actors may have joint control and equal access and thus both may constructively possess the contraband." Commonwealth v. Haskins, 677 A.2d 328, 330 (Pa. Super. 1996) (citing Mudrick, 507 A.2d at 1213-14).

Here, the firearm in question was found in a dryer that was immediately accessible to Appellant and the other two men present in the residence. Given the totality of the circumstances, it is reasonable to infer that Appellant had at least joint constructive possession of the firearm given that he was an active participant in the sale of marijuana on two prior occasions. Appellant obtained the contraband and being observed entering the residence on both occasions. This fact establishes that he had dominion and control over the residence. In addition,

on the day the search warrant was executed, Appellant was found inside the residence at a table on which police found a large amount of drugs and a digital scale thereby evincing his involvement with drug sales. Appellant needed only move a mere six feet from where he was sitting to retrieve the weapon. Moreover, the weapon itself was found inside the dryer under bags of marijuana similar to those observed on the table. Mudrick, 507 A.2d at 1214 (holding that equal access to cocaine found in plain view could be found by jury to be constructive possession); see Commonwealth v. Patterson, 591 A.2d 1075, 1078 (Pa. Super. 1991) (taking judicial notice that drug dealers in Philadelphia are often armed). This fact established a clear connection between the marijuana, which Appellant undoubtedly possessed, and the gun. Consequently, it is respectfully suggested, given the totality of circumstances, that the Honorable Court find that Appellant had constructive possession of the firearm.

Appellant further claims that the evidence was insufficient to support the PWID conviction because he was merely present during the entire investigation. Our General Assembly has defined PWID as follows:

> [T]he 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.

35 P.S. § 780-113(a)(30).

> [T]o sustain a conviction [for PWID] the Commonwealth must prove beyond a reasonable doubt only that, on a specific occasion, the defendant possessed a controlled substance he was not licensed to possess, and that he did so under circumstances demonstrating an intent to deliver that substance. Intent may be inferred from an examination of the facts and circumstances surrounding the case. Factors which may be relevant in establishing that drugs were possessed with the intent to deliver include the particular method

> of packaging, the form of the drug, and the behavior of the defendant.

Commonwealth v. Griffin, 804 A.2d 1, 15 (Pa. Super. 2002).

A "delivery" is "the actual, constructive, or attempted transfer from one person to another of a controlled substance, other drug, device or cosmetic whether or not there is an agency relationship." 35 P.S. § 780-102. To prove that a delivery occurred, the Commonwealth must prove that the defendant knowingly made an actual, constructive, or attempted transfer of a controlled substance to another person without the legal authority to do so. Commonwealth v. Murphy, 844 A.2d 1228, 1234 (Pa.2004). PWID may be inferred from the facts and circumstances surrounding the case. Commonwealth v. Daniels, 999 A.2d 590, 595 (Pa.Super.2010). Factors that may be relevant to establish a PWID include packaging, the form of the drug, and the defendant's behavior. Id.

Drawing all inferences in favor of the Commonwealth as the law requires, it is clear that the evidence was sufficient to sustain the verdict finding Appellant guilty of the charge of PWID. Twice police sent a CI to purchase drugs on the 2600 block of North 8th Street. On both occasions, Appellant played a role in the transactions involving the sale and purchase of marijuana. Thereafter, police found Appellant seated at a table in the residence from inside of which Appellant had retrieved the marijuana sold to the CI. The table had a digital scale and marijuana on it, evidence that supported an inference that Appellant was actively involved in the packaging and distribution of marijuana. In addition, a mere six feet from the table, police discovered four more bags of drugs and a gun inside a clothes dryer. All of this evidence is more than sufficient to overcome any inference that Appellant was merely present in the residence. Thus, it is suggested that the evidence was clearly sufficient to support the PWID charge.

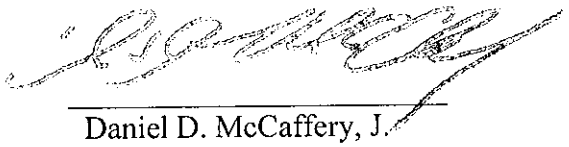
In his next claim, Appellant contends that his speedy trial rights as set forth in Pa.R.Crim.P 600 were violated because the Commonwealth failed to act in a diligent manner to bring him to trial within the time limit set forth by Rule 600. No relief should be granted on this claim. Although Appellant filed a *pro se* Rule 600 Motion to Dismiss, the motion was not presented to any court by Appellant's counsel and thus, it was never ruled upon. Pursuant to Pa.R.Crim.P. 576, the *pro se* filing did not preserve Appellant's right to a Rule 600 hearing or appellate review of the claim. . See Comment to Rule 576. ("The requirement that the clerk time stamp and make docket entries of the filings in these cases only serves to provide a record of the filing, and does not trigger any deadline nor require any response."). See also Pa.R.A.P. 302(a) (issues not raised or preserved in the lower court cannot be raised for the first time on appeal). Thus, it is suggested that the claim be deemed waived.

Appellant's final claim asserts that: "The evidence relied upon in the instant action was secured by Philadelphia Police Officer, Jeffrey Walker, a convicted felon." Appellant's 19259b) Statement, Issue 7. The claim does not entitle Appellant to relief because he fails to set forth what remedy he seeks. More importantly, it should be denied because this Court was not presented with any evidence indicating that Officer Walker played any part in the instant matter. Consequently, it is respectfully suggested that Appellant be denied relief with respect to this claim.

CONCLUSION

Based on the foregoing, it is respectfully suggested that the judgment of sentence entered in this matter against appellant be affirmed.

BY THE COURT,



Daniel D. McCaffery, J.

Date: January 21, 2016

CERTIFICATION OF SERVICE

I, James Molinari, Esquire, Law clerk to the Honorable Daniel D. McCaffery hereby certifies that on the 21st day of January, 2016, by first class mail, postage prepaid, a true and correct copy of the attached opinion was served upon the following:

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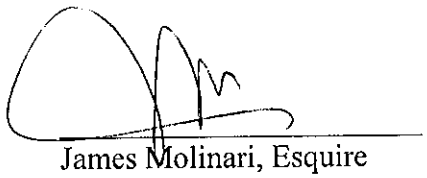

James Molinari, Esquire