

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

|                              |   |                          |
|------------------------------|---|--------------------------|
| COMMONWEALTH OF PENNSYLVANIA | : | IN THE SUPERIOR COURT OF |
|                              | : | PENNSYLVANIA             |
|                              | : |                          |
| v.                           | : |                          |
|                              | : |                          |
|                              | : |                          |
| PATRICIA DODSON              | : |                          |
|                              | : |                          |
| Appellant                    | : | No. 1787 EDA 2017        |

Appeal from the Judgment of Sentence May 12, 2017  
In the Court of Common Pleas of Delaware County Criminal Division at  
No(s): CP-23-CR-0004936-2015

BEFORE: SHOGAN, J., LAZARUS, J., and DUBOW, J.

MEMORANDUM BY LAZARUS, J.:

**FILED MAY 29, 2018**

Patricia Dodson appeals from the judgment of sentence, entered in the Court of Common Pleas of Delaware County, following her conviction of two counts of possession of a controlled substance with intent to deliver (PWID) (cocaine/heroin).<sup>1</sup> On appeal, Dodson claims the evidence was insufficient to support the convictions because the Commonwealth did not prove she constructively possessed any controlled substances. After our review of the record, the parties' briefs and the relevant law, we find Dodson's claim is meritless, and we affirm judgment of sentence based on the opinion authored by the Honorable Gregory M. Mallon.

After conducting surveillance and executing a search warrant on 209 West Parkway Avenue, in the city of Chester, Delaware County, Detective

---

<sup>1</sup> 35 P.S. § 780-113(a)(30).

Michael Honicker, of the Delaware County Criminal Investigations Division, seized a quarter-pound of cocaine (107 grams) and a 20-gram block of heroin, as well as drug paraphernalia used to process, package and sell the drugs. At trial, Detective Honicker testified that after conducting surveillance of the residence over five days he developed Dodson as a suspect. He testified that the drugs were found in a bedroom containing female clothing and mail addressed to Dodson at the 209 West Parkway Avenue address. He also testified that the location matched Dodson's address on records from the Pennsylvania Department of Transportation and the Social Security Administration.

We address Dodson's sufficiency of the evidence challenge, mindful that our standard is to

determine if the Commonwealth established beyond a reasonable doubt each of the elements of the offense, considering all the evidence admitted at trial, and drawing all reasonable inferences therefrom in favor of the Commonwealth as the verdict-winner. The trier of fact bears the responsibility of assessing the credibility of the witnesses and weighing the evidence presented. In doing so, the trier of fact is free to believe all, part, or none of the evidence.

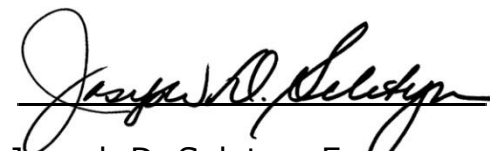
***Commonwealth v. Newton***, 994 A.2d 1127, 1131 (Pa. Super. 2010) (quoting ***Commonwealth v. Pruitt***, 951 A.2d 307, 313 (Pa. 2008)) (citations omitted). The Commonwealth may sustain its burden by means of wholly circumstantial evidence, and we must evaluate the entire trial record and consider all evidence received against the defendant. ***Commonwealth v. Markman***, 916 A.2d 586, 598 (Pa. 2007).

The crime of possession of a controlled substance with intent to deliver requires the Commonwealth to prove that Dodson possessed the controlled substance with the intent to manufacture, distribute, or deliver it. **See** 35 P.S. § 780–113(a)(30). **See also Commonwealth v. Marquez**, 980 A.2d 145, 148 (Pa. Super. 2009) (en banc). Further, where more than one person has equal access to the contraband, the Commonwealth must present evidence showing either defendant’s participation in the drug-related activity, *or evidence connecting defendant to the specific room or area where the contraband was kept.* **Commonwealth v. Bricker**, 882 A.2d 1008 (Pa. Super. 2005). Here, the Commonwealth established, beyond a reasonable doubt, Dodson’s connection to the residence and the specific room in which the contraband was found.

We affirm Dodson’s judgment of sentence based on Judge Mallon’s opinion. **See** Trial Court Opinion, 10/10/17, at 2-8. We direct the parties to attach a copy of that opinion in the event of further proceedings.

Judgment of sentence affirmed.

Judgment Entered.

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

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 5/29/18

**COPY**

**IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION**

**COMMONWEALTH OF PENNSYLVANIA** | **NO. 4936-15**  
**V.**  
**PATRICIA DODSON**

**OPINION**

Mallon, J.

Filed: *10-10-17*

Appellant, Patricia Dodson, was sentenced to an aggregate sentence of 7 to 14 years of incarceration following a jury trial. She now appeals to the Superior Court. The nature and history of the case are as follows:

**I. NATURE AND HISTORY OF THE CASE**

Appellant was arrested pursuant to a search warrant on August 12, 2015 after a search of her residence, located at 209 West Parkway Avenue in Chester, Pennsylvania, uncovered a pound of raw cocaine , one ounce of raw heroin, as well as various items of drug paraphernalia, such as electronic scales, new and unused packaging material, cutting agent, and multiple firearms. The Appellant was charged with multiple crimes under the Controlled Substance, Drug, Device, and Cosmetic Act, and on April 5, 2017 a jury found the Appellant guilty of Possession of Cocaine with the Intent to Deliver, and Possession of Heroin with the Intent to Deliver.

Appellant was sentenced on May 12, 2017 to 5 to 10 years of incarceration and 5 years of consecutive probation on his conviction of possession of cocaine with the intent to deliver and 2 to 4 years of consecutive incarceration on his conviction of possession of heroin with the intent to deliver, for an aggregate sentence of 7 to 14 years followed by 5 years of probation. Appellant was given credit for time served and found not to be RRRI eligible.

On May 25, 2017 the Appellant, through counsel, filed a Notice of Appeal. Following an

order from the court, Appellant filed a Concise Statement of Matters Complained of on Appeal on July 27, 2017. Appellant raises the following issues:

1. The evidence presented at trial was insufficiency (sic) to establish each element of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver beyond a reasonable doubt because the evidence at trial did not prove actual or constructive possession;
2. The jury verdict of guilty of Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver is contrary to the weight of the evidence,

## II. DISCUSSION

### I. Sufficiency of the Evidence

Appellant challenges the sufficiency of the evidence for her convictions of Possession of a Controlled Substance with the Intent to Deliver, cocaine and heroin, respectively.

In determining whether the evidence is sufficient to support a defendant's conviction, the reviewing court will consider the evidence admitted during the trial along with any reasonable inferences that may be drawn from that evidence in the light most favorable to the Commonwealth as the verdict winner. If the court finds, based on that review, that the fact finder could have found every element of the crime charged beyond a reasonable doubt, then it must sustain the conviction. *Commonwealth v. Murphy*, 577 Pa. 275, 284, 844 A.2d 1228, 1233 (2004) (citations omitted). A reviewing court may not re-weigh the evidence and substitute its own judgment for that of the fact-finder. *Commonwealth v. Jones*, 874 A.2d 108, 120-21 (Pa.Super. 2005), quoting *Commonwealth v. Bullick*, 830 A.2d 998, 1000 (Pa. Super. 2003).

In rendering its verdict, the jury is free to believe all, part, or none of the evidence presented at trial. *Commonwealth v. Sullivan*, 864 A.2d 1246, 1249 (Pa. Super. 2004). Furthermore, it is up to the jury, sitting as the finder of fact, to make all credibility determinations. *Commonwealth v. Thompson*, 934 A.2d 1281, 1285 (Pa. Super. 2007).

Appellant claims that the evidence was insufficient to find her guilty of Possession of a Controlled Substance with the Intent to Deliver because the Commonwealth did not prove actual or constructive possession. Possession with Intent to Deliver a Controlled Substance is statutorily defined in the Controlled Substance, Drug, Device and Cosmetic Act as follows:

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

(30) Except as authorized by this act . . . possession with intent to . . . deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board . . .

35 P.S. § 780-113(a)(30).

When drugs are not found on one's person, the Commonwealth must establish constructive possession. Constructive possession requires proof of the ability to exercise conscious dominion over the substance, the power to control the contraband, and the intent to exercise such control. *Commonwealth v. Bricker*, 882 A.2d 1008, 1014 (Pa. Super. 2005) (internal citation omitted). Constructive possession may be established by the totality of the circumstances. *Id.*

To convict a person of Possession with the Intent to Deliver, the Commonwealth must prove beyond a reasonable doubt that the defendant possessed a controlled substance and did so with the intent to deliver it. *Commonwealth v. Conaway*, 791 A.2d 359, 362 (Pa. Super. 2002). The Pennsylvania Supreme Court has directed that “[the] factors to consider when determining whether a defendant intended to deliver a controlled substance include the manner in which the controlled substance was packaged, the behavior of the defendant, the presence of drug paraphernalia, and large[] sums of cash found in possession of the defendant. The final factor to be considered is expert testimony . . . [which] is admissible concerning whether the facts surrounding the possession of controlled substances are consistent with an intent to deliver rather

than with an intent to possess it for personal use.” *Commonwealth v. Ratsamy*, 594 Pa. 176, 183, 934 A.2d 1233, 1237-38 (2007) (internal citation omitted).

This court finds that the evidence was sufficient to establish constructive possession. Taking the evidence admitted during the trial in the light most favorable to the Commonwealth as the verdict winner, in the case *sub judice*, Detective Michael Honicker, a detective of over 41 years with the Criminal Investigation Division of Delaware County (hereinafter “CID”), testified that he had conducted surveillance of 209 West Parkway Avenue in Chester, Pennsylvania and developed the Appellant, Patricia Dodson, as a suspect in drug activity. During the course of surveillance, the Appellant was observed at the residence. *Id.* at 50. Specifically, she was observed letting people into the residence at the front door. *Id.* at 50-51. Detective Honicker testified that on July 22, 2015, he, along with other officers from CID, executed a search warrant at 209 West Parkway Avenue at approximately 6 A.M. N.T., 4/5/17, pp. 44-45. When the officers entered the residence, they first encountered a man lying on the sofa next to a loaded firearm, a Mack 11. *Id.* at 56. He told the police that he was instructed to watch the drugs. He stated that if anyone ran into the house he was to shoot them. *Id.* at 58.

The police recovered new and unused bagging material for heroin and cocaine in that room. *Id.* at 58. Detective Honicker relayed that they found packaging material throughout the house- including under the seat cushions, on the shelves, on the tables and in the bedroom. *Id.* at 73. A Tupperware bin containing paraphernalia, including cutting material and scales, were found in the kitchen. *Id.* at 64-65. They also recovered face masks and rubber gloves from an area which Detective Honicker referred to as a “workstation.” *Id.* at 66-67. Plates covered in drug residue were also found around the “workstation.” *Id.* at 74-75. Additionally, several firearms were located in the closets in the house. *Id.* at 75-78.

When the officers reached the Appellant 's bedroom, they found two electronic scales; one with cocaine residue and one with heroin residue. *Id.* at 79. They also found a quarter-pound of cocaine in a bag "which wasn't cut or put into smaller bags as of yet." *Id.* There was also a 20 gram block of heroin recovered "which hasn't been processed into bags" as well as bagging material *Id.* Detective Honicker explained that he knew it was the Appellant's bedroom because there was women's clothing throughout it. *Id.* at 81. Detective Honicker testified that he packaged up the narcotics recovered from the residence and sent them to the crime lab for field testing. *Id.* at 101. He testified that they tested positive for cocaine and heroin. *Id.* at 101.<sup>1</sup>

Officer Timothy Garron, an officer of 10 years with the City of Chester Police Department, also testified at trial. *Id.* at 155.<sup>2</sup> Officer Garron was qualified as an expert in the

---

<sup>1</sup> At trial the Commonwealth and defense counsel stipulated that [o]n or about July 27th of 2015, Detective Michael Honiker of the Delaware County Criminal Investigations Division submitted the following items to the Lima Regional Laboratory of the Pennsylvania State Police Bureau of Forensic Science Services. One sealed envelope containing one clear Ziploc bag with one clear knotted plastic bag containing tan chunky powder. Two, one sealed envelope containing one clear Ziploc bag containing white chunky powder. Three, one sealed envelope containing one clear Ziploc bag with two clear plastic bags containing residue; one sealed envelope containing one clear Ziploc bag with 18 yellow glassine bags containing tan powder; five, one sealed envelope containing one plastic bag with two paper plates containing residue. The items were analyzed by Forensic Scientist Elizabeth Martin, who if called to testify, would be qualified in the field of forensic science as an expert and would testify in the capacity to the result of her analysis that the tan powder in Item 1.1 weighed a total of 19.49 grams and contained heroin, a Schedule I controlled substance. The tan powder in Item 2.1 contained a total of 107.72 grams and contained cocaine, a Schedule II controlled substance. The residue in Item 3.1 contained heroin, a Schedule I controlled substance. The powder in Item 4.1 weighed 1.28 grams and contained heroin, a Schedule I controlled substance. The residue on Item 5.1 contained heroin, a Schedule I controlled substance. The results of her analysis are contained in Lab Report dated August 31st of 2015 and are attached hereto as Exhibit A. A proper chain-of-custody was established with respect to the above items from the time they were obtained by Detective Michael Honiker of the Delaware County Criminal Investigations Division to the time they were analyzed at the Lima Regional Laboratory of the Pennsylvania State Police by Forensic Scientist Elizabeth Martin and presented here today in Court. N.T., 4/5/17, p. 104, Commonwealth Exhibit C-31.

<sup>2</sup> Officer Garron testified to his work and experience, which includes five years of employment within the Narcotics Unit and the Delaware County Drug Task Force, and a full time member of



field of illegal drugs, drug investigation, and distribution and he testified that, based upon his training and experience, the bulk cocaine recovered from the Appellant's residence was not an amount that you would commonly buy on the street. *Id.* at 172, 177. He testified that the amount of cocaine recovered would sell for approximately \$4800 to \$5000, and in his opinion, was more than most users could afford. *Id.* at 177-78. He explained that the unused bags recovered from the house are commonly used to package or further break down different controlled substances. *Id.* at 178. He further explained that the wax paper bags recovered from the residence would be used by the dealer to "stamp" his product so that people could recognize it. *Id.* at 180.

Officer Garron also identified the 20 grams of heroin recovered from the residence and testified that it was not an amount that one would commonly purchase on the street. *Id.* at 183. He explained that a heroin user would not be able to handle the amount recovered. *Id.* He explained that a heroin addiction is so strong that a user would just keep shooting until their body shut down and they overdosed. *Id.* at 183. He approximated the value of the raw heroin recovered to be about \$1400. *Id.* at 183-84. He explained that the "[c]urrent day market value in Chester right now, if you have a good relationship with your drug dealer, probably 50 to \$55 for a gram of heroin. On the high end, maybe \$70, a gram of heroin. So at \$20 a gram; you're at \$70 on the high end just to give the benefit of the doubt, you're looking at \$1,400 for these 20 grams right here." *Id.* at 183. According to Officer Garron, "you're getting 33 individual servings out of one gram. So at 20 grams, you're getting 660, thereabout. We'll just say 650 to make it even.

---

the FBI's Violent Crime Task Force. N.T., 4/5/17, p. 155, 158. Over the course of his work, Officer Garron has seized controlled substances thousands of times, as well as seized drug paraphernalia. *Id.* at 157. He testified that cocaine and heroin are prevalent throughout the city of Chester. *Id.* at 157-58. Officer Garron testified that he has worked undercover as both a seller and user of controlled substances and explained to the jury about his general experiences in that capacity. *Id.* at 162-69. He explained that he understands how dealers store, protect, sell and deliver controlled substances. *Id.* at 166.

You're getting 650 servings out of this 20 grams at, you know, \$10 apiece, 6,500 bucks right there all day. And that's before you cut it or stretch it. Now, if you were to add a gram, a gram per gram -- I've heard guys do as much as putting two grams to a gram of raw heroin. So two grams of some inordinate substance, whether it's -- again, it could be soap, a special kind of soap that they grind up or baby laxatives are commonly used, baby aspirin, things of that nature, to stretch it a little bit further. You could make -- if you stretch this, if you put two grams to every one gram of heroin on here, you're looking at almost \$20,000 in profit." *Id.* at 184.

Officer Garron testified that the items found around the workstation were used to break down the heroin and cocaine to distribute for street level sales. *Id.* at 186. He testified that based upon the amount of controlled substances and paraphernalia found, he believed that the Defendant was a "mid-level" dealer. *Id.* at 189. He testified that based upon his education, training, experience and review of all the evidence in the case, he believed the cocaine and heroin was "definitely" and "100 percent" possessed with the intent to distribute. *Id.* at 194-95.<sup>3</sup>

Defense counsel attempted to persuade the jury that another individual named Michael Simmons lived at 209 Parkway and possessed the drugs located therein. *Id.* at 127. Michael Simmons was present at the residence when the search warrant was effectuated. Detective Honicker confirmed that mail belonging to Mr. Simmons was located in a backpack in a closet in

---

<sup>3</sup> He testified, "The long and the short of it is lack of user paraphernalia, the amount of drugs founds versus the amount of no cash found. That all tells me that this was just a re-supply of narcotics for both the cocaine and the heroin. On top of that, any time you're able to double or triple your money off the amount of product that you have, that's why people get into this business. It's quick. It's fast. It's a lot of money. People -- people don't realize how much money is floating around in the inner-cities. Like I said, if you cut that down, both the cocaine and the heroin, you're looking at somewhere upwards of around \$30,000 of something that you've spent somewhere around 5 to \$6,000 for. So you're more than quadrupling your money. And for that reason alone, there's no -- I mean it just makes sense." N.T. 4/5/17, p. 195.

the dining room adjacent to the kitchen, but that no male clothing was recovered in the residence. *Id.* at 123-30.

The jury found and the court concurs that the evidence presented at trial was sufficient to establish Appellant's constructive possession of both cocaine and heroin. As set forth above, the raw heroin and raw cocaine was located within the Appellant's bedroom. The Appellant was observed by Detective Honicker at the front door of the residence on several occasions, supporting an inference that the Appellant was not just a casual visitor, but rather the owner of the residence. A search of the residence uncovered numerous mailings addressed to the Appellant as well as her clothing. This evidence, when considered in its totality, was sufficient for a jury to conclude that not only did the Appellant constructively possess these drugs, but that she possessed these drugs with the intent to deliver.

## II. Weight of the Evidence

Lastly, Appellant argues that the verdict was against the weight of the evidence. The court submits that the verdict was not against the weight of the evidence.

An allegation that the verdict is against the weight of the evidence is addressed to the discretion of the trial court. *Commonwealth v. Ramtahal*, 613 Pa. 316, 33 A.3d 602 (2011). A trial court will award a new trial only when the jury's verdict is so contrary to the evidence as to *shock one's sense of justice*. *Commonwealth v. Diggs*, 597 Pa. 28, 949 A.2d 873 (2008) (emphasis added).

It is well established that a challenge to the weight of the evidence is limited to a review of the discretion of the trial judge, who has had the opportunity to observe the proceedings and demeanor of the witnesses. *Commonwealth v. Cunningham*, 805 A.2d 566, 572 (Pa. Super. 2002). That decision will not be reversed on appeal absent a showing of an abuse of discretion.

*Commonwealth v. Petteway*, 847 A.2d 713, 717 (Pa. Super. 2004). In the case *sub judice*, Appellant was found guilty of, possessing drugs with the intent to deliver.

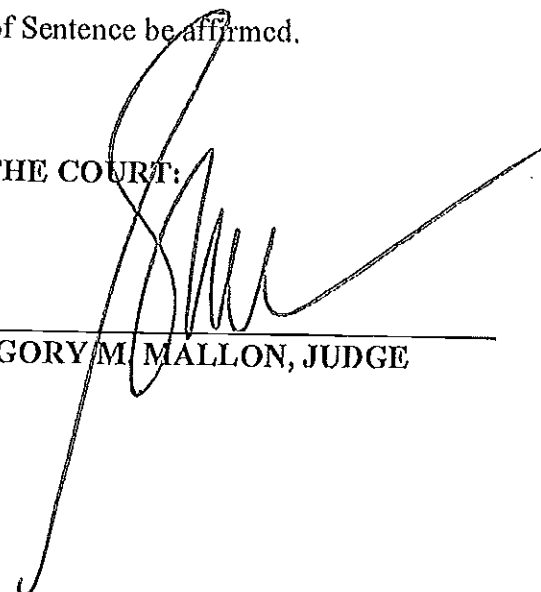
This court submits that the jury was free to believe or disbelieve any of the testimony and evidence. At trial the Commonwealth presented evidence that the Appellant was observed at the residence and that her belongings were located throughout the residence at the time the search warrant was executed. Officer Garron testified that the amount of heroin and cocaine found, in its raw form, was not an amount that you would commonly buy on the street. Based upon the amount of drugs, and the scales and packaging material found throughout the Appellant's residence, the jury determined that these drugs were possessed with the intent to deliver.

Respectfully, the jury's verdict did not shock one's sense of justice as to require a new trial. It is not for this court to substitute its own judgment for that of the jury in Appellant's case.

### III. CONCLUSION

In light of the aforementioned, it is respectfully submitted that the court's decision was free from legal error and that there is no merit to Appellant's appeal. It is for the reasons set forth above that this court requests that Appellant's Judgment of Sentence be affirmed.

BY THE COURT:



\_\_\_\_\_  
GREGORY M. MALLON, JUDGE