

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,		IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee		
v.		
CEDRIC ANTHONY HARRISON,		
Appellant		No. 207 WDA 2012

Appeal from the Judgment of Sentence January 27, 2012
In the Court of Common Pleas of Fayette County
Criminal Division at No(s): CP-26-CR-0001676-2011

BEFORE: BOWES, LAZARUS, and COLVILLE,* JJ.

MEMORANDUM BY BOWES, J.:

FILED May 1, 2013

Cedric Anthony Harrison appeals from the judgment of sentence of five to ten years incarceration imposed by the trial court following his convictions for possession with intent to deliver (PWID) cocaine, possession of cocaine, possession of drug paraphernalia and criminal trespass. We affirm.

The trial court recited the pertinent facts as follows.

On May 10, 2011, Parole Agent Tim Murphy and Detective John Brant of the Fayette County Drug Task Force arrived at Clover Street, Snowden Terrace, Brownsville, Fayette County, Pennsylvania at approximately 2:00 p.m. Snowden Terrace is a public housing complex owned and operated by the Fayette County Housing Authority.

Upon observing Murphy and Brant, the Defendant, who was seated on the porch of 418 Clover Street, quickly jumped to

* Retired Senior Judge assigned to the Superior Court.

his feet, reached into his left pocket and then fled. At the time of the incident the Defendant was on parole and was not permitted in Snowden Terrace. Murphy and Brant pursued the Defendant. During the chase, the Defendant reached into his right front pants pocket, removed a clear plastic baggie containing a white substance from his pocket and then threw the baggie and its contents into a wooded area near the housing complex. A second clear plastic baggie fell from the Defendant's person as he was attempting to flee. Officer Brant took possession of the second baggie immediately. The Uniontown Police Canine Unit was dispatched and eventually recovered the first baggie from the woods.

At trial, the Defendant stipulated to the chemical analysis of the contents contained in the baggies. The baggie recovered from the woods contained 21.7 grams of cocaine, a Schedule II controlled substance. The second baggie also contained .72 grams of cocaine. The total weight of [the] cocaine found that day was 22.42 grams.

Officer Ryan Reese, who is a sergeant with the Connellsville Police Department and also a detective for the Fayette County Drug Task Force, testified on behalf of the Commonwealth as an expert in the field of narcotics investigations. According to Reese, the street value of 22.42 grams of cocaine is approximately \$2,000.00.

Trial Court Opinion, 6/19/12, at 2-3 (internal citations omitted). Officer Reese further opined that Appellant possessed the cocaine with intent to deliver.

The jury found Appellant guilty of the drug offenses and the trial court adjudicated him guilty of criminal trespass. Thereafter, the trial court sentenced Appellant to five to ten years imprisonment based on application of a mandatory minimum sentence. This appeal ensued. The trial court directed Appellant to comply with Pa.R.A.P. 1925(b). Appellant filed his concise statement and the trial court authored its Pa.R.A.P. 1925(a) opinion.

The matter is now ready for our review. Appellant presents the following issues for this Court's consideration.

1. Did the trial court [commit] error when it refused to exclude the testimony and qualifications of Officer Bryan [sic] Reese as an expert witness?
2. Did the trial court commit reversible error when it permitted Officer John Brant to testify re fingerprints based totally upon hearsay. Brant was not qualified as an expert witness nor permitted to offer an opinion nor was he asked a hypothetical question?
3. Did the trial court commit reversible error when it permitted Officer Bryan [sic] Reese to testify regarding crack cocaine when crack cocaine was not involved in this case?
4. Did the trial court commit reversible error when it denied the appellant's point for charge re the interest/bias of Commonwealth witness Bryan [sic] Reese?

Appellant's brief at 3.

Appellant presents the arguments for his first three issues together. He first argues that Officer Reese should not have been permitted to testify because "his opinion was biased in favor of the Commonwealth who is his employe[r] and who expected him to opine that the drugs were for possession with an intent to deliver." Appellant's brief at 9. The Commonwealth responds that any bias "could have been, and was, brought out during cross examination before the finder of fact." Commonwealth's brief at 2.

We find Appellant's issue is without merit. "The admission of expert scientific testimony is an evidentiary matter for the trial court's discretion

and should not be disturbed on appeal unless the trial court abuses its discretion.” ***Commonwealth v. Page***, 59 A.3d 1118, 1135 (Pa.Super. 2013). Expert testimony is governed by Pa.R.E. 702, which reads,

Rule 702. Testimony by experts

If scientific, technical or other specialized knowledge beyond that possessed by a layperson will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of an opinion or otherwise.

Pa.R.E. 702. Appellant does not dispute that Officer Reese was qualified to testify; he challenges only his bias. However, any alleged bias by the expert witness relates to the weight his testimony should be afforded and not its admissibility. ***See e.g., Reading Radio, Inc. v. Fink***, 833 A.2d 199, 208 (Pa.Super. 2003) (“A witness' relationship with one of the parties at trial raises questions of credibility rather than expertise and, as such, is a matter of the weight afforded to an expert's testimony by the jury.”).

Appellant also alleges that Officer Brant impermissibly testified regarding fingerprint evidence. Appellant challenges Officer Brant’s testimony that, in his experience, fingerprints were found in two of fifty cases where such testing was conducted and that environmental conditions can prevent conclusive fingerprint testing. He contends that this proof was impermissible hearsay and expert opinion testimony. Again, we find Appellant’s issue to be devoid of merit.

Here, Officer Brant testified as to his own experience in ascertaining fingerprint evidence. When Officer Brant began to state that he had been informed about fingerprint evidence he was interrupted by an objection and did not complete the sentence. Instead, he went on to testify regarding his personal experience with respect to the likelihood of recovering fingerprint evidence. This testimony was not hearsay as it did not relay information from another out-of-court source, **see** Pa.R.E. 801,¹ but was premised on his own investigatory experience.

Further, the testimony was being introduced to explain Officer Brant's course of conduct in declining to seek fingerprinting of the drug baggies. The information was relevant since trial counsel sought to call into question this aspect of the investigation. Thus, the testimony was not elicited to prove the truth of whether environmental conditions preclude accurate

¹ Pa.R.E. 801 read in relevant part, "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Pa.R.E.801(c) (October 1, 1998). The rule was amended effective March 18, 2013. The new rule states,

(c) Hearsay. "Hearsay" means a statement that

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

Pa.R.E. 801(c).

fingerprint testing; rather, it was introduced to establish why no testing was conducted. **See *Commonwealth v. Chmiel***, 889 A.2d 501, 533 (Pa. 2005) (“challenge to the competency of the investigation opened the door for the prosecution to provide extensive testimony explaining the course of the investigation.”). Hence, Officer Brant’s testimony was not inadmissible for this additional reason. Insofar as Appellant, without citation, contends that Officer Brant’s testimony was expert testimony, we disagree. Instead, Officer Brant explained why he did not test the recovered baggies for fingerprints following trial counsel’s questioning on the subject.

In his third issue, Appellant maintains that Officer Reese testified regarding crack cocaine when crack cocaine was not involved in this matter. He submits that such testimony was irrelevant and prejudicial. However, Appellant’s position rests on a false premise, *i.e.*, that crack cocaine was not recovered. Officer Reese testified that one of the baggies recovered appeared to be crack cocaine based on its color and texture. Specifically, he opined that the .72 grams of cocaine that police recovered was likely crack cocaine. As the trial court accurately noted, Officer Reese’s “testimony regarding the distinction between crack and powder cocaine was relevant as well since it was a key premise upon which his conclusion that the cocaine was possessed with the intent to deliver and not for personal use rested.” Trial Court Opinion, 6/19/12, at 6. Accordingly, Appellant’s issue fails.

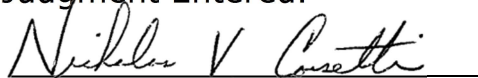
Appellant’s final claim is that the trial court erred in declining to issue a special jury instruction as to the bias of the Commonwealth’s expert,

Officer Reese. Appellant asserts, “[t]here was clear evidence in this case about the bias of Officer Reese and it was err[or] for the trial judge to exclude such consideration from the jury.” Appellant’s brief at 12-13. The Commonwealth replies that the standard jury instruction includes an explanation of bias and therefore the trial court did not commit reversible error. We agree.

“An instruction will be upheld if it clearly, adequately and accurately reflects the law. The trial court may use its own form of expression to explain difficult legal concepts to the jury, as long as the trial court’s instruction accurately conveys the law.” ***Commonwealth v. Cook***, 952 A.2d 594, 626-627 (Pa. 2008). The trial court clearly explained the law regarding expert witnesses and included within its instructions a discussion of bias as it relates to witnesses generally, which it referred to when explaining how the jury was to evaluate the expert testimony herein. Thus, the jury was not precluded from considering Officer Reese’s bias and the fact that he was an employee of the Commonwealth and testified on its behalf.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in cursive script, reading "Nicholas V. Casella", written over a horizontal line.

Deputy Prothonotary

Date: 5/1/2013