NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. MAURICE GRIER, Appellant	: : : : : : : : :	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 2771 EDA 2012

Appeal from the Judgment of Sentence entered on December 15, 2011
in the Court of Common Pleas of Bucks County,
Criminal Division, No. CP-09-CR-00003292-2011

BEFORE: BENDER, P.J., DONOHUE and MUSMANNO, JJ.

MEMORANDUM BY MUSMANNO, J.: **FILED DECEMBER 04, 2013**

Maurice Grier ("Grier") appeals from the judgment of sentence imposed after he was convicted of possession of a controlled substance with intent to deliver ("PWID"), possession of a controlled substance, and possession of drug paraphernalia.[1] We affirm.

The pertinent facts and procedural history of this case were thoroughly set forth by the trial court in its Opinion, which we adopt for the purpose of this appeal. ***See*** Trial Court Opinion, 2/7/13, at 1-7.

Grier raises the following issues on appeal:

> 1. Did the trial court err in permitting the verdict even though it was not supported by sufficient evidence?
>
> 2. Did the trial court err in permitting the verdict even though it was against the weight of the evidence?

[1] 35 P.S. §§ 780-113(a)(30), (a)(16), (a)(32).

3. Did the trial court err in denying the [M]otion to suppress?

Brief for Appellant at 4.

In his first two issues on appeal, Grier challenges the sufficiency and weight of the evidence in support of the verdict. Grier asserts that the evidence was so unreliable and contradictory that it was incapable of supporting the verdict. Grier argues that the evidence did not establish that he possessed the *mens rea* for the crime of PWID. He contends that the evidence did not support the finding that the voice that stated he "could deliver in thirty minutes" was Grier's voice.

Our standards of review of these claims are as follows:

> When evaluating a sufficiency [of the evidence] 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 [are] to be resolved by the factfinder unless the evidence [is] 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).

> The finder of fact is the exclusive judge of the weight of the evidence as the fact finder is free to believe all, part, or none of the evidence presented and determines the credibility of the witnesses. As an appellate court, we cannot substitute our judgment for that of the finder of fact. Therefore, we will reverse a jury's verdict and grant a new trial only where the verdict is so contrary to the

> evidence as to shock one's sense of justice. Our appellate courts have repeatedly emphasized that "[o]ne 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."
>
> Furthermore,
>
> > where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

Commonwealth v. Rabold, 920 A.2d 857, 860-61 (Pa. Super. 2007) (citations omitted).

After reviewing the record, we conclude that there is no merit to Grier's contentions concerning the weight and sufficiency of the evidence. The trial court has accurately addressed these issues. ***See*** Trial Court Opinion, 2/7/13, at 7-11. We adopt the trial court's well-reasoned Opinion and affirm on that basis with regard to these issues. ***See id.***

With regard to Grier's claim that the evidence did not support the finding that it was his voice that stated he "could deliver in thirty minutes," we note that Detective Kolman testified that he heard the same man also say, "Yo, this is Reese," and "I got [crack]." ***See*** N.T., 10/3/11, at 34. Since Grier's first name is Maurice (and Reese could be a nickname for Maurice), this evidence supports the inference that Grier made the statement that he "could deliver in thirty minutes." ***See id.***

Grier also contends that the trial court erred in denying his Motion to suppress. Grier asserts that no exigent circumstances existed to support the warrantless search of the motel room. Grier further argues that, at the time the door opened, the police had only a mere suspicion and not probable cause to suspect the commission of a crime. Grier contends that the police did not know that drugs were present until they entered the room. ***See*** Brief for Appellant at 14.

Our standard of review of the denial of a Motion to suppress is as follows:

> An appellate court's standard of review in addressing a challenge to a trial court's denial of a suppression motion is limited to determining whether the factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Since the prosecution prevailed in the suppression court, we may consider only the evidence of the prosecution and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the record supports the factual findings of the trial court, we are bound by those facts and may reverse only if the legal conclusions drawn therefrom are in error.

Commonwealth v. Stevenson, 894 A.2d 759, 769 (Pa. Super. 2006) (citation omitted).

Probable cause to obtain a search warrant exists, under the Pennsylvania and United States Constitutions,

> where the facts and circumstances within the affiant's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man

> of reasonable caution in the belief that a search should be conducted."
>
> In ***Illinois v. Gates***, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), the United States Supreme Court established the "totality of the circumstances" test for determining whether a request for a search warrant under the Fourth Amendment is supported by probable cause. In ***Commonwealth v. Gray***, … 503 A.2d 921 ([Pa.] 1986), th[e Pennsylvania Supreme] Court adopted the totality of the circumstances test for purposes of making and reviewing probable cause determinations under Article I, Section 8. In describing this test, [the Pennsylvania Supreme Court] stated:
>
> Pursuant to the "totality of the circumstances" test …, the task of an issuing authority is simply to make a practical, common-sense decision whether, given all of the circumstances set forth in the affidavit before him, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place....

Commonwealth v. Jones, 988 A.2d 649, 655 (Pa. 2010) (certain citations omitted).

In addition, pursuant to the United States and Pennsylvania Constitutions,

> "[a]bsent consent or exigent circumstances, private homes may not be entered to conduct a search or to effectuate an arrest without a warrant, even where probable cause exists…." [A] number of factors … should be considered in determining whether exigent circumstances exist in a given situation to justify a warrantless entry and search of a private residence. These include: (1) the gravity of the offense; (2) whether there is a reasonable belief that the suspect is armed; (3) whether there is a clear showing of probable cause; (4) whether there is a strong showing that the suspect is within the premises to be searched; (5) whether there is a likelihood that the suspect will escape; (6) whether the entry was

> peaceable; (7) the time of the entry, *i.e.,* day or night; (8) whether the officer was in hot pursuit of a fleeing felon; (9) whether there is a likelihood that evidence may be destroyed; and (10) whether there is a danger to police or others….

Commonwealth v. Walker, 836 A.2d 978, 980-81 (Pa. Super. 2003) (citations omitted). "It is well established that police cannot rely upon exigent circumstances to justify a warrantless entry where the exigency derives from their own actions." ***Commonwealth v. Waddell***, 61 A.3d 198, 214 (Pa. Super. 2012).

In the instant case, at the suppression hearing, Detective Kolman testified that, on April 16, 2011, at 5:30 p.m., he and Officer Catrombon responded to the Lincoln Motel based on a report of a drug complaint. N.T., 9/30/11, at 7. Kolman stated that the Lincoln Motel is located in a high crime area and that he had responded to that location several times, including just a few days earlier. ***Id.*** at 7-8. At that time, Kolman recovered a bullet-proof vest and an AK-47 from the Motel. ***Id.*** at 8. On April 16, 2011, the report indicated that narcotics activity was occurring on the second floor, in Room 223 of the Motel. ***Id.*** at 9. Kolman stated that two other police officers arrived shortly after he and Catrombon responded. ***Id.***

Kolman testified that he and Catrombon initially walked up to the room and knocked on the door. ***Id.*** at 10. Kolman stated that he could hear people speaking inside loudly and clearly, and he immediately recognized what they were talking about. ***Id.*** Kolman heard an adult male engaging in

what Kolman believed was a phone conversation. ***Id.*** Kolman heard the adult male say, "Hey, this is Reese," and that he had "hard" and "sherms," "you know, crack." ***Id.*** at 10-11.

Kolman testified that he had previously made several hundred undercover buys as well as uniformed narcotics arrests. ***Id.*** at 11. He stated that he is familiar with the terminology used in drug dealing, and that the word "hard" is the street term for cocaine." ***Id.*** Kolman had heard the word "sherm" used in connection with PCP. ***Id.*** at 11-12.

Kolman determined that there were at least two males and two females in the motel room. ***Id.*** at 12. Kolman heard one of the females engaging in a phone conversation, in which she said that "she would not drive all the way down there for only that amount." ***Id.*** He also heard her say "40 grams." ***Id.***

Kolman decided to go downstairs to get the key to the room next door because he was afraid that if the door to Room 223 opened, "there could be destruction of evidence if they retreated back in and locked the door." ***Id.*** at 14. After acquiring both room keys, as Kolman was proceeding back upstairs, he heard the police officers yelling "Police, Police." ***Id.*** at 15. Kolman saw that the door to Room 223 was open and the officers were detaining four subjects inside the room. ***Id.***

Kolman stated that he and the officers had talked about obtaining a search warrant for Room 223 but, under the circumstances, they did not

have enough time. ***Id.*** at 16. Kolman testified that he was certain that the male voice he heard speaking was not coming from a television. ***Id.*** at 20. Kolman stated that, based on his training and experience, weapons are frequently involved with drug activity. ***Id.*** at 23. Kolman also was concerned that one of the suspects could jump out of the motel room window. ***Id.*** at 27.

Officer Clee testified at the suppression hearing that he has been investigating narcotics crimes for ten years. ***Id.*** at 28. Clee stated that he was on patrol on the date in question and heard a call "for drug activity at the Lincoln Motel." ***Id.*** at 29. Clee testified that he had responded many times previously to the Lincoln Motel on calls of drugs and prostitution. ***Id.*** at 30. Clee responded to the Lincoln Motel's second floor, where Kolman and another officer were present. ***Id.*** at 31. Clee testified that the officers decided they would detain the subjects when they exited the room, and apply for a search warrant for the room. ***Id.*** at 32. Clee heard a male and a female in the room speaking about drugs. ***Id.***

Clee testified that the motel room door was opened by Hennessy. ***Id.*** As she exited, the officers went into the room and secured it and the occupants. ***Id.*** at 32-33. Clee indicated that Kolman had heard that there was going to be a drug delivery in 30 minutes, and Clee had heard a conversation about another drug deal being set up. ***Id.*** Therefore, the officers assumed that the subjects were exiting the room in order to make a

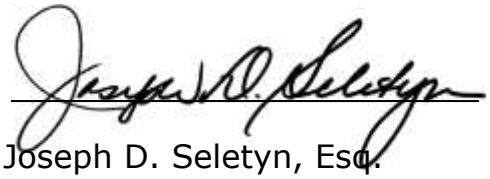
drug sale. ***Id.*** Inside the room, Clee saw "[v]arious drug paraphernalia …, the marijuana pipes and crack bags." ***Id.*** at 34. Officer Clee testified that, if the occupants of the room had detected the presence of the police, they could have "flushed, eaten, thrown out the window [or] burnt" the evidence. ***Id.*** at 42.

Based on the above evidence, the trial court made findings of fact and conclusions of law, as set forth in its Opinion. ***See*** Trial Court Opinion, 2/7/13, at 1-2; N.T., 10/3/11, at 3-11. Upon review of the record, we conclude that the trial court's factual findings are supported by the record and the legal conclusions drawn therefrom are correct. ***See Stevenson***, 894 A.2d at 769. Specifically, the record showed that the police officers were called to the Lincoln Motel, the site of prior crimes involving illegal drugs, prostitution, and weapons. While standing in the hallway outside of Room 223, the officers heard the occupants of the room make statements while talking on the telephone, which indicated that the occupants were involved at that time in the active sale of cocaine and PCP. The officers had experience and training in the investigation of narcotics crimes. Thus, the totality of the circumstances, including the statements the officers overheard from within the room, were sufficient "to warrant a man of reasonable caution in the belief that a search should be conducted." ***Jones***, 988 A.2d at 655. Accordingly, we discern no error in the trial court's conclusion that the police had probable cause to request a search warrant.

Further, Grier's claim that no exigent circumstances were present lacks merit. Here, the evidence established a "clear showing of probable cause;" the suspected offenses were serious; there was a "strong showing that the suspect was within the premises to be searched;" due to the large window in the room and the possibility of weapons, there was a likelihood that the suspect(s) would escape; the entry into the room was peaceable due to the fact that one of the occupants had opened the door; and there was a likelihood that drug evidence would be destroyed if the officers did not act quickly after the door was opened. ***See Walker***, 836 A.2d at 980-81. Thus, we conclude that the trial court did not err in finding the presence of exigent circumstances justifying the police entry into the room. ***See id.*** at 981-84 (holding that exigent circumstances justifying warrantless entry into a motel room were present where a police officer had been informed of illegal drug activity at the motel, the officer observed the defendant outside of the motel room with a crack pipe, the defendant turned around and entered the room when he saw the officer, there was a strong likelihood that evidence would be destroyed, and the officer's entry was peaceful).

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/4/2013

A23039-13

IN THE COURT OF COMMON PLEAS OF BUCKS COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	**No. 2011-3292**
	:	**(2771 EDA 2012)**
v.	:	
	:	
MAURICE GRIER	:	

OPINION

A jury convicted Defendant, Maurice Grier, of Possession of a Controlled Substance with the Intent to Deliver (PWID),[1] Possession of a Controlled Substance,[2] and Possession of Drug Paraphernalia.[3] Defendant was sentenced to a mandatory five to ten years in a state correctional facility. On appeal, Defendant challenges the sufficiency of the evidence, the weight of the evidence, and the denial of his pre-trial motion to suppress.

On July 12, 2011, Defendant filed "Motion to Suppress Physical Evidence" and Memorandum. On September 30, 2011 and October 3, 2011, a hearing was held on the pre-trial motion. On October 3, 2011, after a hearing on Defendant's motion this Court found the following facts:

> Detective Adam Kolman is an experienced law enforcement officer with the Bensalem Township Police Department, and who has a total of 13 years of experience in law enforcement. On April 26, 2011, at approximately 5:30 p.m., Detective Kolman responded to the Lincoln Motel in Bensalem, Bucks County, Pennsylvania for the report of narcotics in Room 223. The Lincoln Motel is located on the Route 1 corridor where Bucks County borders Philadelphia County. This area is a high-crime area and Detective Kolman has responded to this area hundreds of times previously. Just a few days prior Detective Kolman responded to this motel and recovered an AK-47 and a bullet proof vest. Detective Kolman was accompanied by a uniformed patrol officer, Officer Catrombon. Typically detectives do not respond to dispatches, but there was a

[1] 35 P.S. § 780-113(a)(30)- 18.26 grams crack cocaine (second or subsequent conviction).

[2] 35 P.S. § 780-113(a)(16)- crack cocaine and/or phencyclidine and/or oxycodone.

[3] 35 P.S. § 780-113(a)(32)- pipes and/or chore boy.

shortage of police officers available that day. As the two entered the motel and went up to the second floor hallway, and as they approached Room 223 they heard voices inside the room. While standing outside of Room 223, Detective Kolman heard a male say "Hey, this is Reece" and he mentioned the words "hard" or "sherms." The voice repeated itself by saying, "I said hard. You know, crack." Detective Kolman could hear this male voice ten to twenty feet down the hallway. Detective Kolman has experience in narcotics investigations and has made one hundred undercover buys, made more than five hundred drug-related arrests, and been involved in more than a thousand arrests. Based on his training and experience, Detective Kolman believed the male was on the phone setting up a drug sale of crack cocaine and PCP. The detective heard at least one other male voice and two female voices in the room and was certain that it was not a television. Detective Kolman heard one of the female voices speaking on the phone and heard parts of her conversation, specifically her saying that she "would not drive all the way down there for only that amount." Detective Kolman also heard the female voice talk about "grams" and say "forty grams" one time. It also appeared to him that she was not happy with the other end of the conversation and did not want to drive wherever it was for that small of an amount. Two other officers joined Detective Kolman in the hallway, including Officer David Clee. After approximately fifteen minutes, while the police were discussing their next step, Detective Kolman went down to the front desk to get a key for Room 223 and the room next door. Detective Kolman wanted to occupy the room next door, apply for a search warrant, and secure a search warrant. While the police were waiting for Detective Kolman to return, a female occupant opened the door of Room 223 to exit. The motel room had a large window. The officers immediately entered the room, went inside, and observed drug paraphernalia. The four individuals in the room were placed under arrest at this time. Officer Moore placed Defendant under arrest. Subsequent to that arrest, outside the police car, Officer Moore searched Defendant's person and located two bags of cocaine.

This Court then made the following conclusions of law:

> The police entered the room and saw drug paraphernalia. The police had probable cause to request a search warrant at the time Detective Kolman left to get a key. Once the door was open, exigent circumstances existed for the officers to enter the room. The drug paraphernalia was in plain view and at this point the police had probable cause to arrest the defendant. The search of Defendant's person, after this lawful arrest, was lawful.

At the conclusion of the hearing, this Court denied Defendant's Motion to Suppress.

On October 3, 2011, the trial commenced. The following additional facts were established at trial. When one travels from Philadelphia County into adjoining Bucks County on Route 1, the Lincoln Motel is the first business that one encounters in Bucks County. N.T.

10/3/11, pp. 32, 48. The motel has approximately sixty rooms and consists of a long corridor with rooms on both sides. N.T. 10/3/11, p. 32. Within ten seconds of approaching Room 223, Detective Kolman heard the male voice say "hey this is Reece" and that he had "hard" and "sherms" and "it would take him about thirty minutes to deliver." N.T. 10/3/11, pp. 34-35. Officer John Catrombon, who has five years of experience in law enforcement, heard a male and female say "thirty grams" and a male say he "had sherms and could deliver in thirty minutes." N.T. 10/3/11, pp. 67-68.

Officers Patrick J. Moore and Clee, who have seven years and eighteen years of experience in law enforcement respectively, also arrived on scene. N.T. 10/3/11, pp. 112-14, 145-46. Ten years of Officer Clee's experience has specifically been in the narcotics unit. N.T. 10/3/11, p. 147. As Detective Kolman went to get a key, Officer Clee specifically heard the defendant say he "has 20's" and then the female say "23 grams" and "Reece has whatever you need." N.T. 10/3/11, pp. 147-48, 155. In his experience, Officer Clee opined that "20's" refers to the sale of twenty dollar crack cocaine bags, "hard" means crack cocaine, and "sherms" means PCP. N.T. 10/3/11, p. 147.

Detective Kolman obtained the room keys from the motel manager for Room 223 and the room directly next door. N.T. 10/3/11, pp. 37-38. As Detective Kolman was returning to the corridor, he heard commotion coming from down the hall. N.T. 10/3/11, p. 38. The officers entered Room 223 just as Carol Hennessey was exiting the room. N.T. 10/3/11, p. 70. Video surveillance of the hallway was recorded during this time period. Exh. D-3.

When they entered the room, Officers Clee and Catrombon observed bags of crack cocaine, push rods, chore boy, and crack pipes in plain view on a table. N.T. 10/3/11, pp. 70-72, 162; Exhs. C-4, C-10 to C-15, C-17 & C-18. The individuals in the room were identified as the

defendant, Raymond Lyons, Jennie Luckie, and Hennessey. N.T. 10/3/11, pp. 38-39, 102. After observing both males and hearing them speak, Detective Kolman determined that the man who referred to himself as "Reece" on the phone was the defendant, Maurice Grier. N.T. 10/3/11, p. 39. Officer Moore was instructed to transport Defendant to police headquarters after he was arrested. N.T. 10/3/11, p. 115. During the search of Defendant, Officer Moore found an ounce of crack cocaine contained in two baggies in Defendant's left pant pocket. N.T. 10/3/11, pp. 117-18, 122-23. Based on his training and experience, Officer Moore opined that the drug was packaged for delivery and each bag would cost approximately fifteen to twenty dollars. N.T. 10/3/11, pp. 137-38.

Additionally, after obtaining a search warrant for Room 223, Officer Catrombon found a silver spoon with burnt marks and residue in the nightstand, a glass bottle containing PCP in the freezer, and a bottle of Oxycodone pills prescribed to "Roy Grier" on the bed. N.T. 10/3/11, pp. 72, 87, 107; Exhs. C-16 & C-20. The Bucks County Crime Laboratory results confirmed that the substances submitted for testing were: 23 pieces of crack cocaine (totaling 18.26 grams), 1 glass tube of PCP (21.47 grams, approximately 24.4 ml), and 100 tablets of Oxycodone (totaling 12.62 grams). N.T. 10/3/11, pp. 151-53; Exh. C-29.

At headquarters, Officers Joseph Gansky, who has five years of experience in law enforcement, interviewed Defendant. N.T. 10/3/11, pp. 178-79. Officer Gansky was assisted by Officer Mike Brady. N.T. 10/3/11, pp. 179-80, 191. Defendant waived his *Miranda* rights and agreed to speak to them. N.T. 10/3/11, pp. 180-82; Exh. C-30. Officer Gansky did not believe that Defendant was under the influence of drugs at the time of the interview. N.T. 10/3/11, p. 199. Defendant gave a signed statement to police, which consisted of questions and answers. N.T. 10/3/11, pp. 191-92; Exh. C-30.

In the written statement, Defendant admitted the following facts: He uses marijuana, crack cocaine, and PCP. He bought a $1000 worth of drugs at 8th and Spring Garden that morning, drove up to the Lincoln Motel in his white Impala, and brought the drugs with him. He was going to give "the girls" the crack cocaine as "that's part of the game." It would take them twenty-four hours to consume the crack cocaine. Exh. C-30. Officer Gansky concluded that based on this statement and the evidence that Defendant was giving the females crack cocaine in exchange for sex. N.T. 10/3/11, p. 193.

Defendant took the stand during trial, and gave the following version of the events. Defendant got a call from Luckie, a friend, who said that they wanted to "party" and "get [the defendant] high for his birthday." N.T. 10/3/11, pp. 229-30, 234. Defendant's birthday was two days before this. N.T. 10/3/11, p. 229. At approximately 3:30 or 4:00 p.m., Defendant arrived at the motel to meet his friends. N.T. 10/3/11, pp. 229, 253. He stated that he did not bring drugs with him. N.T. 10/3/11, p. 262. Earlier that day, Hennessey and Lyons bought drugs several times from Hennessey's boyfriend, a man named "Scott." N.T. 10/3/11, pp. 231-32, 243, 250. Defendant stated that he had no money, was holding the drugs for Hennessy, and was not trying to sell the drugs to anyone. N.T. 10/3/11, pp. 260, 262. He claimed he does not pay for sex with Luckie or Hennessey. N.T. 10/3/11, p. 262. He was high at the police station after smoking four "dippers" or PCP cigarettes that day, as well as crack cocaine. N.T. 10/3/11, pp. 233, 247, 256. He denied signing the statement at police headquarters and said that was not his signature. N.T. 10/3/11, p. 246. Defendant subsequently admitted that he might have signed it, but he did not write it, and did not remember the officers telling him to sign it. N.T. 10/3/11, p. 261.

On cross-examination, Defendant admitted to possessing PCP, oxycodone, cocaine, and the drug paraphernalia. N.T. 10/3/11, pp. 235, 258-60. Their dealer "Scott" had left the room at

approximately 3:30 p.m. and was not there while the police were outside of Room 223. N.T. 10/3/11, pp. 238, 242-44. Defendant acknowledged that his name was the only name in the room that sounded like "Reece." N.T. 10/3/11, pp. 239-40. Defendant also admitted that the individual packets of drugs found in his pocket were referred to as "20's." N.T. 10/3/11, pp. 241-42, 259-60. He mixed PCP and cocaine and he was "so high" he couldn't even "stand up sometimes" as his feet were "acting strange." N.T. 10/3/11, pp. 244, 256. Defendant denied initialing or signing the statement at police headquarters, and stated that he had never met Officers Gansky or Brady before. N.T. 10/3/11, pp. 245-47, 249. Yet admitted that the statement accurately listed his personal information, the name of the person with whom he lives, his drugs of choice, his admission to having a drug problem, and the information that he drove to the motel that day in his white Impala. N.T. 10/3/11, pp. 246-53.

After a two-day trial, the jury convicted Defendant of the following charges: Count 1- PWID, Count 2- Possession of a Controlled Substance, and Count 3- Possession of Drug Paraphernalia. N.T. 10/4/11, pp. 89-92. Defendant's bail was revoked and sentencing was deferred for a state Pre-Sentence Investigation report.

On December 15, 2011, the Commonwealth filed Notice of Mandatory Minimum Sentence pursuant to 18 Pa.C.S. § 7508(a)(3)(ii)- Schedule I (10-100 grams). One the same day, this Court sentenced Defendant on Count 1 to a mandatory five to ten years in a state correctional facility and imposed the mandatory $30,000 fine. N.T. 12/15/11, p. 17. No further penalty was imposed for the remaining counts. N.T. 12/15/11, p. 17.

Subsequently, this Court permitted trial counsel (privately retained) to withdraw. On December 23, 2011, the Bucks County Public Defender's Office filed "Post-Sentence Motions" and leave to file supplemental motions on behalf of Defendant. On December 27, 2011, the

Public Defender's Office filed a conflict petition, and on December 29, 2011, new counsel was appointed to represent Defendant.

On January 13, 2012, this Court scheduled the post-sentence hearing for March 1, 2012. On February 23, 2012, counsel filed "Motion to Continue Post-Trial Motion." The hearing scheduled for March 1, 2012 was continued until May 21, 2012 because the defendant was not transported from the state correctional facility. On March 20, 2012, counsel filed "Motion to Continue Post Trial Motion Pursuant to PA Rule Crim 720(3)(b)," which this Court granted on March 21, 2012. On May 21, 2012, a hearing was held on Defendant's post-sentence motions and thereafter, this Court entered a written order denying these motions.

On September 21, 2012, by the agreement of counsel, an order was entered reinstating Defendant's right to file a direct appeal. On September 28, 2012, Defendant filed a Notice of Appeal to the Superior Court and an order was entered directing the defendant to file a Statement of Matters Complained of on Appeal. The Statement filed on October 12, 2012 raises the following issues:

1. The verdict was not supported by sufficient evidence.
2. The verdict was against the weight of the evidence.
3. The trial court erred in denying the motion to suppress.

First, Defendant challenges the sufficiency of his convictions. No verdict can stand unless the Commonwealth has proven every element of the crime beyond a reasonable doubt. *Commonwealth v. Perez*, 664 A.2d 582, 584 (Pa. Super. 1995). The standard of review for a sufficiency of the evidence claim is well-settled. *Commonwealth v. Bricker*, 882 A.2d 1008, 1014 (Pa. Super. 2005); *see also Commonwealth v. Kerrigan*, 920 A.2d 190, 195 (Pa. Super. 2007). The test is whether viewing all the evidence admitted at trial, in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element

of the crime beyond a reasonable doubt. *Id.* The facts and circumstances established by the Commonwealth need not preclude every possibility of innocence and any doubts regarding a defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances. *Id.*

Moreover, the Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. *Id.* In applying the above test, the entire record must be evaluated and all the evidence actually received must be considered. *Id.* Our Supreme Court has held that it is the province of the trier of fact to pass upon the credibility of witnesses and the weight to be accorded the evidence produced. *Commonwealth v. Yost*, 386 A.2d 956, 959 (Pa. 1978). In doing so, the fact-finder is free to believe all, part, or none of the evidence. *Id.*

The Superior Court of Pennsylvania has reiterated that its role is not to weigh the evidence, nor substitute its judgment for that of the fact-finder. *Kerrigan*, 920 A.2d at 195. All of the evidence introduced at the time of trial, and apparently believed by the fact-finder must be considered in applying this standard. *Commonwealth v. Ratsamy*, 934 A.2d 1233, 1237 (Pa. 2007). Thus on appeal, the test is whether the trier of fact, while passing upon the credibility of witnesses and the weight of the proof, reached an appropriate verdict based on all of the evidence presented at trial. *Id.*

The Pennsylvania Controlled Substance, Drug, Device and Cosmetic Act (the Act hereinafter), 35 P.S. §§ 780-101, *et seq.* defines the offenses Defendant was charged with and convicted of as follows:

COUNT 1- PWID:

> The following acts and the causing thereof within the Commonwealth are hereby prohibited: . . . Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance, *to wit cocaine*, 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).

> COUNT 2- POSSESSION OF A CONTROLLED SUBSTANCE:
>
> The following acts and the causing thereof within the Commonwealth are hereby prohibited: . . . Knowingly or intentionally possessing a controlled or counterfeit substance, *to wit crack cocaine and/or phencyclidine and/or oxycodone*, by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.

35 P.S. § 780-113(a)(16).

> COUNT 3- POSSESSION OF DRUG PARAPHERNALIA:
>
> The following acts and the causing thereof within the Commonwealth are hereby prohibited: . . . The use of, or possession with intent to use, drug paraphernalia, *to wit pipes and/or chore boy*, for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

35 P.S. § 780-113(a)(32).

The evidence presented by the Commonwealth at trial included this Court's findings and the additional relevant facts as stated above. Defendant's own admissions are sufficient to establish his guilt on Counts 2 and 3. During cross examination, Defendant admitted that he had the drugs and the paraphernalia in his possession and this Court believes that no argument was presented in defense of these two charges.

Now we turn to the only remaining charge- PWID. The Act defines "deliver" and/or "delivery" as "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. Our Superior Court has held:

> **The Commonwealth must prove both the possession of the controlled substance and the intent to deliver the controlled substance. It is well-settled that all the facts and circumstances surrounding possession are relevant in making a determination of whether contraband was possessed with intent to deliver.**
>
> In Pennsylvania, the intent to deliver may be inferred from possession of a large quantity of controlled substance. It follows that possession of a small amount of a controlled substance supports the conclusion that there is an absence of intent to deliver.
>
> Notably, "if, when considering only the quantity of a controlled substance, it is not clear whether the substance is being used for personal consumption or distribution, it then becomes necessary to analyze other factors."

Commonwealth v. Lee, 956 A.2d 1024, 1028 (Pa. Super. 2008) (emphasis added), *appeal denied*, 964 A.2d 894 (Pa. 2009) citing *Commonwealth v. Brown*, 904 A.2d 925, 931-32 (Pa. Super. 2006), *appeal denied*, 919 A.2d 954 (Pa. 2007). Further, "Pennsylvania courts interpreting § 780-113(a)(30), as it applies to PWID, have concluded that the Commonwealth must establish *mens rea* as to the possession element." *Commonwealth v. Koch*, 39 A.3d 996, 1001 (Pa. Super. 2011) citing *Commonwealth v. Mohamud*, 15 A.3d 80 (Pa. Super. 2010). "Factors to consider in determining whether the 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. Kirkland*, 831 A.2d 607, 611 (Pa. Super. 2003) citing *Commonwealth v. Conaway,* 791 A.2d 359 (Pa. Super. 2002).

Here multiple, experienced members of law enforcement overheard Defendant state that he had drugs and "could deliver in thirty minutes." The police overheard a female discuss amounts, talk about delivering, and state "Reece has whatever you need." Additionally,

Defendant admitted to possessing the cocaine and stated that he was going to give the females the crack cocaine as "that's part of the game."

Thus the evidence was sufficient to establish beyond a reasonable doubt that Defendant committed the crimes for which he was convicted. Here the jury's verdict was consistent with the law and the evidence. Therefore, Defendant's convictions are proper and the jury's verdict should not be overturned.

Second, Defendant argues that the verdict was against the weight of the evidence. In Pennsylvania, the standard of review for an appeal challenging the weight of the evidence is well-settled. The finder of fact is the exclusive judge of the weight of the evidence and is free to believe all, part, or none of the evidence presented. *Commonwealth v. Cruz*, 919 A.2d 279, 281-82 (Pa. Super. 2007). Additionally, the finder of fact determines the credibility of the witnesses. *Id.* In reaching its decision, it is the duty of the finder of fact to reconcile inconsistent testimony and resolve any inconsistencies. *Commonwealth v. Manchas*, 633 A.2d 618, 624 (Pa. Super. 1993).

The relief sought in a weight of the evidence challenge is the award of a new trial. However, the Supreme Court of Pennsylvania has held a new trial should only be granted if the finding was against the weight of the evidence and is so contrary to the evidence that it shocks one's sense of justice. *Commonwealth v. Whitney*, 512 A.2d 1152, 1155-56 (Pa. 1986). The trial court's decision on a motion for new trial is committed to its sound discretion and an appellate court will not disturb its decision absent an abuse of discretion. *Id.* at 1156.

For the reasons previously stated, the jury's verdict was not against the weight of the evidence.

Third, Defendant argues that this Court erred in denying his motion to suppress. The test is whether the suppression court's factual findings are supported by the record. *Commonwealth v. Lawley*, 741 A.2d 205, 208 (Pa. Super. 1999) (citations omitted). The appellate court will review the suppression court's order and consider the evidence for the prosecution and any uncontradicted evidence for the defense. *Id.* at 208. The suppression court's factual findings will be accepted if they are supported by the evidence. *Id.*

The law in Pennsylvania regarding warrantless searches is well-established. The Fourth Amendment provides that:

> The right of the people to be secure in their persons, houses,[4] papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. Further,

> Based on the constitutional guarantee of freedom from unreasonable searches and seizures, courts have held that warrantless searches and seizures in a private home are presumptively unreasonable. *Commonwealth v. Roland*, 637 A.2d 269, 270 (Pa. 1994) (citing *Arizona v. Hicks*, 480 U.S. 321 (1987)). "Absent consent or exigent circumstances, private homes may not be entered to conduct a search or to effectuate an arrest without a warrant, even where probable cause exists." *Commonwealth v. Griffin*, 785 A.2d 501, 505 (Pa. Super. 2001).
>
> The Pennsylvania Supreme Court has listed a number of **factors that should be considered in determining whether exigent circumstances exist** in a given situation to justify a warrantless entry and search of a private residence. These **include: (1) the gravity of the offense; (2) whether there is a reasonable belief that the suspect is armed; (3) whether there is a clear showing of probable cause; (4) whether there is a strong showing that the suspect is within the premises to be searched; (5) whether there is a likelihood that the suspect will escape; (6) whether the entry was peaceable; (7) the time of the entry, *i.e.*, day or night; (8) whether the officer was in hot pursuit of a fleeing felon; (9)**

[4] "A hotel room can clearly be the object of Fourth Amendment protection as much as a home or an office." *Commonwealth v. Dean*, 940 A.2d 514, 519 (Pa. Super. 2008) citing *Hoffa v. United States*, 385 U.S. 293, 301 (1966); *Commonwealth v. Cooper*, 362 A.2d 1041 (Pa. Super. 1976), *vacated on other grounds*, 363 A.2d 783 (Pa. 1976).

> **whether there is a likelihood that evidence may be destroyed; and (10) whether there is a danger to police or others.** *Roland*, *supra* at 270-71. However, "mere speculation that evidence may be destroyed because suspects may learn of police activity is inadequate to justify a warrantless entry, and in any event police may not bootstrap themselves into exigencies by their own conduct." *Commonwealth v. Melendez*, 676 A.2d 226, 231 (Pa. 1996).

Commonwealth v. Walker, 836 A.2d 978, 981 (Pa. Super. 2003)(emphasis added).

In the present case, the officers responded to a report of narcotics in a high-crime area. While standing in a public area, the motel's hallway, the officers overheard multiple persons discussing drugs and attempting to set up a drug transaction. At that point, the police had ample information to obtain a warrant. While making arrangements to secure a warrant, exigent circumstances not created by law enforcement then existed and the officers entered the room.

Delivery of narcotics, possession of narcotics, and paraphernalia are serious crimes. Drugs and paraphernalia are easily disposable. The entry was peaceful and occurred only after an occupant opened the door of her own free will, unaware that the police were outside. As such, the police did not create the exigency justifying the warrantless entry. The entry occurred during the afternoon hours. The motel room had a large window, which could be used to escape or dispose of drugs and paraphernalia. Once inside, the officers immediately saw drugs and drug paraphernalia in plain view.

Our appellate courts have held that "the plain view doctrine permits the warrantless seizure of an object in plain view when: (1) an officer views the object from a lawful vantage point; (2) it is immediately apparent to him that the object is incriminating; and (3) the officer has a lawful right of access to the object." *Commonwealth v. Collins*, 950 A.2d 1041, 1045 n.4 (Pa. Super. 2008) citing *Commonwealth v. McCree*, 924 A.2d 621, 628-29 (Pa. 2007). Based on the nature of the evidence observed, the police then had probable cause to place the defendant and the other occupants in the room under arrest.

Lastly, the pat down search of Defendant subsequent to his lawful arrest was also permissible under the law. "It is of course axiomatic that an arresting officer may, without a warrant, search a person validly arrested, and the constitutionality of a search incident to a valid arrest does not depend upon whether there is any indication that the person arrested possesses weapons or evidence as the fact of a lawful arrest, standing alone, authorizes a search." *Commonwealth v. Trenge*, 451 A.2d 701, 710 (Pa. Super. 1982) referencing *Michigan v. DeFillippo*, 443 U.S. 31, 35 (1979). *And see*, *New York v. Belton*, 453 U.S. 454 (1981); *Commonwealth v. Long*, 414 A.2d 113 (Pa. 1980); *Commonwealth v. Bess*, 382 A.2d 1212 (Pa. 1978); *Commonwealth v. Pinney*, 378 A.2d 293 (Pa. 1977). Subsequently, the police secured the room and obtained a search warrant to search thereafter.

For these reasons, this Court's pre-trial ruling and Defendant's convictions are consistent with the evidence and the law.

DATE: February 7, 2013

BY THE COURT,

REA B. BOYLAN, J.

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