

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
	:	
v.	:	
	:	
WILLIAM WILLAMS,	:	
	:	
Appellant	:	No. 379 EDA 2013

Appeal from the Judgment of Sentence January 3, 2013
in the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0009022-2008

BEFORE: BENDER, P.J., Ott, and STRASSBURGER,* JJ.

MEMORANDUM BY STRASSBURGER, J.: **FILED DECEMBER 17, 2013**

William Williams (Appellant) appeals from the judgment of sentence entered on January 3, 2013, after a jury convicted him of criminal conspiracy.¹ We affirm.

Appellant was arrested and charged with, *inter alia*, possession with the intent to deliver a controlled substance (PWID) and criminal conspiracy (PWID). Appellant’s first trial ended in a mistrial. At his second trial, a jury was asked to determine whether the Commonwealth proved that Appellant committed criminal conspiracy (PWID) and PWID. The jury convicted Appellant of the former charge but hung on the latter charge.

After the trial court sentenced Appellant, he timely filed a notice of appeal. The trial court directed Appellant to comply with Pa.R.A.P. 1925(b),

¹ 18 Pa.C.S. § 903.

* Retired Senior Judge assigned to the Superior Court.

and Appellant subsequently filed a Pa.R.A.P. 1925(b) statement. In his brief to this Court, Appellant asks us to consider the following questions:

[1.] Whether [A]ppellant is entitled to an arrest of judgment since the evidence is insufficient to sustain his convictions for Criminal Conspiracy Engaging – Manufacturing/Del/Poss/W Int Manufacturing or Deliver as the Commonwealth failed to prove [A]ppellant’s guilt of these crimes beyond a reasonable doubt.

[2.] Whether [A]ppellant is entitled to an arrest of judgment since the verdict is against the weight of the evidence to sustain his convictions for Criminal Conspiracy Engaging – Manufacturing/Del/Poss/W Int Manufacturing or Deliver as the Commonwealth failed to prove [A]ppellant’s guilt of these crimes beyond a reasonable doubt.

Appellant’s Brief at 4 (trial court answers omitted).

Appellant first challenges the sufficiency of the evidence presented by the Commonwealth at trial. Appellant offers a poorly crafted argument in support of this issue. To the extent there is any substance to Appellant’s argument, it is as follows.

Here there is no substantial evidence which show [*sic*] conclusively that [Appellant] entered into any conspiratorial agreement nor aided in the commission or committed an overt act in the furtherance of an agreement upon action. It is only the sole testimony of the [C]ommonwealth’s witness [*sic*] testimony that is put to the jury purporting that he sees [Appellant] discarding drugs without any corroborating evidence.

Appellant’s Brief at 16 (citation to record omitted).

Our standard of review in determining whether the evidence was sufficient

requires that we consider the evidence admitted at trial in a light most favorable to the Commonwealth, since it was the verdict winner, and grant it all reasonable inferences which can be derived therefrom. The evidence, so viewed,

will be deemed legally sufficient to sustain the jury's conviction on appeal only if it proves each element of the offense charged beyond a reasonable doubt.

Commonwealth v. Poland, 26 A.3d 518, 521 (Pa. Super. 2011) (citation omitted).

A conspiracy conviction requires proof of (1) an intent to commit or aid in an unlawful act, (2) an agreement with a co-conspirator and (3) an overt act in furtherance of the conspiracy. Because it is difficult to prove an explicit or formal agreement to commit an unlawful act, such an act may be proved inferentially by circumstantial evidence, i.e., the relations, conduct or circumstances of the parties or overt acts on the part of the co-conspirators.

Id. (citations omitted).

We further note that the statute prohibiting possession with the intent to deliver a controlled substance provides:

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

* * *

(30) Except as authorized by this act, the 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).

The trial court accurately summarized the evidence presented at Appellant's trial in the manner that follows.

On March 12, 2008, Sergeant Paul DeCarlo received an anonymous tip over the phone that men were inside the

basement of an apartment building at 725 North 17th Street, Philadelphia, without permission to be in the location. At approximately 8 p.m., Sgt. DeCarlo went to the location with Sergeant Kenneth Gill, Officer James Godfrey, Officer Harry Wissman, and Officer Michael Harrell to investigate. Sgt. DeCarlo was familiar with the property as it had been the subject of prior narcotics surveillances in which he had been involved. Once the officers arrived at the property, Sgt. DeCarlo saw that the front door was open and directed two of the officers to the back of the property to prevent anyone from leaving. Sgt. DeCarlo and two other officers went through the front door into the hallway and within seconds, a male, Prentice McLean, walked up from the basement and he was immediately stopped for investigation.

Sgt. DeCarlo and Officer Wissman proceeded down the steps to the basement where they observed [Appellant] and two other males, Douglas Ginyard and Tremell Foster, sitting in a semicircle around a television and a game console which were on top of a washer and dryer. [Appellant] and the two men appeared to be playing video games. Less than two feet in front of them on the floor was a crate placed in "a coffee table type lay out." Sgt. DeCarlo testified that the basement was well-lit and that he was less than ten feet away from [Appellant] when the officers first noticed him sitting on a chair facing the television. [Appellant] was seated closest to the stairs. When the officers announced their presence, all three men stood up and one of the men, Foster, ran out a doorway that led into the yard. [Appellant] quickly threw an amber colored pill bottle across the floor towards the back of the stairs.

The pill bottle contained 142 yellow-tinted plastic baggies containing a white powdery substance that tested positive for crack cocaine. On top of the crate was a porcelain plate containing three razors with white powdery residue. Also on the crate was a digital scale and a large package containing new and unused yellow-tinted, purple-tinted, and clear-tinted small bags. [Appellant] had \$384 U.S. currency in his pants pocket in the denominations of ten \$20 bills, ten \$10 bills, five \$5 bills and fifty-nine (59) \$1 bills. McLean had \$55 in U.S. currency in his possession in the amount of one \$20 bill, one \$10 bill, three \$5 bills, and ten \$1 bills. Ginyard had \$12 U.S. currency in his possession in the amount of two \$5 bills and two \$1 bills. Neither [Appellant] nor the other men maintained an address at

the apartment building. [Appellant] and the three men were placed under arrest.

The Commonwealth's narcotics expert, Officer Kevin Keyes, testified that based on the amount of drugs and the other items found at the scene, [Appellant] possessed drugs with the intent to deliver. He explained that the 142 individual packets of crack cocaine weighing an average of 53 milligrams each were consistent with crack cocaine packets sold for five dollars by distributors, while most drugs [sic] users only carry a few packets at a time. Officer Keyes also testified that the pill bottle holding the drugs was a type of container commonly used by distributors, as opposed to users, because it allows them to hide the drugs on their body, to prevent from losing the drugs during transactions, and to discard the drugs easily. The label was ripped off the pill bottle which was also consistent with the manner in which distributors carried illegal drugs to avoid any identification.

Moreover, Officer Keyes testified that the other items found were consistent with distribution of drugs. The ceramic plate and the razors were consistent with breaking down the rock crack cocaine. Ceramic plates, in particular, were used by distributors because the razors would not create indentations in the plate that caused the drugs to get lost in the creases. The scale was consistent with weighing the drugs to fill packets with similar amounts of crack cocaine. The new and unused small bags with the red apple logo on them were commonly used to distribute drugs throughout the city. Additionally, the lack of pipes and lighters in the area where the other items were found pointed to distribution rather than drug use. Officer Keyes also testified that the fact that [Appellant] was found at a location other than his home address was consistent with distribution because many distributors want to avoid the traffic of buyers near their residence so as to prevent drawing attention to themselves and making their home subject to a search. Lastly, \$384 in cash was recovered from [Appellant] in denominations that were consistent with a distributor possessing profits from the sale of drugs. Specifically, the fifty-nine (59) \$1 bills were consistent with the profits from the sale of \$5 packets of crack cocaine.

Trial Court Opinion, 6/5/2013, at 2-4 (citation omitted).

When this evidence is viewed in a light most favorable to the Commonwealth, it establishes that Appellant intended to possess crack cocaine with the intent to deliver it. Furthermore, a reasonable inference can be drawn from this evidence that Appellant agreed with Prentice McLean, Douglas Ginyard, and Tremell Foster to possess crack cocaine with the intent to deliver it. Lastly, the evidence demonstrates that Appellant and his cohorts committed an overt act in furtherance of the conspiracy. In fact, the evidence indicates that Appellant and his cohorts already had a functioning drug dealing operation when the police encountered them on March 12, 2008. Accordingly, we conclude that the Commonwealth presented sufficient evidence to support Appellant's conviction of criminal conspiracy (PWID).

Under his second issue, Appellant claims that the jury's verdict is contrary to the weight of the evidence.

Pennsylvania Rule of Criminal Procedure 607 provides, in pertinent part, the following:

(A) A claim that the verdict was against the weight of the evidence shall be raised with the trial judge in a motion for a new trial:

- (1) orally, on the record, at any time before sentencing;
- (2) by written motion at any time before sentencing; or
- (3) in a post-sentence motion.

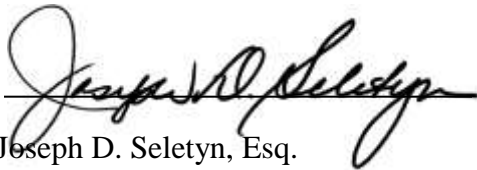
The purpose of this rule is to make it clear that a challenge to the weight of the evidence must be raised with the trial judge or it will be waived.

Commonwealth v. Wall, 953 A.2d 581, 585 (Pa. Super. 2008) (citations and quotation marks omitted).

Appellant's brief fails to indicate where in the record he preserved his challenge to the weight of the evidence, in violation of Pa.R.A.P. 2117(c) and 2119(e). Our review of the trial court's docket and the certified record reveals that Appellant did not make an oral or written pre-sentence motion or a post-sentence motion challenging the weight of the evidence. Consequently, Appellant waived this issue. For these reasons, we affirm Appellant's judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive, flowing style with a horizontal line underneath it.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/17/2013