

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

IBRAHIM MUHAMM ABDULLAH,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 709 WDA 2012

Appeal from the Judgment of Sentence of April 13, 2012,
in the Court of Common Pleas of Indiana County,
Criminal Division, at No. CP-32-CR-0000216-2011

BEFORE: SHOGAN, OTT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.:

Filed: January 3, 2013

This case is a direct appeal from the judgment of sentence imposed on Appellant after a jury convicted him of possessing controlled substances ("possession") and conspiracy to commit possession with intent to deliver controlled substances ("conspiracy to commit PWID"). For each charge, the controlled substances were heroin and crack cocaine. Appellant contends the evidence was insufficient to support his convictions. Finding no merit to his claims, we affirm the judgment of sentence.

The trial record includes the following facts. Using a confidential informant ("CI"), police bought heroin and crack cocaine from Joshua Zaczyk at a certain residential trailer leased by Zaczyk and Loren Collura. Later that

* Retired Senior Judge assigned to the Superior Court.

evening, police executed a search warrant for controlled substances at the same residence. When doing so, police found Appellant, Justin Gomez and Stephanie Elliott in the home. All three ran in one direction or another within the trailer as police entered.

At some point, Appellant came to be standing in the entrance to a bathroom in the residence. At that time, police saw that the water in the bathroom toilet contained nine bags of what was later determined to be heroin or heroin residue. The water in the toilet was swirling as if it had just been flushed. The water level was high and the toilet seemed to be clogged. Outside the trailer, police dismantled the drainpipe. After they did so, two bags flowed from the pipe. One contained 77 stamp bags of heroin residue; one contained 47.40 grams of crack cocaine.

Police searched Appellant. In his pocket, they found a total of \$1,121.00. By virtue of the serial numbers on that money, police identified \$80.00 of the total amount as being money the CI used to buy drugs from Zaczyk earlier in the evening. Police also connected \$40.00 of the total amount found on Appellant with one or more other drug purchases they made from Zaczyk at the same residence on an earlier date.

Police also searched Gomez and found \$120.00 on him. That money consisted of marked bills the police had used in prior drug transactions.

Police found drug-use paraphernalia on Elliott and they found digital scales elsewhere in the residence.

Following the foregoing events, Appellant was charged with several offenses, including possession of heroin and crack cocaine and conspiracy to commit PWID. The alleged coconspirators were Zaczyk, Gomez and Collura.¹ Appellant was later acquitted of several offenses but was convicted of possession and conspiracy to commit PWID. He was sentenced and then filed this appeal.

Before addressing Appellant's claims, we note the following legal principles. A person commits the crime of possession by knowingly or intentionally possessing a controlled substance. 35 P.S. § 780-113(a)(16). The crime of PWID consists of possession while having the intent to deliver the controlled substance. *Id.* § 780-113(a)(30).

To prove the crime of conspiracy, the Commonwealth must show that the accused entered into an agreement with another person to commit or aid in the commission of a crime, that the accused shared this criminal intent with the other person, and that there was an overt act committed in furtherance of the conspiracy. *Commonwealth v. Knox*, 50 A.3d 749, 755

¹ Though Collura was not present during the execution of the warrant, it appears there was evidence, not now relevant to this appeal, linking her to the instant conspiracy. The record indicates she pled guilty to conspiracy. Elliott was charged with possession and possession of drug paraphernalia, but not conspiracy.

(Pa. Super. 2012). It is not necessary for the Commonwealth to establish a formal or explicit agreement and criminal intent. *Id.* Instead, the agreement and criminal intent may be shown by virtue of relations, actions and circumstances of the alleged conspirators that demonstrate a criminal confederation. *Id.*

Our review of sufficiency claims is as follows:

When evaluating a sufficiency claim, our standard is whether, viewing all the evidence and reasonable inferences in the light most favorable to the Commonwealth, the factfinder reasonably could have determined that each element of the crime was established beyond a reasonable doubt. This Court considers all the evidence admitted, without regard to any claim that some of the evidence was wrongly allowed. We do not weigh the evidence or make credibility determinations. Moreover, any doubts concerning a defendant's guilt were to be resolved by the factfinder unless the evidence was so weak and inconclusive that no probability of fact could be drawn from that evidence.

Commonwealth v. King, 990 A.2d 1172, 1178 (Pa. Super. 2010) (internal citations omitted).

Appellant contends the evidence was insufficient to sustain his conviction for possession. He is wrong. Viewing the evidence in the light most favorable to the Commonwealth, we find the jury could have reasonably found that Appellant, who was standing in the bathroom entrance while the swirling toilet water contained stamp bags of heroin, possessed those bags and tried to flush them. Similarly, the jury could have inferred that Appellant possessed and flushed the heroin and crack cocaine

that came from the drainpipe. Any doubts as to whether Appellant possessed the drugs in question were for the jurors to resolve. We cannot say that the evidence was so weak and inconclusive that no probability of guilt could be based thereon. Appellant's sufficiency claim regarding possession fails.

Appellant also maintains the evidence did not support his conspiracy conviction. He is again wrong. He seems to acknowledge that the commonality of the drug-buy money that was found on Gomez and him and the money that was used by the police to buy drugs from Zaczyk constituted evidence allowing the jurors to infer that Appellant was involved in a criminal confederation. However, Appellant argues that his witness, Zaczyk, testified in defense that Zaczyk had given Appellant the drug-buy money in order to repay a loan from Appellant. Zaczyk's testimony indicated Appellant was not involved in Zaczyk's drug sales. Appellant concludes that the evidence was therefore insufficient to sustain the charge of conspiracy.

Appellant's argument is unavailing. He wants us to accept Zaczyk's testimony as credible and, moreover, to rely on Zaczyk's testimony to conclude that Appellant received the drug money from Zaczyk without having been involved in any drug transactions or conspiracy. In short, Appellant wants us to accept defense evidence in order to disturb the verdict. We will not do so. We do not make credibility assessments and we do not substitute our own factual conclusions for those that were reasonably

made, or those that could have been reasonably made, by the jurors based on the evidence presented to them.

In this case, the evidence presented to the jurors, when viewed in the appropriate Commonwealth-favorable light, supported Appellant's conspiracy conviction. Police used certain drug-buy money to purchase drugs from Zaczyk on multiple occasions. Some of that money was found on Appellant on the same day that one such purchase of heroin and crack cocaine was made. Some of the money used in an earlier purchase from Zaczyk was also found on Appellant. Similarly, police found that Gomez possessed some of the drug-buy money that they had used in one or more purchases. Police found the foregoing money on Appellant and Gomez while the two were together in Zaczyk's trailer and while Appellant was standing beside a toilet, apparently having flushed or tried to flush heroin and crack cocaine as police were entering the home.

Based on the foregoing facts, the jurors could have reasonably found that the relation, actions and circumstances of Appellant, Zaczyk and Gomez established that Appellant had an agreement and a shared criminal intent with Zaczyk and Gomez to engage in PWID and that there were one or more overt acts (*e.g.*, actual sale of drugs) committed in furtherance of the conspiracy. The evidence is not so weak or inconclusive as to preclude all probability of guilty. Appellant is not entitled to relief.

In light of our foregoing discussion, Appellant's arguments fail and we affirm the judgment of sentence.

Judgment of sentence affirmed.