

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

STEVEN WEISSMAN

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 850 EDA 2011

Appeal from the Judgment of Sentence February 10, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0013575-2009

BEFORE: PANELLA, J., OLSON, J., and FITZGERALD, J.*

MEMORANDUM BY PANELLA, J.

Filed: January 30, 2013

Appellant, Steven Weissman, appeals from the judgment of sentence entered on February 10, 2011, in the Court of Common Pleas of Philadelphia County. We affirm.

The trial court aptly sets forth the facts underlying this appeal.

On June 9, 2009, Police Officer Michael Keenan conducted a surveillance for the sale of illegal narcotics on the 9900 block of South Canterbury Road in Philadelphia, Pennsylvania. Upon arrival to that block, Officer Keenan observed Defendant sitting on the front steps of 9923 South Canterbury [Road]. During the next hour, Officer Keenan observed Defendant enter and exit the property several times. (N.T., 7/22/2010 at 8).

At 2:00 p.m., Officer Keenan observed a blue Ford pick-up truck stop in front of the property located at 9923 South Canterbury Road. Defendant approached the driver of the

* Former Justice specially assigned to the Superior Court.

vehicle and engaged in a brief conversation with him. Defendant then entered the vehicle. The driver drove the truck around the block and then returned to 9923 South Canterbury Road to drop off Defendant. Officer Keenan radioed a location and description of the vehicle to Officer Jose Candelaria. Officer Candelaria stopped the vehicle within seconds after it left the 9900 block of South Canterbury Road. The vehicle was occupied by two individuals later identified as Brian and Rita Fedeline. From the driver[,] Brian Fedeline, Officer Candelaria recovered one pill bottle containing the following narcotics: 10 yellow pills, 7 brown pills and 3 light brown or tan pills. From the passenger[,] Rita Fedeline, Officer Candelaria recovered one pill bottle containing the following narcotics: 6 yellow pills, 7 white pills, and 2 smaller white pills. *Id.* at 8-9, 19.

Police obtained a search warrant for the property located at 9923 South Canterbury Road. From that property, Officer Candelaria recovered the following evidence from the living room area: a piece of mail and an identification card bearing Defendant's name and the 9923 South Canterbury Road address; one medical prescription pad; one pill bottle containing 20 yellow Percocet pills; one pill bottle with a pink cap containing 15 white Oxycodone pills; 4 white Oxycodone pills; 6 blue Xanax pills; and 2 white Percocet pills. The pills recovered from the Fedelines matched in size, shape and color to some of the pills found at 9923 South Canterbury Road. *Id.* at 21-22, 24, 26.

Defense counsel called Marie Kass, Defendant's mother, as a defense witness. Kass testified, *inter alia*, that Defendant did not live at 9923 South Canterbury Road. She also testified that she lawfully possessed all of the pills that were seized from inside of her house. *Id.* at 34. Kass was unaware if Brian and Rita Fedeline were friends with Defendant. *Id.* at 40.

Trial Court Opinion, 4/20/12, at 1-3 (footnote omitted).

The trial court, sitting as the finder of fact at the bench trial, found Kass's testimony incredible and convicted Weissman of possession of a controlled substance with intent to deliver (PWID) and intentional possession of a controlled substance. The trial court later sentenced Weissman, *in*

absentia, to a period of imprisonment. After the denial of post-sentence motions, this timely appeal followed.

On appeal, Weissman maintains that the Commonwealth presented insufficient evidence to sustain his conviction for PWID. We disagree.

Our standard of review regarding sufficiency of the evidence claims is well settled.

The standard we apply in reviewing the sufficiency of evidence 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. In applying the above test, we may not weigh the evidence and substitute our judgment for that of the fact-finder. In addition, we note that the facts and circumstances established by the Commonwealth need not preclude every possibility of innocence. 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. The Commonwealth may sustain its burden of proving every element of the crime beyond a reasonable doubt by means of wholly circumstantial evidence. Moreover, in applying the above test, the entire record must be evaluated and all evidence actually received must be considered. Finally, the trier of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence.

Commonwealth v. Helsel, 53 A.3d 906, 917-918 (Pa. Super. 2012) (citation omitted).

With the above principles in mind, we now consider whether the Commonwealth presented sufficient evidence to sustain Weissman's conviction for possession with intent to deliver. Section 780.113(a)(30) of

The Controlled Substance, Drug, Device and Cosmetic Act prohibits the following acts:

[T]he 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). To sustain a conviction for PWID “all of the facts and circumstances surrounding the possession are relevant and the elements of the crime may be established by circumstantial evidence.” ***Commonwealth v. Little***, 879 A.2d 293, 297 (Pa. Super. 2005) (citation omitted).

Preliminarily, we note that in the present case the police did not recover the narcotics from Weissman’s person, thus the Commonwealth must establish constructive possession. “Constructive possession is a legal fiction, which is invoked when actual possession at the time of arrest cannot be shown, but there is a strong inference of possession from the facts surrounding the case.” ***Commonwealth v. Battle***, 883 A.2d 641, 644 (Pa. Super. 2005) (citation omitted). Constructive possession has been defined as “conscious dominion,” which has subsequently been defined as “the power to control the contraband and the intent to exercise that control.” ***Commonwealth v. Walker***, 874 A.2d 667, 678 (Pa. Super. 2005) (citation

omitted). “[C]onstructive possession may be established by the totality of the circumstances.” *Id.* (citation omitted).

Weissman first argues that the Commonwealth presented insufficient evidence that he constructively possessed the narcotics. The police recovered the narcotics in the living room of the home and two pieces of evidence that Weissman resided in the home—a piece of mail and an identification card. This evidence, along with the evidence of Weissman sitting on the home’s front step for an extended period of time, his entering and exiting the home, and his driving with the Fedelines, shows that Weissman had conscious dominion over the contraband.¹

Weissman next argues that the evidence is insufficient because the Commonwealth failed to prove “that the drugs recovered from Mr. and Mrs. Fedeline came from the Defendant....” Appellant’s Brief, at 15. The police observed Weissman speak with the Fedelines and then drive with them in their vehicle. Shortly after the Fedelines dropped Weissman off at the residence, the police recovered a variety of pills from the couple—numerous pills of the very same type that were found in Weissman’s residence. It is a reasonable inference, given Weissman’s rather peculiar interaction with the Fedelines and the narcotics in the residence, that the pills came from him. The fact finder, in this case the trial court, was free to make this inference.

¹ The trial court was free to find Kass’s testimony incredible. *See Helsel, supra.*

Weissman makes much of the fact that some of the pills recovered from the Fedelines did not exactly match some of the pills recovered from the residence. But that does not render the evidence insufficient. That is a claim that goes to the weight of the evidence. In any event, numerous pills recovered from the Fedelines matched the type found in Weissman's residence.

Judgment of sentence affirmed. Jurisdiction relinquished