NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. SAMUEL FOLEY, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 891 EDA 2012

Appeal from the Judgment of Sentence Entered October 28, 2011
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0009173-2009

BEFORE: FORD ELLIOTT, P.J.E., BENDER, J., and SHOGAN, J.

MEMORANDUM BY BENDER, J.: Filed: February 19, 2013

Appellant, Samuel Foley, appeals from the judgment of sentence of 11½ to 23 months' house arrest, followed by five years' probation, imposed after he was convicted of criminal conspiracy, possession with intent to deliver a controlled substance (PWID), possession of a controlled substance, and criminal use of a communication facility. We affirm.

Appellant was arrested and charged with the above-stated crimes as a result of his involvement in the trafficking of a large quantity of marijuana. At Appellant's non-jury trial conducted on May 19, 2011, the Commonwealth presented the following evidence.[1] Philadelphia Police Officer Thomas Hawn

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[1] We note that the Honorable John O'Grady Jr. who presided over Appellant's trial, is no longer sitting as a Judge in Philadelphia County. Consequently, we are without the benefit of a trial court opinion in this case.

testified that he is part of an "interdiction group" that investigates drug activity involving the mail, airport, buses, and trains. N.T. Trial, 5/19/11, at 7-8. Officer Hawn stated that on June 25, 2009, he received information from a branch of United Parcel Service (UPS) indicating that it had received a "cluster of boxes" suspected as containing drugs. ***Id.*** at 8. Those boxes were mailed from California and were addressed to "M. Johnson" at 5104 North Broad Street in Philadelphia. ***Id.*** at 8, 10. Officer Hawn searched police databases and could not verify that an "M. Johnson" was associated with that address. ***Id.*** at 10. The building located at that address contained an upstairs apartment, a church called the "National African Religion Congress," and a law office used by Appellant.[2] ***Id.*** at 44.

In terms of the physical characteristics of the boxes, Officer Hawn stated, "[t]he smallest one I believe [was a] total weight [of] approximately 50 pounds, and there were four total [boxes] ranging from 50 to I believe the heaviest one was somewhere in the range of 70 pounds." ***Id.*** at 8-9. The officer further stated that the boxes smelled strongly of marijuana, and a canine sniff conducted on the boxes also indicated the presence of narcotics. ***Id.*** at 9, 11. In regard to other signs that narcotics were packaged inside the boxes, Officer Hawn testified:

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[2] Appellant was both an attorney and a priest in the National African Religion Congress church at the time of this incident. ***Id.*** at 79.

> [Officer Hawn]: Some indicators, of course the smell would be number one on this one.
>
> The State of California is a supply area. We are a demand area, so that would be number two, the manner in which it was packaged.
>
> Also, as I picked [a box] up there's a unique way marijuana sits in these boxes from doing [investigations] numerous times. When I dropped [the box] on the ground it rolled as if there was a beach ball or a basketball inside that box which is an indicator for bulk marijuana.

Id. at 10.

Officer Hawn then described his participation in a "controlled delivery" of the boxes to 5104 North Broad Street. ***Id.*** at 11. Officer Hawn explained that he dressed as a UPS delivery driver and took the boxes to that address. ***Id.*** at 11-12. Once there, the following interaction with Appellant occurred:

> [Officer Hawn]: … As I approached the location there's a sign to approach the back door.[3] I knock on the door. As I knock on the door, I'm met by [Appellant.]
>
> …
>
> I get into a conversation with [Appellant] concerning the boxes. The conversation consists of [my telling Appellant that] I have a delivery of four boxes to an M. Johnson.
>
> [Appellant's] response to me was I've been waiting for them all day.
>
> I said, fine, sign here.
>
> I had the UPS register form. [Appellant] does sign it.

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[3] Subsequent testimony indicated that the front door of the building led to the upstairs apartment, while the "back door" where packages were to be delivered was the entrance to Appellant's law office and the headquarters of the National African Religion Congress church. ***Id.*** at 44.

> When he returned it to me, I don't understand the signature and I ask what it stands for. I believe he points S. Foley, Jr.
>
> I ask him what the S stands for, and he says Samuel.
>
> ...
>
> I then go back to my truck, place the clipboard in the truck. I take the first box, take it to the front door, and I met [Appellant]. I lay it down on the stoop. [Appellant] comes out and retrieves that box. I say to him that I'll get the rest.
>
> I come down the steps, go back to the deliver[y] truck to get the second one. As I approach the location, the door is just left ajar where I could see in. I push it open. I can see [Appellant] and another young man coming from a hallway which led down to the back of the building. I did not see the first parcel.
>
> I do the same thing with the second parcel. I leave it on the stoop, go to retrieve the next. As I'm at my truck I observe an entry team approaching the location to make entry to that location.
>
> ...
>
> The entry team would be [m]y back-up officers, the people conducting surveillance and observing all the transactions and interactions.
>
> ...
>
> ... I gave information about the interactions to the first officer I met on the porch as I returned and pointed out that [Appellant], he's the one who signed for them, that the second male I had no interaction with. I could not find the boxes. I looked down the hallway and I'd seen both boxes [at] the furthest point of the building in a rear office hallway.

Id. at 12-14.

In addition to Officer Hawn's testimony, the Commonwealth also presented the testimony of Agent Alan Basewitz, a narcotics agent with the Pennsylvania Office of Attorney General. ***Id.*** at 28. Agent Basewitz testified that he became involved in the investigation in this case after receiving a

call from Officer Hawn regarding the four suspicious packages. ***Id.*** at 31. Agent Basewitz testified that there were several "indicators" that the four boxes contained narcotics, including that they were sent from California, "a source area of drugs," and that the "parcels were plain large cardboard boxes" with no indication that they were "commercially manufactured" by a specified business. ***Id.*** at 32. Agent Basewitz also noted that the boxes were bulky, heavy, and were sent from a "third-party shipper," namely "AM Male Livescan." ***Id.*** The agent explained that "[d]rug dealers commonly use third-party shippers because they believe it insulates them from identification. So they bring these to drop places which are then mailed out from third parties." ***Id.*** He further stated that from his experience, he found that "in situations like this it's often that the person is paid to receive the boxes and that's their sole role in the operation." ***Id.*** at 42.[4]

Based on these indicia, and the fact that a canine sniff indicated the packages contained narcotics, Agent Basewitz obtained an "anticipatory search warrant" for the address of 5104 North Broad Street. ***Id.*** at 33. Then, following the controlled delivery by Officer Hawn, Agent Basewitz entered the office building and spoke with Appellant. ***Id.*** at 35. The agent

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[4] We acknowledge that Agent Basewitz was not admitted as an expert witness. However, to the extent that his testimony could be construed as an opinion, Appellant did not object and, therefore, we will consider the agent's statements.

testified that after giving Appellant ***Miranda*** warnings, the following exchange occurred:

> [Agent Basewitz]: … I said to [Appellant], … could you tell me what's going on here, sir?
>
> And he responded yes. The regular UPS driver delivered these two packages.
>
> And he pointed to the two packages.
>
> And he said, I don't know what's going on.
>
> And I said to him, your regular UPS driver delivered those two packages?
>
> And he said, yes, the regular UPS driver that I see every day delivered those two packages.[5]
>
> And he emphasized in tone that that was the same UPS driver that he had seen every day.
>
> Again, he said, what's going on?
>
> And I said, we have a search warrant for the premises.
>
> And I said, who is the name of the party that it was addressed to[,] []M. Johnson[?] Who is M. Johnson?
>
> And [Appellant] said, I don't know.
>
> And I said, why would you accept a parcel with the name of somebody that you don't know?
>
> And [Appellant] responded that there are a lot of people who work here.

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[5] Officer Hawn also testified that he heard Appellant tell Agent Basewitz that he "received boxes from [his] regular UPS guy that [he] see[s] every day." ***Id.*** at 13. Officer Hawn confirmed that he was not "also a UPS driver in connection with [his] role with the Philadelphia Police Department," and stated that the controlled delivery was the first time he ever encountered Appellant. ***Id.***

> And I said, why would you – how about M. Johnson? Do you know an M. Johnson?
>
> And he said that he did not.
>
> And I asked if there was an M. Johnson associated with the church or the property or the premises.
>
> And he said, no.
>
> And I said, well, why would you accept a package … addressed to M. Johnson whom you don't know that has an obvious odor of marijuana emanating from the boxes?
>
> And he replied I lost my sense of smell.
>
> And I said, you lost your sense of smell. Does that mean you have partial loss of your senses or complete loss?
>
> And he said, I really didn't lose it, but I lost it.[6]
>
> And I said, did you tell the driver that you had been waiting for the packages all day, the UPS driver?
>
> And he emphatically indignantly, in fact, denied it.
>
> He said, I never said that to him, in that tone.
>
> And I said, [Appellant], the UPS driver is an undercover police officer. He's not a UPS driver. And [Appellant] then said, I want an attorney, but I'll talk to you.
>
> And I said, well, if you're invoking your right to counsel, I can't really talk to you. If you want to talk to us, as you said you would like to, I can't do that if you want an attorney. But let me tell you this: I know you're either getting a phone call, making a phone call, somebody is picking it up or you have to bring it somewhere, and I'm looking for your cooperation. This is the time if you want to cooperate to do that. Would you like to cooperate?

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[6] Agent Basewitz later elaborated on Appellant's comment, stating, "When he said that to me he smiled and looked down. He said, I didn't lose it, but I lost it, and he giggled and smiled…." ***Id.*** at 40.

> And he said – he looked at me and said, you have a job to do, and I understand that. You have a job to do, and I understand that.
>
> And then he wouldn't look up.
>
> And I said, [Appellant], would you like to cooperate.
>
> And then he refused to even acknowledge anything after that. He wouldn't talk to me.
>
> And I said that I take that by your silence and not responding to me that you're exercising your right to counsel, and that will be honored so I won't ask you anymore questions.
>
> [The Commonwealth]: Was that the extent of your interview with him?
>
> [Agent Basewitz]: Yes.
>
> There was a point where he interacted later on because without questioning he said that there's a – that office is vacant, which he was referring to the office where the boxes were.
>
> And he said, nobody uses that office.
>
> And I made a comment to the other – to Officer Hawn that, well, there's a lot of paperwork and files in here. Obviously, somebody's using it.
>
> And I found inside that room cash that was [in] two envelopes, one had $500.00 and one had $674.00 in it. And I said to Officer Hawn that I recovered the envelopes with that money.
>
> And [Appellant] without questioning just blurted out, "I don't know whose money that is. Nobody uses that office."
>
> So that was the extent of the interaction.

Id. at 35-39. In addition, Agent Basewitz testified that the boxes were subsequently opened, revealing that they contained a total of 243 pounds of marijuana. ***Id.*** at 39. Agent Basewitz estimated the value of the marijuana as $486,000. ***Id.*** at 40.

Following the presentation of the Commonwealth's evidence, Appellant moved for the dismissal of the charges against him, arguing that the Commonwealth proffered no evidence to prove that Appellant participated in a conspiracy to sell the marijuana. ***Id.*** at 57. The trial court denied that motion. ***Id.*** at 62. Appellant then presented the testimony of several character witnesses who testified regarding his reputation for being a law-abiding citizen. At the close of Appellant's trial, the court took the matter under advisement.

On June 30, 2011, the trial court returned a verdict of guilty for each of the offenses of which Appellant was charged. Appellant was sentenced on October 28, 2011, to an aggregate term of 11½ to 23 months' house arrest, followed by five years' probation. He filed timely post-sentence motions, which were denied by operation of law on March 6, 2012. Appellant then filed a timely notice of appeal. Herein, he raises six issues for our review:

1. Whether the arrest of [A]ppellant was illegal because of the lack of probable cause[?]
2. Whether the trial court erred by denying [A]ppellant's motion to dismiss and by failing to rule that the Commonwealth had not proved guilt beyond a reasonable doubt as to all the elements of the crime of criminal conspiracy[?]
3. Whether the trial court erred by denying [A]ppellant's motion to dismiss and by failing to rule the Commonwealth had not proved guilt beyond a reasonable doubt as to all the elements of the other crimes charged[?]
4. Whether the evidence was insufficient to support the trial court's verdict[?]

5. Whether the trial court's verdict was against the weight of the evidence[?]

6. Whether the trial court abused its discretion in reaching its verdict[?]

Appellant's Brief at 4.

In his first issue, Appellant presents several convoluted arguments, including challenges to the legality of his arrest, the validity of the search warrant, the sufficiency of the evidence presented at his preliminary hearing, and the trial court's decision to deny his pretrial motion to quash the criminal information.[7] First, Appellant contends that due to his allegedly illegal arrest, he should have been released and the charges against him dropped. However, as the Commonwealth points out, the only appropriate remedy for an allegedly unlawful arrest is the suppression of evidence obtained as a result of that arrest. ***See*** Commonwealth's Brief at 6; ***Commonwealth v. Carter***, 643 A.2d 61, 68 (Pa. 1994) ("[A]n illegal arrest

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[7] Appellant failed to specify any of these issues, other than the challenge to the lawfulness of his arrest, in his "Statement of the Questions Involved." Consequently, the Commonwealth contends that these arguments are waived. Commonwealth's Brief at 6 (citing Pa.R.A.P. 2116(a) ("No question will be considered unless it is stated in the statement of questions involved or is fairly suggested thereby.")). However, because we conclude that Appellant's assertions are moot, waived, and/or meritless for the reasons set forth *infra*, we decline to find these claims waived based on Appellant's briefing errors.

is not a bar to subsequent prosecution nor a defense to a valid conviction;" rather, the remedy for an unlawful arrest "is the suppression of the evidentiary fruits of the illegal arrest, not the dismissal of the charges."). As Appellant did not file a motion to suppress evidence based on his purportedly invalid arrest, he has waived any challenge to the legality of his detention. Likewise, Appellant's challenge to the validity of the search warrant is waived due to his failure to raise that claim in a motion to suppress. ***See Commonwealth v. Tiffany***, 926 A.2d 503, 509 n.21 (Pa. Super. 2007) (citations omitted) (claims not raised in suppression motion are waived on appeal).

Appellant also contends that at his preliminary hearing, the Commonwealth failed to proffer sufficient evidence to prove a *prima facie* case and, thus, the court should have granted his motion to quash the criminal information. However, this Court has declared that:

> [O]nce a defendant has gone to trial and has been found guilty of a crime, any alleged defect in the preliminary hearing is rendered immaterial. Where, as in the instant case, 'it is determined at trial that the evidence of the Commonwealth is sufficient to be submitted to the jury, then any deficiency in the presentation before the district justice would have been harmless.

Kelley, 664 A.2d at 127 (citations and internal quotation marks omitted). Accordingly, in the present case, the alleged defects in the preliminary hearing were rendered immaterial upon Appellant's conviction.

In his second and third issues, Appellant maintains that the trial court erred in not granting his motion to dismiss, made at the close of the Commonwealth's case, because the Commonwealth failed to proffer sufficient evidence to prove the elements of each offense of which he was convicted. In his fourth issue, Appellant reiterates the same challenge to the sufficiency of the evidence in a more generalized fashion.[8] Thus, we will address all of these issues together. To begin, we note:

> In reviewing a sufficiency of the evidence claim, we must determine whether the evidence admitted at trial, as well as all reasonable inferences drawn therefrom, when viewed in the light most favorable to the verdict winner, are sufficient to support all elements of the offense. ***Commonwealth v. Moreno****,* 14 A.3d 133 (Pa. Super. 2011). Additionally, we may not reweigh the evidence or substitute our own judgment for that of the fact finder. ***Commonwealth v. Hartzell****,* 988 A.2d 141 (Pa. Super. 2009). The evidence may be entirely circumstantial as long as it links the accused to the crime beyond a reasonable doubt. ***Moreno, supra*** at 136.

Commonwealth v. Koch, 39 A.3d 996, 1001 (Pa. Super. 2011).

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[8] Appellant also reiterates arguments attacking the search warrant and the validity of his arrest; for the reasons stated *supra*, those claims are waived. Furthermore, Appellant also challenges the admission of certain evidence, arguing that it was irrelevant. However, Appellant did not object to this contested evidence at trial. Therefore, this claim is also waived. ***Commonwealth v. Boyd***, 679 A.2d 1284, 1289 (Pa. Super. 1996) (citation omitted) ("In order to preserve for appellate review any claim of error regarding the admission of evidence, a party must specifically object to the admission of such evidence at trial.").

Instantly, while Appellant first challenges his conspiracy conviction, we will begin by examining the sufficiency of the evidence to support his convictions of possession of a controlled substance and PWID, as those crimes underlie Appellant's conspiracy conviction.

> To sustain a conviction for the crime of possession of a controlled substance, the Commonwealth must prove that Appellant knowingly or intentionally possessed a controlled substance without being properly registered to do so under the Act. ***See*** 35 P.S. § 780–113(a)(16). The crime of possession of a controlled substance with intent to deliver requires the Commonwealth to prove an additional element: that Appellant possessed the controlled substance with the intent to manufacture, distribute, or deliver it. ***See*** 35 P.S. § 780–113(a)(30).

Commonwealth v. Brown, 48 A.3d 426, 430 (Pa. Super. 2012).

In regard to both of these convictions, Appellant solely challenges whether the Commonwealth proved he possessed the marijuana.[9] Because the drugs were not found on Appellant's person, the Commonwealth was required to demonstrate constructive possession. ***Brown***, 48 A.3d at 430 (citing ***Commonwealth v. Kirkland***, 831 A.2d 607, 611 (Pa. Super. 2003)).

> Constructive possession is a legal fiction, a pragmatic construct to deal with the realities of criminal law enforcement. Constructive possession is an inference arising from a set of facts that possession of the contraband was more likely than not.

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[9] Appellant admits that the amount of drugs involved in this case was so large as to "permit[] an inference that the possessor had the intent to sell, deliver or otherwise distribute it." Appellant's Brief at 30 (citations omitted).

> We have defined constructive possession as "conscious dominion." We subsequently defined "conscious dominion" as "the power to control the contraband and the intent to exercise that control." To aid application, we have held that constructive possession may be established by the totality of the circumstances.

Id. (quoting ***Commonwealth v. Parker***, 847 A.2d 745, 750 (Pa. Super. 2004) (internal citations omitted)).

Appellant proffers two arguments to support his claim that he did not constructively possess the marijuana: (1) the only drugs present in his office building "were delivered there, unsolicited, by a DEA task force representative," Appellant "never had even the slightest opportunity to exercise dominion or control over [the] drugs;" and (2) the Commonwealth failed to prove that he knew there were drugs inside the boxes delivered to his office. ***Id.*** at 32.

Appellant's first argument can be easily dismissed. The mere fact that an undercover officer delivered the boxes of marijuana to Appellant's doorstep does not negate the fact that he signed for those boxes and carried them inside his office building. Therefore, the pertinent question is whether the Commonwealth's evidence proved that Appellant *knew* there were drugs inside those boxes and exercised conscious dominion over them. ***Brown***, 48 A.3d at 430; ***see also Commonwealth v. Sterling***, 361 A.2d 799, 802 (Pa. Super. 1976) (evidence must demonstrate appellant's conscious exercise of dominion over the narcotics, not just exercise of dominion over the package in which they were delivered).

In this regard, we find our recent decision in ***Brown*** instructive, as that case involved a nearly identical factual scenario. There, Pennsylvania State Trooper Brian R. Overcash investigated two suspicious packages shipped to a Federal Express (FedEx) facility in Reading, Pennsylvania, and addressed to April Newmann at 1431 Palm Street in Reading. ***Brown***, 48 A.3d at 427-28. After a canine alerted to the presence of narcotics inside each of the two packages, a warrant was obtained and the parcels were opened. ***Id.*** at 428. Inside the two packages, Trooper Overcash discovered marijuana with a combined weight of 31.8 pounds. ***Id.***

Trooper Overcash, along with several members of the Reading Police Vice Unit, set up a controlled delivery of the packages to the address indicated on the boxes. ***Id.*** An undercover officer dressed as a FedEx delivery man knocked on the door of the residence located at 1431 Palm Street and Brown answered the door. ***Id.*** The undercover officer told Brown that he had a delivery for "the Newmanns" and, after identifying himself, Brown "stated that he would accept the packages for the Newmanns." ***Id.*** Brown also told the undercover officer "that he had been waiting for the packages." ***Id.***

After Brown accepted the delivery, officers converged on and searched the home at 1431 Palm Street. The search revealed that one of the boxes of marijuana "had [] been covered with a blanket and stowed away in an upstairs linen closet," while the other "box was still on the living room floor."

Id. The search of the home also indicated that no one named "Newmann" resided at that address. ***Id.*** at 431.

Brown was arrested and charged with possession and PWID. At his trial, the Commonwealth presented the expert testimony of Criminal Investigator Leporace, who opined that Brown possessed the drugs with intent to deliver. In so concluding, the investigator noted that "in his experience, dealers do not ship large amounts of controlled substances to the same place where the drugs are repackaged for sale." ***Id.*** at 428. Based on this evidence, a jury convicted Brown of the above-stated charges. ***Id.*** at 429.

On appeal, this Court distinguished the facts of Brown's case from those in ***Commonwealth v. Rambo***, 412 A.2d 535 (Pa. 1980), and ***Sterling***, 361 A.2d 799, "where it was held that evidence was insufficient to prove knowledge." ***Brown***, 48 A.3d at 430. In explaining the ***Sterling*** and ***Rambo*** decisions, we stated:

> In ***Sterling***, officials discovered a large quantity of hashish in a package addressed to a third party, care of Sterling; obtained a warrant to search Sterling's home; and arranged delivery with the postal carrier. 361 A.2d at 800. Police observed Sterling retrieve the package from his mailbox, executed the warrant 45 minutes later, and discovered the package unopened in the kitchen. ***Id.*** at 800–801. Although Sterling denied knowledge of the contents of the package, a jury convicted him of PWID. This Court ordered Sterling discharged on the PWID charge, holding that, while the evidence showed that he exercised conscious dominion over the package, there was insufficient evidence to establish that he exercised conscious dominion over the hashish. ***Id.*** at 802.

> Similarly, in ***Rambo**,* authorities discovered a large amount of hashish in packages addressed to Rambo and his girlfriend at Rambo's residence, obtained a warrant to search Rambo's apartment, and conducted a controlled delivery of the packages. 412 A.2d at 536–537. Rambo accepted and signed for the packages and left the apartment. ***Id**.* at 537. Police executed the warrant 45 minutes later, and found the packages unopened on the floor of the apartment. ***Id.*** Rambo was convicted of PWID, and this Court affirmed, distinguishing the case from [***Sterling***] in that (1) a package was addressed to Rambo, not merely c/o Rambo, suggesting that he was expected to open it; and (2) that Rambo signed for the packages suggested that he was expecting them. ***See Commonwealth v. Rambo**,* 250 Pa.Super. 314, 378 A.2d 953, 956 (1977) (*en banc*), *reversed by* ***Commonwealth v. Rambo**,* 488 Pa. 334, 412 A.2d 535 (1980). Our Supreme Court disagreed with the import of those distinctions, and held that Rambo must be discharged because the Commonwealth failed to produce sufficient evidence to prove beyond a reasonable doubt that Rambo knew that the packages contained hashish. 412 A.2d at 538.

Brown, 48 A.3d at 430-31.

This Court then discussed how the facts of ***Brown*** were different from the circumstances of ***Sterling*** and ***Rambo***, stating:

> In the instant case, the trial court held that the evidence was sufficient to sustain Appellant's conviction because of the following: (1) Investigator Leporace testified that it is common in drug transactions for contraband to be shipped to an individual at a location other than where it is reduced for street sales; (2) although the search revealed no indication that anyone named Newmann resided at the address, Appellant stated that he would accept the packages for the Newmanns; (3) the evidence that Appellant was expecting the packages was direct, in that he stated that he was expecting them, rather than merely suggested by his accepting them; and (4) Appellant concealed one of the packages in a closet under a blanket, suggesting that he knew there was reason to hide it. TCO, 11/29/2012, at 5–6.
>
> We agree that these factual differences take this case out of the realm of ***Sterling*** and ***Rambo**.* Most importantly, that Appellant hid a package is a strong indicator of guilty knowledge,

> and a circumstance that was not present in ***Rambo*** or ***Sterling***, where the recipients left the packages out in the open with ordinary, innocent deliveries. ***See Commonwealth v. Mohamud***, 15 A.3d 80, 92 (Pa. Super. 2010) (holding that, *inter alia,* Mohamud's "surreptitious behavior when he arrived at the UPS store to retrieve the package" supported finding that the Commonwealth's evidence was sufficient to prove knowledge of possession of an illegal substance). As such, we hold that Appellant is entitled to no relief based upon his first argument.

Brown, 48 A.3d at 431 -432.

Because the facts of ***Brown*** are so similar to the circumstances in the present case, we are compelled to conclude that the evidence was sufficient to sustain Appellant's convictions of possession and PWID. Agent Basewitz's testimony that drug dealers commonly use third-party shippers and pay a person solely to receive boxes of narcotics is analogous to Investigator Leporace's testimony in ***Brown***. Additionally, as Appellant admitted, there was no one by the name "M. Johnson" associated with 5104 North Broad Street, just as no one by the name "Newmann" was connected with the shipping address in ***Brown***. Even more notable, both Brown and Appellant made incriminating statements that they were expecting the packages.

Finally, just as Brown's concealment of one package indicated his consciousness of guilt, here, Appellant made several ostensibly deceptive statements to Agent Basewitz which demonstrated the same. Namely, Appellant repeatedly told Agent Basewitz that his regular UPS driver, who he sees every day, delivered the boxes. These statements were obviously untrue in light of the fact that Officer Hawn was the delivery person. Additionally, Appellant stated that he accepted the packages addressed to

"M. Johnson" because many people worked in the building, yet acknowledged that no person of that name was "associated with the church or the property or the premises." N.T. Trial, 5/19/11, at 36. Further, Appellant's declaration that the office in which he placed the boxes was not used appeared deceptive in light of the paperwork, files, and envelopes of money discovered therein.

In sum, for the same reasons proffered in ***Brown***, we conclude that the facts of Appellant's case are distinguishable from ***Sterling*** and ***Rambo***. Thus, the evidence was sufficient to prove that Appellant constructively possessed the marijuana. As Appellant admits that the quantity of drugs demonstrated the intent to sell, we conclude that the evidence was sufficient to sustain Appellant's possession and PWID convictions.

Likewise, Appellant's criminal conspiracy conviction was supported by adequate evidence. This Court has explained:

> To sustain a conviction for criminal conspiracy, the Commonwealth must establish that the defendant (1) entered into an agreement to commit or aid in an unlawful act with another person or persons, (2) with a shared criminal intent and (3) an overt act was done in furtherance of the conspiracy. "This overt act need not be committed by the defendant; it need only be committed by a co-conspirator."
>
> As our Court has further explained with respect to the agreement element of conspiracy:
>
> > The essence of a criminal conspiracy is a common understanding, no matter how it came into being, that a particular criminal objective be accomplished. Therefore, a conviction for conspiracy requires proof of the existence of a shared criminal intent. An explicit or formal agreement

> to commit crimes can seldom, if ever, be proved and it need not be, for proof of a criminal partnership is almost invariably extracted from the circumstances that attend its activities. Thus, a conspiracy may be inferred where it is demonstrated that the relation, conduct, or circumstances of the parties, and the overt acts of the co-conspirators sufficiently prove the formation of a criminal confederation. The conduct of the parties and the circumstances surrounding their conduct may create a web of evidence linking the accused to the alleged conspiracy beyond a reasonable doubt. Even if the conspirator did not act as a principal in committing the underlying crime, he is still criminally liable for the actions of his co-conspirators in furtherance of the conspiracy.

Commonwealth v. McCall, 911 A.2d 992, 996-97 (Pa. Super. 2006) (citations omitted).

The essence of Appellant's challenge to his conspiracy conviction is that the Commonwealth failed to prove that he had a relationship or any communication with the person who sent the boxes of marijuana. In support of this argument, Appellant points to testimony by Officer Hawn and Agent Basewitz acknowledging that there was no direct evidence of any such relationship or communication between Appellant and the sender of the packages. For instance, Officer Hawn stated that the only information he had about the person who sent the boxes was the name "Alwar," which was evident on the shipping labels of the packages. N.T. Trial, 5/19/11, at 17. The officer admitted that he did not have any information or evidence of a prior relationship between "Alwar" and Appellant. ***Id.*** at 18. Officer Hawn also acknowledged, after repeated questioning by Appellant's counsel, that he did not have any information that would lead him to conclude that on the

day the boxes were shipped, Appellant knew there were drugs in those boxes, or that Appellant knew drugs had been delivered to the UPS in Philadelphia prior to their delivery at 5104 North Broad Street. ***Id.*** at 20, 21. Additionally, Appellant emphasizes Agent Basewitz's testimony that he did not investigate who "Alwar" was, he had no evidence that Appellant had a relationship or any communication with "Alwar," and there was no direct proof that Appellant had any involvement with the delivery of the boxes to the UPS facility in Philadelphia. ***Id.*** at 41-43.

From this testimony, Appellant concludes "that there was neither evidence of the existence of the 'agreement' required for a criminal conspiracy nor the 'shared criminal intent' also required." Appellant's Brief at 22-23. He goes on to state that Officer Hawn's and Agent Basewitz's "speculation and/or opinions about mannerisms and smell; their beliefs about what it is that drug dealers do; M. Johnson's not being there; [A]ppellant['s] signing for the boxes; his alleged "I've been waiting all day" comment, heard by no one other than Officer Hawn; his mistaking Officer Hawn for the regular UPS delivery man; and any other so-called evidence related to the circumstances of the delivery were irrelevant." ***Id.*** at 23 (citation to the record omitted). In sum, he claims that "[o]n the day the task force showed up at [A]ppellant's office door, it had no evidence of conspiratorial or other criminal conduct on the part of [] [A]ppellant," and, therefore, "there could have been no overt act" supporting his conviction of criminal conspiracy. ***Id.*** at 23.

Appellant's argument erroneously presumes that the elements of the conspiracy, *i.e.* an agreement, shared criminal intent, and overt act, must have been satisfied *before* the police arrived at 5104 North Broad Street. However, considering *all* of the circumstances involved in this case, as is appropriate, we conclude that there was sufficient evidence demonstrating Appellant's involvement in a conspiracy. As discussed *supra*, the evidence established that Appellant took constructive possession of the drugs contained in the packages, constituting an "overt act" in furtherance of the conspiracy. Moreover, while there was no direct evidence of the relationship between Appellant and the sender of the boxes, his act of taking possession of the packages, and his statement that he had been waiting for the delivery all day, circumstantially demonstrated that Appellant had an agreement with the sender to participate in the illegal possession and distribution of marijuana. As the Commonwealth points out, "[t]he trial court was not required to draw the illogical inference that there was no conspirator: that, for instance, [Appellant went] to California to ship the drugs to himself." Commonwealth's Brief at 11-12. We agree. Based on all of these reasons, Appellant's conspiracy conviction was supported by sufficient evidence.[10]

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[10] Appellant also challenges the sufficiency of the evidence to sustain his conviction of criminal use of a communication facility. However, his entire argument amounts to the following sentence: "Relative to the charge for the criminal use of a communication facility, in the absence of a conspiracy, or any other underlying felony, there could have been no conviction for that offense as [] [A]ppellant merely signed for the boxes as part of the normal
(Footnote Continued Next Page)

Next, Appellant contends that his convictions were against the weight of the evidence.

> A claim alleging the verdict was against the weight of the evidence is addressed to the discretion of the trial court. Accordingly, an appellate court reviews the exercise of the trial court's discretion; it does not answer for itself whether the verdict was against the weight of the evidence. It is well settled that the jury is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses, and a new trial based on a weight of the evidence claim is only warranted where the jury's verdict is so contrary to the evidence that it shocks one's sense of justice. In determining whether this standard has been met, appellate review is limited to whether the trial judge's discretion was properly exercised, and relief will only be granted where the facts and inferences of record disclose a palpable abuse of discretion.

Commonwealth v. Houser, 18 A.3d 1128, 1135-1136 (Pa. 2011) (citations and internal quotation marks omitted).

In this case, Appellant preserved his weight of the evidence challenge by raising it in a post-sentence motion for a new trial. ***See*** Pa.R.Crim.P. 607 (weight of evidence claims must be raised before the trial court in a motion for a new trial to be preserved for appellate review). However, Judge O'Grady apparently left the bench in Philadelphia County before ruling on that motion. Facing these same circumstances in ***Armbruster v. Horowitz***, 744 A.2d 285 (Pa. Super. 1999), this Court concluded that such a scenario is

(Footnote Continued) ––––––––––––––––––––

delivery process." Appellant's Brief at 35. Based on our conclusions that the evidence sufficiently demonstrated Appellant's guilt of conspiracy, PWID, and possession, his challenge to his conviction for criminal use of a communication facility is meritless.

"an exception to the general rule that a court, relying solely on a 'cold' record, may not exercise a review of a weight of the evidence claim." ***Id.*** at 286. We further stated that, "[i]n these exceptional circumstances, we believe the interests of justice require that the weight of the evidence claim be reviewed by the appellate tribunal rather than vacating the judgment and remanding for a new trial." ***Id.*** at 286-87. Accordingly, we will review Appellant's challenge to the weight of the evidence in the first instance.

In arguing his weight claim, Appellant states:

> It is beyond dispute that not only was there no proof of a criminal conspiracy in which [] [A]ppellant participated, but there was also proof that no investigation of such a conspiracy was ever undertaken. Additionally, there was no proof of any other criminal conduct on the part of [] [A]ppellant, even separate and distinct from the vicarious liability that would have come from his participation in the nonexistent criminal conspiracy. The trial court failed to recognize that convicting [] [A]ppellant, when the clearly greater weight of the evidence pointed to [] [A]ppellant's "innocence", as compared to that barely hinting or permitting speculation of "guilt", constituted a denial of justice.

Appellant's Brief at 6. Appellant sums up his argument by declaring that "[t]he verdict was so stunning and so contrary to the evidence, as to not only shock one's sense of justice, but also to raise questions about judicial abuse of discretion." ***Id.***

We disagree. To the extent that Appellant contends there was no proof he committed the crimes of which he was convicted, such an argument goes to the sufficiency of the evidence, not the weight. ***See Commonwealth v. Hunter***, 768 A.2d 1136, 1143 (Pa. Super. 2001)

(quoting ***Commonwealth v. Widmer***, 744 A.2d 745, 751-52 (Pa. 2000) ("A motion for a new trial on the grounds that the verdict is contrary to the weight of the evidence, concedes that there is sufficient evidence to sustain the verdict.")) . We thoroughly assessed the sufficiency of the evidence, *supra*, and determined that Appellant's convictions must be upheld. After examining the record pursuant to that review, we conclude that the trial court's verdict does not shock our sense of justice.

In Appellant's sixth and final issue, he presents various claims of abuse of discretion by the court. For instance, Appellant maintains that the court's verdict constituted a "total abandonment of reason" because it was against the sufficiency and weight of the evidence. This argument is meritless for the reasons stated *supra*. Additionally, Appellant makes serious allegations of prejudice and misconduct by the court. Because our review of the record belies these claims and demonstrates that the court acted prudently and judiciously, we decline to even address the details of Appellant's baseless accusations. Finally, Appellant contends that the court acted improperly in not ruling on his post-sentence motions (which were ultimately denied by operation of law pursuant to Pa.R.Crim.P. 720(B)(2)(3)(a)), and in not submitting a trial court opinion in accordance with Pa.R.A.P. 1925(a). However, this inaction was due to Judge O'Grady's decision to retire from the bench, which is certainly not an abuse of discretion. Therefore, each of Appellant's arguments in his final issue are

meritless and utterly unsupported by the record. Accordingly, his judgment of sentence is affirmed.[11]

Judgment of sentence affirmed.

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[11] Appellant filed a "Motion to Suppress Appellee's Brief for Failure to File Brief on Time" with this Court on December 4, 2012. Due to our disposition herein, that motion is denied.