

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

DONTE MADDOX

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1482 EDA 2012

Appeal from the Judgment of Sentence April 19, 2012
In the Court of Common Pleas of Philadelphia County
Criminal Division at No(s): CP-51-CR-0008364-2011

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

MEMORANDUM BY PANELLA, J.

FILED MAY 23, 2013

Appellant, Donte Maddox, appeals from the judgment of sentence entered on April 19, 2012, in the Court of Common Pleas of Philadelphia County. After careful review, we affirm.

On April 19, 2011, at 2:50 p.m., Philadelphia Police Officer Jeffrey Stauffer and his partner, Officer Szelagowski, were in full uniform in an unmarked police vehicle on the 2000 block of Rush Street. They observed Maddox talking with a man, later identified as Derrick Clark. The officers followed the men for approximately three blocks to the corner of Coral and Auburn Streets. There, they saw Clark hand Maddox cash. In exchange, Maddox reached into his right jacket pocket and removed several small

* Retired Senior Judge assigned to the Superior Court.

“bluish” objects that he handed to Clark. N.T., Suppression Hearing/Trial, 3/1/12, at 25-27.

Officer Stauffer, a five-year veteran of the police force, was familiar with the area. In particular, Officer Stauffer knew the 2000 block of Rush Street to be a known drug area. He had personally made sixty to seventy drug arrests in the general area, including several within a three block radius of the 2000 block of East Rush Street. A dozen or so of his arrests in the immediate area had resulted in the seizure of heroin in blue glassine packets stamped “DDT.” Based on his experience, his knowledge of the area, and his observations, Officer Stauffer believed that Maddox had engaged in a drug transaction. ***See id.***, at 32-34.

Officer Stauffer and his partner got out of their unmarked car. As Officer Stauffer approached him, Derrick Clark threw his drugs on the ground. The officer immediately recognized the 10 blue glassine packets stamped “DDT” as heroin. ***See id.***, at 29-30. At about the same time, Maddox was observed throwing a sandwich bag on the ground and fleeing. Maddox was chased and arrested by Officer Szelagowski. Maddox’s discarded sandwich bag contained 70 clear packets with markings identical to Clark’s. According to Officer Stauffer, he had only seen that particular “DDT” marking on heroin sold in the 2000 block of East Rush Street. ***See id.***, at 30-31. At the time of his arrest, Maddox had \$200 on his person. ***See id.***, at 35-37.

Prior to trial, Maddox filed an omnibus pre-trial motion to suppress the narcotics seized. A suppression hearing was held and the trial court denied Maddox's motion. The trial court also denied Maddox's motion *in limine* to introduce evidence that Derrick Clark had an open 2008 case for PWID. A bench trial immediately followed based on the facts as developed at the suppression hearing. The trial court found Maddox guilty of possession of a controlled substance and possession with intent to deliver a controlled substance. Thereafter, on March 19, 2012, Maddox was sentenced to a mandatory period of three to six years' imprisonment. This appeal followed.

On appeal, Maddox raises the following issues for our review:

1. DID THE TRIAL COURT ERR BY EXCLUDING EVIDENCE OF DERRICK CLARK'S OPEN POSSESSION WITH THE INTENT TO DELIVER CASE WHERE APPELLANT WAS BEING TRIED FOR POSSESSION WITH INTENT TO DELIVER.
2. DID THE TRIAL COURT ERR BY DENYING APPELLANT'S MOTION TO SUPPRESS BASED ON A LACK OF PROBABLE CAUSE TO ARREST.
3. DID THE TRIAL COURT ERR BY ADMITTING EXPERT TESTIMONY REGARDING THE STREET VALUE OF NARCOTICS FROM A NON-QUALIFIED, FACT WITNESS TO THE CASE.

Appellant's Brief, at 4.

Maddox first argues that the trial court erred in denying his motion *in limine* to present evidence of Derrick Clark's open possession with intent to deliver a controlled substance (PWID) case in order to support his defense theory that Clark was in fact the seller and Maddox the buyer.

We review a trial court's decision to grant or deny a motion *in limine* with the same standard of review as admission of

evidence at trial. With regard to the admission of evidence, we give the trial court broad discretion, and we will only reverse a trial court's decision to admit or deny evidence on a showing that the trial court clearly abused its discretion. An abuse of discretion is not merely an error in judgment, but an overriding misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence or the record.

Commonwealth v. Flamer, 53 A.3d 82, 86 (Pa. Super. 2012).

Maddox wanted to offer this evidence to show that the "alleged buyer was in fact selling drugs." Appellant's Brief, at 10. According to Maddox, "the identity of the drug dealer [was] a material issue of fact raised by the numerous inconsistencies contained in the multiple police documents" and, as such, "the paperwork is so vague that it can be interpreted as either [Maddox] sold drugs to Derrick Clark or Derrick Clark sold drugs to Maddox." ***See id.***, at 12.

We find that the trial court did not abuse its discretion in precluding this evidence. Clark's *arrest* in 2008 is not evidence of guilt based on conduct occurring in 2011. The evidence is patently irrelevant. As to the claim that "the paperwork" is somehow "vague," the officers saw Clark hand Maddox cash in exchange for small objects. This claim is frivolous.

Next, Maddox argues that the trial court erred in denying his motion to suppress the contraband based upon a lack of probable cause to arrest. We disagree.

When considering the denial of a suppression motion, this Court's review is limited to determining whether the court's

factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed in the suppression court, we consider only the Commonwealth's evidence and so much of the appellant's evidence as is uncontradicted when read in the context of the record as a whole. Where the record supports the suppression court's factual findings, we are bound by those facts and may reverse only if the legal conclusions drawn from them are erroneous.

Commonwealth v. West, 937 A.2d 516, 517 (Pa. Super 2007).

(internal citations omitted).

In this issue, Maddox is attempting to contest the seizure of items he abandoned. As the officers approached Maddox, he threw the contraband on the ground and fled. Once he abandoned the items, the police officers needed no justification whatsoever to seize the items. On this basis Maddox cannot contest the seizure. "[I]t is axiomatic that a defendant has no standing to contest the search or seizure of items which he has voluntarily abandoned." ***Commonwealth v. Taylor***, 33 A.3d 1283, 1285-1286 (Pa. Super. 2011) (internal quotation marks and citation omitted).

In any event, the police officers certainly had probable cause to arrest Maddox: they observed a hand-to-hand transaction; Maddox dropped items and fled when the officers approached; and the officers recovered suspected heroin from the scene. This issue is utterly meritless.

In his final issue, Maddox contends that the trial court erred by admitting expert testimony regarding the street value of narcotics from a non-qualified witness. Maddox has waived this claim.

At the suppression hearing, Officer Stauffer testified that each packet of heroin sells for \$10 in the area where Maddox was arrested. Maddox claims that this testimony prejudiced him *at trial*. **See** Appellant's Brief, at 17-18. Maddox objected to this testimony at the suppression hearing, but he did not renew his objection when all "relevant, non-hearsay" evidence from the suppression hearing was incorporated for trial. N.T., Suppression Hearing/Trial, 3/1/12, at 65. Accordingly, this claim is waived.

Even if we addressed this claim on the merits, we would have found that it cannot serve to provide Maddox relief. Assuming for the sake of argument that the testimony was improper, we fail to see how the error prejudiced Maddox. Maddox discarded a large ziplock bag containing *seventy* packets of heroin. That is an overwhelming quantity of narcotics; it is not an amount for individual use. The value of the narcotics under this factual scenario was irrelevant to the conviction for possession with intent to deliver.¹

Judgment of sentence affirmed. Jurisdiction relinquished.

¹ Indeed, the trial court notes that "[t]he value of the packets of heroin seized from [Maddox] was not a factor considered by this [c]ourt...." Trial Court Opinion, 11/13/12, at 8.

Judgment Entered.

A handwritten signature in cursive script, appearing to read "Karen Gambetti", written over a horizontal line.

Prothonotary

Date: 5/23/2013