

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

REHIM J. HICKMAN,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 2010 MDA 2013

Appeal from the Judgment of Sentence October 9, 2013
In the Court of Common Pleas of Dauphin County
Criminal Division at No(s): CP-22-CR-0003949-2010

BEFORE: BENDER, P.J.E., BOWES, and PANELLA, JJ.

MEMORANDUM BY BOWES, J.:

FILED JULY 23, 2014

Rehim J. Hickman appeals from the judgment of sentence of three to six years incarceration imposed by the trial court after a jury found him guilty of possession with intent to deliver ("PWID") cocaine.¹ We affirm.

A confidential informant ("CI") indicated to police that he could purchase crack cocaine from an individual known as Ooo. Detective Corey Dickerson met with the CI, who then called Ooo to arrange for a purchase. The CI and Ooo agreed to meet in a closed former barbershop to conduct the transaction. The parties agreed that the CI would purchase a quarter ounce of cocaine for \$300. Detective Dickerson in an undercover capacity

¹ The jury acquitted Appellant of another count of possession with intent to deliver.

traveled to the barbershop, met the CI there, and searched the CI and the location. According to Detective Dickerson, the person known as Ooo entered ten to fifteen minutes later and greeted the CI and Dickerson. Ooo then placed a white plastic bag of suspected crack cocaine on a counter. The CI then handed Ooo money, before Ooo entered a bathroom. This occurred on March 10, 2009. Detective Dickerson identified Ooo as Appellant the following day from a JNet photograph and at trial.²

The CI and Detective Dickerson again arranged for a drug deal approximately two weeks later. Detective Dickerson and the CI traveled to the same area at 2:07 p.m. After arriving, a silver Dodge Intrepid pulled in front of them. Appellant exited the vehicle and approached the car where the detective and CI were located. He then entered the backseat of the car and handed the CI crack cocaine in exchange for \$600 cash. The cocaine from this transaction was determined to be 13.5 grams. Aside from the actual hand-to-hand transaction inside the car, these events were captured on video tape. Specifically, the tape showed Appellant arrive, walk to the CI's vehicle, and exit that car.

Police arrested Appellant on July 31, 2010. The Commonwealth filed a criminal information charging Appellant with two counts of PWID, one for

² The jury acquitted Appellant relative to this transaction; however, it provides background in explaining Detective Dickerson's ability to identify Appellant at the later drug deal.

each transaction. After a series of continuances, Appellant filed a motion to disclose the identity of the CI on January 18, 2012. The court conducted a hearing on that motion on June 26, 2012, and denied it.³ Thereafter, Appellant entered a guilty plea before a different judge on May 8, 2013. However, prior to sentencing, Appellant withdrew that plea and proceeded to trial. The jury returned a guilty verdict, on June 13, 2013, as to the drug deal that occurred inside the vehicle. Subsequently, the court sentenced Appellant to three to six years incarceration on October 9, 2013.

This timely appeal ensued. The trial court directed Appellant to file and serve a Pa.R.A.P. 1925(b) concise statement of errors complained of on appeal. Appellant complied, and the trial court authored a memorandum decision pursuant to Pa.R.A.P. 1925(a). The matter is now ready for review. Appellant raises two issues for this Court's consideration.

- I. Whether the trial court abused its discretion in denying Appellant's pre-trial [m]otion to [d]isclose the [i]dentity of the [c]onfidential [i]nformant where the [c]onfidential [i]nformant's identity would yield information material to the preparation of Appellant's defense and where the request for disclosure was reasonable, in violation of Article I, Section 9 of the Pennsylvania Constitution and the Sixth Amendment to the United States Constitution?
- II. Whether the Commonwealth failed to present sufficient evidence to sustain Appellant's conviction where the

³ Although the docket reflects that Appellant filed a motion seeking disclosure of the informant's identity and an order denying that motion; neither document is contained within the certified record on appeal.

Commonwealth failed to prove that a crime occurred or that Appellant was the individual who committed the crime charged?

Appellant's brief at 5.

Since Appellant's second issue relates to the sufficiency of the evidence, and such a claim warrants discharge rather than retrial, we address that claim at the outset. **Commonwealth v. Stokes**, 38 A.3d 846 (Pa.Super. 2011). Appellant argues that Detective Dickerson's testimony was insufficient to establish Appellant's guilt. In this regard, he highlights that a video introduced by the Commonwealth did not show the detective, nor did it depict a transaction. Appellant submits that Detective Dickerson was unable to recall whether the CI called his contact in the detective's presence, if he or the CI drove to the drug deal, how long Appellant and the CI were in the vehicle at the time of the alleged transaction, and when the deal occurred. The Commonwealth counters that Detective Dickerson's testimony, deemed credible by the jury, was sufficient to establish each element of PWID.

In analyzing a sufficiency claim, "[w]e must determine whether the evidence admitted at trial, and all reasonable inferences drawn therefrom, when viewed in a light most favorable to the Commonwealth as verdict winner, support the conviction beyond a reasonable doubt." **Commonwealth v. Brown**, 52 A.3d 320, 323 (Pa.Super. 2012). The Commonwealth can meet its burden "by wholly circumstantial evidence and

any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances." **Id.** This Court cannot "re-weigh the evidence and substitute our judgment for that of the fact-finder." **Id.** Additionally, "the entire record must be evaluated and all evidence actually received must be considered." **Id.**

Further, we must draw all reasonable inferences from the evidence in favor of the Commonwealth as the verdict-winner. **Commonwealth v. Hopkins**, 67 A.3d 817, 820 (Pa.Super. 2013). "Where there is sufficient evidence to enable the trier of fact to find every element of the crime has been established beyond a reasonable doubt, the sufficiency of the evidence claim must fail." **Brown, supra** at 323. "The evidence established at trial need not preclude every possibility of innocence and the fact-finder is free to believe all, part, or none of the evidence presented." **Id.**

Here, Detective Dickerson testified that Appellant entered a car and engaged in a hand-to-hand drug transaction involving cocaine. These facts are sufficient to establish each element of PWID. The jury was free to credit Detective Dickerson's account. Appellant's position is premised on this Court disregarding our standard of review and viewing the evidence in a light most favorable to him rather than the Commonwealth. Since Detective Dickerson testified to witnessing Appellant provide the CI with a clear plastic baggy

containing suspected cocaine, later confirmed as cocaine, for \$600, Appellant's claim fails.

Having addressed Appellant's sufficiency claim, we now examine his initial issue. Appellant asserts that because the CI was the only material witness other than the police officer, "fundamental fairness suggests disclosure of the informant's identity, absent a showing that disclosure would jeopardize the informant." Appellant's brief at 11 (citing ***Commonwealth v. Marsh***, 997 A.2d 318, 323 (Pa. 2010) (OAJC)). Appellant relies on ***Commonwealth v. Payne***, 656 A.2d 77 (Pa. 1994), in support of his position and distinguishes ***Marsh, supra***. In ***Payne***, the defendant was convicted of PWID cocaine and possession of cocaine. An undercover Pennsylvania State Police officer was utilizing a confidential informant in a drug investigation. Upon seeing the defendant and a female on a street corner, the informant indicated that the defendant could supply narcotics. The informant then went and spoke to the defendant and returned to the undercover officer's vehicle.

According to the informant, the defendant agreed to sell him cocaine. The officer and informant then followed the defendant and the woman, who drove to another location. The woman dropped the defendant off, and the trooper and informant exited their vehicle and followed on foot. The defendant then sold the two men 7.4 grams of cocaine. These events transpired on May 11, 1990; however, police did not arrest the defendant

until December 10, 1990. The defendant filed a motion seeking the identity of the informant, asserting that the trooper misidentified him. The trial court denied the motion, and this Court affirmed on direct appeal. The Pennsylvania Supreme Court reversed, concluding that disclosure was required.

The **Payne** Court relied on **Commonwealth v. Carter**, 233 A.2d 284 (Pa. 1967), which premised its analysis on **Roviaro v. United States**, 353 U.S. 53 (1957). These decisions applied a balancing test in determining whether a government's privilege against non-disclosure of an eyewitness's identity should yield. The **Carter-Roviaro** test provides that disclosure may be warranted where the eyewitness's identity is relevant and helpful to the defense or necessary to a fair determination. Although the **Carter** Court upheld non-disclosure of identification of a witness where mistaken identity was the defense, the **Payne** Court noted that "the proper balance between the prosecution and defense necessarily must tip in favor of disclosure where guilt is based solely on a single observation by the police but testimony from a *'more disinterested source is available.'*" **Payne, supra** at 79 (quoting **Carter, supra** at 288) (emphasis in original). The High Court, however, opined that "[w]here other corroboration of the officer's testimony exists, disclosure of the informant's identity is, of course, not necessarily required." **Payne, supra** at 79.

In ***Marsh***, Justice McCaffery wrote the lead opinion joined by Justices Eakin and Baer, which reversed this Court's determination that disclosure of a confidential informant's identity was warranted. Justice Saylor authored a concurring opinion joined by Chief Justice Castille and Justice Todd. Therein, the defendant was arrested immediately after attempting to sell drugs to an undercover police officer. Specifically, a confidential informant met with Philadelphia police and indicated that Marsh was a large supplier of drugs. The informant described Marsh, provided his name and address, and detailed the type of vehicle Marsh drove. An undercover officer then travelled with the informant to make a purchase from Marsh. Marsh arrived in the vehicle described by the informant and removed a brown bag from his trunk. He then entered the undercover officer's car and removed four clear bags of cocaine. The officer indicated that he had to leave his car to get the purchase money and police arrested Marsh.

The lead opinion concluded that disclosure was immaterial to the defense and that the request was not reasonable. It further rejected a bright line rule requiring the prosecution to identify an informant if the only eyewitnesses to a drug transaction are the informant and a police officer. Justice Saylor, in his concurring opinion, agreed that "a defendant is required to establish materiality and reasonableness before a trial court may

exercise its discretionary prerogative to require disclosure of the identity of a confidential informant. **Marsh, supra** at 325 (Saylor, J., concurring).

Appellant maintains that identity was at issue because Detective Dickerson had not met Appellant before the date of the drug deal. He notes that video evidence and testimony showed that numerous individuals were in the area at the time of the transaction. Appellant contends that Detective Dickerson's testimony was not reliable and that the telephone number called by the CI did not belong to Appellant.

The Commonwealth responds that, unlike **Payne**, there was additional evidence demonstrating Appellant entered the car in which the drug transaction transpired. It highlights that the jury watched a video depicting the events leading up to the drug deal, though not the actual transaction. The Commonwealth notes that Appellant was on video surveillance before and after the drug deal, corroborating Detective Dickerson's identification. According to the Commonwealth, disclosure of the CI's identity was, therefore, not material to his defense.

Our standard of review in analyzing the grant or denial of a request to reveal an informant's identity is for an abuse of discretion. **Commonwealth v. Roebuck**, 681 A.2d 1279, 1282 (Pa. 1996). In **Roebuck**, the Pennsylvania Supreme Court accepted review to set forth "the burdens of proof and the proper procedures in applying the **Carter-Roviario** test to criminal prosecutions where a confidential informant is an eyewitness to the

crime and the defendant seeks the disclosure of the informant's identity for purposes of preparing a defense at trial." *Id.* at 1290-1281 (footnote omitted).

Roebuck involved two separate drug sales with a CI. The first sale occurred after the CI met with police and drove an undercover officer to purchase heroin. The defendant approached the car and asked the CI for \$180 for a bundle of heroin. The defendant then walked approximately fifty feet to another individual and retrieved an item from that person before returning to the car and turning over a baggie containing fifteen balloons of heroin. The CI told the undercover officer that the defendant's name was Nathaniel Roebuck. The officer conducted a check of that name and received a description matching the person she observed during the drug sale.

The second sale occurred approximately one month later. The undercover officer travelled with the CI to meet Roebuck. Roebuck approached the officer and she asked to purchase a bundle. Roebuck indicated that the price was \$190 and the officer agreed to buy the drugs. After Roebuck conferred with another man, that person approached and handed over fifteen balloons of heroin. At trial, Roebuck averred that he did not take part in either drug sale and presented the testimony of the individual who gave the officer the drugs at the second sale. That person testified that Roebuck was not involved.

Discussing *Payne, supra, Carter, supra,* and *Roviaro, supra,* the *Roebuck* Court ruled that disclosure was required for the first sale, but not for the second transaction. It began by reasoning that the CI was the only eyewitness to the first sale other than the officer, and set forth that this weighed in favor of disclosure. The Court also considered the “public’s interest in maintaining the flow of information to the police and the safety of the confidential informant.” *Roebuck, supra* at 1284. Since the Commonwealth did not present any evidence that disclosure “would jeopardize the safety of the confidential informant or compromise any ongoing investigation[,]” *id.*, it ruled that the trial court erred in not directing the prosecution to turn over the name of the informant.

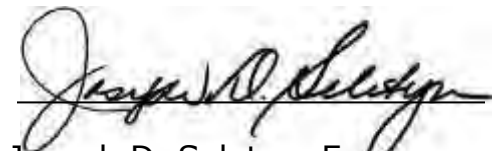
However, it held that the trial court did not abuse its discretion in declining to order disclosure of the informant’s identity for the second transaction. The *Roebuck* Court reasoned that because the defendant presented the testimony of another individual at that sale, he did not demonstrate that “he **needed** the testimony of the confidential informant.” *Id.* at 1285 (emphasis in original).

In the instant case, the trial court noted that Appellant argued that disclosure was necessary because no other corroborating evidence existed. Nonetheless, the court reasoned that Appellant failed to demonstrate that

the identity of the CI was material to his defense.⁴ Since other corroboration of the officer's identification testimony existed here, namely the video tape depicting Appellant's presence at the scene, disclosure of the CI's identity was not required. While the tape did not capture the hand-to-hand transaction, it showed Appellant entering the vehicle where the deal transpired. Hence, the risk of misidentification was not present. **Cf. Commonwealth v. Bing**, 713 A.2d 56 (Pa. 1998). Further, Detective Dickerson and Detective Jason Paul, the CI's handler, both testified that revealing the CI's identity would place that person in danger. For these reasons, we find that the court did not abuse its discretion in denying Appellant's motion.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/23/2014

⁴ We are aware that the court that authored the Pa.R.A.P. 1925(a) decision was not the same jurist that denied Appellant's motion for disclosure of the identity of the informant.