

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

WILLIAM VALENTINE,

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 572 EDA 2013

Appeal from the Judgment of Sentence entered January 29, 2013,
in the Court of Common Pleas of Bucks County,
Criminal Division, at No(s): CP-09-CR-0003521-2012

BEFORE: ALLEN, COLVILLE,* and STRASSBURGER,* JJ.

MEMORANDUM BY ALLEN, J.:

FILED AUGUST 07, 2013

William Valentine ("Appellant") appeals from the judgment of sentence imposed after a jury convicted him of possession of a controlled substance with intent to deliver ("PWID").¹

Appellant presents one issue for our review:

Did the Trial Court error [sic] in permitting the verdict even though it was not supported by sufficient evidence?

Appellant's Brief at 4.

The jury in this case convicted Appellant of PWID after it determined that Appellant sold three bags of crack cocaine to a confidential informant, Janet Schonewolf, in a controlled buy that occurred on January 10, 2012.

¹ 35 P.S. § 780-113(a)(30).

Appellant argues that “the evidence and testimony was so unreliable and contradictory that it did not support the verdict of guilty.” Appellant’s Brief at 9. Appellant specifically contends that the Commonwealth did not establish that he was the individual who delivered the crack cocaine to Ms. Schonewolf. *Id.* at 10. Appellant avers that “the transaction was entirely executed by Schonewolf and [Appellant’s girlfriend]”, even though Appellant concedes that Ms. Schonewolf testified to the contrary. *Id.* Appellant further asserts that Ms. Schonewolf’s testimony was “arguably suspect” and “from a tainted source.” *Id.*

After considering the record, the parties’ briefs, the trial court’s opinion and the applicable law, we conclude that the trial court in its Pa.R.A.P. 1925(a) opinion has cogently addressed the issue raised by Appellant on appeal, such that further discussion by this Court is not warranted. Accordingly, we adopt the trial court opinion of the Honorable Jeffrey L. Finley entered on April 16, 2013 as our own. In the event of future proceedings, the litigants shall attach a copy of Judge Finley’s opinion to any filings.

Judgment of sentence affirmed.

J-S50036-13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Kevin Gambetti", written over a horizontal line.

Prothonotary

Date: 8/7/2013

4/16/13 see list

IN THE COURT OF COMMON PLEAS OF
BUCKS COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA :
 :
 :
 v. : No. 3521-2012
 :
 : (572 EDA 2013)
 WILLIAM VALENTINE :
 : CRT

OPINION

William Valentine (“Valentine”) appeals to the Superior Court of Pennsylvania following his conviction and sentencing on January 29, 2013. We file this opinion pursuant to Pennsylvania Rule of Appellate Procedure 1925(a).

I. Procedural and Factual History:

Valentine was convicted of one count of delivery of cocaine following a transaction which took place on January 10, 2012. Valentine was arrested pursuant to an investigation conducted by the Bucks County Violent Gang Task Force (“the Task Force”). *N.T. 1/28/13*, p. 46. The Task Force is run by the FBI and involves officers from Bristol and Bensalem Township Police Departments, as well as Pennsylvania State Police. *N.T. 1/28/13*, p. 46. FBI Special Agent Gallant, a member of the Task Force, organized the investigation which resulted in Valentine’s arrest. *N.T. 1/28/13*, p. 47. Special Agent Gallant had received information that a confidential informant had become available who was able to make a purchase from Valentine. *N.T. 1/28/13*, p. 47. Special Agent Gallant had been aware that Valentine was living at the Keystone Motel in Bristol, Bucks County, but had not been able to arrange a controlled buy from Valentine previously. *N.T. 1/28/13*, p. 47.



The confidential informant was identified as Janet Schonewolf (“Schonewolf”), a defendant in another federal investigation. *N.T. 1/28/13*, p. 48. Schonewolf was willing to cooperate in order to mitigate her sentence for her own federal drug case. *N.T. 1/28/13*, p. 48. No guarantees were made to Schonewolf regarding her cooperation, but she was told that law enforcement agents would inform the sentencing judge about her cooperation, if she testified truthfully. *N.T. 1/28/13*, p. 62, 70, 80.

Schonewolf then called a number she used to reach Valentine in order to purchase drugs. *N.T. 1/28/13*, p. 50. Special Agent Gallant heard Schonewolf make the phone call, and a female answered. *N.T. 1/28/13*, p. 50. The female was Valentine’s girlfriend, Nicole. *N.T. 1/28/13*, p. 72. Schonewolf made arrangements to purchase three bags of crack cocaine from Valentine at the Keystone Motel. *N.T. 1/28/13*, p. 50-51, 72. Prior to the controlled buy, Schonewolf was carefully searched by a female officer. *N.T. 1/28/13*, p. 50. Schonewolf had no contraband on her person. *N.T. 1/28/13*, p. 50. The FBI provided \$50 in currency, which was photographed by Special Agent Gallant prior to the controlled buy. *N.T. 1/28/13*, p. 52. The cash was provided in denominations of two \$20 bills, a \$5 bill and five \$1 bills. *N.T. 1/28/13*, p. 53. That cash was given to Schonewolf before she was transported to the Keystone Motel. *N.T. 1/28/13*, p. 53. Schonewolf was not allowed to have any other cash on her person at the time of the controlled buy. *N.T. 1/28/13*, p. 49-50.

Officer Durle, another member of the Task Force, transported Schonewolf to the motel in an undercover vehicle. *N.T. 1/28/13*, p. 53. The undercover vehicle was searched prior to transporting Schonewolf, no contraband was discovered. *N.T. 1/28/13*, p. 107. Special Agent Gallant followed the vehicle with Schonewolf and Officer Durle. *N.T. 1/28/13*, p. 54. Officer Leighton, another member of the Task Force, was set up for surveillance at the Keystone Motel

prior to the arrival of the undercover vehicle. *N.T. 1/28/13*, p. 54. When Schonewolf and Officer Durle arrived at the Keystone Motel, Valentine was emerging from his car in the parking lot. *N.T. 1/28/13*, p. 73. Schonewolf explained to Valentine that she had spoken to Nicole about coming over, and then followed Valentine into his room. *N.T. 1/28/13*, p. 74. Using binoculars, Officer Leighton observed the interaction between Valentine and Schonewolf in the parking lot of the Keystone Motel. *N.T. 1/28/13*, p. 114. Officer Leighton also observed Valentine opening the door to the motel room for Schonewolf to enter. *N.T. 1/28/13*, p. 115.

Once inside the room, Schonewolf asked Valentine for the three bags of crack cocaine. *N.T. 1/28/13*, p. 76. Valentine asked Schonewolf for the money, and Schonewolf then counted out the \$50 of prerecorded buy money to him. *N.T. 1/28/13*, p. 73-76. Valentine then handed Schonewolf three bags of crack cocaine. *N.T. 1/28/13*, p. 76. Shortly thereafter, Schonewolf exited the room and immediately reentered the undercover vehicle where Officer Durle waited. *N.T. 1/28/13*, p. 78-79. Schonewolf was inside the motel room for approximately two minutes. *N.T. 1/28/13*, p. 116. Schonewolf did not have contact with anyone else after exiting the motel room. *N.T. 1/28/13*, p. 110. Upon entering the vehicle, Schonewolf immediately handed Officer Durle three clear, small, plastic Ziploc-style bags which contained what appeared to be crack cocaine. *N.T. 1/28/13*, p. 79.

Upon arriving at the police station, a female officer again searched Schonewolf's person, and no contraband was found. *N.T. 1/28/13*, p. 79. Officer Durle provided the three bags to Special Agent Gallant, who immediately performed a field test which indicated that the bags contained crack cocaine. *N.T. 1/28/13*, p. 58. Special Agent Gallant then turned the bags over to Officer Leighton to be entered into evidence. *N.T. 1/28/13*, p. 60. Officer Leighton took the

three bags provided to him by Special Agent Gallant and returned to the Pennsylvania State Police Barracks where the Task Force keeps its office. *N.T. 1/28/13*, p. 117-18.

Officer Leighton placed the bags in the evidence locker at the Pennsylvania State Police Barracks. *N.T. 1/28/13*, p. 118-19. The evidence remained in the evidence locker at the Pennsylvania State Police Barracks from January 10, 2012 to February 29, 2012. *N.T. 1/28/13*, p.119. The evidence was held at the Pennsylvania State Police Barracks pending a determination of whether the Task Force would be able to obtain a search warrant and whether the Task Force would be able to bring federal charges against Valentine. *N.T. 1/28/13*, p. 121. Ultimately, a search warrant was executed on Valentine's motel room, however, the Task Force decided to file charges in the Commonwealth of Pennsylvania rather than federally. *N.T. 1/28/13*, p. 121. Office Leighton then transferred the evidence to Bristol Township on February 29, 2012. *N.T. 1/28/13*, p. 119.

After the three bags of crack cocaine were submitted to evidence at Bristol Township Police by Officer Leighton, the evidence custodian for Bristol Township Police logged them into evidence and took them to the Bucks County Crime Lab for testing. *N.T. 1/28/13*, p. 89-90. The evidence was logged in at the Bucks County Crime Lab and stored in the evidence room until the chemist assigned to the case conducted testing. *N.T. 1/29/13*, p. 6-8. The forensic chemist who tested the evidence testified that she analyzed the drug evidence and prepared a report accordingly. *N.T. 1/29/13*, p. 15-16. The three bags of white powder were found to contain 0.21 grams of crack cocaine. *N.T. 1/29/13*, p. 22.

At approximately six A.M. on January 11, 2012, the morning after the controlled buy occurred, Special Agent Gallant and Officer Leighton executed a search warrant for the motel room occupied by Valentine at the Keystone Motel. *N.T. 1/28/13*, p. 60. Two \$20 bills matching

the controlled buy money were recovered in a large men's gray sweatshirt inside that room. *N.T. 1/28/13*, p. 60. The sweatshirt appeared to be the same one Office Leighton had observed Valentine wearing on the prior afternoon. *N.T. 1/29/13*, p. 122. Officer Leighton also compared the serial numbers on the currency to the serial numbers on the prerecorded buy money and determined that the money recovered from the search matched the prerecorded buy money. *N.T. 1/28/13*, p. 122-23. Valentine and his girlfriend Nicole were present in the motel room on the morning of the search. *N.T. 1/28/13*, p. 61, 124.

A jury trial was conducted on January 28 and 29, 2013. The jury found Valentine guilty beyond a reasonable doubt of distribution of cocaine on January 29, 2013. Valentine stood for sentencing that same date. This Court sentenced Valentine to a term of imprisonment in a state correctional institute for not less than 27 months nor more than 60 months. Valentine timely filed his Notice of Appeal on February 12, 2013.

II. Statement of Matters Complained of on Appeal:

Valentine timely filed his Statement in accordance with Pa.R.A.P. 1925(b) on March 5, 2013. Valentine's Statement is set forth *verbatim* herein:

1. Whether the trial court erred in finding that the evidence presented at trial was sufficient to sustain a conviction.
2. Whether the trial court erred in finding that the weight of the evidence presented at trial was sufficient to sustain a conviction.

Concise Statement of Errors Complained of on Appeal, March 5, 2013.

III. Discussion:

(a) Sufficiency of the evidence

“The test for sufficiency of the evidence is whether the evidence accepted as true, as well as all reasonable and permissible inferences, is sufficient to prove guilt beyond a reasonable doubt.” *Commonwealth v. Caterino*, 678 A.2d 389, 391 (Pa. Super. 1996). The inquiry is one that seeks to determine only whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Commonwealth v. Payne*, 868 A.2d 1257, 1260 (Pa. Super. 2005) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original)).

The evidence presented to the jury at trial “need not preclude every possibility of innocence, and the fact-finder is free to resolve any doubts regarding a defendant’s guilt 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.” *Commonwealth v. Love*, 896 A.2d 1276, 1983 (Pa. Super. 2006) (internal quotation omitted). Furthermore, we must keep in mind that the credibility of witnesses and the weight to be accorded to the evidence produced are matters within the province of the trier of fact, who is free to believe all, some or none of the evidence.

Commonwealth v. McCalman, 795 A.2d 412, 415 (Pa. Super. 2002) (quoting *Commonwealth v. Passarelli*, 789 A.2d 708, 716 (Pa. Super. 2001)).

“[T]he manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under [The Controlled Substance, Drug, Device and Cosmetic Act], or a practitioner not registered or licensed by the appropriate State board” is prohibited by law in Pennsylvania. 35 P.S. § 780-113 (30). Proof of sale of a controlled substance necessarily includes delivery of the drug. *Commonwealth v. Jones*, 586 A.2d 433,

435-36 (Pa. Super. 1991). There was ample evidence presented in this case that Valentine sold and delivered three bags of crack cocaine to Schonewolf. Testimony also established that crack cocaine is a Schedule II controlled substance. *N.T. 1/29/13*, p. 22. The evidence has been discussed at length in the Procedural and Factual History section of this opinion; however certain relevant facts will be reviewed in support of the sufficiency of the evidence.

Schonewolf placed a phone call to Valentine's girlfriend, using a number she had previously obtained for buying drugs. *N.T. 1/28/13*, p. 50-51, 72. Undercover officers accompanied Schonewolf to the scene of the controlled buy. *N.T. 1/28/13*, p. 53-54. Officers carefully searched Schonewolf's person and the vehicle for contraband prior to the controlled buy. *N.T. 1/28/13*, p. 50, 107. Valentine met Schonewolf in the parking lot of the Keystone Motel and accompanied Schonewolf into the motel room. *N.T. 1/28/13*, p. 73-74.

Schonewolf was only inside the motel room for approximately two minutes. *N.T. 1/28/13*, p. 116. She was not in contact with any other individuals prior to reentering the undercover vehicle. *N.T. 1/28/13*, p. 110. Although Schonewolf was the only person who could testify as to the exact exchange of drugs, she emerged with three bags of crack cocaine and without the prerecorded buy money. During the search executed on the same motel room early in the morning following the sale, two \$20 bills which matched the prerecorded buy money were recovered from a sweatshirt matching the description of the sweatshirt Valentine had been observed wearing. *N.T. 1/28/13*, p. 122-23.

Furthermore, extensive testimony established the chain of custody of the evidence prior to and after testing at the Bucks County Crime Lab. The results of the forensic chemist's analysis, as documented in her report, established that the substance which Valentine had sold to Schonewolf was indeed crack cocaine. Therefore, there was clearly sufficient evidence presented

for the jury to conclude beyond a reasonable doubt that Valentine was guilty of distribution of a controlled substance.

(b) Weight of the evidence

“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 but claims that ‘notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.’” *Lyons*, 833 A.3d at 258 (quoting *Commonwealth v. Widmer*, 744 A.2d 745, 751-52 (Pa. 2000)). Since the weight accorded to the evidence is within the determination of the jury as the fact finder, the verdict will only be overturned “if it is so contrary to the evidence as to shock one's sense of justice.” *Commonwealth v. Champney*, 832 A.2d 403, 408 (Pa. 2003) (internal citation omitted). “A claim that the verdict was against the weight of the evidence shall be raised with the trial judge in a motion for a new trial (1) orally, on the record, at any time before sentencing; (2) by written motion at any time before sentencing; or (3) in a post-sentence motion.” Pa. R. Crim. P. Rule 607(A)(1)-(3).


The record does not indicate that defense counsel ever made a motion for a new trial based on the weight of the evidence. There was no oral motion on the record before sentencing, and Valentine was sentenced on the same date as the verdict was announced, therefore counsel did not have time to submit a written motion raising the weight of the evidence prior to sentencing. Furthermore, the docket indicates that no post-sentence motions were filed on Valentine’s behalf. Given Valentine’s failure to comply with the mandates of Pa. R. Crim. P. 607(A)(1)-(3), Valentine is precluded from raising the weight of the evidence as a ground for appeal.

Moreover, a brief examination of the merits of Valentine's claim that the verdict was against the weight of the evidence demonstrates that the claim is baseless. An examination of the record reveals that there are no "facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice." The verdict was very consistent with the evidence and thus clearly not so contrary to the evidence as to shock the conscience. Therefore, Valentine's claim that the verdict was against the weight of the evidence is meritless.

IV. Conclusion

For the foregoing reasons, we find that the issues raised in this appeal are without merit.

BY THE COURT,



JEFFREY L. FINLEY, J.

DATE: *April 16, 2013*