

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

DWAYNE A. ROBERTS

Appellant

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 30 MDA 2013

Appeal from the Judgment of Sentence May 10, 2012
In the Court of Common Pleas of Bradford County
Criminal Division at No(s): CP-08-CR-0000770-2011

BEFORE: BENDER, P.J., PANELLA, J., and MUSMANNO, J.

MEMORANDUM BY PANELLA, J.:

FILED APRIL 16, 2014

Appellant, Dwayne A. Roberts, appeals from the judgment of sentence entered on May 10, 2012, in the Court of Common Pleas of Bradford County. After careful review, we affirm.

A jury convicted Roberts of conspiracy to deliver a controlled substance and false identification to police. Subsequent thereto, the trial court sentenced Roberts to an aggregate period of 2 to 5 years' imprisonment. Roberts filed a timely post-trial motion requesting a new trial on the grounds that his conviction for conspiracy to deliver was contrary to the weight of the evidence presented by the Commonwealth. **See** Post Trial Motion, 5/21/12, at ¶¶5-6. On December 4, 2012, the President Judge of Bradford County entered an order denying Roberts' post-sentence motion by

operation of law pursuant to Pa.R.Crim.P. 720. **See** Order, 12/4/12. This timely appeal followed.

On appeal, Roberts raises the following issue for our review:

Was the appellant's conviction for conspiracy to deliver a controlled substance under the Drug Act against the weight of the evidence?

Appellant's Brief, at 10.

Our standard of review for a challenge to the weight of the evidence is well settled. The finder of fact is the exclusive judge of the weight of the evidence as the fact finder is free to believe all, part, or none of the evidence presented and determines the credibility of the witnesses. **See Commonwealth v. Champney**, 574 Pa. 435, 444, 832 A.2d 403, 408 (2003). As an appellate court, we cannot substitute our judgment for that of the finder of fact. **See id.** Therefore, we will reverse a jury's verdict and grant a new trial only where the verdict is so contrary to the evidence as to shock one's sense of justice. **See Commonwealth v. Passmore**, 857 A.2d 697, 708 (Pa. Super. 2004).

A verdict is said to be contrary to the evidence such that it shocks one's sense of justice when "the figure of Justice totters on her pedestal," or when "the jury's verdict, at the time of its rendition, causes the trial judge to lose his breath, temporarily, and causes him to almost fall from the bench, then it is truly shocking to the judicial conscience." **Commonwealth v.**

Davidson, 860 A.2d 575, 581 (Pa. Super. 2004) (citations omitted), **aff'd**, 595 Pa. 1, 938 A.2d 198 (2007).

Furthermore,

where the trial court has ruled on the weight claim below, an appellate court's role is not to consider the underlying question of whether the verdict is against the weight of the evidence. Rather, appellate review is limited to whether the trial court palpably abused its discretion in ruling on the weight claim.

Champney, 574 Pa. at 444, 832 A.2d at 408 (citation omitted).

Here, the trial court denied Roberts post-sentence motion, thereby ruling on the weight of the evidence claim. Bearing in mind our standard of review when evaluating a weight of the evidence claim, we can find no palpable abuse of discretion in the trial court's denial of Roberts's motion.

The jury convicted Roberts of criminal conspiracy to deliver a controlled substance – cocaine. A person is guilty of conspiracy with another person or persons to commit a crime if:

with the intent of promoting or facilitating its commission he: (1) agrees with such other person or persons that they or one of more of them will engage in conduct which constitutes such crime or an attempt or solicitation to commit such crime; or (2) agrees to aid such other person or persons in the planning or commission of such crime or of an attempt to solicitation to commit such crime.

18 PA.CON.S.TAT.ANN. § 903(a). Thus, in order to sustain a conviction for criminal conspiracy the Commonwealth must establish that Roberts: "(1) entered 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." **Commonwealth v. Johnson**,

719 A.2d 778, 784 (Pa. Super. 1998). The overt act need not be committed by the defendant, but rather, by any of the co-conspirators. **See Commonwealth v. Finn**, 496 A.2d 1254, 1255 (Pa. Super. 1985).

The evidence presented by the Commonwealth at the time of trial established that on September 13, 2011, co-defendant Ashly Hamilton received a text message from co-defendant, Ronnie Bridgewater, known as "Razer," for a ride to the Dandy mini-mart. **See** N.T., Jury Trial, 3/21/12, at 51-52. Roberts, known as "D," and Bridgewater, both social acquaintances of Hamilton were together when Hamilton picked them up in Sayre "from a guy named Andy's house." **Id.**, at 53. Bridgewater was seated in the front passenger seat and Roberts was in the rear seat of the vehicle. **See id.**, at 54. Hamilton transported the men to the mini-mart to purchase cigarettes. **See id.**, at 53.

On the way back to "Andy's house," Bridgewater instructed Hamilton to "turn on a street" after which "a green Blazer pulled up behind [the vehicle]." **Id.**, at 54. Bridgewater told Hamilton to "stop and pull over." **Id.** A woman exited the green Blazer and entered the rear seat of Hamilton's vehicle, next to Roberts. **See id.**, at 54-55. Bridgewater reached his hand behind his seat and handed something to the woman. **See id.**, at 55-56. At the same time, unbeknownst to the occupants, District Court Judge Michael Shaw was driving in his neighborhood, known as the Milltown Area and "pulled off to the side of the road to use [his] cellphone." **Id.**, at 19. Judge Shaw noticed the "two cars pull in to [his] left" "maybe seventy-five yards

away, kind of in a strange area.” **Id.** Hamilton’s vehicle then drove off, with the green Blazer following behind. **See id.**, at 56. Down the road, Bridgewater instructed Hamilton to stop after which the woman exited the vehicle and got back into the Blazer. **See id.** On the way back to “Andy’s house”, Bridgewater handed Hamilton “a few things to hold on to” which she “put in [her] bra.” **Id.**, at 58.

Judge Shaw testified he was concerned about his safety because “about a year earlier someone had threaten[ed] [him] with a gun.” **Id.**, at 20. Judge Shaw also testified that “[his] gut feeling was that a drug transaction had went down” and, as such, he notified the Sayre Police Department. **See id.**, at 23. Officer Derek Watkins of the Sayre Police Department was dispatched to the location where the vehicle was spotted on Tioga Street. **See id.**, at 28. Officer Watkins discovered the vehicle in front a residence with the occupants standing outside of the car. **See id.**, at 29. The occupants were patted down for safety after which weapons were discovered on Bridgewater’s person.

Roberts provided a false name, Rodney Bruce Jones, to the officers during their questioning. **See id.**, at 36. Controlled substances, packaged in baggies and cash were recovered from all occupants. With respect to Roberts, the officers seized \$1,050.00 from “one of [his] pockets.” **Id.**, at 41.

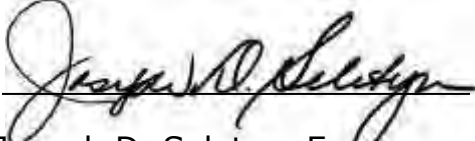
The trial court found that the verdict did not shock its sense of justice. We find no abuse of discretion with this conclusion.

J-S77021-13

Judgment of sentence affirmed. Jurisdiction relinquished.

Bender, P.J., files a concurring and dissenting memorandum.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/16/2014