

Commonwealth v Tiedemann

Commonwealth of Pennsylvania v. Timothy Tiedemann, Defendant  
Court of Common Pleas of the 39th Judicial District of Pennsylvania,  
Franklin County Branch  
Criminal Action No. 981-2012

HEADNOTES

*Criminal Law; Expert Witness Testimony*

1. The testimony of an expert witness is admissible to assist the trier of fact in understanding the evidence or determining a fact in issue.
2. The admission of expert testimony is within the discretion of the trial court. The decision is to be based solely on whether the expert's opinion will aid the jury in finding the truth of the issues involved.
3. If the judge determines that a witness is qualified to testify as an expert, it is then the role of the jury to determine how much weight to assign to that witness's testimony; the jury is free to believe all, part or none of the evidence.

*Criminal Law; Sufficiency of the Evidence*

1. The standard in reviewing the sufficiency of the evidence is whether, in viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt.
2. The facts and circumstances established by the Commonwealth need not preclude all possibility of innocence.

*Criminal Law; Weight of the Evidence*

1. A verdict is against the weight of the evidence where it is "so contrary to the evidence as to shock one's sense of justice and make the award of a new trial imperative."
2. A new trial is not properly granted based upon "a mere conflict in the testimony" and must be based on more than a reassessment of the credibility of witnesses.

Appearances:

Michael J. Toms, Esq., Counsel for Defendant  
John M. Lisko, Esq., Assistant District Attorney

OPINION sur Pa.R.A.P. 1925(a) AND ORDER OF COURT

Before Van Horn, J.

**STATEMENT OF THE CASE**

Defendant was charged with Possession of Drug Paraphernalia, in violation of 35 P.S. 780-1113(a)(32). On January 31, 2013, Defendant was found guilty after a jury trial. On February 13, 2013, Defendant was sentenced to 30 days to 12 months in the Franklin County Prison. Defendant filed an Optional Post-Sentence Motion, which consisted of a Motion for Judgment of Acquittal and a Motion for New Trial, on February 19, 2013 and this Court set a hearing on the Defendant's Motion. On April 16, 2013, this Court convened for a hearing on the Defendant's Motion. Defense counsel was unprepared to make argument on the Defendant's Motion at the April 16, 2013 hearing, but agreed to permit this Court to rule based on its memory of the jury trial. This Court denied both the Motion for Judgment of Acquittal and Motion for New Trial.

Defendant filed a Notice of Appeal on April 29, 2013. Pursuant to a Court Order dated May 1, 2013, Defendant filed a Concise Statement of Matters Complained of on Appeal ("Statement") on May 14, 2013. Defendant raises three issues on appeal in his Statement. First, "[w]hether the trial court committed error when it permitted, over defense objection, PSP

Trooper Rodney Rink to testify as an expert witness in the investigation of drug offenses and, in particular, heroin drug offenses?" Second, "[w]hether the trial court committed error when it denied Defendant's Post-Sentence Motion for Judgment of Acquittal based upon insufficient evidence?" Third, "[w]hether the trial court committed error when it denied Defendant's Post-Sentence Motion for a New Trial on the basis that the weight of the evidence did not support a verdict of guilty?" The Court now responds to Defendant's Statement though this Opinion pursuant to Pa.R.A.P. 1925(a).

## DISCUSSION

### Issue #1: Expert Witness Testimony

The Defendant first argues that this Court erred when it allowed Pennsylvania State Police Trooper Rodney Fink to testify as an expert witness in the investigation of drug offenses and, in particular, heroin drug offenses.

The testimony of an expert witness is admissible to assist the trier of fact in understanding the evidence or determining a fact in issue. See Pa. R.E. 702. Our Supreme Court has set forth the following test for courts to apply regarding expert witnesses:

The test to be applied when qualifying a witness to testify as an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation. If he does, he may testify and the weight to be given to such testimony is for the trier of fact to determine.

*Miller v. Brass Rail Tavern, Inc.*, 664 A.2d 525, 528 (Pa. 1995). The admission of expert testimony is within the discretion of the trial court. See *Commonwealth v. Davies*, 811 A.2d 600, 603 (Pa. Super. Ct. 2002). The decision is to be based solely on whether the expert's opinion will aid the jury in finding the truth of the issues involved. *Commonwealth v. Young*, 524 Pa. 373, 389, 572 A.2d 1217, 1225 (1990). If the judge determines that a witness is qualified to testify as an expert, it is then the role of the jury to determine how much weight to assign to that witness's testimony; the jury is free to believe all, part or none of the evidence. See *Potochnick v. Perry*, 861 A.2d 277, 286 (Pa. Super. 2004).

In the instant case, Pennsylvania State Police Trooper Rodney Fink was qualified to testify as an expert on the issue of the investigation of drug offenses and, in particular, heroin drug offenses. Trooper Fink has been with the Pennsylvania State Police since May 2005 and while at the police academy he received training in investigation of narcotics violations, identification of both paraphernalia and the substances themselves. See Transcript of Jury Trial, Jan. 31, 2013 ("Tr."), at 40-42. He also attended training at the Northeast Counterdrug Training Center, which was a week-long, very intensive training regarding narcotics investigations, which covered working with informants, the identification of substances, to the prosecution of the cases. See *id.* In addition to his formal training, Trooper Fink has been assigned to the vice narcotics unit for the last year and a half. See *id.* He is also assigned to the Franklin County Drug Task Force, whose main function is to investigate violations of the drug and narcotics trade. See *id.* Trooper Fink testified that the most valuable "training" he has received is his time on the street, dealing with the investigations themselves. See *id.* He has been involved in over 300 drug investigations, with at least 75 of those being investigations involving heroin. See *id.*

Given Trooper Fink's formal training and involvement with vice narcotics unit and the Drug Task Force, this Court determined that he has "specialized knowledge on the subject under investigation," and would assist the jury in understanding the evidence. Therefore, Trooper Fink was qualified to testify on the matter of drug investigations and specifically heroin investigations. The Defendant, in his cross-examination of the witness, solicited testimony from Trooper Fink regarding the fact he was not involved with this specific case, nor did he know if the details of the case prior to the day of trial. It is the responsibility of the jury to determine how much weight to assign Trooper Fink's testimony, given those facts. However, on the limited issue of whether he was qualified to testify, that is left to the discretion of this Court. Based on Trooper Fink's training and experience, this Court did not err in permitting him to testify as an expert.

### Issue #2: Sufficiency of the Evidence

The Defendant alleges that this Court erred when it denied his Post-Sentence Motion for Judgment of Acquittal based upon insufficient evidence. This Court disagrees.

The standard of review for challenges to the sufficiency of evidence is well established:

The standard we apply in reviewing the sufficiency of the evidence is whether viewing all the evidence admitted at trial in the light most favorable to the verdict winner, there is sufficient evidence to enable the fact-finder to find every element of the crime beyond a reasonable doubt.

*Commonwealth v. Reynolds*, 835 A.2d 720, 725-26 (Pa. Super. Ct. 2003). A challenge to the sufficiency of the evidence is a question of law. See *id.* at 726. The appellate court may not substitute its judgment for that of the fact-finder. See *Commonwealth v. Mack*, 850 A.2d 690, 693 (Pa. Super. Ct. 2004). Rather, doubts regarding guilt must be resolved by the jury 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." *Id.*

The facts and circumstances established by the Commonwealth need not preclude all possibility of innocence. See *id.* Further, the elements of an offense may be found by means of wholly circumstantial evidence. See *id.* The court must review the entire record, and "all evidence actually received must be considered." *Id.* The trier of fact, in passing upon the credibility of witnesses, is free to believe all, part or none of the evidence. See *id.* As a result, the uncorroborated testimony of a victim, if believed, is sufficient to convict a defendant. See *id.* Finally, our appellate courts have established that "it is the function of the jury to evaluate evidence adduced at trial" so that if "the verdict is based on substantial, if conflicting evidence, it is conclusive on appeal." *Reynolds*, 835 A.2d at 726 (citations omitted).

Defendant was convicted of possession of drug paraphernalia in violation of 35 P.S. § 780-113 (a)(32). The paraphernalia in question is syringes and a spoon. The Superior Court has clearly stated that "[t]o sustain a conviction for possession of drug paraphernalia the Commonwealth must establish that items possessed by defendant were used or intended to be used with a controlled substance so as to constitute drug paraphernalia and this burden may be met by Commonwealth through circumstantial evidence." *Commonwealth v. Little*, 879 A.2d 293, 300 (Pa. Super. 2005). Drug paraphernalia is defined as

"all equipment, products and materials of any kind which are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act."

35 P.S. 780-102. Additionally,

"[i]n determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, statements by an owner or by anyone in control of the object concerning its use, prior convictions, if any, of an owner, or of anyone in control of the object, under any State or Federal law relating to any controlled substance, the proximity of the object in time and space, to a direct violation of this act, the proximity of the object to controlled substances, the existence of any residue of controlled substances on the object, ... the existence and scope of legitimate uses for the object in the community, and expert testimony concerning its use."

*Commonwealth v. Torres*, 421 Pa. Super. 233, 617 A.2d 812, 815 n. 5 (1992), *appeal denied*, 535 Pa. 618, 629 A.2d 1379 (1993) (quoting 35 Pa.Stat. § 780-102(b))

Taking the evidence presented at trial in the light most favorable to the verdict winner, the Commonwealth, this Court determined that there was sufficient evidence to support the Defendant's conviction.

Defendant first argues that the Commonwealth did not prove beyond a reasonable doubt that Defendant possessed the items to use for illegal purposes because "there was no testimony saying exclusively the public could not purchase the items legally outside a doctor's [sic] order" and further that "the only circumstantial evidence then, was that in past experiences items like those could be used for drug use; although they could be used for legal purposes as well." Defendant's Amended Optional Post-Sentence Motions to Pa.R.Crim.P. 720(B) at 3. The Defendant does not cite, nor can this Court find, case law to support Defendant's assertion that drug paraphernalia can only be items that cannot legally be obtained but for a doctor's order. In fact, Pennsylvania courts have repeatedly found every day, household items to be drug paraphernalia in the right context. See *Commonwealth v. Torres*, 617 A.2d 812 (Pa. Super. 1992)(holding that three unopened boxes of sandwich bags were drug paraphernalia when they were found within the same automobile where seventeen packets of cocaine wrapped in the end of sandwich bags was also found), see also *Commonwealth v. Coleman*, 984 A.2d 998 (Pa. Super. 2009)(holding that glass vials, glassine baggie, and a sock were drug paraphernalia because they were used to store, contain, and conceal crack cocaine).

Further, there was evidence offered at trial that, if viewed in the light most favorable to the Commonwealth, would allow

the jury to find that the Commonwealth had proved that the Defendant possessed these items for illegal purposes. Trooper Keith Sobecki testified that spoons do not typically have burn marks on the bottom unless it has been used to heat something up and that the spoon's presence alongside needles suggests illegal activity was taking place. See Tr. at 16. Trooper Sobecki also testified that the Defendant, in response to his question whether the Defendant know what those items were for, said that "he was a genius and he used heroin approximately two weeks ago." *Id.* Trooper Fink testified that the spoon had residue on the top and black burn marks on the bottom, which is consistent with what you would find with someone that's using heroin. See Tr. at 43. Trooper Fink also testified that the needles that were offered as evidence appeared to have been used because one had a bit of blood or red coagulation on its tip and the safety caps were discarded. See *id.* at 44. The Defendant testified and tried to explain that the items were used for working on electronics or models and that he was "being sarcastic about stuff" when he told the Troopers that he had done heroin two weeks prior. See *id.* at 50. Despite such explanation, there was sufficient evidence presented in the Commonwealth's case-in-chief that would allow the jury to find that the items possessed by defendant were used or intended to be used with a controlled substance and that those items are drug paraphernalia, as defined above. Therefore, this Court did not err in denying the Defendant's Post-Sentence Motion for Judgment of Acquittal.

### **Issue #3: Weight of the Evidence**

Defendant next argues that this Court erred when it denied Defendant's Post-Sentence Motion for a New Trial because the weight of the evidence presented at trial did not prove his guilt beyond a reasonable doubt.

A verdict is against the weight of the evidence where it is "so contrary to the evidence as to shock one's sense of justice and make the award of a new trial imperative." *Commonwealth v. Hudson*, 955 A.2d 1031, 1035 (Pa. Super. Ct. 2008). Our Supreme Court has set forth the standard of review on this issue:

A motion for a new trial alleging that the verdict was against the weight of the evidence is addressed to the discretion of the trial court. An appellate court, therefore, reviews the exercise of discretion, not the underlying question whether the verdict is against the weight of the evidence. The factfinder is free to believe all, part, or none of the evidence and to determine the credibility of the witnesses. The trial court will award a new trial only when the jury's verdict is so contrary to the evidence as to shock one's sense of justice.

*Commonwealth v. Diggs*, 949 A.2d 873, 879-80 (Pa. 2008). It is axiomatic that the jury is entitled to believe "all, part, or none of the evidence, and credibility determinations rest solely within the purview of the fact-finder." *Commonwealth v. Treiber*, 874 A.2d 26, 30 (Pa. 2005). A jury is not obligated to believe any testimony and the weight to be ascribed to testimonial or documentary evidence presented is a determination resting solely with the finder of fact. See *Commonwealth v. Flor*, 998 A.2d 606, 626 (Pa. 2010). A new trial is not properly granted based upon "a mere conflict in the testimony" and must be based on more than a reassessment of the credibility of witnesses. *Commonwealth v. Bruce*, 916 A.2d 657, (Pa. Super. Ct. 2007). The Court is not sitting as a thirteenth juror. See *id.* Rather, the Court must determine 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." *Id.* (citing *Commonwealth v. Widmer*, 744 A.2d 745, 751-52 (Pa. 2000)).

This Court does not find that the Defendant's conviction is "so contrary to the evidence as to shock one's sense of justice and make the award of a new trial imperative." As described above, Trooper Sobecki testified as to the syringes and spoon with a burnt bottom being found in the Defendant's home. When questioned by Trooper Sobecki about the items, the Defendant admitted to having used heroin two weeks prior. Trooper Fink testified that the burnt bottom of the spoon is consistent with someone having used the spoon to heat up heroin for injecting it into his body. This Court will not second-guess the findings of the jury as to the weight it gave to the testimony and evidence offered during the trial and its determination that the Defendant is guilty of this crime. The jury's findings were reasonable given the evidence presented to it at trial and were not "so contrary to the evidence to shock one's sense of justice." Therefore, this Court did not err in denying the Defendant's Post-Sentence Motion for New Trial.

### **CONCLUSION**

Trial courts have the discretion to permit individuals who have specialized knowledge in a subject under investigation to testify as an expert witness. Trooper Fink, based on his formal training and his experience has specialized knowledge on the topic of drug investigations and specifically those regarding heroin, and therefore this Court had the discretion to allow him to testify at the Defendant's jury trial. Further, the evidence offered at trial was sufficient for the jury to find that the Commonwealth had proved each element of the crime beyond a reasonable doubt and the Defendant's conviction

was not so contrary to the evidence to shock one's sense of justice. Therefore, this Court did not err in permitting Trooper Fink to testify nor in denying Defendant's Motion for Judgment of Acquittal and Motion for New Trial and this Court respectfully requests that the Superior Court dismiss the appeal of the Defendant.

ORDER OF COURT

**AND NOW THIS 10th DAY OF June, 2013** pursuant to Pa.R.A.P. 1931(c),

**IT IS HEREBY ORDERED THAT** the Clerk of Courts of Franklin County shall promptly transmit to the Prothonotary of the Superior Court the record in this matter along with the attached Opinion sur Pa.R.A.P. 1925(a).

*Pursuant to Pa.R.Crim.P. 114, the Clerk of Courts shall immediately docket this Opinion and Order of Court and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Opinion and Order of Court, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.*