

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
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 Plaintiff, :
 :
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 v. :
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SURINDRA PERSAUD, :
 :
 :
 Defendant. :

Criminal Action No. 02-113 JJF

Colm F. Connolly, Esquire, United States Attorney, and Adam Safwat, Esquire, Assistant United States Attorney, UNITED STATES ATTORNEY'S OFFICE, DISTRICT OF DELAWARE, Wilmington, Delaware. Attorneys for Plaintiff.

Raymond M. Radulski, Esquire, of RAYMOND M. RADULSKI, ATTORNEY AT LAW, Wilmington, Delaware. Attorney for Defendant.

MEMORANDUM OPINION

September 2, 2004
Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion For Judgment Of Acquittal Pursuant to Federal Rule of Criminal Procedure 29(c) filed by Defendant Surindra Persaud.¹ (D.I. 49.) For the reasons discussed, the Court will deny the Motion.

BACKGROUND

On May 25, 2004, Defendant was convicted by a jury of distribution of cocaine base and possession with intent to distribute cocaine base, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). By his Motion, Defendant moves for a judgment of acquittal based on insufficiency of the evidence.

STANDARD OF REVIEW

In resolving a motion challenging the sufficiency of the evidence, a court reviews the evidence “in a light most favorable to the Government following a verdict in its favor.” United States v. Gambone, 314 F.3d 163, 169-79 (3d Cir. 2003) (quoting United States v. Antico, 275 F.3d 245, 260 (3d Cir. 2001)). A court should not weigh the evidence or attempt to determine the credibility of the witnesses. Id. at 170 (quoting United States v. Beckett, 208 F.3d 140, 151 (3d Cir. 2000)). A court reviewing the sufficiency of the evidence is guided by “strict principles of deference to a jury’s findings,” United States v. Anderskow, 88 F.3d 245, 251 (3d Cir. 1996) (quoting

¹ Defendant filed the instant motion pro se.

United States v. Ashfield, 735 F.2d 101, 106 (3d Cir.), cert. denied, 469 U.S. 858 (1984)), and therefore, a defendant claiming that the evidence was insufficient to sustain the verdict faces a very heavy burden. Id. (quoting United States v. Gonzalez, 918 F.2d 1129, 1132 (3d Cir. 1990)). A court may “overturn a verdict only ‘if no reasonable juror could accept evidence as sufficient to support the conclusion of the defendant’s guilt beyond a reasonable doubt.’” Anderskow, 88 F.3d at 251 (quoting United States v. Coleman, 811 F.2d 804, 807 (3d Cir. 1987)). Based on these principles, a court should reach a finding of insufficiency only when “‘the prosecution’s failure is clear.’” United States v. Smith, 294 F.3d 473, 477 (3d Cir. 2002) (quoting United States v. Leon, 739 F.2d 885, 891 (3d Cir. 1984)).

DISCUSSION

I. Parties’ Contentions

Defendant contends that the testimony of two government witnesses was false and that the video played by the Government was tampered with because the Government only showed part of the video at trial.² Further, Defendant contends that the drugs he was convicted of possessing were actually the property of another individual that was never arrested. Defendant also contends that the Government never established that he removed any drugs from

² Among the evidence admitted in this case was video surveillance of the area in which Defendant was arrested. (Transcript (“Tr.”) at 52.)

his car and that his possession of the drugs was for personal use and not distribution. Finally, Defendant contends that he is entitled to acquittal based on ineffective assistance of counsel.

The Government responds that the instant motion is untimely and should be denied. In addition, the Government contends that the evidence supports both counts of the jury's verdict. The Government contends that the video surveillance, the testimony of various witnesses, and the admitted exhibits were more than sufficient to support the jury's verdict.

II. Decision

After review of the parties' arguments and the record evidence, the Court will deny the present motion. First, the Court finds that the instant motion is untimely. As the Government correctly argues, a defendant may move for judgment of acquittal within seven days after a guilty verdict or after a court discharges the jury, whichever is later. Fed. R. Crim. P. 29(c). The jury returned a guilty verdict on May 25, 2004, and Defendant filed the instant motion on June 9, 2004. Therefore, Defendant's Motion must be denied as untimely.

However, even assuming that Defendant timely filed his Rule 29(c) Motion, the Court concludes that the evidence was sufficient to support the jury's verdict. With respect to Defendant's arguments concerning the credibility of Detective Michael Rodriguez's and Mary Williams's testimony, the Court

notes that in a motion challenging the sufficiency of the evidence, the Court is bound to defer to the jury's findings. Anderskow, 88 F.3d at 251. Thus, the Court is precluded from reassessing the credibility of these witnesses. See Gambone, 314 F.3d at 170.

Concerning the video evidence, the Court is not persuaded by Defendant's contention that the video played by the Government was tampered with and thus cannot support his conviction. Defendant's concerns relate to the Government's fast forwarding through impertinent sections of the tape. The video, however, was admitted into evidence with the consent of Defendant who reserved the right to play additional portions of the video if he felt it was necessary. (Tr. at 63.)³ Based on this record, the Court concludes that the Government's presentation of portions of the video surveillance was appropriate.

Defendant raises several contentions regarding the drugs recovered by the police from Ms. Williams and from Defendant's automobile. Defendant contends that: 1) the drugs found in the car were for his personal use; 2) the drugs found in Ms. Williams's possession were those of the individual seen in the video wearing blue and white shorts; and 3) no drugs were found on Defendant's person. With respect to the argument that the

³ Defendant did play portions of the video for the jury on cross-examination. (Tr. at 76.)

drugs found in Defendant's car were for personal use, the Court concludes that the jury was presented with evidence sufficient to support a finding that the drugs found in the car were for distribution.

The jury heard expert testimony that the packaging of the drugs and the events observed on the video surveillance indicated that Defendant's possession of the drugs was consistent with distribution and not personal use. (Tr. at 107-11.) With regard to Defendant's contention that the drugs found in Ms. William's possession were those of the individual seen in the video wearing the blue and white shorts, Defendant's counsel repeatedly raised this issue (Tr. at 46, 77, 88, 115-16), but, based on the verdict, the jury did not accept this argument.

Finally, the Court concludes that the fact that no drugs were found on Defendant's person is irrelevant. The jury heard testimony from Ms. Williams concerning who delivered drugs to her immediately prior to Defendant's arrest. Ms. Williams testified that she received the drugs from the individual standing in the video (Tr. at 86-87) and that she gave money to the individual in the blue and white shorts who was sitting. (Tr. at 87.) The jury also observed in the video and heard testimony that there were only two individuals located where Defendant was arrested, one in red and one in blue in white shorts. (Tr. at 76-79.) Finally, the jury heard testimony identifying Defendant as the

individual in red. (Tr. at 62.)

The jury also heard testimony about Defendant having access to and control of his automobile (Tr. at 65-68) and that drugs were found in the car. (Tr. at 96-98.) The jury was instructed about constructive possession (D.I. 43 at 11) and, based on the verdict, found that Defendant was in constructive possession of the drugs recovered from his car. Based on this record, the Court cannot conclude that the jury did not have evidence sufficient to find that Defendant possessed the drugs found in Ms. Williams's possession and in his car.

CONCLUSION

For the reasons discussed, the Court concludes that the evidence in this case was sufficient to support Defendant's conviction of distribution of cocaine base and possession with intent to distribute cocaine base. Accordingly, the Court will deny Defendant's Motion.⁴

⁴ Defendant's claims of ineffective assistance of counsel should not be raised in the instant motion but should be made in a collateral proceeding under 28 U.S.C. § 2255. See United States v. Oliva, 46 F.3d 320, 325 (3d Cir. 1995) (citing United States v. Sandini, 888 F.2d 300, 312 (3d Cir. 1989), cert. denied, 494 U.S. 1089 (1990)).

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ORDER

At Wilmington, this 2nd day of September, 2004, for the reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that the Motion For Judgment Of Acquittal Pursuant to Federal Rule of Criminal Procedure 29(c) filed by Defendant Surindra Persaud (D.I. 49) is **DENIED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE