

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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DEMETRIUS CUBBAGE, :
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 Defendant. :

Criminal Action No. 02-44 JJF

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

Clayton A. Sweeney, Jr., Esquire, of CLAYTON A. SWEENEY, JR., ESQUIRE, Philadelphia, Pennsylvania. Attorney for Defendant.

MEMORANDUM OPINION

August 25, 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). (D.I. 77.) For the reasons that follow, the Court will deny the Motion.

BACKGROUND

I. Introduction

On May 18, 2004, the Court held a jury trial involving charges that the Defendant, Demetrius Cubbage, knowingly and intentionally possessed, with the intent to distribute, more than 50 grams of a mixture and substance containing a detectible amount of cocaine base¹ in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). Following the close of evidence, the jury returned a verdict finding Defendant guilty of the crime charged. By his Motion, Defendant moves for judgment of acquittal based on insufficiency of the evidence.

II. Factual Background

On February 6, 2002, the Dover Drugs, Vice, and Organized Crime Unit (the "Crime Unit") executed a search warrant for an apartment in Dover, Delaware. (Trial Transcript ("Tr.") at A37-38.) Prior to executing the warrant, Detective David Boney conducted surveillance of the apartment using a video camera with

¹ Cocaine in the base form is commonly referred to as crack cocaine. (Tr. at A191.)

a telephoto lens attached. (Tr. at A107.) Detective Boney testified that the camera lens enabled him to observe people or objects that were approximately sixty feet away as if they were within arm's reach. (Tr. at A108.)

While conducting surveillance, Detective Boney testified that he observed the Defendant exit the apartment wearing a long sleeved white shirt and black pants, walk to the rear of a gray Buick parked directly in front of the apartment, and open the trunk. (Tr. at A108-09, 111.) Detective Boney testified that Defendant sifted through the contents of the trunk, and, after continuing his search for a brief period, appeared to become nervous and quickened his search. (Tr. at A109-10.) After approximately thirty seconds, Detective Boney testified that Defendant suddenly stopped what he was doing, relaxed, and removed an item from the trunk of the Buick. Id. Detective Boney described the object removed by Defendant as a "camouflage colored object" having a military pattern. Id. After retrieving the camouflage object, Defendant looked around the area, shut the trunk of the Buick, and walked back in the apartment. Id. Within minutes after Defendant returned to the apartment, the Crime Unit entered the apartment and began their search.

Upon entering the apartment, the Crime Unit observed several men sitting at the dining room table and one on a living room couch. (Tr. at A38.) The living room had two couches, a large

one where the individual was sitting, and a smaller love seat with a few objects on it. (Tr. at A39, 66-67.) One member of the Crime Unit, Detective Jason Pires, continued into the apartment and found a locked door on the right side of the hallway that he subsequently forced open. (Tr. at A39-40.) The locked door led to a bathroom where Detective Pires found the Defendant showering. (Tr. at A40.) On the floor next to the shower, Detective Pires observed a black pair of pants and white shirt. (Tr. at A41.) All of the other individuals in the apartment were fully clothed. (Tr. at A40-41.) Detective Pires also found a digital scale on the bathroom sink that Detective Pires testified was a type commonly used to weigh illegal drugs. (Tr. at A40.)

Detective Pires removed Defendant from the shower, handcuffed him, and placed him in the master bedroom. (Tr. at A42.) Detective Pires then proceeded to search the bathroom and, in the black pants on the bathroom floor, found a wallet containing Defendant's state identification card, \$2938 in cash, and a clear plastic bag containing what was later identified as approximately 60 grams of crack cocaine. (Tr. at 42-43, 49, 147-48, 191-92.)

Upon further search of the apartment, the Crime Unit found numerous baggies, another scale, and several items on the love seat, but no pipes or other paraphernalia for smoking crack

cocaine. (Tr. at A64, 65.) Of the items found on the love seat was a bag containing approximately \$34,000 in cash and a planner. Inside the planner was a title to the gray Buick parked in front of the apartment, which was issued to the Defendant. (Tr. at A142, 65.) The Crime Unit also found underneath a cushion on the love seat a package wrapped in a camouflage helmet cover containing two plastic bags holding approximately 544 grams of crack cocaine. (Tr. at A65, 194-95.) Detective Boney testified that he recognized this package as the camouflage colored object he observed Defendant remove from the gray Buick. (Tr. at A112-15.)

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 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 he is entitled to a judgment of acquittal because the evidence presented in this case was insufficient to establish beyond a reasonable doubt that he knowingly possessed with the intent to distribute more than 50 grams of a mixture and substance containing a detectible amount of cocaine base. Defendant contends that a judgment of acquittal is required in this case because: 1) the testimony of Detective Boney was inconsistent and unreliable; 2) the Government failed to establish that Defendant possessed the larger amount of crack cocaine due to the circumstances in which the cocaine was found

(i.e. under a couch cushion, coat, and bag); 3) the Government failed to explain how the smaller amount of cocaine base came to be in Defendant's pocket; 4) the Government did not explain how the scale became positioned as it was found in the bathroom; and 5) the Government failed to eliminate the possibility that the drugs found were those of the other individuals in the apartment.

The Government responds that the record is replete with evidence from which the jury could find beyond a reasonable doubt that Defendant is guilty of the crime charged in the Indictment. The Government contends that among the evidence supporting the jury's verdict is the money and drugs in the pants found next to the shower in which Defendant was showering, the approximately 544 grams of cocaine base found in the camouflage helmet cover Defendant was observed retrieving from his car only minutes prior to when the search began, and the money found in a bag that also contained Defendant's car title.

II. Decision

The Court concludes that it must deny Defendant's Motion for Judgment of Acquittal because the jury's verdict was supported by substantial evidence. Initially, the Court concludes that the Defendant's arguments about the Government's failure to establish that Defendant knowingly and intentionally possessed the 50 grams of crack cocaine found in the black pants on the bathroom floor are without merit. The jury heard testimony describing the

clothes Defendant was wearing when he was first observed exiting the apartment, and that they matched the clothes found on the floor of the bathroom (in which the drugs were found) where Defendant was showering. (Tr. at A40, 41, 43.) The jury also heard testimony that a wallet containing Defendant's identification card was found in the black pants, that the bathroom door was locked, and that all the other individuals in the apartment were fully clothed. (Tr. at A43, 40-41.) Considering this evidence, the Court concludes that the jury did not err in finding that Defendant knowingly and intentionally possessed the 50 grams of crack cocaine found in the black pants.

The Court also concludes that there was legally sufficient evidence from which the jury could find that Defendant knowingly and intentionally possessed the larger amount of crack cocaine wrapped in the camouflage helmet cover. Detective Boney testified that he observed Defendant remove a camouflage colored object from the gray Buick and, that this same object, later identified as a helmet cover, was subsequently found underneath a cushion on the love seat in the apartment containing approximately 544 grams of crack cocaine. (Tr. at A65, 194-95, 112-15.) Additionally, none of the other individuals in the apartment were observed sitting on the love seat. (Tr. at A39, 66-67.)

With respect to Defendant's arguments concerning

inconsistencies in Detective Boney's testimony, the Court agrees with the Government that the Court is precluded from reassessing the jury's evaluation of this testimony. The verdict demonstrates that the jury chose, after its consideration of all the evidence, to credit Detective Boney's testimony and the jury was apparently not persuaded that the testimony was unreliable from the inconsistencies identified by Defendant's counsel on cross-examination. Consequently, in adhering to the strict standard of deference to the jury's findings, Anderskow, 88 F.3d at 251, the Court will not second-guess the jury's evaluation of Detective Boney's credibility.²

CONCLUSION

For the reasons discussed, the Court will deny Defendant's Motion for Judgment of Acquittal. (D.I. 77.)

An appropriate Order will be entered.

² Based on the foregoing, the Court concludes that Defendant's contentions regarding the positioning of the scale found in the bathroom do not justify granting the instant motion.

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O R D E R

At Wilmington, this 25th day of August, 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 the Defendant Demetrius Cubbage (D.I. 77) is **DENIED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE