IN THE SUPERIOR COURT OF PENNSYLVANIA
No. 1739 MDA 2009

COMMONWEALTH OF PENNSYLVANIA,
Appellee

v.

HOBSON L. McKOWN,
Appellant

BRIEF FOR APPELLEE

Appeal from the Judgment of Sentence entered September 17, 2009, by the Court of Common Pleas of Centre County, Pennsylvania, at Docket No. CP-14-CR-1610-2008

CENTRE COUNTY DISTRICT ATTORNEY'S OFFICE

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I. Did deputy sheriffs and police lawfully enter Appellant's residence for the purpose, initially, of seizing firearms pursuant to a court order and, subsequently, for the purpose of seizing contraband pursuant to a valid warrant?

[Appellee proposes an answer in the affirmative.]

II. Did Appellant waive his argument that the Magisterial District Judge improperly imposed a bail condition requiring him to relinquish his firearms?

[Appellee proposes an answer in the affirmative.]

III. Was the evidence sufficient to support Appellant's conviction of possessing drug paraphernalia?

[Appellee proposes an answer in the affirmative.]

COUNTER-STATEMENT OF THE CASE

On September 10, 2008, Appellant Hobson McKown appeared in Centre County Central Court for a preliminary hearing on charges of Carrying a Firearm without a License and Possessing a Firearm in a Court Facility. Magisterial District Judge Leslie Dutchcot heard testimony that, on September 2, 2008, a man telephoned administrative staff at Magisterial District Judge Jonathan Grine's court and asked whether the court had facilities to secure his firearm, should he bring it with him while there on business. Shortly thereafter, a man later identified as Hobson McKown entered MDJ Grine's lobby with a camera, then exited quickly. Court staff then saw Mr. McKown outside a window of the court, "kind of checking the building out from top to bottom." (N.T. 9/10/08 at 8.[1]) Mr. McKown returned inside and began taking photographs with his camera, left briefly, then came back and requested a copy of the court schedule for the day, which he was given. (N.T. 9/10/08 at 9.) During Mr. McKown's last entry into the court, Judge Grine confronted him about his behavior. Mr. McKown ran from the building. (N.T. 9/10/08 at 10.)

Court staff requested police assistance due to Mr. McKown's unusual actions. Police determined from JNET photos and the court list that Mr. McKown would likely be returning to court later that day for a hearing before Judge Grine. To ensure the safety of all present in the court, State College Police Officer Robert Bradley was posted in the lobby. (N.T. 9/10/08 at 23.) Mr. McKown returned to the court at approximately 4:00 p.m. for a hearing of his own and, when he did so, Officer Bradley greeted him and asked several times whether he was armed. Mr. McKown refused to answer, except to ask in response whether the officer was the "check station." (N.T. 9/10/08 at 19.) Eventually, however, Mr. McKown's attorney

[1] The notes of testimony of the September 10, 2008, were conveyed to this Court by means of a "Praecipe to Correct Record Pursuant to Stipulation of Counsel" filed on February 17, 2010.

advised him to answer the officer's question, whereupon Mr. McKown told the officer that he was indeed armed. Following some further inquiry, the officer retrieved from Mr. McKown's pocket a Kel Tec .380 pistol loaded with seven rounds, including one in the chamber. (N.T. 9/10/08 at 21.)

At the conclusion of the preliminary hearing, Judge Dutchcot modified Mr. McKown's bail to include a nonmonetary condition prohibiting him from possessing firearms and requiring that he surrender any firearms to the Sheriff of Centre County. (R. 15.) Judge Dutchcot further entered an order directing that the "Centre County Sheriff's Department ... take custody of all firearms in [Mr. McKown's] possession." (R. 16.) Approximately thirty minutes after bail conditions were signed, Mr. McKown appeared at the Sheriff's Department and told Lieutenant Weaver that he wished to surrender his firearms the following day. Lieutenant Weaver responded that this was not an option and that the deputy sheriffs would be enforcing the order immediately. The Sheriff himself eventually spoke with Mr. McKown and advised him that refusal to surrender his firearms would be a violation of his bail conditions. Mr. McKown then agreed to accompany the deputies to his home for the purpose of relinquishing possession of his firearms in accordance with the court order. (R. 37-38.)

Because Mr. McKown did not have transportation, the deputies permitted him to ride with them to his trailer in State College. When they arrived and began walking toward the trailer, Mr. McKown again attempted to make alternative arrangements for surrendering the firearms. While proposing these alternatives, Mr. McKown began to walk very slowly, "like[] he was almost in slow motion." (R. 39.) Approximately 30 feet from the doorway, Mr. McKown stopped walking altogether and, according to Deputy Eric Albright, "his face was pale white, ... his eyes were sort of down, and he just looked extremely nervous." (R.

40.) Believing that Mr. McKown's extreme reluctance and nervousness might be indications of something dangerous in the trailer, Deputy Albright asked Mr. McKown if there was anything inside that might harm the deputies. Mr. McKown replied that there was not. (R. 41-42.) One of the other deputies then asked Mr. McKown for the key to the trailer. Mr. McKown replied that it was in his left front pocket, whereupon the deputy retrieved it. (R. 51.) The deputy gave the key to Deputy Albright, and he opened the door slightly and looked inside. Immediately in view was a bookshelf with a handwritten sign on it reading "I do not consent to this search." Next to the bookshelf were six cans of ammunition. (R. 41-42.)

At the time Deputy Albright opened the door to Mr. McKown's trailer, he had been a handler of an explosives detection dog for seven years and had received over 200 hours of training in the recognition of explosives and improvised explosive devices (IEDs). (R. 43.) As he opened the door wider, Deputy Albright saw numerous items he recognized as consistent with the construction of IEDs: mouse traps, circuit boards, a voltage meter, wire cutters, multiple computer hard drives, and an additional can of ammunition. (R. 42.) Deputy Albright and the other deputies immediately backed away from the trailer and began making phone calls for a bomb technician. (R. 44.)

Officer Matthew White, a certified bomb technician with the Penn State University police department, received Deputy Albright's call for assistance. (R. 64.) Deputy Albright related his observations to Officer White and explained that he and the other deputies had been directed by court order to seize Mr. McKown's firearms but "he felt that they couldn't safely go though the residence unless it had been cleared by a trained bomb technician." (R. 65.) Officer White joined the deputies at the scene, donned basic protective gear, and entered

Mr. McKown's trailer. (R. 66.) Immediately inside he saw electronic components, electronic tool kits, mouse traps, and ammunition cans. The electronic components and the tools found with them were consistent with the construction of "time power units, basically the control mechanisms for IEDs." And the mouse traps Officer White observed could be used to create "initiators" for both IEDs and booby traps. (R. 66-67.) These observations caused Officer White the same concerns of Deputy Albright, so he began to search "from the floor level to the ceiling looking for possible IEDs or booby traps." (R. 66.)

Because IEDs can be "as small as your thumb," Officer White opened cabinets in the kitchen. One of these cabinets contained several shipping envelopes, and while examining them Officer White noticed one with an item inside shaped like a pipe used to smoke marijuana. (R. 67.) He conveyed this observation to Detective Martin of the Ferguson Township Police Department, who later applied for a search warrant. (R. 68.)

After completing his sweep of the trailer, Officer White concluded that, while there were clearly components associated with IEDs and booby traps in the residence, none of them had actually been constructed into an explosive device. (R. 68.) Upon being advised by Officer White that the trailer appeared safe, the deputies entered and took custody of firearms, crossbows, and 17 cans full of ammunition. (R. 55, 57.)

Detective Martin was successful in obtaining a search warrant for the residence based on Officer White's observation of suspected drug contraband. Pursuant to the warrant, Detective Martin seized a suspected marijuana pipe and suspected marijuana. (R. 81-82.) At trial, the court received evidence that the marijuana pipe was found in the kitchen of Mr. McKown's extremely small residence, one-half of a mobile home. (R. 152-153.) The key to the residence was in Mr. McKown's pocket (R. 154, 167) and a vehicle registered to Mr.

McKown was in the driveway (R. 26). Mr. McKown clearly did not want the deputies in his residence (R. 163) and grew increasingly "nervous and pale" as he approached his home with them (R. 154). Two police officers testified that the pipe was of the type used to smell marijuana (R. 184, 197-198), and expert testimony established that the pipe had marijuana residue in it (R. 209).

SUMMARY OF ARGUMENT

1. The sheriff possesses inherent common law and statutory powers to enter buildings for the purpose of enforcing court orders-- by force if necessary. When performing such ministerial, as opposed to investigative, duties, the sheriff's authority is strongest. The Fourth Amendment is targeted particularly against "searches for evidence of crime," and hence the investigative function of police is one of its primary concerns. Since the sheriff's deputies in this case were not performing an investigative function, but were instead acting pursuant to a valid seizure order issued by a magistrate, their entry into Appellant's residence was clearly within constitutional boundaries. Moreover, they were entitled to conduct the seizure of Appellant's firearms in safety, and Officer White's examination of the residence for explosives was a necessary means of ensuring this.

Voluntary consent to a search is an exception to the warrant requirement. The suppression court found that Appellant consented to the search: he agreed to the bail condition, agreed to go to his residence with the deputies and, once there, told them where to find the key.

The search warrant issued in this case was not deficient because the police affiant recited observations by other police officers as the basis for probable cause. To the contrary, the warrant application set forth ample circumstances from which the magistrate, exercising "practical, common sense" judgment, was able to infer a "fair probability that contraband or evidence of crime" would be found in Appellant's residence.

2. Appellant failed to adequately preserve his argument that the magistrate improperly imposed an additional bail condition at the preliminary hearing, and it should therefore be considered waived. Nonetheless, the magistrate's addition of a "no firearms"

condition was clearly appropriate, for it was directly and rationally related to ensuring that Appellant comply with the standard, required bail condition that he refrain from criminal activity.

3. The evidence was sufficient to support Appellant's conviction of possessing drug paraphernalia. The glass pipe was found in Appellant's kitchen; the key to residence was in Appellant's pocket and a vehicle registered to Appellant was in the driveway. The small size of Appellant's residence-- half of a mobile home-- made it implausible that others lived there with him. Moreover, Appellant did not want the deputies in his residence and grew increasingly "nervous and pale" as he approached his home with them. Two police officers testified that the pipe seized in Appellant's home was of the type used to smell marijuana, and expert testimony established that the pipe had marijuana residue in it.

ARGUMENT FOR THE APPELLEE

I. *The entry of Appellant's residence by deputy sheriffs and police officers did not violate the Constitution.*

A. *The seizure of firearms from Appellant's home was a lawful exercise of the sheriff's historic and statutory duty to execute court orders .*

1. *The sheriff possesses inherent power to enter buildings-- by force if necessary-- to carry out court orders.*

The sheriff occupies an office recognized by the Pennsylvania Constitution itself. Pa. Const. Art. 9, §4. Historically, "the sheriff was a powerful officer, with both judicial and executive powers." Commonwealth v. Leet, 537 Pa. 89, 93, 641 A.2d 299, 301 (1994). In addition to "the common law power ... to make arrests without warrant for felonies and for breaches of the peace committed in his presence," Leet, 641 A.2d at 303, the sheriff had "authority 'to summon suitors to the court, to collect amercements from defaulters and carry out the judgments of the court.'" Id., quoting Stenton, English Justice Between the Norman Conquest and the Great Charter: 1066-1215 (1964), at 67. "[I]n the enforcement of court orders, the sheriff ... was authorized and expected to employ often-necessary force." Id., 537 Pa. at 94, 641 A.2d at 302.

The sheriff continues to wield such powers in Pennsylvania. By statute, the sheriff is charged with "serv[ing] process and execut[ing] orders directed to him pursuant to law." 42 Pa.C.S. §2921. When levying upon or attaching personal property, "[t]he sheriff ... may enter the place or building in which the goods are contained either peaceably or by breaking in by force." Pa.R.Civ.P. 3127 (emphasis added). The sheriff may similarly "break and enter" pursuant to an order of execution issued by a Magisterial District Judge. Pa.R.C.P.M.D.J. 411.

2. *Officer White's examination of Appellant's residence for explosives was a constitutionally reasonable means of ensuring the safety of the deputy sheriffs as they executed the court's order to seize Appellant's firearms.*

Given the long-settled duties and powers of his office, the sheriff of Centre County had little choice but to enter Hobson McKown's home when ordered to seize his firearms by Magisterial District Judge Dutchcot. Moreover, his deputies were entitled to do so safely. In Maryland v. Buie, 494 U.S. 325 (1990), police entered the home of Jerome Buie for the purpose of apprehending him on a felony arrest warrant for robbery. Once inside, the officers fanned out through the first and second floors. One of the officers, Corporal James Rozar, went to the basement door to "freeze" it so no one could come up and surprise the officers as they searched the home for Buie. With his revolver drawn, Corporal Buie shouted twice should into the basement, ordering anyone present therein to come out. Eventually, Buie emerged from the basement. A detective then entered the basement to ensure that no other persons were present. While there, he noticed a red running suit lying in plain view on top of a stack of clothing. Recognizing the running suit as similar in description to the clothing worn by one of the robbers, the detective seized it.

Buie moved to suppress the running suit, arguing that its seizure was the product of an unlawful police entry into his basement. The state courts denied suppression, and the United States Supreme Court affirmed. Characterizing the issue as "what level of justification the Fourth Amendment required before [the detective] could legally enter the basement to see if someone was there," Buie, 494 U.S. at 331, the Court began its analysis by noting that "the Fourth Amendment bars only unreasonable searches and seizures" and that, in determining reasonableness, the proper inquiry involves a balancing of "the intrusion on the individual's Fourth Amendment interests against its promotion of legitimate

governmental interests." Id. Finding that the police officers had a compelling interest "in taking steps to to assure themselves that the house in which a suspect is being, or has just been, arrested is not harboring other persons who are dangerous and who could unexpectedly launch an attack," id. at 333, the Court held that a warrant was not required to enter the basement and

> as an incident to the arrest the officers could, as a precautionary matter and without probable cause or reasonable suspicion, look in closets and other places immediately adjoining the place of arrest from which an attack could immediately be launched. Beyond that ... there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.

Id. at 334. In Pennsylvania, reasonable concern about the presence of explosives in an arrestee's home has been held to justify a protective sweep. Commonwealth v. Henkel, 306 Pa.Super. 346, 452 A.2d 759 (Pa.Super. 1982).

The present facts raise the exact concerns that underpin Buie's protective sweep doctrine. Deputy Albright made articulable observations creating the reasonable inference that danger might be present within Mr. McKown's residence. That danger admittedly did not consist of potential human assailants, but it was no less real. Indeed, the first observation made by Deputy Albright-- Mr. McKown's sign stating that he "did not consent to this search"-- immediately warned him that Mr. McKown had anticipated and planned for the possible entry of law enforcement personnel into his residence. This, coupled with Deputy Albright's knowledge of explosive devices and his observation of bomb-making materials immediately inside the door to Mr. McKown's trailer, created the troubling inference that more severe measures might have been awaiting the deputies. Clearly, the deputy sheriffs

were justified in contacting a specialist able to perform a protective sweep for explosives to ensure that they could safely execute the order to seize the firearms.

While a protective sweep has been traditionally conceived of as "quick and limited," Buie, 494 U.S. at 327, the peculiar nature of the potential danger confronting the deputies precluded both. It was clear upon Deputy Albright's cursory inspection of the trailer that Mr. McKown might well have been a person of considerable technological proficiency and, as Officer White explained, explosive devices created on an improvised basis-- using readily-available electronic components, etc.-- can be as small as the human thumb. Under these circumstances, a protective sweep was, necessarily, more comprehensive and deliberate than a mere check for armed or otherwise dangerous persons at the scene of an arrest.

3. ***The seizure of the firearms was constitutionally reasonable because the deputies were exercising a ministerial, as opposed to an investigative, function.***

The Pennsylvania Supreme Court has, over the past sixteen years, decided a number of cases dealing with the law enforcement powers of the office of the sheriff. See Commonwealth v. Dobbins, 594 Pa. 71, 934 A.2d 1170 (Pa. 2007); Kopko v. Miller, 586 Pa. 170, 892 A.2d 766 (2006); Commonwealth v. Lockridge, 570 Pa. 510, 810A.2d 1191 (Pa. 2002); Commonwealth v. Kline, 559 Pa. 646, 741 A.2d 1281 (Pa. 1999); Commonwealth v. Leet, 537 Pa. 89, 641 A.2d 299 (1994). In Leet, the Court held that deputy sheriffs have authority to make warrantless arrests for Motor Vehicle Code violations committed in their presence. Leet, supra, 641 A.2d at 303. In Kline, the Court affirmed the authority of deputy sheriffs to enforce the Motor Vehicle code even where they did not have training identical to that of municipal police officers. Kline, supra, 741 A.2d at 1284. In Lockridge, the Court extended Leet's grant of Motor Vehicle Code enforcement power to the filing of a citation for

a summary Motor Vehicle Code violation that did not occur in the deputy sheriff's presence. Lockridge, supra, 810 A.2d at 1196. Leet, Kline, and Lockridge all were predicated in large measure on the historic, common law powers of the sheriff. See Kopko, supra, 934 A.2d at 774.

By contrast, Kopko v. Miller and Commonwealth v. Dobbins made clear that deputy sheriffs have limited investigative law enforcement powers. In Kopko, the Court held that sheriffs "are not 'investigative or law enforcement officers' pursuant to the definitions contained in the Wiretapping Act." Kopko, supra, 892 A.2d at 770. Similarly, in Dobbins, the Supreme Court determined that "absent specific statutory authorization, sheriffs lack authority to conduct independent investigations under the Controlled Substances Act, including the seeking of search warrants where no breach of the peace or felony has occurred in their presence." Dobbins, supra, 934 A.2d at 1181.

According to our Supreme Court, therefore, the authority of a sheriff is strongest where he acts in conformity with his historic, common law role. Conversely, it is more questionable where his conduct is more in the nature of modern investigative police work, "the often competitive enterprise of ferreting out crime." Johnson v. United States, 333 U.S. 10, 14 (1948). In dispatching his deputies to seize Hobson McKown's firearms, the sheriff of Centre County was exercising historic, "essentially ministerial," Dobbins, 934 A.2d at 1178, powers; no investigative function was being performed. That is, the sheriff acted well-within an ancient grant of power, where his authority to act was most legitimate.

"Searches for evidence of crime present situations demanding the greatest, not the least, restraint upon the Government's intrusion into privacy; although its protection is not limited to them, it was at these searches which the Fourth Amendment was primarily

directed." Abel v. United States, 362 U.S. 217, 237 (1960). Here, the deputy sheriffs, exercising their strong, traditional grant of authority to enforce court orders, were operating in a non-investigative domain, one of relaxed Fourth Amendment concern under Abel. Given this dynamic, the actions of the deputies in entering Hobson McKown's trailer to seize his firearms were clearly within constitutionally appropriate boundaries.

B. ***Appellant consented to the entry into his residence.***

The court below denied suppression on the basis that Mr. McKown had "consented to a search of his residence for firearms." (Opinion and Order, 4/28/09, at 8.) Voluntary consent to a search is an exception to the warrant requirement, and "the voluntariness of consent is a question of fact that is determined by looking at the totality of the circumstances." Commonwealth v. Edwards, 735 A.2d 723, 725 (Pa.Super. 1999); see Commonwealth v. Williams, 547 Pa. 577, 692 A.2d 1031 (Pa. 1997) (warrantless search of parolee's residence, pursuant to signed parole conditions, deemed reasonable under Fourth Amendment).

"[I]t is the exclusive province of the suppression court to determine the credibility of witnesses and, if the factual findings are supported by the record, [reversal is appropriate only if] the suppression court committed an error of law or abuse of discretion." Commonwealth v. Barton, 456 Pa.Super. 290, 294, 690 A.2d 293, 296 (Pa.Super. 1997). There is ample support in the record for the suppression court's conclusion the Mr. McKown consented to the seizure of his firearms and the associated entry into his home. The bail condition prohibiting Mr. McKown from possessing firearms was imposed in open court with Mr. McKown present; his attorney noted that Mr. McKown was "well aware at this point with the court's ruling, he cannot carry a concealed weapon, if he does that's an

additional violation, he'll go right to jail, that violates his bail and he does not want to go there." (N.T. 9/10/08 at 61.) Although Mr. McKown attempted to persuade the sheriff to allow him to relinquish his firearms voluntarily, he eventually "agreed to go with [the deputies] ... to his residence to retrieve the firearms." (R. 38.) Once there, he told them where the key could be found. (R. 51.) The suppression court did not abuse its discretion in finding that a preponderance of evidence proved that Mr. McKown consented to the initial entry by the deputy sheriffs. And, given the validity of that initial entry, the deputy sheriffs were entitled to have a protective sweep for explosives done to ensure they could safely seize Mr. McKown's firearms. See Part I(A)(2) supra.

C. *The search warrant was not improperly based on observations made by police other than the affiant.*

Mr. McKown argues that the search warrant was deficient because its affiant had failed to "provide the issuing authority with any basis of knowledge for [Officer] White's identification of a substance as being marijuana." Appellant Brief at 25. Here, as in Commonwealth v. Musi, 486 Pa. 102, 404 A.2d 378 (Pa. 1979), this Court is essentially being asked to "find that police officials [cannot] rely upon information relayed to them by other members of the department in the performance of their duties." Id., 404 A.2d at 113.

"The task of the issuing magistrate is simply to make a practical, common sense decision whether, given all of the circumstances set forth in the affidavit before him... there is a fair probability that contraband or evidence of crime will be found in a particular place." Commonwealth v. Weidenmoyer, 518 Pa. 2, 8, 539 A.2d 1291, 1294 (1988). There was ample information recited in the warrant application for a magistrate to conclude that such a fair probability existed in this case: Mr. McKown "became evasive when the Deputies wanted to access his residence to seize the weapons, [and] [o]nce inside the residence Deputy

Albright observed what he recognized as possible components to manufacture an explosive device." When Officer White, a police officer with specialized training in explosives, examined the residence for booby traps and IEDs, "he observed what he recognized as a baggie of marijuana and a woven bag containing a glass blown smoking device." (R. 26.)

II. ***Appellant has waived his first issue presented on appeal, whether the common pleas court erred in finding that the magisterial district judge had jurisdiction to modify his bail.***

Mr. McKown argues that Magisterial District Judge Dutchcot was without "jurisdiction" to modify the terms of his bail at his September 10, 2008, preliminary hearing and, alternatively, that a bail condition to surrender firearms is unlawful. As the trial court noted, "this issue was never raised in any motions." Opinion and Order, 11/5/09, at 5. Rather, Mr. McKown's attorney stated at the suppression hearing that he would be arguing "that Judge Dutchcot didn't actually even have jurisdiction to issue [the bail] order." (R. 90.) In the brief submitted to the suppression court, Mr. McKown did argue that "the defendant has a constitutional right to possess firearms [and] [t]here must be limits to a Magisterial District Judge imposing conditions of bail that are not related to ensuring his appearance to court." (R. 112.) The trial court found that this argument was "never fully developed at any stage of the litigation" and recommended that this Court consider the issue waived. Opinion and Order, 11/5/09, at 6.

"Issues not raised in the lower court are waived and cannot be raised for the first time on appeal." Pa.R.A.P. 302 (a). This is not a case where the suppression court cut counsel off, thereby preventing him from fully developing his argument. See Commonwealth v. Dickson, 591 Pa. 364, 372, 918 A.2d 95, 100 (Pa. 2007). "One of the main purposes of the waiver doctrine is to insure that the appellate court is provided with the benefit of the trial

court's reasoning." Commonwealth v. Metz, 534 Pa. 341, 347, 633 A.2 125, 127 n.2 (Pa. 1993). Since the issue was not expressly presented to the suppression court, and since the suppression court did not consider it in whatever form it was, arguably, presented, the issue should be deemed waived in this appeal.

Nonetheless, the bail condition imposed by Judge Dutchcot was clearly appropriate. The Pennsylvania Constitution contemplates "the safety of any person and the community" as a valid purpose of bail. Pa.Const.Art. I, §14. Moreover, the Rules of Criminal Procedure require as a condition of any release on bail that the defendant "refrain from criminal activity." Pa.R.Crim.P. 526(A)(5). Additional conditions may be imposed "to ensure the defendant's appearance and compliance." Pa.R.Crim.P. 526(B). This is precisely what Judge Dutchcot did; recognizing Mr. McKown's apparent "obsession with carrying the weapon" (N.T. 9/10/08 at 60), and having concluded that Mr. McKown did not have a valid concealed weapons permit, Judge Dutchcot ordered that Mr. McKown refrain from possessing firearms altogether in order to facilitate his compliance with the mandatory bail condition that he refrain from criminal activity.

III. *The evidence was sufficient to support Appellant's conviction of possessing drug paraphernalia.*

"This Court's standard for reviewing a sufficiency claim is whether, viewing all the evidence and reasonable inferences therefrom in the light most favorable to the Commonwealth, the factfinder reasonably could have determined all the elements of the crime were established beyond a reasonable doubt." Commonwealth v. Pitner, 928 A.2d 1104, 1108 (Pa.Super. 2007). This Court "do[es] not weigh the evidence." Id.

"[C]onstructive possession may be established by the totality of the circumstances." Commonwealth v. Mudrick, 510 Pa. 305, 308, 507 A.2d 1212, 1213 (Pa. 1986). In this case,

those circumstances included evidence that the marijuana pipe was found in the kitchen of an extremely small residence-- one-half of a mobile home-- inhabited by Mr. McKown. (R. 152-153; N.T. 8/20/09 at 10-11.) The key to residence was in Mr. McKown's pocket (R. 154, 167) and a vehicle registered to Mr. McKown was in the driveway (R. 26). Mr. McKown clearly did not want the deputies in his residence (R. 163) and grew increasingly "nervous and pale" as he approached his home with them (R. 154). Two police officers testified that the pipe was of the type used to smell marijuana (R. 184, 197-198), and expert testimony established that the pipe had marijuana residue in it (R. 209).

CONCLUSION

The judgment of the Court of Common Pleas should be AFFIRMED.

Respectfully submitted:

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