

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNIE ALEXANDER WILLIAMS,

Defendant.

No. 3:07cr0614-JAJ

ORDER

This matter comes before the court pursuant to Kennie Alexander Williams's March 19, 2008 motion for a new trial (Dkt. No. 78). The Government filed a response on March 28, 2008 (Dkt. No. 79) and Williams filed a reply on March 30, 2008 (Dkt. No. 80). For the reasons set forth below, the Court denies Defendant's Motion for New Trial.

A. Factual and Procedural Background

On August 29, 2007, cooperating defendant Larry Jones arranged to meet with Williams in the Coralville Wal-Mart parking lot to engage in a drug deal. According to Jones, he got into Williams's car and showed him the drugs. Co-defendant Adrian McCraney then got in the back seat and Williams told Jones that McCraney was his cousin. McCraney pulled a gun and held it to Jones's chest while Williams robbed Jones of seven plastic baggies of cocaine and \$300, as well as various personal items. After the robbery, Jones called 911 from a nearby gas-station pay phone, reporting the robbery and giving a description of Williams's car. Jones did not, however, tell the police that he had met Williams to do a drug deal.

Shortly thereafter, police spotted Williams's car, which led to a high-speed chase on interstate highway I-380. During the chase, items were thrown from the passenger-side window. The chase ended with police ramming the back of Williams's car, causing it to go into the ditch. Williams and McCraney were arrested and police searched the car,

retrieving one plastic baggie of cocaine from the floor of the front seat and a bullet and magazine from the backseat. After searching the area where items were earlier observed to have been thrown, police found a Motorola-brand cellular phone box containing six baggies of cocaine. Police also found a semiautomatic pistol and a towel in the same area. A Division of Criminal Investigations chemist confirmed the baggies contained a mixture containing cocaine. (See Govt. Ex. 3).

On November 15, 2007, a grand jury returned a superseding indictment against Williams. Count One charged possession of cocaine with intent to distribute; Count Two charged Hobbs Act Robbery; and Count Three charged possession of a firearm in furtherance of drug trafficking. Following a three-day jury trial in March 2008, the jury convicted Williams of all three counts. Williams now challenges his conviction due to insufficiency of the evidence.

B. Standard of Review

The Court may grant a new trial if the interest of justice so requires. Fed. R. Crim. P. 33. The Rule 33 remedy should be used sparingly and with caution. United States v. Dodd, 391 F.3d 930, 934 (8th Cir. 2004). The Court may exercise its broad discretion in considering the motion. United States v. Cannon, 88 F.3d 1495, 1502 (8th Cir. 1996). Unlike a motion for a judgment of acquittal, the Court need not examine the evidence in the light most favorable to the government. United States v. Gascon-Guerrero, 382 F. Supp. 2d 1097, 1102 (S.D. Iowa 2005). Motions for new trials based on the weight of evidence are generally discouraged, and the authority to grant such a motion should be exercised “sparingly” and “with caution.” United States v. Lincoln, 630 F.2d 1313, 1319 (8th Cir. 1980). A new trial is appropriate where the court “finds that the verdict is contrary to the weight of the evidence” and where “the court believes a miscarriage of

justice may have occurred.” United States v. Smart, 501 F.3d 862, 865 (8th Cir. 2007) (internal quotations omitted).

C. Possession With Intent to Distribute

Williams first argues that there was insufficient evidence to support a conviction for possession with intent to distribute cocaine. Specifically, he contends that the testimony of government witness Larry Jones was unreliable because of his motive to “falsely implicate” Williams. That motive, Williams asserts, is Jones’s agreement to cooperate with the government by testifying against Williams and others. (See Govt. Ex. 38, Larry Jones Plea Agreement).

Jones made four statements to the police regarding the incidents on the night of August 29, all of which were inconsistent to some extent. While testifying at trial, Jones admitted that he initially lied to the police. During his initial call to 911, he did not mention the drug deal in order to avoid prosecution. During his first interview at the police station, he again lied, explaining, “I was trying to get the focus off myself.” As more of the truth began to come out, he identified Sammy Innarito as the real dealer stating that he was just delivering drugs for Innarito. He explained, “I wasn’t wanting law enforcement officers to know that I was involved in selling.” On the witness stand, Jones confessed that he was doing more than making deliveries, he was also buying and selling.

Jones was forthright about lying to the police and grand jury. He pleaded guilty to a serious drug felony. He was thoroughly probed on cross-examination regarding his falsifications. He was also thoroughly probed about his motives for testifying.¹ It was not

¹ Williams’s attorney asked Jones the following questions on cross-examination:

Q. [W]hat you’re trying to do here is get yourself off, isn’t it?

A. No.

Q. At least get a reduced sentence, correct?

(continued...)

against the weight of the evidence for the jury to believe Jones's testimony and his explanations for lying earlier. Further, only in the egregious case will a district court grant a new trial because of a witness's incredibility. "The test for rejecting evidence as incredible is extraordinarily stringent." United States v. Hakim, 491 F.3d 843, 845 (8th Cir. 2007). That a witness could gain from lying does not necessarily defeat his credibility. United States v. Crenshaw, 359 F.3d 977, 988 (8th Cir. 2004).

Williams also argues that outside of Jones's testimony, there is very little evidence to support the possession with intent to distribute conviction. This is untrue. First, police found cocaine in the car and at the location where it was observed to have been thrown. Second, Williams's phone records indicate that he called Jones's phone number twenty-one times between 7:34 pm and 11:07 pm on August 29, 2007, the day of the robbery. (See Govt. Ex. 7). The quantity of drugs alone supports an inference of an intent to distribute.

¹(...continued)

A. No, actually I've already pleaded guilty to the crime that I have committed.

Q. But you haven't been sentenced yet, have you?

A. No, I have not.

Q. And that's the purpose of your Plea Agreement, isn't it, to try to get a reduced sentence?

A. And to cooperate with the government.

Q. But the purpose of the cooperation is to get a reduced sentence, isn't it?

A. That is my hope.

Q. And you know that in that Plea Agreement your hope only comes true if the government makes a Motion to reduce your sentence, isn't that right?

A. That is correct.

Q. And so you know you have to satisfy the prosecutor's office in order to get that Motion, don't you?

A. That is correct.

Together with Jones's testimony, a jury could reasonably find that Williams possessed the drugs with an intent to distribute.

C. Hobbs Act Robbery

Williams next argues that it was against the weight of the evidence for the jury to find the robbery had an effect on interstate commerce. Without an effect on interstate commerce, a conviction under the Hobbs Act cannot stand.

The Hobbs Act criminalizes interference with commerce through robbery, extortion, or violence. 18 U.S.C. § 1951. While Williams correctly states that an “overwhelming majority of cases of Hobbs Act Robbery involve a victim that is a business engaged in interstate commerce,” (see, e.g., United States v. Dobbs, 449 F.3d 904 (8th Cir. 2006); United States v. Vong, 171 F.3d 648, 654 (8th Cir. 1999); United States v. Williams, 308 F.3d 833, 838-40 (8th Cir. 2002)), the Eighth Circuit considers drug dealing as a business engaged in interstate commerce. See United States v. Cox, 942 F.2d 1282, 1286 (8th Cir. 1999) (“Based on the evidence at trial, we conclude that the Government sufficiently proved the interstate character of Perez’s drug trade.”); see also United States v. Parkes, 497 F.3d 220, 231 (2d Cir. 2007) (“[A] reasonable juror, hearing this evidence, could have found that the attempted robbery of Medina's marijuana or proceeds would have affected interstate commerce ‘in any way or degree.’”); United States v. Taylor, 480 F.3d 1025, 1027 (11th Cir. 2007) (“[A] sufficient interstate nexus” exists where defendants steal cocaine from cocaine traffickers); United States v. Ostrander, 411 F.3d 684, 692 (6th Cir. 2005) (upholding a Hobbs Act conviction based on evidence that the stolen “cocaine and marijuana . . . sold originated in Latim [sic] America, and thus had to get to Michigan through interstate commerce.”); United States v. Marrero, 299 F.3d 653, 656 (7th Cir. 2002) (drug dealers’ business was commercial “because it bought its merchandise (cocaine) from out of state”); United States v. Bailey, 227 F.3d 792, 798 (7th Cir. 2000)

("[R]obbery of cocaine dealers generally has an effect on interstate commerce."); United States v. Orozco, 98 F.3d 105, 107 (3d Cir. 1996) ("Drug trafficking is an inherently commercial activity.").

Williams argues there is no proof that the drugs traveled in interstate commerce. At trial, however, Drug Enforcement Administration ("DEA") agent Jon Johnson testified that cocaine is not grown in the United States. He stated that he was aware of only one instance of coca plants being grown in the United States under controlled circumstances. See United States v. Farmer, 73 F.3d 836, 843 (1996) (affirming a Hobbs Act Robbery conviction because seventy percent of the robbed store's products came from outside of Iowa). Larry Jones also stated that the cocaine was coming from "down by the Texas-Mexico border." In order to sustain a Hobbs Act conviction, the government need only show a *de minimis* effect on interstate commerce. Dobbs, 449 F.3d at 912. Here, Williams and McCraney stole \$300 and seven ounces of cocaine, worth over \$7,000.² Based on the quantity of drugs and money, as well as the interstate and international nature of the cocaine trade, it was reasonable for the jury to conclude that the robbery had at least a *de minimis* effect on interstate commerce.

D. Possession of a Weapon in Furtherance of a Drug Trafficking Crime

Williams next argues that the evidence was insufficient to show that he possessed the gun in furtherance of a drug trafficking crime because the gun was thrown out of the passenger-side window, where McCraney was sitting. He argues that there was no evidence to show that "Mr. Williams knew that Mr. McCraney had the gun or that Mr. Williams had any access to it or any power or intention to exercise dominion or control over the gun." (Mtn. for New Trial at 9).

² Jones testified that Williams was to pay him \$4,200 for four ounces of cocaine. Thus, the value of seven ounces of cocaine could be approximated at \$7,350.

Possession of a weapon can be sole or joint, actual or constructive. See United States v. Walker, 393 F.3d 842, 846-47 (8th Cir. 2005). The Court appropriately instructed the jury that if “two or more persons share actual or constructive possession of a thing, possession is joint.” (Final Jury Instructions, Dkt. No. 65). While there is no evidence that Williams solely or actually possessed the weapon, there was strong evidence that McCraney actually possessed the weapon and that Williams and McCraney were acting in concert. Thus, they jointly possessed the weapon. This evidence includes (1) testimony from Larry Jones stating that McCraney pulled a gun on him while in Williams’s car and while Williams robbed him; (2) the gun was found next to the drugs and money Williams had stolen from Jones; (3) a bullet was found in Williams’s car; and (4) Williams was not carrying enough money to buy the cocaine from Jones. Based on this testimony, a reasonable jury could conclude that Williams and McCraney jointly possessed the gun.

Upon the foregoing,

IT IS ORDERED

That the defendant's Motion for New Trial (Dkt. No. 78) is denied.

DATED this 1st day of May, 2008.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA