

distribute heroin, in violation of 21 U.S.C. § 841(a)(1). Count four charged that the § 841(a)(1) violation set forth in count three took place within 1000 feet of a public school, in violation of 21 U.S.C. § 860.

Defendant's trial began on November 3, 1997. On November 5, 1997, the jury returned its verdict, finding Defendant guilty on all four counts.

In his Motion for Judgment of Acquittal, Defendant makes the following arguments: (1) the Court erred by allowing the Government to impeach Defendant with his prior conviction for knowingly possessing a controlled substance with intent to deliver; (2) the Court erred in limiting the defense's ability to explain that his witness Migdalia Morales "was going to the bank for food stamps and the line on such days is so substantially long that it would make sense that she would in fact ask the defendant to wait for a phone call and pick said witness up at a later point" (Def.'s Mot. at ¶ 3); and (3) the jury's verdict was against the weight of the evidence because the testimony of the Government's witness, Officer Colon, was incredulous. The Court will address each of these arguments in turn.

II. LEGAL STANDARD

In deciding a motion for a judgment of acquittal under Fed. R. Crim. P. 29, "[t]he verdict of a jury must be sustained

if there is substantial evidence, taking the view most favorable to the government, to support it." Hamling v. United States, 418 U.S. 87, 124, 94 S. Ct. 2887, 2911 (1974) (citation omitted) (internal quotation omitted). The court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." United States v. Coleman, 862 F.2d 455, 460-61 (3d Cir. 1988) (internal quotation omitted), cert. denied, 490 U.S. 1070, 109 S. Ct. 2074 (1989) (citing Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979)).

For a judgment of acquittal to be granted, the court must decide, as a matter of law, that the evidence presented at trial was insufficient to support the conviction. United States v. Cohen, 455 F. Supp. 843, 852 & n.7 (E.D. Pa. 1978), aff'd, 594 F.2d 855 (3d. Cir.), cert. denied, 441 U.S. 947, 99 S. Ct. 2169 (1979). "In reviewing the testimony for determining a Rule 29 motion, questions of the weight of the evidence or of the credibility of the witnesses are foreclosed by the jury's verdict." Id. at 852 (citation omitted).

III. DISCUSSION

A. Introduction of Evidence of Defendant's Prior Conviction

Before Defendant's trial began, the Government sought the

introduction of Defendant's prior 1993 conviction, pursuant to Rule 404(b) of the Federal Rules of Evidence. The Court held a hearing on the Government's Motion on November 3, 1997 and denied the Government's Motion.

Defendant testified on his own behalf at trial. During the course of his testimony, Defendant was describing his wife's drug addiction and made the following statement: "I don't have any habits or vices." The Government moved for the introduction of evidence of Defendant's prior 1993 conviction for possession with intent to distribute cocaine on the basis of Defendant's testimony. The Court allowed the Government to introduce evidence of Defendant's 1993 conviction based on Rule 609(a)(1) of the Federal Rules of Evidence. The Court based its ruling on the fact that the Defendant had opened the door by testifying as to his character by stating that he had "no habit" and "no vices.". In order to limit the prejudice to the Defendant, the Court did not allow the Government to introduce any evidence concerning the underlying facts of Defendant's 1993 conviction (e.g., that Defendant was arrested only a few blocks away from the street corner where he was arrested on March 5, 1996 for the instant offenses). The Government was merely allowed to read into the record a stipulation that the Defendant had been convicted in 1993 for possession of a controlled substance with the intent to distribute.

Under these circumstances, the Court did not commit error in allowing the introduction of Defendant's 1993 conviction pursuant to Rule 609(a)(1). Even if the Court were to put to one side the evidence relating to Defendant's 1993 conviction, the Court finds that there was substantial evidence to support the jury's verdict.

B. The Testimony of Magdalia Morales

Before Defendant's trial began on November 3, 1997, the Court and counsel discussed a number of issues concerning the mechanics of the trial in chambers and off the record. It is the Court's recollection that during this discussion, counsel for the defense raised an issue concerning the testimony of Magdalia Morales. In particular, defense counsel was concerned that his client may be prejudiced if Ms. Morales testified that her trip to the bank was related to the fact that she received public assistance and that lines at the bank are very long on days when public assistance checks are issued. Defense counsel and counsel for the Government reached an agreement not to solicit testimony from Ms. Morales concerning the nature of her visit to the bank. The Court never made any ruling limiting the testimony of Ms. Morales. If counsel for the defense believed that the Court had made such a ruling, it was incumbent upon defense counsel to place such an objection on the record. Counsel failed to do so.

For these reasons, the Court will deny Defendant's Motion on this ground.

C. Officer Colon's Testimony

Officer Colon was one of the officers who arrested Defendant on March 5, 1997 for the instant offenses. Defendant argues that Officer Colon's testimony was "incredulous" and for that reason the jury's verdict was against the weight of the evidence.

In this case, Officer Colon testified to the following: on March 5, 1997 he observed the Defendant talking with a white male near the intersection of Mutter Street and Indiana Avenue; the white male handed the Defendant U.S. currency; the Defendant then retrieved an object from a hole in the wall of a building on Mutter Street, removed objects from a pill container, and handed white packets to the white male; when Officer Colon and his partner Officer Jonas left their vehicle, the white male fled and was not apprehended; Defendant was apprehended; Officer Jonas retrieved two pill containers from the hole in the wall; one of the pill containers contained packets of white powder alleged to be heroin; the other container contained packets of white powder alleged to be cocaine; Defendant was arrested and \$145 was found in his pockets.

Defendant stipulated that the analysis of the substances in the pill containers consisted of 1.448 grams of cocaine and 1.869

grams of heroin.

Agent Cohen testified that the location of the drug transaction involving the Defendant took place within 1000 feet of the Isaac A. Sheppard Public School.

Defendant testified that he did not take anything out of a hole in the wall located on North Mutter Street and did not engage in a drug transaction near the corner of Mutter and Indiana on March 5, 1997. He testified that he was near the corner of Mutter and Indiana because he was waiting for a phone call from Magdalia Morales.

The Court finds that the evidence, when viewed in the light most favorable to the Government, was substantial and was clearly sufficient to support the jury's verdict. In reviewing the testimony in connection with a motion for judgment of acquittal, it is improper for the Court to determine the credibility of the witnesses or the weight of the evidence. That is exactly what the Defendant asks the Court to do. Because the evidence supports Defendant's conviction for possession of cocaine and heroin with intent to distribute within 1000 feet of a public school, the Court will deny Defendant's Motion on this ground as well.

An appropriate order follows.