

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

CHARLES JOHNSON

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CRIMINAL NO. 01-638

MEMORANDUM

BUCKWALTER, J.

September 26, 2002

Defendant's motion for judgment of acquittal, arrest of judgment or for new trial will be denied for the following reasons.

First, the evidence viewed in a light most favorable to the government supports the verdict of guilty of possession of crack with intent to deliver, possession of a firearm in furtherance of a drug trafficking crime, and possession by a felon of a firearm. The accurate recitation of the evidence as set forth in pages 1, 2 and 3 of the government's brief overwhelmingly supports the jury verdict.

Next, the motion to suppress was correctly denied after an evidentiary hearing held by the court. Based upon that hearing, I found that the defendant was on state parole and that his parole officer, David Smith, conducted a search of his room without a warrant and found a 9mm Smith and Wesson, packets of crack cocaine in a hole which appeared to be recently cut in the floor, a bullet proof vest, and other items.

I also found that Agent Smith had reasonable suspicion before conducting the search that defendant may have a firearm and cocaine. This was based upon information from a confidential informant, partially supported by the fact that the Reading Police Department had conducted a recent search of defendant's prior residence and found narcotics and weapons in a common area.

Next, the court's instruction in response to a question relative to the interstate nexus was that the government need only prove that the firearm possessed by defendant traveled at some time in interstate commerce. This instruction was approved in Scarborough v. United States, 431 U.S. 563 (1977) 575 . . . "we see no indication that Congress intended to require any more than the minimal nexus that the firearm have been, at some time, in interstate commerce."

Contrary to defendant's assertion, the court's taking judicial notice that the defendant's convictions were serious drug offenses or violent felonies was a matter of law within the province of the court.

The defendant was not given the name of the confidential informant upon whose tip the parole agent's search of defendant's room was made. In general, the government's privilege to keep secret the identity of a confidential informant is only trumped by a showing that his identity is relevant and helpful to the accused. Here, no such proffer was made. The confidential informant was no part of the case against defendant that was presented before the jury.

The court did not commit error in allowing an expert to testify only as to the packaging and sale of drugs customarily in the Reading area and specifically denying the expert

to testify whether the drugs were possessed with intent to deliver and whether a firearm was possessed in relation to a drug offense. (See order of court dated August 21, 2002 – Docket #21).

Defendant's sixth argument of error is related to the issue involving disclosure of the confidential informant and is without merit.

An appropriate order follows.

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ORDER

AND NOW, this 26th day of September, 2002, upon consideration of Defendant's Motion for Judgment of Acquittal, Arrest of Judgment or for New Trial (Docket No. 40), and the government's response thereto, it is hereby **ORDERED** that said Motion is **DENIED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.