

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY SHIPP,

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 188821

Recorder's Court

LC No. 95-001407-FH

Before: Jansen, P.J., and Reilly and W.C. Buhl,* JJ.

MEMORANDUM.

Defendant appeals as of right from his bench trial conviction for possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), for which he was sentenced to one year of probation. We affirm.

Defendant argues that the prosecution presented insufficient evidence to convict him beyond a reasonable doubt.

To satisfy the requirements of due process, the prosecutor must introduce sufficient evidence that could justify a trier of fact in reaching the conclusion that a defendant is guilty beyond a reasonable doubt. *People v Fisher*, 193 Mich App 284, 287; 483 NW2d 452 (1992). An appellate court reviewing the sufficiency of the evidence in a bench trial must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crimes charged were proven beyond a reasonable doubt. *People v Hunter*, 209 Mich App 280, 282; 530 NW2d 174 (1995). This Court is not permitted to assess the credibility of the witnesses in making its determination. *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993).

To convict a defendant of possessing less than twenty-five grams of cocaine where, as here, the defendant has presented no evidence that he or she was authorized to possess the controlled substance,

* Circuit judge, sitting on the Court of Appeals by assignment.

the prosecution must prove beyond a reasonable doubt that the defendant knowingly possessed a substance containing cocaine and that the substance weighed less than twenty-five grams. See CJI2d.12.5. The prosecution presented sufficient evidence to prove beyond a reasonable doubt that defendant knowingly possessed less than twenty-five grams of cocaine.

Two police officers testified that they saw defendant dump a substance out of the automobile in which he was riding. The officers recovered the substance, a pill bottle, a pill cap, and some powder from inside the automobile. The powdery substance was placed in the pill bottle, taken to the police station, and analyzed. Upon analysis, it was determined that the substance, which weighed .337 grams before testing, contained cocaine. It can be inferred from the fact that defendant attempted to dump the substance when he saw two police officers that he was aware of its composition. See *People v Delongchamps*, 103 Mich App 151, 158-160; 302 NW2d 626 (1981) (knowledge of the nature of a controlled substance may be inferred from circumstantial evidence). This evidence was sufficient to support defendant's conviction.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ William C. Buhl