

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY DURR,

Defendant-Appellant.

UNPUBLISHED
October 10, 1997

No. 195489
Recorder's Court
LC No. 95-009406

Before: Bandstra, P.J., and Murphy and Young, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant was sentenced to two to twenty years in prison. We affirm.

Defendant argues that insufficient evidence was presented at trial to sustain his conviction for possession with intent to deliver less than fifty grams of cocaine. Specifically, defendant contends there was insufficient evidence to establish an intent to deliver. We disagree. When reviewing a claim of insufficient evidence following a bench trial, this Court 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 crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985).

[T]o support a conviction for possession with intent to deliver less than fifty grams of cocaine, it is necessary for the prosecutor to prove four elements: (1) that the recovered substance is cocaine, (2) that the cocaine is in a mixture weighing less than fifty grams, (3) that defendant was not authorized to possess the substance, and (4) that defendant knowingly possessed the cocaine with the intent to deliver. [*People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748, amended 441 Mich 1201; 489 NW2d 748 (1992), citing *People v Lewis*, 178 Mich App 464, 468; 444 NW2d 194 (1989).]

“[I]ntent to deliver may be proven by circumstantial evidence and also may be inferred from the amount of controlled substance possessed.” *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991).

Viewing the evidence in a light most favorable to the prosecution, we conclude that the evidence was sufficient to convict defendant of possession with intent to deliver less than fifty grams of cocaine. Defendant's possession of ten rocks of crack cocaine, the amount of cash found on his person, his behavior while under surveillance, and the fact that he possessed no use paraphernalia constitutes sufficient evidence from which to infer that defendant possessed the cocaine with the intent to deliver it. See *Wolfe, supra* at 524-525; *Ray, supra* at 708-709. A rational trier of fact could have concluded that the essential elements of the crime had been proven beyond a reasonable doubt.

Affirmed.

/s/ Richard A. Bandstra

/s/ William B. Murphy

/s/ Robert P. Young, Jr.