

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRYL DANA STALEY,

Defendant-Appellant.

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UNPUBLISHED

December 3, 1999

No. 198515

Recorder's Court

LC No. 95-010615

Before: Jansen, P.J., and Hoekstra and J. R. Cooper\*, JJ.

MEMORANDUM.

Defendant appeals by right his conviction of two counts of attempted possession with intent to deliver less than 50 grams of heroin and cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant asserts that his conviction is inconsistent with the trial court's simultaneous acquittal of his codefendant, Sandra Woods. He maintains that without the evidence of Woods' delivery of the controlled substances, there is insufficient evidence to support his conviction. We disagree.

While juries are free to reach inconsistent verdicts, a judge sitting in a bench trial does not usually share that freedom. *People v Burgess*, 419 Mich 305, 310-311; 353 NW2d 444 (1984). However, in this matter the difference between defendant's conviction and codefendant's acquittal is apparent in the court's findings. Where none of the customers were apprehended, and no drugs were seized from codefendant, the trial court could find that there was insufficient evidence to find codefendant guilty beyond a reasonable doubt because of the lack of evidence that she possessed drugs. In contrast, when defendant was approached by police, he attempted to flee, and discarded a bag containing 17 zip lock bags containing heroin, cocaine, and marijuana. There was sufficient evidence to establish defendant's guilt where he possessed the drugs, and had the intent to make a delivery. *People v Wolfe*, 440 Mich 508, 516; 489 NW2d 748 (1992); *People v Lewis*, 178 Mich

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

App 464, 468; 444 NW2d 194 (1989). Where the evidence differed as to possession, codefendant's acquittal was not inconsistent with defendant's conviction.

Affirmed.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Jessica R. Cooper