

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS JAMES MARTIN,

Defendant-Appellant.

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UNPUBLISHED  
February 26, 2002

No. 227958  
Oakland Circuit Court  
LC No. 99-167607-FH

Before: Smolenski, P.J., and Doctoroff and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right from a jury conviction of possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv), for which he was sentenced to life probation with the first year to be spent in jail. We affirm but remand for correction of the judgment of sentence.

Defendant's sole claim on appeal is that the verdict was against the great weight of the evidence. Because defendant failed to file a timely motion for new trial below, the issue has not been preserved for appeal. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Because the issue has not been preserved for appeal, review is precluded unless the defendant demonstrates plain error that affected the outcome of the lower court proceedings. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

The elements of the crime charged are: (1) defendant knowingly possessed a controlled substance, (2) defendant intended to deliver the substance to someone else, (3) the substance possessed was heroin, and (4) the substance was in a mixture that weighed less than fifty grams. *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998). Actual delivery of the controlled substance is not necessary to prove intent to deliver. *People v Wolfe*, 440 Mich 508, 524; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Intent to deliver may be inferred from all of the facts and circumstances, including the amount of narcotics in a defendant's possession and the way in which they are packaged, and minimal circumstantial evidence is sufficient. *Id.*; *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

The evidence showed that defendant was standing next to a man in an area known for narcotics trafficking. He was holding a small pill bottle containing seven individual packets of heroin. He did not have any narcotics paraphernalia typically associated with personal consumption. The other man had \$25, which was enough to buy two or three of the packets.

When the police approached, defendant discarded the bottle. Such evidence was clearly sufficient to support the verdict and thus it did not result in a miscarriage of justice. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999). Although there were some discrepancies in the testimony, they were not such as to justify setting aside the verdict. *People v Lemmon*, 456 Mich 625, 643-644, 647; 576 NW2d 129 (1998). Accordingly, we find that defendant has failed to establish a right to relief.

Defendant's conviction is affirmed. Because the judgment of sentence mistakenly states that defendant was convicted of possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v), we remand for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Michael R. Smolenski

/s/ Martin M. Doctoroff

/s/ Donald S. Owens