STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

L.E. COLEMAN,

Defendant-Appellant.

UNPUBLISHED
August 20, 2002

No. 232676
Wayne Circuit Court
LC No. 00-007649

Before: White, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Following a bench trial, defendant L.E. Coleman was convicted of two counts of attempted possession with intent to deliver a controlled substance of less than fifty grams, MCL 333.7401(2)(a)(iv).[1] Defendant was sentenced to one to five years for each conviction, with credit for one day served, and defendant now appeals as of right. We affirm.

The prosecution alleged that police observed defendant, a seventy-four-year-old woman, sell a suspected controlled substance to someone on the front porch of the home she owned. Police entered the home and saw defendant's daughter and defendant seated at a table with alleged drug paraphernalia. Defendant then attempted to hide some of the paraphernalia under the table and police arrested her. The alleged controlled substances were tested and found to be heroin and cocaine. The defense contended that defendant's daughter alone was in possession of the controlled substances without defendant's permission, and that defendant told her to remove the drugs from her home. Defendant also denied selling the drugs, arguing that because of her advanced age and medical condition, she could not have walked out on the front porch very easily.

First, defendant argues that the trial court's finding of fact that defendant intended to deliver the drugs was clearly erroneous. See *People v Lakeman*, 135 Mich App 235, 240 n 1; 353 NW2d 493 (1984); *In re Forfeiture of US Currency*, 164 Mich App 171, 179; 416 NW2d 700 (1987). We disagree. The trial court found that a police officer testified that he saw defendant exchange suspected controlled substances for money on her front porch. While defendant denied this, we will not disturb the trier of fact's credibility judgment. *People v Avant*,

[1] See also MCL 750.92 (statute defining attempt).

235 Mich App 499, 506; 597 NW2d 864 (1999). Contrary to defendant's argument, the police need not have arrested the buyer and proved receipt of the controlled substances to establish the intent to deliver element. *People v Wolfe*, 440 Mich 508, 524; 489 NW2d 748, amended 441 Mich 1201 (1992). Furthermore, there is no requirement that officers must testify that the amount or packaging of the drugs is that of drugs commonly offered for sale. See *id*. The law only requires that the intent to deliver be implied by the circumstances in the case, including the amount or packaging of the drugs. Finally, we note that the trial court convicted defendant for *attempted* possession with intent to deliver, which carries a lesser burden of proof than the completed crime. See MCL 750.92. Thus, we are not persuaded that the trial court's factual finding that defendant sold controlled substances was clearly erroneous.

Second, defendant claims that the evidence was insufficient to sustain her conviction. "Defendant has framed the issue as insufficiency of the evidence. However, because this was a bench trial, the issue is more properly whether or not the trial court's factfinding was clearly erroneous. GCR 1963, 517.1." *Lakeman*, *supra* at 240 n 1. However, because defendant invokes her constitutional rights to due process of law, review of this issue is de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). On de novo review of the record, we affirm defendant's convictions for the same reasons stated above.

Affirmed.

/s/ Helene N. White
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell