

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES SYLVESTER REYNOLDS,

Defendant-Appellant.

UNPUBLISHED

July 20, 2004

No. 242771

Wayne Circuit Court

LC No. 01-002894-01

Before: Murphy, P.J., and Griffin and White, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of possession with intent to deliver more than 50 but less than 225 grams of heroin, MCL 333.7401(2)(a)(iii).¹ Defendant was sentenced to three to twenty years in prison for the conviction. We affirm.

Defendant's only issue on appeal is that the evidence presented at trial was insufficient to convict him of possession with intent to deliver heroin. We disagree. In reviewing the sufficiency of the evidence, this Court must view the evidence de novo in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999); *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985)(standard equally applicable in bench trials); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). Circumstantial evidence and reasonable inferences drawn therefrom can constitute satisfactory proof of the elements of a crime. *People v Bulmer*, 256 Mich App 33, 37; 662 NW2d 117 (2003). Minimal circumstantial evidence is sufficient to establish a defendant's state of mind. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

Defendant argues that the evidence was insufficient to prove the knowledge element of possession with intent to deliver heroin. In order to obtain a conviction for possession with intent to deliver between 50 and 225 grams of heroin, the prosecution was required to prove that defendant knowingly possessed a controlled substance, that defendant intended to deliver the

¹ This statutory provision now sets the upward limit at 450 grams. 2002 PA 710.

substance to someone else, that the substance possessed was heroin and defendant knew it was heroin, and that the substance was in a mixture weighing between 50 and 225 grams. See *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998). A person need not have actual physical possession of a controlled substance to be guilty of possessing it. *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Possession may be actual or constructive, and it can exist jointly. *Id.* at 520. Evidence that defendant had the right to exercise control over the narcotics and knew that they were present is sufficient to establish constructive possession. *Id.* Constructive possession will suffice for a conviction of possession with intent to deliver. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995).

Viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to support a finding that defendant possessed the heroin and that he knew that it was heroin. The package of heroin was sent via Airborne Express from West Hollywood, California, to the Mansfield address where defendant resided for thirty years and, when delivered, defendant accepted, signed for the package, and took it into his house without questioning the wrong addressee. Defendant did not tell Officer Brett Michalski, who was disguised as an Airborne employee, that the addressee was unknown, but rather defendant simply said that he would take it. Defendant's acceptance of the package without hesitation arguably provides an inference that defendant knew the presence and character of its content. Standing alone, we question the sufficiency of such evidence to establish knowledge. However, when considered with the evidence that, inside defendant's house, the police found two bindles of heroin and suspected packaging materials for heroin, including plastic bags, measuring spoons, a sifter, and other narcotics paraphernalia, there was sufficient circumstantial evidence to prove that defendant knowingly possessed heroin. Furthermore, in defendant's basement, the police seized a Los Angeles newspaper, which was akin to the newspaper found in the package. As the trier of fact, the trial court was free to make credibility determinations and reject defendant's claim that he did not know the contents of the package, and we shall not disturb credibility assessments on appeal. *Wolfe, supra* at 514-515. Based on the above circumstantial evidence, a rational trier of fact could have inferred that defendant possessed the heroin at issue with knowledge that it was heroin. The fact that the package was found in the possession of another individual is irrelevant because defendant initially had actual possession of the heroin at the time it was delivered to the house and later constructively possessed the heroin where he testified that he did not give permission to the other person to take the package.²

Affirmed.

/s/ William B. Murphy
/s/ Richard Allen Griffin
/s/ Helene N. White

² Defendant makes a secondary argument that the prosecution failed to prove the necessary element of the heroin itself, where the heroin was not introduced nor admitted into evidence. Defendant's argument fails because the record reflects that the parties stipulated to the entry of a laboratory analysis establishing the presence of heroin in the package and its weight.