

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONT ROGER TATUM,

Defendant-Appellant.

UNPUBLISHED

September 21, 2004

No. 248645

Wayne Circuit Court

LC No. 02-011859-01

Before: Whitbeck, C.J., and Sawyer and Saad, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction of furnishing contraband to a prisoner, MCL 800.281(1). He was sentenced to seven months to five years' imprisonment. We affirm.

Defendant's sole argument on appeal is that insufficient evidence was presented at trial to support his conviction. We disagree. Because there are no preservation requirements for a challenge to the sufficiency of the evidence, this Court may review such a challenge even when the issue was not raised before the trial court. *People v Patterson*, 428 Mich 502, 505; 410 NW2d 733 (1987). When reviewing a claim of insufficient evidence, this Court views the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004).

MCL 800.281(1) provides:

Except as provided in Section 2, a person shall not sell, give, or furnish, either directly or indirectly, any alcoholic liquor, prescription drug, poison, or controlled substance to a prisoner who is in or on a correctional facility or dispose of that liquor, drug, poison, or controlled substance in any manner that allows a prisoner or employee of the correctional facility who is in or on a correctional facility access to it.

Thus, in order to convict defendant of the crime of furnishing contraband to a prisoner, the prosecution had to prove that (1) defendant furnished (2) contraband material (3) to a prisoner in or on a correctional facility.¹

Defendant is currently serving a life term at Ryan Correctional Facility for a 1978 second-degree murder conviction. On July 19, 2002, corrections officer Antonio Abegdola was assigned to the tower post at Ryan that overlooked a large field in which prisoners congregate for daily recreation. Abegdola testified that on that day he saw defendant sit next to another prisoner at a table in the yard. While the two sat back-to-back, Abegdola observed defendant pass three packets to the other prisoner, who then put them in his shoes. A subsequent search of the second prisoner uncovered three tightly wrapped packs of marijuana in the prisoner's shoes. Defendant and the second prisoner both denied that the second prisoner received the marijuana from defendant. Indeed, both men denied knowing each other until after the events of the day in question. However, this conflicting testimony created issues of fact and credibility that are best left for the trial court, as trier of fact, to resolve. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *Fennell, supra*, 260 Mich App at 270.

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ Henry William Saad

¹ Defendant incorrectly asserts that the elements of the crime are (1) defendant is a prisoner, and (2) defendant possessed contraband while in prison. These elements constitute the crime of possession of contraband by a prisoner, MCL 800.281(4), a crime for which defendant was not charged or convicted.