

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KAHMAL KWESI DILLAHUNTY,

Defendant-Appellant.

UNPUBLISHED

December 20, 2005

No. 256838

Oakland Circuit Court

LC No. 2004-194875-FH

Before: Cavanagh, P.J., and Cooper and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right jury convictions for possession with the intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), assaulting, resisting and obstructing a police officer, MCL 750.479, and operating a vehicle while license suspended or revoked, MCL 257.904(3)(b). We affirm.

Defendant first argues that the trial court abused its discretion when it allowed the prosecutor to impeach his testimony, that he did not have knowledge of drugs from the prospective of a seller, with a prior conviction for delivering or manufacturing cocaine. After review of this evidentiary decision for an abuse of discretion, we disagree. See *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

Evidence of a defendant's prior conviction is admissible when: (1) it is not offered to impeach defendant's credibility for truthfulness or veracity in general, but rebuts specific testimony given by a defendant, (2) a proper cautionary instruction is given regarding the limited use the jury may make of the evidence, and (3) its probative value is not substantially outweighed by its prejudicial effect. *People v Taylor*, 422 Mich 407, 415; 373 NW2d 579 (1985). Those requirements were met in this case. The prosecutor used defendant's conviction to impeach defendant's specific testimony that he was not familiar with how cocaine was sold from a seller's prospective. The trial court gave the standard cautionary instruction, CJI2d 5.1, after the prosecutor used defendant's past conviction to impeach his testimony. And, the probative value, that defendant had not been truthful about his knowledge with respect to how cocaine was sold, was not substantially outweighed by its prejudicial effect. Thus, the trial court did not abuse its discretion by admitting the contested evidence.

Defendant also argues that the prosecution presented insufficient evidence to support his conviction for possession with intent to deliver less than 50 grams of cocaine. After de novo

review, considering the evidence in the light most favorable to the prosecutor, we conclude that a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. See *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

The elements of possession with the intent to deliver less than 50 grams of cocaine are: (1) the recovered substance was cocaine, (2) the cocaine was in a mixture weighing less than 50 grams, (3) the defendant was not authorized to possess the substance, and (4) the defendant knowingly possessed cocaine with the intent to deliver. *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748, amended 441 Mich 1201 (1992). Defendant argues that the evidence did not establish that he had the intent to deliver the cocaine he possessed. But, intent to deliver can be established by circumstantial evidence and reasonable inferences arising from that evidence, including from the quantity and way in which the narcotics were packaged. *Id.* at 524, 526; *People v Gonzalez*, 256 Mich App 212, 226; 663 NW2d 499 (2003). An expert in narcotics enforcement testified that the amount and packaging of the thirteen rocks of crack cocaine was consistent with selling, and not personal use. He further testified that normal users only purchase what they need to get high one time, typically between one and three rocks. And, no personal use paraphernalia was recovered from defendant or his car which also suggests that the cocaine was not for personal use. In sum, the prosecution presented sufficient evidence from which the jury could reasonably conclude that defendant had the requisite intent to deliver the thirteen rocks of crack cocaine he possessed.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Jessica R. Cooper

/s/ Pat M. Donofrio