STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 20, 2007
v	No. 273958 Wayne Circuit Court
CORNELL DAVIS, Defendant-Appellant.	LC No. 03-012827-01

Before: Saad, P. J., and Owens and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for possession with intent to deliver less than 50 grams of heroin, MCL 333.7401(2)(a)(iv). Defendant was sentenced as a fourth habitual offender, MCL 769.12, to three years' probation. We affirm.

I. Basic Facts

An undercover police officer was conducting surveillance at a park known for drug transactions in Detroit. In the span of 15 or 20 minutes, the officer observed defendant transfer something in a closed hand fashion to three different people in exchange for paper currency. Because the officer suspected defendant of exchanging narcotics for the cash, he directed the other officers on his team to arrest defendant. The police found $181 in cash and two folded cigarette papers that contained .10 grams of heroin in defendant's pocket.

II. Sufficiency of the Evidence

Defendant argues that there was insufficient evidence to sustain his possession with intent conviction because the prosecution did not present sufficient evidence of the intent element. We disagree. We review de novo challenges to the sufficiency of the evidence in criminal trials to determine whether, viewing the evidence in a light most favorable to the prosecutor, any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Randolph*, 466 Mich 532, 572; 648 NW2d 164 (2002).

In order to establish possession of less than 50 grams of heroin with intent to deliver, the prosecution must prove that: (1) the recovered substance was heroin, (2) the heroin weighed less than 50 grams, (3) defendant was not authorized to possess the heroin, and (4) defendant knowingly possessed the heroin intending to deliver it. *People v McGhee*, 268 Mich App 600,

622; 709 NW2d 595 (2005); MCL 333.7401(2)(a)(iv). "An actor's intent may be inferred from all of the facts and circumstances, and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998) (citations omitted). "Possession with intent to deliver can be established by circumstantial evidence and reasonable inferences arising from that evidence, just as it can be established by direct evidence." *People v Wolfe*, 440 Mich 508, 526; 489 NW2d 748 (1992).

Here, in a period of 15 to 20 minutes, a police officer saw defendant participate in three separate transactions in a park known for its drug activity. Each time, defendant received currency from a person in exchange for an object transferred in a closed hand fashion consistent with narcotics sales. In defendant's pocket, the officers found .10 grams of heroin in two folded cigarette papers, which one of the arresting officers testified are commonly used in narcotics sales. Defendant testified that the heroin was for his own personal use, but the trial court found the officers more credible. Absent exceptional circumstances, issues of witness credibility are for the jury, *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998), and we will not interfere with the role of the trier of fact of determining the weight of the evidence or witness credibility, *People v Hill*, 257 Mich App 126, 141; 667 NW2d 78 (2003). The fact that defendant *received* currency instead of *paying* it during these transactions strongly supports the inference that he sold heroin. Considering this evidence in the light most favorable to the prosecution, and leaving the court's credibility determinations undisturbed, we find that the rational trier of fact could have concluded beyond a reasonable doubt that defendant had the requisite intent to distribute the heroin.

III. Imposition of Court Costs

Defendant contends that the judgment of sentence does not reflect the sentence imposed by the trial court with respect to court costs. We agree. We review de novo questions involving the construction of a statute. *People v Osantowski*, 274 Mich App 593, 619; 736 NW2d 289 (2007).

At sentencing, the trial court specifically stated that it was imposing $60 in court costs and $60 in costs for the crime victim's right fund and all fees would be waived if defendant performed 50 hours of community service. The trial court stated that it did not want to require defendant to pay "a bunch of costs" because it wanted to enable him to "get the drug treatment [he] need[s]." However, the amended judgment of sentence indicates that defendant was responsible for $600 in court costs and $60 in costs for the crime victim's right fund but all costs would be waived if he completed 50 hours of community service. Therefore, the judgment of sentence contains a clerical error, and we remand for the ministerial purpose of correcting the judgment of sentence to reflect the actual amount of court costs imposed. MCR 6.435(A); MCR 7.216(A)(7).

Defendant also argues that the trial court was not authorized by MCL 333.7401(2)(a)(iv) to impose court costs. Given our resolution of the clerical error, our review of this issue will be limited to the $60 in court costs actually imposed. Defendant is correct that a sentencing court may only require a criminal defendant to pay costs when such a requirement is authorized by statute, *People v Nance*, 214 Mich App 257, 259; 542 NW2d 358 (1995), and MCL 333.7401 does not provide authority for the imposition of court costs. However, defendant overlooks

MCL 769.1k(1)(a), (3), and MCL 769.1j(1)(a), (3), which require a trial court to impose a minimum of $60 in court costs for any felony conviction, even if the defendant receives probation. Further, MCL 769.34(6) authorizes a sentencing court to impose any combination of fines and costs as part of a defendant's sentence. Therefore, the trial court properly imposed court costs, and to the extent that defendant challenges the imposition of $60 in court costs, his argument is without merit.

We also note that the judgment of sentence incorrectly provides that defendant was convicted by a jury, when he was actually convicted following a bench trial. We remand for this ministerial correction as well. MCR 6.435(A); MCR 7.216(A)(7).

We affirm defendant's conviction and sentence, but remand for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ Donald S. Owens
/s/ Kirsten Frank Kelly