

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRELL LAMONT REESE,

Defendant-Appellant.

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UNPUBLISHED

August 26, 2008

No. 278431

St. Joseph Circuit Court

LC No. 06-013769-FH

Before: Schuette, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for delivery of marijuana less than five kilograms, MCL 333.7401(2)(d)(iii). Defendant was sentenced as an habitual drug offender, second offense, MCL 333.7413(2), to seven months in jail and 24 months' probation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that there was insufficient evidence to support his conviction for delivery of marijuana. When reviewing a challenge of insufficient evidence, the Court reviews the evidence de novo, in a light most favorable to the prosecution, to determine whether sufficient evidence was presented to warrant a reasonable trier of fact in finding that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "[A] jury is free to believe or disbelieve, in whole or in part, any of the evidence presented." *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). Deference is given to the jury's superior opportunity to evaluate witness testimony, and jury assessments of weight and credibility of trial testimony will not be determined anew on appeal. *People v Johnson*, 460 Mich 720, 731; 597 NW2d 73 (1999). Rather, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). The elements of a crime can be proven beyond a reasonable doubt with circumstantial evidence and rational inferences arising from that evidence. *Nowack, supra* at 400.

Defendant's conviction for delivery of marijuana under five kilograms required proof beyond a reasonable doubt that defendant knowingly delivered marijuana under five kilograms to another person. MCL 333.7401(2)(d)(iii). The elements are: (1) defendant gave marijuana to another individual, (2) he knew he was delivering marijuana, (3) the substance is, in fact, marijuana, and (4) the substance weighed less than five kilograms. CJI2d 12.2; see *People v Catanzarite*, 211 Mich App 573, 577; 536 NW2d 570 (1995).

The evidence produced was sufficient with regards to all elements. Defendant was convicted of delivering less than five kilograms of marijuana to Robin Millirans near Paul's Pantry at the corner of Second Street and Wood Street in the City of Three Rivers, Michigan. While on routine patrol, police officer Jason Bingaman observed Millirans with his hand inside the window of a vehicle occupied by defendant. After Millirans noticed the police cruiser, he quickly removed his hand from the car and placed it by his waistband. Thereafter, the officer confronted Millirans and a companion while they were walking to Second Street. Millirans removed a small bag of marijuana, valued at about \$10, from his waistband and turned it over to the officer. The substance tested positive for marijuana, and Millirans was arrested. At the police station Millirans wrote and signed a sworn statement admitting he purchased the marijuana from defendant, whom he identified by his street name. The statement read, "I bought weed from Turk. I paid ten dollars. I was at Paul's Pantry and he was driving a black car."

The officer later located defendant driving the vehicle involved in the drug deal, performed a traffic stop, and arrested defendant initially for driving with no license. A search of the vehicle uncovered a small amount of what was confirmed to be marijuana near the driver's seat. The officer arrested defendant who, despite long-term unemployment, was found to have \$394, which included many five and ten dollar bills. During his interview with Officer Bingaman, defendant stated that he did not sell marijuana to the "little guy and if you don't believe me ask the fat kid," referring to Robin Millirans and his companion respectively. However, Officer Bingaman never informed defendant of the identity of the alleged receiver of the marijuana at issue before defendant's statement. Viewed in a light most favorable to the prosecution, the circumstantial evidence presented was sufficient to justify the jury in rationally inferring that the observed exchange was a delivery of marijuana, not merely a handshake as argued by defendant. The evidence establishes that defendant gave marijuana to Millirans when his hand was inside the car, that defendant knew he was delivering marijuana, and that the substance was in fact marijuana, which weighed less than five kilograms.

In arguing to the contrary on appeal, defendant attempts to have the court view the evidence favorably to him and favorably determine witness credibility on appeal. Defendant points out that Millirans contradicted his sworn statement at trial and testified that he did not buy marijuana from defendant. Defendant also argues that he had \$394 at the time of his arrest because his girlfriend gave him \$300 that morning and the rest was birthday gift money. Credibility assessments are not an issue for appeal, and deference is given to the jury's credibility and weight determinations in regards to the testimony of Millirans at trial. See *Johnson, supra* at 731; *Perry, supra* at 63.

Affirmed.

/s/ Bill Schuette  
/s/ Brian K. Zahra  
/s/ Donald S. Owens