

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL SMITH,

Defendant-Appellant.

UNPUBLISHED

September 18, 2008

No. 278580

Wayne Circuit Court

LC No. 07-003565-01

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant Daniel Smith appeals as of right his jury convictions of possession of a controlled substance with intent to deliver¹ and possession of a firearm during the commission of a felony.² The trial court sentenced Smith to two years' imprisonment for the felony-firearm conviction and five years' probation for the possession of a controlled substance with intent to deliver. We affirm.

I. Basic Facts And Procedural History

On the afternoon of September 5, 2005, police entered a house located in Detroit to execute a narcotics search warrant. On their arrival, the police officers found approximately six people on the first floor. On further searching the house, officers found Smith and an unidentified woman in an upstairs bedroom. During a search of the room, Officer Booker Toolles found a slipper that contained three plastic sandwich bags holding narcotics. In one plastic bag, there were "twelve lottery packs" of powdered narcotics. Another plastic bag contained "22 paper wraps" of cocaine. Each paper wrap contained an amount of either powder or rock cocaine. Officer Toolles testified that each paper wrap and each lottery pack at that time would have had a street value of \$10. The powdered form of cocaine generally has a higher street value than rock cocaine. The third plastic bag held approximately "three to four chunks of cocaine." In Officer Toolles' opinion, these chunks would be worth anywhere from \$400 to \$600 in total and all the seized drugs would be worth approximately \$1,000.

¹ MCL 333.7401(2)(a)(iv).

² MCL 750.227b.

During direct examination at trial, Officer Toolles noted that he had executed well over 5,000 narcotics search warrants and had seized narcotics over 10,000 times. In his experience, Officer Toolles testified, the chunks would be broken down and packaged in paper packs. He went on to testify that, in his opinion, the drugs found in the home were being used for individual narcotic sales. Officer Toolles reached this conclusion by considering:

[T]he way they were packaged, the sandwich baggies, how they were broken down, the 22, and they were packaged all the same. The other sandwich bag that had 12 packs, they were different types, and I have seen that type used in many, many times in narcotic sales.

In further elaboration, Officer Toolles testified that, in his individual experience, the amount of narcotics found indicated that these drugs were not for personal usage.

Both parties stipulated that the forensic services section of the Detroit Police Department had conducted laboratory testing and that the testing concluded the bag with 12 paper packs held .61 grams of cocaine, the bag with 22 paper packs contained .92 grams of cocaine, and the third sandwich bag contained 6.89 grams of cocaine.

During cross-examination, Officer Toolles noted that he did not know for sure whether the narcotics were for personal use. In addition, Officer Toolles admitted that, in his experience, he has come across a large quantity of cocaine for a party before and that he did not know if the narcotics in this case were to be used for that purpose. The police's search of the home did not yield any tally sheets, scales, money, or anything related to the manufacture of any narcotics. During redirect questioning, however, Officer Toolles testified that money is often kept separate from the narcotics to prevent the loss of both during a police investigation.

In addition to the narcotics, the police also found three firearms in the second floor bedroom where Smith was found. The firearms included: 1) a .22-caliber pistol found on top of the entertainment system; 2) "a Russian-made 7.62 semi-automatic rifle," also known as an AK47, found behind the door; and 3) a semi-automatic .22-caliber rifle found behind the bed. All the firearms were unloaded, and the record does not support that any ammunition was found.

Officer Philip Rodriguez was one of the officers who searched the house on September 5, 2005. After advising him of his *Miranda*³ rights, Rodriguez interviewed Smith. Smith admitted that he lived at the home and that he was "in possession of cocaine," as well as several weapons. When Rodriguez asked him what he was doing with the cocaine, Smith answered that he was "holding it." In addition, Smith claimed he was "holding [the weapons] for protection." Rodriguez testified that Smith did not appear to be under the influence of any narcotics or alcohol. Further, Smith denied that he was under the influence of any drugs.

At the conclusion of the prosecutor's case, Smith moved for a directed verdict. The defense argued that the prosecution failed to show sufficient evidence to prove Smith intended to deliver the narcotics. The prosecution disagreed, arguing that the quantity of narcotics, the

³ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

packaging of the narcotics, and Officer Toolles' testimony were sufficient to demonstrate intent. The trial court denied the motion, acknowledging the packaging and the quantity of the seized narcotics as well as the street value of the narcotics were evidence of Smith's intention to deliver the narcotics. Smith now appeals.

II. Sufficiency Of The Evidence

A. Standard Of Review

Smith argues that there was insufficient evidence to support his convictions for possession of narcotics with an intent to deliver and felony-firearm. This Court reviews de novo a challenge to the sufficiency of the evidence.⁴ When assessing a sufficiency of the evidence challenge, this Court must "view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt."⁵

B. Analysis

To prove possession with the intent to deliver less than 50 grams of cocaine, the prosecution must show beyond a reasonable doubt that: 1) the substance found was cocaine, 2) the cocaine weighed less than 50 grams; 3) the defendant was not authorized to possess the cocaine, and 4) the defendant knowingly possessed the cocaine with intent to deliver.⁶

The first three required elements are not in dispute. During trial, the parties stipulated that laboratory tests confirmed that the substance found in the second floor bedroom was cocaine and that the cocaine weighed less than 50 grams. And Smith does not argue that he was authorized to possess the cocaine.

The fourth element of the crime requires that Smith both knowingly possessed cocaine and had intent to deliver.⁷ Smith did not at trial, nor does he now on appeal, dispute that he was in possession of the cocaine found during the search. Indeed, in his initial statement to police, Smith admitted that he possessed the cocaine. Therefore, the only element at issue is Smith's intent to deliver.

To prove intent to deliver, actual delivery is not required.⁸ Possession with intent to deliver may be inferred from circumstantial evidence "and reasonable inferences arising from that evidence[.]"⁹ "[B]ecause of the difficulty of proving an actor's state of mind, minimal

⁴ *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

⁵ *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

⁶ *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Gonzalez*, 256 Mich App 212, 225-226; 663 NW2d 499 (2003).

⁷ *Wolfe*, *supra* at 519.

⁸ *Id.* at 524.

⁹ *Id.* at 526.

circumstantial evidence is sufficient.”¹⁰ “Intent to deliver has been inferred from the quantity of narcotics in a defendant’s possession, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest.”¹¹

In *People v Wolfe*, the police had purchased cocaine from the apartment where the defendant was arrested, and upon arrest, the defendant had the police’s marked money.¹² The defendant did not contradict that cocaine was actually sold from the apartment.¹³ Moreover, there was evidence that the cocaine was packaged for sale, and none of the evidence suggested that the cocaine was possessed for personal use: “[n]o glass pipes or other paraphernalia typically used to smoke cocaine were found.”¹⁴ Accordingly, the Michigan Supreme Court held that there was sufficient evidence to prove possession with intent to deliver.¹⁵ Likewise, in *People v Hardiman*,¹⁶ there was evidence that drug packaging occurred in the defendant’s apartment, and a large sum of money was found in the apartment. Additionally, no paraphernalia associated with use of drugs was found in the apartment.¹⁷ The Michigan Supreme Court found that the evidence was sufficient to justify a finding that the defendant intended to deliver the drugs.¹⁸ Further, in *People v Gonzalez*, this Court considered the quantity of cocaine, along with a sifter containing cocaine residue, weapons, and other drug paraphernalia to conclude that the defendant intended to deliver the cocaine, not merely possess it.¹⁹

Here, viewing the evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence of intent based upon: 1) the amount, packaging, and street value of the cocaine found; 2) the presence of multiple firearms; 3) Smith’s admission that he possessed the cocaine and the firearms, and 4) Smith’s denial of any narcotics usage.

We affirm.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio

¹⁰ *People v Fetterley*, 229 Mich App 511, 518; 583 NW2d 199 (1998).

¹¹ *Wolfe*, *supra* at 524.

¹² *Id.* at 511-512, 523-524.

¹³ *Id.* at 524.

¹⁴ *Id.* at 524-525.

¹⁵ *Id.* at 525.

¹⁶ *People v Hardiman*, 466 Mich 417, 419-420; 646 NW2d 158 (2002).

¹⁷ *Id.* at 422 n 5.

¹⁸ *Id.* at 422.

¹⁹ *Gonzalez*, *supra* at 226.