STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 13, 2008
v	No. 279438 Cass Circuit Court
ALFONZO MONTELL GRIFFIN, Defendant-Appellant.	LC No. 07-010023-FH

Before: O'Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of conspiracy to deliver less than 50 grams of cocaine, MCL 750.157a and MCL 333.7401(2)(a)(iv), delivery of less than 50 grams of cocaine, and possession with intent to deliver less than 50 grams of cocaine. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to concurrent terms of 48 months' to 40 years' imprisonment for each conviction. Defendant appeals as of right. We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

Defendant contends that insufficient evidence at trial proved beyond a reasonable doubt that he committed the charged crimes. We review de novo challenges to the sufficiency of the evidence. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). In reviewing the sufficiency of the evidence, we consider the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Moorer*, 262 Mich App 64, 76-77; 683 NW2d 736 (2004). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000) (internal quotation omitted). A reviewing court must "draw all reasonable inferences and make credibility choices in support of the jury verdict." *Id.*

Regarding the conspiracy conviction, MCL 750.157a provides that "[a]ny person who conspires together with 1 or more persons to commit an offense prohibited by law, or to commit a legal act in an illegal manner is guilty of the crime of conspiracy . . . ."

> A conspiracy is a partnership in criminal purposes. The gist of the offense of conspiracy lies in the unlawful agreement between two or more persons. Establishing a conspiracy requires evidence of specific intent to combine with

> others to accomplish an illegal objective. [*People v Blume*, 443 Mich 476, 481; 505 NW2d 843 (1993) (internal quotations omitted).]

"Conspiracy is a specific-intent crime, because it requires both the intent to combine with others and the intent to accomplish the illegal objective." *People v Mass*, 464 Mich 615, 629; 628 NW2d 540 (2001). "[T]here must be proof demonstrating that the parties specifically intended to further, promote, advance, or pursue an unlawful objective." *People v Justice (After Remand)*, 454 Mich 334, 347-348; 562 NW2d 652 (1997). Although a conspiracy involves an agreement, "[d]irect proof of agreement is not required, nor is it necessary that a formal agreement be proven. It is sufficient if the circumstances, acts, and conduct of the parties establish an agreement in fact." *People v Atley*, 392 Mich 298, 311; 220 NW2d 465 (1974), overruled in part on other grounds *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

Defendant insists that the prosecution failed to demonstrate that he "agreed to commit a deliver[y] of cocaine and that he intended to commit or help commit that crime." However, our review of the record reflects that the prosecution proved beyond a reasonable doubt the agreement and intent elements of conspiracy. Two undercover officers testified concerning their January 10, 2007 purchase of crack cocaine from an Allen Street driveway in Dowagiac. Detectives Philip Small and Susan Worley recounted that that evening, Robert Jordan[1] signaled their unmarked car, asked if they wanted to purchase drugs, and directed them to the driveway of 104-1/2 Allen. Small described Jordan, who expressed interest in a "pinch" of Small's purchase, as a "runner," an individual who acted as an intermediary between a drug purchaser and a drug dealer and in return "would want to pinch off a little bit of [the buyer's] drugs so he could smoke that for himself." After Small had parked the unmarked car in a perpendicular fashion across the driveway and given Jordan a $20 bill, the detectives watched Jordan walk to another vehicle parked in front of them in the same driveway. Both detectives averred that they observed Jordan engage in a hand-to-hand transaction with the sole apparent occupant of the other vehicle, who sat in the driver's seat. Jordan returned to the unmarked car and handed the detectives a baggie containing a rock of crack cocaine. As described by Small, the detectives then observed the other vehicle's driver get out, approach the unmarked car and announce, "I just want to see who you guys are. Are you the cops? . . . Turn on the lights." Both detectives testified that after Small illuminated their car's lights, the other vehicle's occupant looked directly in their window, before advising that they were "cool" or "okay." Small and Worley repeatedly and positively identified defendant at trial as the other vehicle's occupant.[2]

Although the record contains no direct evidence of any agreement between defendant and Jordan, the detectives' testimony concerning the conduct of defendant and Jordan amply establishes that they had an agreement to unlawfully distribute drugs. A rational jury could have found beyond a reasonable doubt on the basis of the detectives' testimony that defendant

[1] Worley testified that on January 10, 2007, she recognized Jordan from prior interactions with him.

[2] Worley also testified that she recognized defendant that evening from several previous contacts.

possessed the specific intent to combine or cooperate with Jordan in the accomplishment of an illegal objective, specifically the distribution of crack cocaine. *Mass, supra* at 629.[3]

With respect to defendant's convictions under MCL 333.7401(2)(a)(iv), the prosecution had to show that defendant delivered less then 50 grams of cocaine (Count 2), and that he possessed less than 50 grams of cocaine with the intent to deliver it (Count 3). "[T]o support a conviction for possession with intent to deliver less than fifty grams of cocaine, it is necessary for the prosecutor to prove four elements: (1) that the recovered substance is cocaine, (2) that the cocaine is in a mixture weighing less than fifty grams, (3) that defendant was not authorized to possess the substance, and (4) that defendant knowingly possessed the cocaine with the intent to deliver." *People v Wolfe*, 440 Mich 508, 516-617; 489 NW2d 748, amended 441 Mich 1201 (1992). "Delivery" means "the actual, constructive, or attempted transfer from 1 person to another of a controlled substance, whether or not there is an agency relationship. MCL 333.7105(1); *People v Schultz*, 246 Mich App 695, 703; 635 NW2d 491 (2001). "The cases are well settled that the act of transferring a controlled substance is sufficient to sustain a finding of an actual delivery." *Id*. at 704.

Regarding the adequacy of proof of intent to deliver, this Court has noted the following:

> Actual delivery is not required to prove intent to deliver. 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. Intent to deliver can be inferred from the quantity of the controlled substance in the defendant's possession and from the way in which the controlled substance is packaged. [*People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).]

Similarly, "[p]ossession may be proven by circumstantial as well as direct evidence." *People v Hill*, 433 Mich 464, 469; 446 NW2d 140 (1989). Possession encompasses both actual and constructive possession. *Id*. at 470. "[A] person has constructive possession if there is proximity to the article together with indicia of control." *Id.*

Defendant contests his delivery and possession with intent to deliver convictions on the basis that he neither knowingly delivered cocaine nor knowingly possessed cocaine with the intent to deliver it. But regarding delivery, the testimony of Small and Worley regarding their observations of (1) defendant's transfer of the baggie containing crack to Jordan in exchange for the $20 bill received from Small, and (2) Jordan's subsequent delivery of the crack to the detectives, constitutes evidence from which a rational jury could have found beyond a reasonable doubt that defendant knowingly delivered the cocaine, with Jordan's assistance. *Schultz, supra* at 703-704.

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[3] To the extent that defendant suggests that the dark conditions caused the detectives to incorrectly identify him as the individual dealing drugs, this Court will not revisit the jury's assessment of the detectives' credibility. *People v Cain*, 238 Mich App 95, 119; 605 NW2d 28 (1999).

Defendant's possession with intent to deliver conviction derived from later events. Detective Small testified that as he had begun turning right onto the first street connecting with Allen, he radioed to other officers that "the deal was done and that [defendant] was leaving the area," having just pulled out of the driveway and headed in the opposite direction, "eastbound on Allen possibly heading north." The testimony of Jared Bradford, a Dowagiac police officer, revealed that when he heard Small's request for assistance he was located well within a mile of 104-1/2 Allen Street, and that he pulled over a 1997 four-door Ford driven by defendant, whom Bradford had met previously.[4] Bradford recalled that "within seconds" of hearing Small's radioed request for assistance concerning "a green four-door sedan," this green car came northbound on Lowe Street, and I advised that I had an eye on the car and I could stop it," which Bradford did within about a mile of 104-1/2 Allen Street. Small and Worley arrived on the scene within a few minutes and identified defendant as the crack seller. Bradford, Small, Worley and a K-9 officer all described that after a police dog detected an odor of drugs within the green Ford, the officers found secreted behind a panel on the driver's-side foot well 18 individually packaged rocks of crack. The detectives opined that the packaging used appeared consistent with the sale of drugs because the rocks were measured for a specific dollar amount and easy to hide.

The testimony regarding the crack purchase at 104-1/2 Allen Street and the traffic stop shortly thereafter amply supports the jury's finding that defendant knowingly possessed the 18 baggies of crack with the intent to deliver them. The evidence as a whole established that from the driver's seat of the green Ford defendant had transferred crack to Jordan, and that within seconds or minutes thereafter, Bradford stopped defendant driving the same green Ford and the police recovered 18 additional baggies of crack hidden in close proximity to defendant. In summary, the record permitted a rational jury to find that defendant constructively possessed the crack hidden nearby in the green Ford, and that defendant intended to deliver the 18 individually wrapped crack rocks. *Hill*, *supra* at 469-470; *Fetterley*, *supra* at 517-518.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Elizabeth L. Gleicher

[4] Defendant did not own the green Ford, which at the time of the traffic stop also contained a female passenger, Loretta Brookins.