

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD BURNS, JR,

Defendant-Appellant.

UNPUBLISHED

January 28, 2010

No. 289404

Berrien Circuit Court

LC No. 2008-411983-FH

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of possession of less than 25 grams of a mixture containing cocaine. MCL 333.7403(2)(a)(v). Because sufficient evidence established that defendant knowingly possessed less than 25 grams of cocaine, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On August 27, 2008, police officers responded to a 911 domestic violence call involving an assault.¹ After arresting defendant for assault, Officer Michael Troup conducted a search of defendant's person which included having defendant remove his shoes. When defendant did so, a metal pipe used for crack cocaine fell out. At the time, defendant said it was a whistle but did not identify it as his own. Troup said it looked as though there was some residue in the pipe. Police found nothing else indicative of cocaine use during the search.

Defendant's sole argument on appeal is that a vapor coating of cocaine found in a pipe on his person was invisible to the naked eye and, accordingly, insufficient to establish knowing possession of a controlled substance under *People v Hunten*, 115 Mich App 167; 320 NW2d 68 (1982).

When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v*

¹ Defendant was acquitted of domestic assault and assault with a dangerous weapon at trial.

Wolfe, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Circumstantial evidence and reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). [*People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).]

In *People v Harrington*, 396 Mich 33, 37, 42, 49; 238 NW2d 20 (1976), our Supreme Court held that “any quantity”, including “a small residue of heroin, visible to the naked eye, in the form of a hard powdery substance on the interior of a bottle cap”, was sufficient to support a conviction. The Court noted that the residue “was part of paraphernalia which, arguably, might have been the only thing defendant thought he was hiding, [but that] the white encrustation was there for him to see” and thus “the mens rea threshold was successfully crossed by the prosecution.” *Id.* at 49. *Hunten* did not change this analysis. Rather, the *Hunten* Court assumed that the residue discovered was invisible to the naked eye, and that it was discovered only through laboratory analysis. The *Hunten* Court indicated that when a substance is invisible, scienter cannot be established by identification of the invisible substance alone. *Hunten*, 115 Mich App at 171.²

In the instant case, the evidence indicates that, like in *Harrington*, there was a “slight residue” that was visible. The expert who identified the substance as cocaine explained that the material was “laid down as a vapor” but then turned into “a solid or greasy type of thing.” While he then indicated that an uneducated eye might not *recognize* the substance as cocaine, he did not state that the quantity was so small that an untrained eye could not see it. Viewed in a light most favorable to the prosecution, we conclude that the evidence, or a valid inference therefrom, sufficiently established that the residue was visible. Accordingly, the evidence established knowing possession under *Harrington*.

Affirmed.

/s/ Pat M. Donofrio
/s/ Patrick M. Meter
/s/ Christopher M. Murray

² In *People v Vaughn*, 200 Mich App 32; 504 NW2d 2 (1993), this Court distinguished *Hunten*, finding that “other facts and circumstances” established that the possession was knowing even though the substance itself was invisible. *Id.* at 37-38. Because we conclude that the evidence was sufficient to establish that the residue was visible in this case, we need not address whether “other facts and circumstances” also established knowing possession. *Id.*