

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANNY ATKINS,

Defendant-Appellant.

UNPUBLISHED

November 30, 2010

No. 294417

Wayne Circuit Court

LC No. 09-010085-FH

Before: O'CONNELL, P.J., and BANDSTRA and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), second offense, MCL 333.7413(2). We affirm.

On appeal defendant argues that the prosecution failed to present legally sufficient evidence to support his conviction of possession with intent to deliver less than 50 grams of cocaine. When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

Defendant primarily contends that insufficient evidence supported his conviction because it was based upon unreliable police testimony. At trial, the prosecution relied on testimony from two police officers who participated in a narcotics search at a house where defendant was arrested. The police officers testified that upon their entry defendant was in possession of a paper bag containing narcotics, but attempted to dispose the bag on the mantel. On the other hand, defendant testified that he was never in possession of the paper bag containing the narcotics.

The elements of possession with intent to deliver less than 50 grams of cocaine are: (1) that the recovered substance is cocaine, (2) the weight of the substance, (3) that the defendant was not authorized to possess the substance, and (4) that the defendant knowingly possessed the substance intending to deliver it. *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The element of knowing possession with intent to deliver has two components: possession and intent. *Id.* at 519.

After reviewing the record, we conclude there was sufficient evidence for a reasonable jury to conclude that the recovered substance was cocaine, that the weight was less than 50 grams, and that defendant was not authorized to possess the cocaine. Specifically, the prosecution and defense stipulated to a forensic lab report finding that one of the pills in the paper bag, weighing 0.06 grams, tested positive for cocaine.

Further, we conclude that a reasonable jury could find that defendant had actual possession of the paper bag containing the cocaine. There was specific testimony from the officers conducting the search that defendant, upon seeing the officers, attempted to dispose of the brown paper bag. While defendant's testimony regarding his lack of knowledge and possession of the paper bag is contrary to the officers' testimony, a witness's credibility and the weight accorded to this evidence is a question for the jury, and any conflict in the evidence must be resolved in the prosecution's favor. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Therefore, this evidence, when viewed in a light most favorable to the prosecution, would justify a rational jury's finding that defendant was in actual possession of the paper bag containing the cocaine.

We also conclude that a reasonable jury could find that defendant had the intent to deliver the cocaine. To show intent to deliver, proof of actual delivery is not required. *Wolfe*, 440 Mich at 524. "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." *Id.* Here, the police officers found 44 pill capsules in one large brown paper bag. According to the officer's testimony, the packaging suggested the pills were for sale rather than personal use. While defendant testified that he was present at the home to purchase narcotics, he had neither narcotics nor evidence of drug paraphernalia on his person. Additionally, a reasonable jury could infer that defendant's presence in the home was more than as just a mere customer because defendant was present at this location on three prior occasions during the execution of narcotics search warrants. Given the quantity of cocaine, the packaging, the presence of dogs, and the lack of paraphernalia indicating personal use, it was reasonable for the jury to conclude that defendant had the intent to deliver the cocaine. In sum, we conclude that a rational trier of fact could have found that all the elements of possession with intent to deliver less than 50 grams of cocaine were proven beyond a reasonable doubt.

Affirmed.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Christopher M. Murray