

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
January 19, 2012

v

KENNETH LERON STEELE,

Defendant-Appellant.

No. 301018
Wayne Circuit Court
LC No. 10-001626 - FH

Before: GLEICHER, P.J., and CAVANAGH and O'CONNELL, JJ.

PER CURIAM.

A jury convicted defendant Kenneth Leron Steele of possession with intent to deliver less than five kilograms of marijuana. MCL 333.7401(2)(d)(iii). Defendant admits that he knowingly possessed marijuana at the time of his arrest, but contends that the prosecution presented insufficient evidence of his intent to deliver. Based on the packaging of the marijuana and police observation of a suspicious transaction involving defendant, a rational jury could infer the intent to deliver. Accordingly, we affirm defendant's conviction and sentence of one year probation.

Following a tip of suspected drug activity, Detroit Police Sergeant Andrew White parked near the corner of Geneva and Woodward Avenues in the city of Detroit and conducted surveillance with the aid of binoculars. The sergeant observed defendant cross the street and approach a white male in front of a gas station. The unidentified white male gave defendant money. Defendant then passed something to the unidentified man in a "cuffed hand transaction." The sergeant described defendant's action as hiding an object in his fist to transfer it without detection. The sergeant had been in the department's narcotics unit for 25 years and had been involved in approximately 50,000 narcotic-related arrests. Based on that experience, he knew that "cuffed hand transactions" are common in illegal drug sales. Accordingly, the sergeant called for assistance.

Detroit Police Officers Leo Rhodes and Demetrius Brown responded and arrested defendant as he crossed the street to leave the gas station. Officer Rhodes conducted a search incident to arrest and uncovered "a large freezer bag containing two solid bags of marijuana, two small knotted bags of marijuana and six smaller knotted bags of marijuana in three zip lock bags." The officer testified that this method of packaging is common when narcotics are prepared for resale. The officers also found \$141 dollars on defendant's person, mostly in \$20

bills and smaller. Officer Brown testified that the use of smaller denomination bills is common in marijuana sales.

At trial, defendant stipulated that the narcotics were 50.1 grams of marijuana. He essentially conceded to knowing possession of the marijuana as well. When defendant testified in his own behalf, he claimed that Sergeant White's opportunity to view the alleged drug transaction would have been impeded by buildings and the presence of 30 to 40 methadone clinic patients milling about. Defendant also denied being at the gas station at the time in question.

We review challenges to the sufficiency of the evidence de novo, placing the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the evidence proved the essential elements of the crime beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). The prosecution need not provide direct evidence and can establish the essential elements of the crime through circumstantial evidence and reasonable inferences arising therefrom. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). To establish possession with intent to deliver, the prosecution must prove beyond a reasonable doubt that (1) the defendant knowingly possessed a controlled substance, (2) the defendant intended to deliver the controlled substance to another, (3) the substance possessed was marijuana and the defendant was aware that it was, and (4) the marijuana was in a mixture that weighed less than five kilograms. *People v Williams*, 268 Mich App 416, 419-420; 707 NW2d 624 (2005).

Defendant challenges only the evidence presented to establish intent to deliver. "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient" to show intent. *Ericksen*, 288 Mich App at 197, quoting *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). The prosecution presented more than adequate evidence for a rational trier of fact to find beyond a reasonable doubt that defendant intended to deliver marijuana. Although "[a]ctual delivery is not required to prove intent to deliver," *People v Fetterley*, 229 Mich App 511; 583 NW2d 199 (1998), citing *People v Wolfe*, 440 Mich 508, 524; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992), the prosecution provided strong evidence that delivery actually occurred. Sergeant White personally observed defendant receive money from an unidentified white male and then cuff his hand in order to conceal the object he exchanged. Despite defendant's denial of being at the scene, officers arrested him almost immediately after the sale as he crossed the street away from the gas station. Defendant was carrying a large plastic bag containing smaller bags of varying amounts of marijuana as well as \$141 in mostly small denomination bills. Intent to deliver can be "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." *Wolfe*, 440 Mich at 524. This evidence of strategic packaging and small denomination bills is sufficient circumstantial proof from which a jury could conclude beyond a reasonable doubt that defendant intended to deliver marijuana to another. See *Williams*, 268 Mich App at 422 (presence of marijuana divided into six small plastic bags suggests intent to deliver); *Fetterley*, 229 Mich App at 518 (division of marijuana into eight smaller bags stored in one large plastic bag and presence of a large sum of cash, tabulation sheets and an electronic scale suggests intent to deliver).

Defendant attempted to avoid conviction by denying his presence at the gas station that afternoon and providing photographs purportedly showing how the sergeant's view was

obstructed. Citing *People v Ridgeway*, 74 Mich App 306, 315-317; 253 NW2d 743 (1977), defendant contends that, when faced with equally reasonable but conflicting inculpatory and exculpatory inferences, a jury cannot resolve the credibility dispute beyond a reasonable doubt. However, *Ridgeway* was decided long before November 1, 1991, the effective date of MCR 7.215(C)(2) rendering published Court of Appeals decisions binding precedent on other panels. Moreover, we question the validity of *Ridgeway*'s apparent license to invade the jury's fact-finding role. We are "required to draw all reasonable inferences and make credibility choices" consistent with the jury's verdict. *Nowack*, 462 Mich at 400; *Ericksen*, 288 Mich App at 197. The jury is able to examine and reflect upon the witnesses' demeanor and tone and, therefore, can gauge credibility in a way this Court never could. *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998). Absent physical implausibility of a witness's version of events, we will not interfere with the jury's judgment. *Id.* at 643-644. Here, the prosecution presented evidence that defendant engaged in a suspicious transaction with an unidentified white male at a gas station and was arrested moments later with conveniently packaged marijuana on his person. The jury was clearly capable of weighing that evidence against defendant's version of events.

Ridgeway is also inconsistent with the deeply entrenched idea that the prosecution is not required to negate every innocent explanation provided by a criminal defendant. *People v Hardiman*, 466 Mich 417, 424; 646 NW2d 158 (2002) ("[T]he prosecution need not negate every reasonable theory consistent with the defendant's innocence, but need merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide."); *Nowack*, 462 Mich at 400 ("[T]he prosecutor need not negate every reasonable theory consistent with innocence."); *Fetterley*, 229 Mich App at 517 ("[T]he prosecution need not negate every reasonable theory of innocence, but must only prove its own theory beyond a reasonable doubt in the face of whatever contradictory evidence is presented."). The prosecution presented sufficient evidence from which a rational jury could determine beyond a reasonable doubt that defendant intended to deliver the marijuana he carried. The prosecution's evidence placed defendant at the scene and tended to prove his participation in a likely drug transaction. The prosecution met its burden of proof and we are bound to affirm defendant's jury conviction.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Peter D. O'Connell