

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN A. DUNCOMBE, II,

Defendant-Appellant.

UNPUBLISHED

November 14, 1997

No. 199242

Recorder's Court

LC No. 96-003711

Before: Griffin, P.J., and Sawyer and O'Connell, JJ.

MEMORANDUM.

Defendant, John A. Duncombe, II, appeals as of right from his July 11, 1996, bench trial conviction for possession with intent to deliver Xanax, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c). On August 20, 1996, defendant was sentenced to two years' probation pursuant to the enhanced sentencing statute for being an habitual offender, fourth offense, MCL 769.12(1)(b); MSA 28.1084(1)(b). We affirm.

Defendant claims on appeal that the prosecution failed to present sufficient evidence to support his conviction because the element of possession was not established beyond a reasonable doubt.

To support a conviction of possession with intent to deliver Xanax, it is necessary for the prosecutor to prove each of the following elements beyond a reasonable doubt: (1) the defendant knowingly possessed the controlled substance; (2) the defendant intended to deliver this substance to someone else; (3) the substance possessed was Xanax and the defendant knew it; (4) the defendant was not legally authorized to possess this substance. CJI2d 12.3. The only element of the crime charged that defendant is claiming on appeal as not being established by the prosecution beyond a reasonable doubt is the element of possession. Possession may be established by evidence that defendant exercised control of the substance and knew it was present. *People v Hellenthal*, 186 Mich App 484, 486; 465 NW2d 329 (1990). Viewing the evidence in a light most favorable to the prosecution, we find that the prosecution presented sufficient evidence to establish possession. Detroit Police Officer Keith Payne testified that he witnessed defendant, who was sitting in a vehicle, pour pills into his left hand from a pill bottle and pass the pills to the man who was standing outside the vehicle at

the driver's window. When Payne knocked on the window, defendant dropped the pills into the driver's lap. Six Xanax pills were recovered from the driver's seat of the vehicle and counsel stipulated that the tablets were tested and found to contain alprazolam. Based on this evidence, a rational trier of fact could find beyond a reasonable doubt that defendant possessed the Xanax. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). We hold, therefore, that the trial court did not err in finding defendant guilty of possession with intent to deliver Xanax.

Affirmed.

/s/ Richard Allen Griffin

/s/ David H. Sawyer

/s/ Peter D. O'Connell