

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES A. SHIPP,

Defendant-Appellant.

UNPUBLISHED

September 25, 1998

No. 197670

Recorder's Court

LC No. 96-000548

Before: Holbrook, Jr., P.J., and Wahls and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals by right his conviction for delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), entered after a bench trial. We affirm.

Defendant's conviction arises out of a street sale of a small quantity of crack cocaine. Defendant was charged with delivery and possession with intent to deliver cocaine. Defendant and the arresting officer were the only witnesses. At the conclusion of the trial, the court found that the officer was credible and found defendant guilty of delivery of cocaine. The court declined to find defendant guilty of possession with intent to deliver, stating that defendant was overcharged. The court found that defendant made a delivery, that the substance was stipulated to be a quantity of cocaine less than fifty grams, that from the circumstances defendant knew that the substance was cocaine, and there was no indication that defendant was legally authorized to deliver it.

On appeal, defendant argues that the findings of fact were inconsistent with the verdict, where defendant was acquitted on the possession with intent to deliver charge. Any inconsistency does not merit a new trial.

A jury is not held to any rules of logic, and its power extends to the capacity for leniency. *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980). Considerations change when a case is tried before a judge. *Id.* This Court has reversed a conviction based on inconsistent verdicts in a bench trial, but that reversal was based on the trial court's inexplicable findings, and the sense that the defendant was given a sham trial. *People v Fairbanks*, 165 Mich App 551; 419 NW2d 13 (1987).

While the trial court may have exceeded its powers in reaching inconsistent verdicts, no new trial is required. No judgment or verdict in a criminal case may be set aside unless it has resulted in a miscarriage of justice. MCL 769.26; MSA 28.1096. Defendant's conviction was clearly supported by the court's findings of fact. The conviction is not called into question by the court's finding that defendant was overcharged. Any error in the court's ruling was for defendant's benefit, and does not provide a basis for reversal. *People v Collins*, 380 Mich 131; 156 NW2d 566 (1968).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh