

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SCOTT ALLEN SKOP,

Defendant-Appellant.

UNPUBLISHED

December 15, 1998

No. 202682

Charlevoix Circuit Court

LC No. 96-014709 FH

Before: Griffin, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of conspiracy to deliver a controlled substance, marijuana. MCL 750.157a; MSA 28.354(1); MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii). He was sentenced to ninety days in jail and was ordered to serve the first sixty days immediately, with the balance to be held in abeyance provided that he met all conditions of his two-year probation. We affirm.

Defendant first argues that that trial court improperly denied his motion for a directed verdict because there was insufficient evidence to find him guilty of conspiracy to deliver marijuana beyond a reasonable doubt. When reviewing a trial court's ruling on a motion for directed verdict, this Court considers the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Warren*, 228 Mich App 336, 345; 578 NW2d 692 (1998). In order to prove a conspiracy, "direct proof of the conspiracy is not essential; instead, proof may be derived from the circumstances, acts, and conduct of the parties. . . . Inferences may be made because such evidence sheds light on the coconspirators' intentions." *People v Justice (After Remand)*, 454 Mich 334, 347; 562 NW2d 652 (1997) (citation omitted).

To be convicted of conspiracy to possess with intent to deliver a controlled substance, the people must prove that (1) the defendant possessed the specific intent to deliver the statutory minimum as charged, (2) his coconspirators possessed the specific intent to deliver the statutory minimum as charged, and (3) the defendant and his

coconspirators possessed the specific intent to combine to deliver the statutory minimum as charged to a third person. [*Id.* at 349.]

Evidence presented at trial gave rise to the inference that defendant met with his coconspirator before the sale of the marijuana. Testimony also indicated that defendant was present at the time the marijuana was given to a third person, and that he handed the marijuana to his coconspirator, who then handed it to the buyer. The buyer testified that defendant then told her that she could contact him or the coconspirator if she needed anything else. The amount of marijuana was never in dispute. Evidence also revealed that defendant's fingerprints were found on the baggie containing the marijuana. We conclude that, considering the evidence in a light most favorable to the prosecution, a rational trier of fact could find defendant guilty of conspiracy to deliver marijuana beyond a reasonable doubt. *Warren, supra*.

Defendant's remaining two issues were not properly preserved below. However, we conclude that the prosecutor was not required to list defendant's coconspirator as a witness on the information because "the prosecutor's duty has never extended to calling or listing accomplices," *People v Lawton*, 196 Mich App 341, 346; 492 NW2d 810 (1992), and therefore would not extend to a coconspirator. Further, even assuming that there was error because the prosecution did not file a witness list, defendant has failed to show that the error was prejudicial to the outcome of his case. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994). Moreover, the coconspirator's acquittal does not preclude defendant's conviction in this case because separate trials were held. *People v Anderson*, 418 Mich 31, 35-38; 340 NW2d 634 (1983).¹

We affirm.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Richard A. Bandstra

¹ Although defendant acknowledges the rule stated in *Anderson*, he appears to be asking us to hold that *Anderson* was wrongly decided by stating that *Anderson* "defies common sense," "defies any reasonable logic," and "is not justifiable nor logical." We cannot do so. "A decision of the Supreme Court is binding upon this Court until the Supreme Court overrules itself . . ." *O'Dess v Grand Trunk W R Co*, 218 Mich App 694, 700; 555 NW2d 261 (1996).