

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES LEE DAVIS,

Defendant-Appellant.

UNPUBLISHED

May 9, 2000

No. 212348

Jackson Circuit Court

LC No. 97-082110-FH

Before: Owens, P.J., and Murphy and White, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of delivering less than fifty grams of cocaine, contrary to MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant was sentenced to three to twenty years' imprisonment. The prosecution in this case alleged that defendant sold crack cocaine to a man named Michael Smelser while he was observed by an undercover police surveillance team; Smelser testified against defendant at trial. We affirm.

Defendant first contends that the trial court erred in denying his motion for directed verdict because the testimony adduced at trial was insufficient to support a conviction for the crime charged. We review a sufficiency of the evidence claim de novo by viewing the evidence in a light most favorable to the prosecutor to determine 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, 722-723; 597 NW2d 73 (1999); *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Defendant cites the testimony of his alibi witnesses in support of his insufficiency of the evidence argument. Defendant's alibi witnesses testified that defendant was at their home between the hours of approximately 6:00 p.m. and 11:00 p.m. and so could not have made the alleged drug deal. Mark Jones, one of defendant's friends, testified that he was at the house where the alleged transaction took place from 1:00 p.m. until 10:30 p.m., and that he did not see defendant at the house during that time period.

Defendant also cites Officer Brett Stiles' testimony that he never saw Smelser or defendant exchange anything. Defendant places considerable emphasis on the fact that Smelser had two prior felony convictions and would have had a strong incentive to fabricate testimony against defendant in order to escape prosecution for possession of the cocaine that the police found under the seat in Smelser's car. Defendant would have this Court disregard Smelser's testimony and then conclude that the prosecution did not present sufficient evidence to support defendant's conviction.

We conclude that, after viewing the evidence in a light most favorable to the prosecution, the prosecutor provided sufficient evidence to support defendant's conviction. Smelser's credibility was a question for the jury. *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828 (1997), citing *Wolfe, supra* at 514-515. Although Smelser may have had an incentive to lie about where he obtained the cocaine in order to protect himself from prosecution, the jury was free to conclude that Smelser testified truthfully. Furthermore, Officer Stiles testified that two other individuals approached the house prior to Smelser and only stayed there for approximately five minutes. Officer Stiles testified that in his experience, crack houses typically receive a high frequency of foot and vehicle traffic from visitors who usually only stay for short periods of time. Stiles also testified that during a subsequent raid at the house, he found plastic baggies on the porch of the house and that they contained a white residue. Based on the foregoing, a rational trier of fact could conclude that Smelser's testimony was true, that the house was a crack house, and that defendant was the source of the cocaine found in Smelser's possession.

Defendant also asserts that the trial court did not comply with MCR 6.419(D) in that it did not state the reason for denying defendant's motion. We note that that defendant did not object to the trial court for the alleged error, and conclude that the issue is unpreserved for our review. *People v Grant*, 445 Mich 535, 544-547; 520 NW2d 123 (1994). In any event, we note that the trial court stated that it was denying defendant's motion for directed verdict because there was adequate evidence presented for the case to go to the trier of fact for the ultimate determination of witness credibility. We therefore conclude that the trial court's statement was sufficient to satisfy MCR 6.419(D).

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Helene N. White