STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

        Plaintiff-Appellee,

v

ARMONDO GRAHAM,

        Defendant-Appellant.

UNPUBLISHED
December 13, 2002

No. 235914
Wayne Circuit Court
LC No. 00-011161

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

PER CURIAM.

Following a bench trial, defendant was convicted of delivery of marijuana, MCL 333.7401(2)(d)(*iii*), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(*iii*). The trial court sentenced defendant to concurrent terms of fourteen months' to four years' imprisonment. He appeals as of right. We affirm in part and remand in part.

On appeal, defendant argues that insufficient evidence was presented to support his convictions. In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecutor to determine whether a "rational trier of fact could have found that the essential elements of the offense were proven beyond a reasonable doubt." *People v Nowak*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). Our review is deferential, drawing all reasonable inferences and making credibility choices in support of the trier of fact's verdict. *Id.* at 400.

Specifically, defendant contends that this was a case of mistaken identity. Although defendant and Vennis Woods testified in support of the mistaken identity theory, the trial court, sitting as trier of fact, specifically found their testimony not to be credible. As noted above, we defer to the trial court's credibility assessment. *Nowak, supra* at 400.

Here, an undercover officer testified that he purchased two "dime" bags of marijuana from defendant only moments before the raid was conducted. The officer expressed confidence in his identification of defendant, and provided a detailed description of him to the raid team. Another officer on the raid team identified defendant as the lone person inside the apartment near the rear door when the raid was conducted. The marijuana bag was a few feet away from defendant. Defendant closely matched the description of the suspect who had sold marijuana to the undercover officer. Under the circumstances, there was sufficient evidence of defendant's possession of the marijuana vis-à-vis his dominion and control over it. *People v Konrad,* 449 Mich 263, 271; 536 NW2d 517 (1995). In addition, defendant's intent to deliver was established

by the quantity of marijuana in his possession, the manner in which it was packaged, and the other circumstances surrounding his arrest. *People v Wolfe*, 440 Mich 508, 524; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Accordingly, the evidence, when viewed in a light favorable to the prosecution, was sufficient to support a finding of defendant's guilt beyond a reasonable doubt. *Nowak, supra* at 399-400.

Defendant next asserts that the trial court failed to articulate substantial and compelling reasons to depart from the statutory sentencing guidelines range of zero to nine months' imprisonment (according to the presentence investigation report). As noted above, the trial court sentenced defendant to minimum terms of fourteen months' imprisonment on each count. However, the trial court failed to acknowledge either the applicable guidelines or the requisite substantial and compelling reasons to impose a departure sentence. MCL 769.34(3). Moreover, we note that the trial court failed to comply with MCL 769.34(7), which requires the trial court to "advise the defendant orally and in writing that he or she may appeal the sentence as provided by law on grounds that it is longer or more severe than the appropriate sentence range." Accordingly, it is not clear that the trial court was aware that it was departing from the sentencing guidelines range. Consequently, we are compelled to vacate defendant's sentences and remand for resentencing. *People v Hornsby*, 251 Mich App 462, 474; 650 NW2d 700 (2002).

We affirm defendant's convictions, but remand for resentencing. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh