STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN D. WOOD,

Defendant-Appellant.

UNPUBLISHED
December 20, 2002

No. 237009
Wayne Circuit Court
LC No. 99-007151

Before: Fitzgerald, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

Defendant appeals as of his right his jury trial conviction of possession with intent to deliver more than 650 grams of cocaine, MCL 333.7401(2)(a)(i). Defendant was sentenced to twenty to forty years in prison. We affirm.

Defendant argues that due to a defect in the verdict form his conviction should be reduced from possession with intent to deliver over 650 grams of cocaine to possession of less than fifty grams of cocaine, MCL 333.7403(2)(iv). We disagree. Because defendant failed to properly preserve this issue for appeal, our review is limited to plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

When a defendant claims that a verdict is void for uncertainty, this Court reviews the pleadings, the trial court's charge, and the entire record, under a standard of "clear deducibility." *People v Rand*, 397 Mich 638, 643; 247 NW2d 508 (1976); *People v Miller*, 143 Mich App 274, 276; 372 NW2d 329 (1985). If the jury's intent can be clearly deduced by reference to the record, the verdict is not void as uncertain. *Rand, supra* at 643.

The verdict form in this case listed three possible verdicts: not guilty, guilty of possession with intent to deliver cocaine, and possession of cocaine. Significantly, we note that the amount of cocaine was never disputed in this case. Rather, defendant's defense was that he did not possess the cocaine. Moreover, during closing arguments the prosecutor and defense counsel both stated that the amount of cocaine at issue was over 650 grams. A further review of the record also shows that the trial court clearly instructed the jury that the charge against defendant was possession with intent to deliver over 650 grams of cocaine. After the jury rendered its verdict, the trial court asked the foreman and the other jurors to specify whether their verdict was guilty of possession with intent to deliver over 650 grams of cocaine. Each juror answered in the

affirmative. Thus, it is clear from the record that the jury intended to convict defendant of possession with intent to deliver over 650 grams of cocaine. See *Rand, supra* at 643.

Defendant next asserts that there was insufficient evidence to prove beyond a reasonable doubt that he either possessed the cocaine or intended to deliver it. We disagree. In reviewing a sufficiency of the evidence claim, we view the evidence in the light most favorable to the prosecution and 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, 723; 597 NW2d 73 (1999). However, we will not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). "[C]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

A conviction for possession with intent to deliver over 650 grams of cocaine requires proof beyond a reasonable doubt that: (1) the recovered substance is cocaine; (2) the cocaine is in a mixture weighing more than 650 grams; (3) defendant was not authorized to possess the substance; and (4) defendant knowingly possessed the cocaine with the intent to deliver. See *Wolfe*, *supra* at 516-517. "Possession may be either actual or constructive, and may be joint as well as exclusive." *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). Whether the defendant had dominion or control over the controlled substance is the essential issue. *Id*. Similarly, actual delivery is not required to prove intent to deliver. *Wolfe, supra* at 524. "Intent to deliver can be inferred from the quantity of the controlled substance in the defendant's possession and from the way in which the controlled substance is packaged." *Fetterley, supra* at 518.

In the instant case, the cocaine was discovered in defendant's apartment and a large quantity was hidden in the dishwasher. There was testimony that defendant persistently attempted to halt the search of his apartment before the cocaine was discovered in his dishwasher by telling police that they already found all his drugs. Another police officer testified that defendant verbally admitted during questioning that the drugs were his and that he sold one or two kilograms of cocaine a week. The amount of cocaine discovered also indicated an intent to sell. A detective testified that kilograms of cocaine are for drug dealers and not individual users. Moreover, several tools used by drug dealers (a scale, sandwich baggies, and a cutting agent) were uncovered during the search of defendant's apartment. Viewing the above evidence in a light most favorable to the prosecution, we find that there was sufficient evidence to establish that defendant possessed and intended to deliver the cocaine found in his apartment.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Jessica R. Cooper