

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT E. BAILEY,

Defendant-Appellant.

UNPUBLISHED

September 23, 2008

No. 278047

Grand Traverse Circuit Court

LC No. 03-009349-FH

Before: Saad, C.J., and Sawyer and Beckering, JJ.

PER CURIAM.

Defendant appeals by right his bench trial conviction on two counts of conspiracy to deliver cocaine, less than 50 grams, MCL 750.157a and MCL 333.7401(2)(a)(iv). The trial court sentenced defendant to consecutive terms of three years to 20 years in prison on each count. We affirm.

Defendant presents two challenges. First, he argues that the trial court erred by denying his motion for a directed verdict. Second, he argues that the evidence was insufficient to support his conviction. We review these challenges de novo, to determine whether a rational trier of fact could have found that plaintiff proved the elements of the charged crimes. *People v Meshell*, 265 Mich App 616, 619; 696 NW2d 754 (2005). In examining the record, we must view all facts in the light most favorable to plaintiff. *Id.*

To establish a conspiracy, two or more individuals must agree to the commission of a criminal offense. *People v Justice (After Remand)*, 454 Mich 334, 345; 562 NW2d 652 (1997). The evidence must establish that the defendant knew of the conspiracy, knew of the illegal objective, and intended “to participate cooperatively to further that objective.” *People v Blume*, 443 Mich 476, 485; 505 NW2d 843 (1993). Significantly to the case at bar, a defendant may be convicted of conspiracy based on inferences derived from the acts and conduct of the parties. *People v Justice*, 454 Mich 334, 347; 562 NW2d 652 (1997).

The evidence established that the police found crack cocaine and marijuana at defendant’s apartment, that defendant had driven his half-brother to an undercover cocaine sale, that the two left the sale area together, that the half-brother subsequently drove the same car to four other drug transactions, and that currency received in those drug transactions was found in defendant’s bedroom. Deferring to the credibility determinations made by the trier of fact, *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990), and viewing the whole

evidence in the light most favorable to the prosecutor, sufficient facts were adduced to allow a reasonable trier of fact to find that defendant and his half-brother had agreed to work together to sell crack cocaine.

Defendant next argues that his conviction on two counts of conspiracy violated the double jeopardy provisions of the United States and Michigan Constitutions. US Const, Am V; Const 1963, art 1, § 15. We review this preserved claim de novo to determine whether there was error, and if there was error, to determine whether the error was harmless beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). We find no error. The prosecutor charged defendant with two separate conspiracies occurring on or about October 6, 2003, through October 10, 2003. As noted above, the evidence presented was sufficient to support a guilty verdict on both charges. Thus, defendant's double jeopardy protections were not violated. See *People v Mezy*, 453 Mich 269, 285; 551 NW2d 389 (1996); *People v Manning*, 163 Mich App 641; 415 NW2d 1 (1987).

Defendant also argues that his convictions violate Wharton's Rule. Defendant did not present this issue to the trial court, so we review the issue for plain error affecting defendant's substantial rights. *Carines, supra* at 763. We find no error. The evidence was sufficient to establish that defendant and his half-brother agreed to sell cocaine to a third party. Given the involvement of three persons, Wharton's Rule is not implicated in this case. See *People v Clifton*, 70 Mich App 65, 67-68; 245 NW2d 175 (1976).

Lastly, defendant maintains that the trial court violated his constitutional right to remain silent. US Const, Am V; Const 1963, art 1, §17. Having reviewed this preserved constitutional challenge, we find no constitutional violation. The investigating detective testified that defendant knew and understood his right to remain silent, and that defendant willingly answered the detective's questions. Although defendant subsequently exercised his right to remain silent, the trial court did not consider defendant's silence as evidence of guilt. Rather, the court considered defendant's previous answers as evidence of guilt, because the answers were implausible. *People v McReavy*, 436 Mich 197, 218; 462 NW2d 1 (1990). The use of defendant's answers as evidence of guilt did not violate defendant's rights. See *People v Shafier*, 277 Mich App 137, 140; 743 NW2d 742 (2007).

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Jane M. Beckering