

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 8, 2011

v

EDDIE LEE POPE,

No. 296464
Wayne Circuit Court
LC No. 09-007104-FH

Defendant-Appellant.

Before: K.F. KELLY, P.J., and METER and GLEICHER, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for possession with intent to deliver less than 50 grams of cocaine, a violation of MCL 333.7401(2)(a)(iv), and delivery of less than 50 grams of heroin, a violation of MCL 333.7401(2)(a)(iv). Defendant was sentenced to 46 months to 20 years' imprisonment. We affirm.

I. BASIC FACTS

On March 3, 2009, Detroit Police Sergeant Andrew White was on surveillance at an abandoned residence at 2232 Marquette in an unmarked police car. From across the street, approximately thirty feet from the residence, Sergeant White observed a black male approach defendant on the front porch, give defendant paper currency, and defendant hand him something with a cuffed hand. Based on the sergeant's experience with narcotics, the sergeant believed that defendant was passing narcotics. After the man left, a black Taurus pulled up in front of Sergeant White. Sergeant White saw the driver, later identified as James Wilson, exit the car, walk up to defendant, speak with him shortly, and pass defendant currency, to which the defendant again returned a cuffed hand. Again, based on his experience, Sergeant White believed that defendant passed narcotics. Based on this belief, Sergeant White instructed a nearby raid team to stop the driver, and returned to 2232 Marquette to continue observation.

The raid team stopped and arrested Wilson five blocks from the point where Sergeant White departed. Officer Demetrius Brown testified that upon arrest, Wilson and the Taurus matched the description of both the buyer and the car given by Sergeant White. A search incident to arrest revealed a foil pack of heroin in Wilson's back pocket. Officer Brown testified that he did not find anything else on Wilson, aside from "common things you have in your pocket."

The raid team then conducted a search of the house where defendant was located. Defendant was arrested and searched. Sergeant White found four clear ziplock bags of cocaine. Defendant had \$362, in ten \$20 bills, nine \$10 bills, ten \$5 bills, and twenty-two \$1 bills. Sergeant White testified that based on his experience, this indicated that defendant was engaged in narcotics sales, namely, that the individual narcotics packages cost somewhere from \$5 to \$10. Following the raid, two females approached the residence and told police officers they were there to purchase cocaine.

Defendant now claims that the prosecution presented insufficient evidence for a reasonable jury to conclude beyond a reasonable doubt that defendant did anything more than possess cocaine.

II. STANDARD OF REVIEW

When reviewing a claim that the evidence presented by the prosecution was insufficient to support the defendant's conviction, we view the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find beyond a reasonable doubt that the prosecution established the essential elements of the crime. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). "A reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Further, circumstantial evidence and reasonable inferences arising there from can constitute sufficient proof of the elements of a crime. *Nowack*, 462 Mich at 400.

III. ANALYSIS

A. POSSESSION WITH INTENT TO DELIVER LESS THAN 50 GRAMS OF COCAINE

To prove that a defendant possessed a controlled substance with intent to deliver, a prosecutor must show: (1) that the substance was a controlled substance; (2) the weight of the substance; (3) that the defendant was not authorized to possess the substance; and (4) that the defendant knowingly possessed the substance with the intent to deliver. *Wolfe*, 440 Mich at 516-517. The last element has two components, possession and intent. *Id.*

Defendant alleges that the prosecution did nothing more than prove simple possession. Intent, however, may be inferred. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). Michigan courts have held that because of the inherent difficulty of proving a defendant's state of mind, only minimal circumstantial evidence from which intent may be inferred need be presented. *Ericksen*, 288 Mich App at 196-197. Intent to deliver can be inferred from the packaging of the controlled substance, coupled with the lack of paraphernalia for personal use found where the defendant was arrested. *See People v Hardiman*, 466 Mich 417, 422, n 5; 646 NW2d 158 (2002); *Wolfe*, 440 Mich at 516-517.

Here, Detroit police officers arrested defendant after what Sergeant White described as a likely drug transaction; he observed a man approach defendant, hand paper currency to defendant, and defendant respond with a cuffed hand. When arrested, defendant possessed cocaine which was packaged in individualized ziplock bags, supporting a reasonable inference that it was packaged for sale. Further, \$362 was found on defendant at the time of arrest,

consisting of ten \$20 bills, nine \$10 bills, ten \$5 bills, and twenty-two \$1 bills. Finally, two women approached the home while police were on the scene stating that they were seeking to buy cocaine. Taken in totality, the evidence presented by the prosecution more than gives rise to a reasonable inference that defendant possessed the cocaine with the intent to deliver it.

Although defendant asserts that the packaging could have easily supported personal use, “[e]ven in a case relying on circumstantial evidence, the prosecution need not negate every reasonable theory consistent with defendant’s innocence, but need merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide.” *Hardiman*, 466 Mich at 423-424, quoting *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995). A rational trier of fact could have found beyond a reasonable doubt that defendant possessed the cocaine with intent to deliver.

B. DELIVERY OF LESS THAN 50 GRAMS OF HEROIN

To prove that a defendant delivered a controlled substance, the prosecution must show: (1) delivery of a controlled substance, either the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship, and (2) an intent to deliver, which may be proven by circumstantial evidence and also may be inferred from the amount of controlled substance possessed. *People v Williams*, 268 Mich App 416, 422; 707 NW2d 624 (2005). The prosecution may support a conviction by circumstantial evidence. *Nowack*, 462 Mich at 400.

In this case, Sergeant White saw a man approach defendant, hand defendant paper currency, and defendant handed something to the man in a cuffed hand. Based on his experience, Sergeant White believed that he had witnessed a drug transaction. Sergeant White then followed the buyer and alerted the raid team with a detailed description of the buyer and the car. Five blocks from where Sergeant White departed, the raid team apprehended an individual matching the description of the buyer, later identified as James Wilson, and the car. Upon a search of him, arresting officers found a package of heroin in his rear back pocket. Again, taken in totality, the prosecution presented sufficient evidence to support defendant’s conviction delivery of less than 50 grams of heroin.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Elizabeth L. Gleicher