

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DWIGHT WILLIAMS,

Defendant-Appellant.

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UNPUBLISHED

May 10, 1996

No. 182880

LC No. 94-007546

Before: Taylor, P.J., and Fitzgerald and P.D. Houk,\* JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and was sentenced to a prison term of 3-1/2 to twenty years. He appeals as of right. We affirm.

Defendant's sole argument on appeal is that the evidence is insufficient to support his conviction. Specifically, defendant contends that his testimony was more credible than the testimony of the prosecution's sole witness, Officer Jeffrey Clyburn, and therefore the evidence was insufficient to establish that he knowingly possessed heroin with the intent to deliver it. We disagree. Issues of credibility are to be resolved by the trier of fact, not us. Rather, we look at the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

To prove the crime of possession with intent to deliver less than fifty grams of heroin, the prosecutor must establish: (1) that the recovered substance was heroin; (2) that it was in a mixture weighing less than fifty grams; (3) that the defendant was not authorized to possess the substance; and (4) that the defendant knowingly possessed it with intent to deliver it. *Wolfe, supra* at 516-517. The fourth element, which is the only element at issue, requires that the alleged possessor be aware of the

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\*Circuit judge, sitting on the Court of Appeals by assignment.

presence and character of the particular substance and be intentionally and consciously in possession of it. *People v Delongchamps*, 103 Mich App 151, 159; 302 NW2d 626 (1981).

We are satisfied that the evidence presented was sufficient. Officer Jeffrey Clyburn testified that he and his partner, Officer Curtis Babbs, were positioned inside a vacant building in an area known for narcotics use. While looking out a window on the second floor of the building, Officer Clyburn observed defendant on the sidewalk directly below. Officer Clyburn testified that he heard defendant yelling, "I got that Bull," which he recognized as the brand name for a type of heroin. Officer Clyburn also observed defendant waving down cars.

As Officer Clyburn watched, a yellow Mark III stopped next to defendant. Defendant went to the passenger window, had a short conversation with the driver, exchanged money, and gave the driver a single white coin envelope. The officers then left the building and confronted defendant, who proceeded to drop ten to twelve white coin envelopes. Officer Clyburn testified that he observed Officer Babbs retrieve the envelopes, which the parties stipulated contained heroin. This evidence, when viewed in the light most favorable to the prosecution, sufficiently established that defendant was aware of the presence and character of the heroin, that he was intentionally and consciously in possession of it, and that he intended to deliver it.

Affirmed.

/s/ Clifford W. Taylor

/s/ E. Thomas Fitzgerald

/s/ Peter D. Houk