

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUANE KEITH BIVINGS,

Defendant-Appellant.

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UNPUBLISHED

June 14, 1996

No. 182871

LC No. 94-005388

Before: White, P.J., and Smolenski, and R.R. Lamb,\* JJ.

MEMORANUM.

Following a bench trial, defendant was convicted of one count of delivery of less than fifty grams of heroin and one count 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). He was sentenced to concurrent sentences of two to twenty years on each count. We affirm.

Defendant argues that the prosecution failed to produce sufficient evidence to prove that he was in possession of .48 grams of heroin confiscated from the home of defendant's aunt. In determining whether the prosecution has presented sufficient evidence, this Court is required to 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 Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994).

Officer Nathaniel Coleman of the Detroit Police testified that he purchased two packets of heroin from defendant using a marked \$20 bill. Thereafter, defendant was chased into his aunt's house where Officer Arthur Brown observed him throw a plastic bag into a garbage can. The bag contained .48 grams of heroin. The marked \$20 bill was recovered inside the house, along with narcotics paraphernalia. Although the testimony of Officer Robert Feld conflicted with that of the other officers, the trial court explicitly declared that it found Coleman and Brown to be credible. This Court gives deference to a trial court's resolution of disputed facts, especially where a factual question involves the credibility of the witnesses whose testimony is in conflict. *People v Shields*, 200 Mich App 554, 558;

504 NW2d 711 (1993). Based on the record, we conclude that the trial court's findings of fact were not clearly erroneous, *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991), nor was the evidence insufficient to prove defendant guilty of possession with intent to deliver less than fifty grams of heroin.

Affirmed.

/s/ Helene N. White

/s/ Michael R. Smolenski

/s/ Richard R. Lamb