STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBBY JAMES HENRY,

Defendant-Appellant.

UNPUBLISHED
June 25, 1996

No. 179510
LC No. 0094-1994

Before: Hood, P.J., Markman and A.T. Davis, Jr.*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of conspiracy to possess marijuana with intent to deliver, MCL 333.7401(2)(c); MSA 14.15 (7401)(2)(c). Defendant also pled guilty to habitual offender, second, MCL 769.11; MSA 28.1083. On September 8, 1994, he was sentenced to twelve months in jail for his conspiracy conviction. He was also sentenced to twelve months in jail for his habitual offender conviction, to be served concurrently. He appeals as of right. We affirm.

On March 26, 1994, police officers stopped defendant's alleged marijuana supplier, Michael Zelm, on his way into Menominee. The officers discovered approximately three-quarters of a pound of marijuana in Zelm's car. He was placed under arrest. Zelm claimed that defendant was his buyer of one half pound of the marijuana. Zelm agreed to help arrest defendant as part of a deal to escape prosecution. He called defendant from the police station. In the conversation that followed, he and defendant set up a time to meet. Defendant met with Zelm as agreed. After defendant paid Zelm for the drugs, he was arrested. Defendant was charged on the theory that he and Zelm conspired that defendant would possess the marijuana at issue with intent to deliver it.

Defendant first argues that the trial court erred in denying his motion for a directed verdict on grounds of insufficient evidence. A directed verdict is inappropriate if, considering the evidence in a light most favorable to the prosecution, a rational trier of fact could find that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences arising from the evidence may constitute satisfactory proof of the elements of an offense. *People v Greenwood*, 209

Mich App 470, 472; 531 NW2d 771 (1995). A court must not weigh the evidence or assess the credibility of the witnesses. *People v Mehall*, 213 Mich App 353, 363; 539 NW2d 593 (1995).

The elements of a conspiracy are an (1) unlawful (2) agreement (3) between two or more persons, with (4) the specific intent on the part of both the defendant and the co-conspirator to combine with others to accomplish an illegal objective. *People v Blume*, 443 Mich 476, 481; 505 NW2d 843 (1993). Element (4), specific intent, has its own three sub-elements, requiring proof that the co-conspirator as well as the defendant possessed (a) knowledge of the conspiracy, (b) knowledge of the objective of the conspiracy and (c) intent to participate cooperatively to further that objective. *Id.*, 485. "To establish the intent, the evidence of knowledge must be clear, not equivocal . . . ." *Id.*

Defendant challenged the sufficiency of the evidence of element (4), Zelm's specific intent. Viewing the evidence in the light most favorable to the prosecution, we find sufficient evidence of sub-element (a), Zelm's knowledge of a conspiracy (an unlawful agreement). The testimony of Zelm and two police officers at trial established sufficiently that Zelm and defendant each knew of the other's agreement regarding the sale of marijuana between them, an illegal act in itself.

Viewing the evidence in a light most favorable to the prosecution, there was also sufficient evidence of sub-element (b), Zelm's knowledge of the alleged purpose of the conspiracy -- that defendant would possess the marijuana *with intent to deliver*. The agreement was for Zelm to sell defendant a half pound of marijuana for $850. Zelm testified that he was familiar with marijuana, and that a half pound was a lot for "just you own," or for someone's personal use. In his opinion, a person acquiring a half pound of marijuana would "distribute it." He admitted he was distributing that quantity to defendant, and "[he] wouldn't have kept that for [himself]."

Additionally, the intent to deliver may be inferred by the circumstances and the amount of the substance. See *People v Cantanzarite*, 211 Mich App 573, 578; 536 NW2d 570 (1995); *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991). We therefore find that there was sufficient evidence of Zelm's knowledge of the objective of the conspiracy.

Finally, there was sufficient evidence of sub-element (c), Zelm's intent to participate cooperatively to further the conspiracy's objective. Contrary to defendant's argument, a finding that Zelm intended to participate in the object of the transaction -- the sale of marijuana -- is not an inference upon an inference. *People v Atley*, 392 Mich 298, 316; 220 NW2d 465 (1974). The agreement was for Zelm to sell defendant a half pound of marijuana. Again, Zelm, himself, testified that he was familiar with marijuana. He opined that defendant would likely distribute the half pound of marijuana, as opposed to keeping it for his own personal use. Zelm also testified that he was aware of others besides defendant who trafficked marijuana. However, he believed that defendant contacted him because he could obtain the marijuana for a lower price.

We therefore conclude that, considering the evidence in a light most favorable to the prosecution, it was sufficient to permit a rational trier of fact to find that the essential elements of the

crime charged were proven beyond a reasonable doubt. *Hammons, supra*. The trial court properly denied defendant's motion for a directed verdict.

Defendant next argues that the tape recording of defendant and Zelm setting up a meeting time was not properly authenticated before its admission. Defendant failed to object to the admission of the tape on this ground at trial.[1] An objection based upon one ground will not preserve for appeal an argument premised on a different ground. *People v Lino (After Remand)*, 213 Mich App 89, 94; 539 NW2d 545 (1995). Therefore, this issue is not properly preserved for appellate review.

Finally, defendant argues that he is entitled to have his presentence investigation report (PSIR) altered to avoid misleading information reaching Department of Corrections officials, as required by MCL 771.14(5); MSA 28.1144. *People v Taylor*, 146 Mich App 203, 205; 380 NW2d 47 (1985).

At sentencing, defendant objected to a notation in his PSIR stating that he had been convicted of "armed," rather than "unarmed" robbery. The court agreed and indicated that this was a typographical error that had been corrected. A line had been drawn through the word "armed" and "unarmed" had been written above it. We find that the PSIR was sufficiently corrected to indicate that defendant's prior offense was unarmed robbery.

Affirmed.

/s/ Harold Hood
/s/ Stephen J. Markman
/s/ John J. McDonald

[1] Defense counsel's objection consisted of the following:

> I think that these [tapes] are - will contain admissions and comments by what supposedly is a co-conspirator and there is no longer a conspiracy ongoing. I think the admissions by the co-conspirator would be inadmissible at this point.

At no time was the authenticity of the tape questioned.