STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN PAUL EMERSON, II,

Defendant-Appellant.

UNPUBLISHED
November 8, 1996

No. 182788
LC No. 94-006246

Before: McDonald, P.J., and White and P. J. Conlin*, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and subsequently pleaded guilty to being a second offender under the Controlled Substances Act, MCL 333.7413(2); MSA 14.15(7413)(2). He was sentenced to six months on a tether program, substance abuse treatment, five years' probation and costs and fees. He now appeals as of right.

Defendant first argues the prosecution failed to produce sufficient evidence to prove he was in possession of cocaine. We disagree. A review of the record reveals a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287; 519 NW2d 108 (1994). Possession may be proven by circumstantial evidence and reasonable inferences arising therefrom. *People v Hellenthal*, 186 Mich App 484, 486; 465 NW2d 329 (1990).

Defendant next contends the trial court abused its discretion in allowing deputy sheriff Cletus Smith to testify regarding the reasons he submitted a request to the prosecutor to issue a warrant charging defendant with possession of less than twenty-five grams of cocaine. We agree.

In questioning Smith regarding his reasons for submitting a warrant request, the prosecutor was essentially asking the witness whether he believed defendant was guilty. Although Smith prefaced his answer with the words, "My opinion through my experience," his testimony was based solely on the

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

fact cocaine residue was discovered in defendant's house on a mirror which defendant admitted he owned. There is nothing in Smith's background or expertise which would make him more qualified than the jury to determine whether defendant was in possession of the cocaine simply because the residue was found in defendant's house. We therefore conclude the province of the jury was invaded. See *People v Walker*, 40 Mich App 142; 198 NW2d 449 (1972). Because the evidence against defendant was far from overwhelming, "there is a reasonable probability that the error affected the outcome of the trial." *People v Hubbard*, 209 Mich App 234; 530 NW2d 130 (1995). Accordingly, the error was not harmless.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Gary R. McDonald
/s/ Helene N. White
/s/ Patrick J. Conlin