

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONNIE L. WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

May 23, 1997

No. 188273

LC No. 93-130196-FH

Before: O'Connell, P.J., and Smolenski and T.G. Power*, JJ.

PER CURIAM.

Defendant was convicted by a jury of conspiracy to possess with intent to deliver more than 225 grams but less than 650 grams of cocaine, MCL 750.157a; MSA 28.354(1) and MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii), possession with intent to deliver more than 225 grams but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii), and fleeing and eluding a police officer, MCL 750.479a(1); MSA 28.747(1)(1). Defendant was sentenced to consecutive terms of twenty to sixty years' imprisonment for the conspiracy and possession convictions. Defendant was also sentenced to one year imprisonment for the fleeing and eluding conviction, such sentence to run concurrently with the conspiracy sentence. Defendant appeals as of right. We affirm.

Defendant argues that there was insufficient evidence to support his conspiracy conviction. Specifically, defendant argues that there was insufficient evidence of an agreement between himself, Gover and Powell.

In reviewing the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Medlyn*, 215 Mich App 338, 340; 544 NW2d 759 (1996). The gist of the offense of conspiracy is the unlawful agreement between two or more persons. *People v Blume*, 443 Mich 476, 481; 505 NW2d 843 (1993). There must be evidence of specific intent to combine with others to accomplish an illegal objective. *Id.* For

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

intent to exist, the defendant must know of the conspiracy, must know of the objective of the conspiracy, and must intend to participate cooperatively to further that objective. *Id.* at 485. However, direct proof of agreement is not required, nor is proof of a formal agreement necessary. It is sufficient that the circumstances, acts and conduct of the parties establish an agreement. *People v Cotton*, 191 Mich App 377, 393; 478 NW2d 681 (1991).

In this case, evidence was presented that defendant and Powell were business associates in the drug trade. Approximately two weeks before the instant offenses, Powell took Gover from Detroit to Flint where Gover stayed for approximately one week for the purpose of selling drugs supplied to him by Powell. Powell also gave Gover money. At the end of the week, Powell picked up Gover and took him back to Detroit.

On the day of the instant offenses, Powell again contacted Gover by telephone. Although Powell did not expressly refer to drug dealing on the telephone, Gover “had an idea of what he was talking about” because Powell “said a few words in somewhat of a code.” Powell subsequently picked up Gover and drove Gover to defendant. The three men were going to drive from the Detroit area to Flint. After getting into defendant’s vehicle, Powell showed Gover a bag outside the presence of defendant and told Gover that the bag contained narcotics. Defendant then entered the driver’s compartment of the vehicle. The bag was sitting in the front seat area. At some point, defendant asked Gover whether Gover was “ready to make some money,” which Gover understood to refer to his going to Flint to sell drugs. On the way to Flint, Powell and Gover engaged in a discussion concerning the nature of Gover’s duties with respect to selling drugs in Flint. Defendant drove and listened to this conversation.

When a police car activated its lights for the purpose of stopping defendant’s vehicle, Powell started to throw the bag of cocaine out of the window but was stopped by defendant. After the police officer placed Powell in the police car, defendant and Gover engaged in a discussion concerning a plan whereby Gover would jump out of the vehicle, dispose of or hide the drugs and meet later with defendant. Defendant drove away from the scene of the stop and Gover grabbed the bag of cocaine, which was now underneath the passenger seat. Defendant drove on the road’s shoulder and told Gover to jump. Gover jumped out of the moving vehicle with the bag of cocaine and was apprehended by the police. Defendant was not apprehended by the police at this point.

Defendant had previously utilized a man named Boatwright to sell cocaine for defendant in Flint. Boatwright testified that in September, 1993, he had a discussion with defendant and Powell about the instant offenses, and that defendant admitted that the cocaine in the bag was his cocaine.

Viewing the evidence of defendant’s association with Powell, their recruitment of people to sell drugs for them in Flint, defendant’s admitted knowledge of the cocaine in the bag and conduct of defendant, Powell and Gover on the day in question in a light most favorable to the prosecution, we conclude that a rational trier of fact could have found that the element of agreement, i.e., a specific intent to combine with others to accomplish an illegal objective, was proven beyond a reasonable doubt. See *Meredith, supra* at 411.

Next, defendant argues that insufficient evidence was presented that he possessed the cocaine. We disagree. The element of possession may be either actual or constructive. *People v Catanzarite*, 211 Mich App 573, 577; 536 NW2d 570 (1995). Constructive possession is established where the accused had the right to exercise control of the cocaine and knew that it was present. *Id.* In this case, evidence was presented that defendant prevented Powell from throwing the bag out the window and that he subsequently acknowledged that the cocaine was his. Viewing this evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could have found that the element of possession was proven beyond a reasonable doubt.

Next, defendant argues that the trial court abused its discretion by permitting the prosecutor to amend the conspiracy count to include Powell as a member of the conspiracy after the proofs were concluded. This Court will not reverse a trial court's decision to amend an information unless it finds that the defendant was prejudiced in his defense or that a miscarriage of justice resulted. MCR 6.112(G); MCL 767.76; MSA 28.1016; *People v Weathersby*, 204 Mich App 98, 103; 514 NW2d 493 (1994). The key question is whether the amendment prejudiced the defendant. *People v Covington*, 132 Mich App 79, 86; 346 NW2d 903 (1984).

Here, the original information only listed Gover as a coconspirator with respect to the conspiracy charge. At trial, the court granted the prosecutor's motion to amend the information to also include "Kevonta Johnson, also known as KP or Kenneth Powell" as a coconspirator. A review of the record reveals that the amendment merely reiterated information that had been presented at trial. All relevant evidence regarding Powell's role in the drug deal was readily available to defendant before the amendment occurred. Moreover, defendant was able to cross-examine Gover as to Powell's role in the conspiracy. Defendant has failed to establish prejudice so as to merit relief.

Finally, defendant alleges that the trial court erred in admitting evidence that defendant engaged in six cocaine deals after the instant offenses. This Court reviews a trial court's decision regarding the admission or exclusion of bad acts and similar acts evidence for an abuse of discretion. *Catanzarite*, *supra* at 579. In *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994), our Supreme Court outlined the standard to be utilized when determining whether evidence of other acts is admissible under MRE 404(b):

First, that the evidence be offered for a proper purpose under Rule 404(b); second, that it be relevant under Rule 402 as enforced through Rule 104(b); third, that the probative value of the evidence is not substantially outweighed by unfair prejudice; fourth, that the trial court may, upon request, provide a limiting instruction to the jury.

This Court has held that evidence of prior drug dealing is relevant to the issue of a defendant's intent to deliver. *People v Mouat*, 194 Mich App 482, 484-485; 487 NW2d 494 (1992).

In this case, defendant's theory of defense was that he was simply giving his companions a ride and that he had no knowledge of the cocaine in his vehicle. Before trial, the prosecutor gave notice that

it would seek to introduce evidence of defendant's subsequent drug deals as proof of defendant's knowledge of and intent to distribute cocaine. At trial, the court ruled that the evidence was admissible. The court conducted the analysis required by *VanderVliet* and concluded that the evidence of defendant's subsequent drug deals was relevant with respect to the issues of intent, motive, plan and scheme, and that the probative value of this evidence was not substantially outweighed by the danger of unfair prejudice. During final jury instructions, the court extensively cautioned the jury that it could not consider the evidence of defendant's subsequent drug deals as evidence that defendant was a bad man and therefore that he probably committed the crimes with which he was charged, but rather that it could only consider the evidence of defendant's subsequent drug deals with respect to the issues of defendant's motive, intent and knowledge. We agree with the court's analysis and find no abuse of discretion. *Catanzarite, supra*.

Affirmed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Thomas G. Power