STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

QUINCY PRICE,

Defendant-Appellant.

UNPUBLISHED
October 17, 1997

No. 193363
Kent Circuit Court
LC No. 95-1825-FH

Before: Griffin, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession of cocaine, less than 50 grams, with intent to deliver. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He was sentenced to one and one-half to twenty years' imprisonment. He appeals as of right. We affirm.

The issue is whether there was sufficient evidence to prove possession of cocaine with intent to deliver. In reviewing the sufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979), cert den 449 US 885 (1980).

The elements of possession of a controlled substance, less than 50 grams, with intent to deliver, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), are: (1) the substance in question must be shown to be cocaine; (2) the cocaine must be in a mixture of less than fifty grams weight; (3) it must be shown that defendant was not authorized to possess the substance; and (4) it must be shown that defendant knowingly possessed the cocaine with intent to deliver. *People v Lewis*, 178 Mich App 464, 468; 444 NW2d 194 (1989). Defendant contests only the fourth element.

First, the prosecution presented evidence that defendant possessed the substance that was later determined to be crack cocaine. From a distance of approximately one and one-half car lengths, one of the arresting officers saw defendant pull a baggie of what appeared to be crack cocaine from the back of his pants and show it to another person, Mickens. As soon as Mickens noticed that they were being observed by police, he said something to defendant, and defendant moved the baggie out of the

officer's view. Defendant began to walk around toward the front of the house near the lot where he was standing.

One officer followed defendant on foot while the other drove around the block to find defendant. Once around the other side of the house at 1029 Baxter, the police confronted defendant and subsequently searched the area. The search revealed a baggie with crack cocaine, which was found on the grass within 10 feet of where defendant was first confronted. Witnesses testified that they observed defendant walk to the porch of 1029 Baxter from a direction west of the house, thus placing defendant in the immediate area where the baggie was found. The evidence was therefore sufficient to allow a rational trier of fact to conclude that defendant did, in fact, possess the baggie containing cocaine.

Second, defendant argues that the evidence was insufficient to prove that defendant had the intent to deliver the cocaine. The arresting officer testified that the baggie possessed by defendant contained 17 rocks of cocaine, which had a street value of approximately $340. The officer testified that because the nature of crack cocaine addiction is that an ordinary user will immediately smoke whatever he has in his possession, it is very uncommon for an ordinary user to have 17 rocks of cocaine in his possession. An ordinary user would only have one or two rocks in his possession at any given time.

This Court has held that the above testimony is sufficient to support a finding of intent to deliver. *People v Ray*, 191 Mich App 706; 479 NW2d 1 (1991). In *Ray*, the defendant was shown to have possessed six rocks of crack cocaine, which he dropped when he saw a police officer approaching him. The arresting officer testified that he "had never seen someone who merely uses narcotics possess more than one or two rocks of crack cocaine at one time, . . . and that the amount of cocaine found on [the] defendant and its street value indicated that [the] defendant intended to sell it" *Id*. at 708-709. Despite the absence of direct evidence regarding the intent issue, ". . . intent to deliver may be proven by circumstantial evidence and also may be inferred from the amount of controlled substance possessed." *Id*. at 708, citing *People v Cantina (On Remand)*, 159 Mich App 57, 61; 406 NW2d 473 (1987).

Though defendant argues correctly that the use of drug profiles as substantive evidence of a defendant's guilt is not permitted in Michigan, *People v Hubbard*, 209 Mich App 234; 530 NW2d 130 (1995), he fails to distinguish that argument from the facts of the present case. This Court drew a distinction in *Hubbard* between the use of drug profiles as substantive evidence and the use of expert testimony explaining the significance of seized contraband such as the amount of cocaine that a defendant possesses, noting that the latter is generally allowed, while the former is not. *Id*. at 239. Pursuant to *Ray*, *supra*, the arresting officer's testimony is an explanation of the significance of the 17 rocks of crack cocaine, not a recitation of common characteristics that are typical of a person engaged in drug dealing.

Accordingly, the evidence presented at trial was sufficient to support a guilty verdict for possession of a controlled substance, less than 50 grams, with the intent to deliver.

Affirmed.

/s/ Richard Allen Griffin
/s/ Myron H. Wahls
/s/ Roman S. Gribbs