

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRAVIS EMIL LUCAS,

Defendant-Appellant.

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UNPUBLISHED

October 4, 2005

No. 252729

Wayne Circuit Court

LC No. 02-002934-01

Before: Bandstra, P.J., and Neff and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to two years' imprisonment for the felony-firearm conviction, and six months to four years for the possession with intent to deliver marijuana conviction (the execution of this sentence was suspended). Because substantial circumstantial evidence existed supporting the inference that defendant possessed the intent to deliver marijuana, we affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that the prosecution did not present sufficient evidence to support his possession with the intent to deliver marijuana conviction. A challenge to a conviction based on the sufficiency of the evidence is reviewed de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). The prosecution must introduce evidence sufficient to justify a rational trier of fact in concluding that all of the essential elements of the crime were proven beyond a reasonable doubt. *People v Jermell Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). When reviewing a challenge to the sufficiency of the evidence in a bench trial, this Court views the evidence in the light most favorable to the prosecution. *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992).

Defendant raises only one argument on appeal, that he did not intend to deliver narcotics. "Possession with intent to deliver can be established by circumstantial evidence and reasonable inferences arising from that evidence, just as it can be established by direct evidence." *People v Gonzalez*, 256 Mich App 212, 226; 663 NW2d 499 (2003), citing *People v Wolfe*, 440 Mich 508, 526; 489 NW2d 748, amended 441 Mich 1201 (1992). "[A]ctual delivery of narcotics is not required to prove intent to deliver. Intent to deliver has been inferred from the quantity of

narcotics in a defendant's possession, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest.” *Wolfe, supra* at 524.

Specifically, defendant argues he did not have the intent to deliver any narcotics and instead possessed narcotics solely for personal use. In support of his argument, defendant points to three separate factors. First, the police found a relatively small quantity of narcotics in defendant’s possession, totaling less than one gram of marijuana. Second, the police did not identify the substance traded in transactions they observed as marijuana. Third, defendant did not reside at the house where the police found the Ziploc bag and scale evidence. Defendant contends that the evidence supports only possession of marijuana, not possession with the intent to deliver marijuana.

The record displays that defendant possessed a relatively small amount of marijuana, .86 grams of marijuana, as stipulated by the parties. However, the quantity of marijuana defendant possessed is not the only factor examined in determining whether defendant intended to deliver marijuana. At trial, Narcotics Officer Bryant testified he observed defendant engage in two separate transactions where he exchanged an off-white substance for cash at a residence. Approximately thirty minutes later, the police arrested defendant at the residence. Narcotics Officer Dembinski testified at trial that when he entered the residence to arrest defendant, a semiautomatic pistol with the serial number removed lay on top of a coffee table, within defendant’s reach. And, Sergeant White confiscated \$218 in small bills from defendant’s person, a paper bag from the kitchen containing empty Ziploc bags used for packaging narcotics, and a small portable scale used for weighing and pricing narcotics.

Defendant argues that the police never positively identified the substance exchanged for money in the observed transactions as marijuana. However, the law does not require the prosecution to show that defendant delivered marijuana in the prior transactions at the residence. *Wolfe, supra* at 526. The prosecution must show only that defendant intended to deliver the marijuana he possessed at the time he was arrested. And, the trial court was permitted to consider Bryant’s testimony as part of the circumstances surrounding defendant’s arrest. *Id.* The prior transactions, regardless of the type of narcotic involved, support an inference that defendant intended to deliver the marijuana he possessed at the time he was arrested. Finally, while defendant contends no evidence was admitted at trial to prove the brown paper bag was his, testimony was introduced that defendant was the only person in the house when the police arrested him, linking him with the bag and its contents. When the evidence is viewed in the light most favorable to the prosecution, the prosecution introduced sufficient circumstantial evidence to support the inference that defendant had the requisite intent to deliver the marijuana found in his possession.

Affirmed.

/s/ Richard A. Bandstra  
/s/ Janet T. Neff  
/s/ Pat M. Donofrio