

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALBERT MITCHELL,

Defendant-Appellant.

UNPUBLISHED
October 15, 1999

No. 202455
Recorder's Court
LC No. 96-003691

Before: Neff, P.J., and Murphy and J. B. Sullivan*, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). Defendant was sentenced to six months to four years in prison. We affirm.

Defendant argues on appeal that the trial court's finding of fact that defendant was in possession of heroin was clearly erroneous. We disagree. Findings of fact by the trial court may not be set aside unless clearly erroneous. MCR 2.613(C); MCR 6.001(D). A finding of fact is considered "clearly erroneous" if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996).

Defendant claims that the trial court's finding that Detroit Police Officer Ralph Sumbry observed defendant toss a plastic baggie containing suspected heroin was erroneous because Sumbry had an obstructed view of defendant and no other police officer could corroborate Sumbry's observations. However, the testimony of Officer Sumbry clearly indicates that he viewed defendant when he tossed a plastic baggie, later found to contain heroin, onto a second floor porch. In this case, the trial court believed the testimony of Officer Sumbry and not defendant. "The trial court is best qualified to hear relevant witnesses' testimony and gauge credibility." MCR 2.613(C); *People v Tanner*, 222 Mich App 626, 635; 564 NW2d 197 (1997).

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

Defendant also claims that the trial court did not take into consideration, when making its findings, the failure of the Detroit Police Department to conduct a fingerprint analysis of the plastic baggie allegedly in defendant's possession. Factual findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Armstrong*, 175 Mich App 181, 185; 437 NW2d 343 (1989). Although the trial court did not make specific findings as to the absent fingerprint analysis, it is clear that the court was fully aware of the issue. Regardless, there was eyewitness testimony directly linking defendant to the heroin. Therefore, we hold that the trial court's finding that defendant was in possession of the plastic baggie containing heroin was not clearly erroneous.

Affirmed.

/s/ Janet T. Neff

/s/ William B. Murphy

/s/ Joseph B. Sullivan