STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 17, 2002
v	No. 229370 Kent Circuit Court
JOHNNIE CASTON, SR., Defendant-Appellant.	LC No. 99-12697-FH

Before: Wilder, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of possession of marijuana, in violation of MCL 333.7403(1)(2)(d), as a second subsequent offense, MCL 333.7413(2). He was sentenced to time served, which amounted to 229 days in county jail. We affirm.

I. Facts and Procedural History

On December 14, 1999, the Grand Rapids Police Department executed a search warrant at defendant's residence located on 1908 Union Avenue.[1] Defendant was present at the time the search warrant was executed. During the search, the police found a bag of marijuana, a marijuana roach, and two handguns in the northeast bedroom. The marijuana and marijuana roach were found in a dresser drawer and on top of the dresser, respectively, after a canine unit alerted on the dresser. The handguns were found in a bag located on the bedroom floor. The police also discovered paperwork addressed to defendant near the dresser where the marijuana was found, as well as men's clothing of defendant's size throughout the bedroom. Among the paperwork was a letter addressed to defendant from his daughter and dry cleaning receipts made out in defendant's name. In the living room, the police discovered loose marijuana on the living room floor, and two bags of marijuana inside a wooden box located. The police also confiscated paperwork with defendant's name, a finger scale and sandwich baggies,[2] from the living room in close proximity to the marijuana.

[1] Defendant did not own the home, and shared the residence with three other occupants.

[2] The finger scale and sandwich baggies were seized because the could have been used for weighing packaging marijuana for sale.

Following the search, defendant was questioned by Officer Michael Rozema. At trial, Officer Rozema testified that he read defendant his *Miranda*[3] rights, and that defendant agreed to answer questions. Officer Rozema then testified that because he needed defendant to sign the advice of rights card and defendant had been handcuffed by another officer with his hands behind his back, Officer Rozema uncuffed defendant's hands, and then recuffed defendant with his hands in front so that he could sign the advice of rights card. Officer Rozema also testified that defendant admitted to him that the marijuana in the living room was his, but that it was only for personal use, and that he shared the northeast bedroom with his girlfriend. Further, Officer Rozema testified that defendant stated that the handguns were not his, but rather belonged to his brother, who had left them in the house without his knowledge. Nonetheless, according to Officer Rozema, defendant indicated that he had handled the handguns when his brother first showed them to him. On the basis of these admissions, defendant was placed under arrest and charged with possession of marijuana, MCL 333.7403(2)(d), and possession of a firearm by a felon, MCL 750.224f.[4]

Defendant testified at trial that he did not remember signing the advice of rights card. He also introduced the testimony of a handwriting expert who testified that there were a "number of significant differences" between the signature that appeared on the advice of rights card and samples of defendant's known signature. During cross-examination, the handwriting expert acknowledged that he was unaware what affect being handcuffed while signing the form would have on defendant's signature. He also admitted that even though there were several discrepancies, he could not say that defendant had not signed the card, only that there were "significant differences that would indicate that he did not."

James Turner, one of defendants roommates also testified on behalf of defendant. He testified that he was a "partier" and that there was a good chance that most of the marijuana seized that day belonged to him. In addition, defendant's girlfriend testified that the northeast bedroom belonged to her, and that while defendant did occasionally sleep in that bedroom, he ordinarily slept on the couch in the living room. She denied that the marijuana was hers, but indicated that she was the owner of the finger scale. According to her testimony, she bought the finger scale from the United States Post Office where she worked because she collected antiques, and the scale was going to be an antique someday. Defendant also attempted to call into question the relevancy of the dry cleaning receipts and mail addressed to defendant by pointing out that defendant's son, Johnny Caston, Jr., also lived in the house, and that because he is similarly sized to defendant and has the same name, it was possible that the mail, receipts, and clothing belonged to him, not defendant.

Following closing arguments, the trial court made factual findings and found defendant guilty of possession of marijuana. In finding defendant guilty, the trial court indicated that he did not find the handwriting expert's testimony to be particularly helpful, especially since he testified that he was unaware what affect signing something while handcuffed would have on a signature. The trial court also commented on Officer Rozema's testimony, stating:

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[3] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[4] The felon in possession charge was dismissed pursuant to defendant's motion for acquittal at the close of plaintiff's case in chief.

> What we have is the detective saying I read him his rights, he signed the card in the usual form. The notes that he took of their conversation seemed to relate rather well to what [defendant] says here, that he had a formal 11th grade education. [Defendant] doesn't deny signing the card. He very carefully says – when asked did you sign it, he replies not to my knowledge. Under the circumstances, I'm of the opinion that he signed the card.

The court then went on to state:

> I'm also of the opinion that the prosecution has proved its case beyond a reasonable doubt and that the marijuana was his because he admitted it, because it was found, and it was also found in areas where he lives at various periods in time. I'm aware of the fact that numerous other persons are in this house. Some of the marijuana may have been somebody else's, but he admitted some of it was his. So under the circumstances I'm going to find him guilty of possession of marijuana as charged.

The prosecution then brought to the court's attention defendant's previous conviction of possession of cocaine, thus making defendant a second offender eligible for a two-year sentence. Defense counsel indicated that it would not challenge the fact that defendant had previously been convicted of possession of cocaine, but did indicate to the court that defendant had been in jail since the day of the search, December 14, 1999. On August 3, 2000, the trial court sentenced defendant to time served. This appeal now ensues.

II. Insufficient Facts and Evidence Claims

Defendant first argues that the trial court failed to make sufficient factual findings, and that therefore there was insufficient evidence to convict defendant of possession of marijuana. We disagree.

A. Standard of Review

We review findings of fact by the trial court in a bench trial for clear error. *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001); *Walters v Synder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). To convict a defendant in a bench trial, the trial court must make specific findings of fact and state its conclusions of law. *People v Kemp*, 202 Mich App 318, 322; 508 NW2d 184 (1993), citing MCR 6.403, *People v Jackson*, 390 Mich 621, 627; 212 NW2d 918 (1973), and *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). Factual findings are sufficient as long as it appears that the trial court was aware of the issues and correctly applied the law. *Kemp, supra*, citing *Legg, supra* (citing *People v Armstrong*, 175 Mich App 181, 185; 437 NW2d 343 (1989). As long as the record indicates that the trial court correctly applied the law to its findings of fact, the trial court need not make specific findings of fact with regard to each element of the crime, *Legg, supra*, citing *People v Wardlow*, 190 Mich App 318, 320-321; 475 NW2d 387 (1991), and *People v Vaughn*, 186 Mich App 376, 384; 465 NW2d 365 (1990), and when it is apparent that the trial court properly resolved the factual issues, and no additional factual development is needed for appellate review, a trial court's failure to find specific facts does not require remand. *Legg, supra*, citing *Jackson, supra* at 627, n 3.

Further, in reviewing an insufficiency of the evidence claim following a bench trial, this Court reviews the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime were proven beyond a reasonable doubt. *People v Bowles*, 234 Mich App 345, 236; 594 NW2d 100 (1999); *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995).

B. Analysis

MCL 333.7403 provides, in part:

> (1) A person shall not knowingly or intentionally possess a controlled substance. . . .
>
> (2) A person who violates this section as to:
>
> * * *
>
> (D) Marihuana, is guilt of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more that $2,000.

Here, the trial court found (1) that defendant had signed the advice of rights card, and (2) that defendant admitted to Officer Rozema that "some of [the marijuana] was his." Because a review of the record establishes sufficient evidence to support these findings, see *People v Cyr*, 113 Mich App 213, 222; 317 NW2d 857 (1982), and these findings were made on the basis of assessing the credibility of defendant, Officer Rozema, and other witnesses, a task which falls within the domain of the trial court, see *People v Traughber*, 432 Mich 208, 225; 439 NW2d 231 (1989); MCR 2.613(C), we are unable to find that the trial court clearly erred when it found that defendant had signed the advice of rights card and admitted to owning (i.e., possessing) some of the marijuana. In addition, because quantity is not an element of possession of marijuana, the record clearly establishes that the trial court was aware of the issues involved in the case (i.e., whether defendant knowingly and voluntarily waived his rights and admitted to owning the marijuana) and correctly applied the law to those issues, *Kemp*, *supra*, citing *Legg*, *supra*, we conclude that the trial court properly resolved the factual issues before it. *Legg*, *supra*, citing *Jackson*, *supra*. Thus, the trial court made sufficient factual findings.

With regard to the sufficiency of the evidence claim, the record establishes that in addition to admitting that some of the marijuana belonged to defendant, defendant and defendant's girlfriend acknowledged that defendant either slept on the couch in the living room or in the northeast bedroom. The police also discovered paperwork with defendant's name in the bedroom and living room in close proximity to the marijuana was found. The record also establishes that since one of the letters referred to defendant as "daddy," it was reasonable for the trial court to conclude that the mail and paperwork belonged to defendant, and not his son of the same name. Likewise, because defendant's girlfriend admitted that the northeast bedroom belonged to her, and men's clothing – similar to defendant's size – was found in the bedroom, along with dry cleaning receipts in defendant's name, it was reasonable to conclude that the clothing found in the northeast bedroom belonged to defendant rather than his son. In addition, while Turner testified that most of the marijuana probably belonged to him and not defendant,

quantity need not be established to find someone guilty of possession of marijuana pursuant to MCL 333.7403(2)(D).

People v Burgenmeyer, 461 Mich 431, 439, n 12; 606 NW2d 645 (2000), citing *People v Konrad*, 449 Mich. 263; 536 NW2d 517 (1995), and *People v Sammons*, 191 Mich App 351, 371; 478 NW2d 901 (1991) held that a defendant can be convicted of possession of drugs if "the defendant ha[d] dominion and control over them," the defendant had "the power and intention to exercise dominion or control over the drugs either directly or through another person," or "the defendant [was] in proximity to the drugs and ha[d] control over them." Viewing the evidence in the light most favorable to the prosecution, it is clear that the prosecution presented sufficient evidence to support the trial court's findings that the elements of possession of marijuana had been proven beyond a reasonable doubt. *Bowles*, *supra*; *Hutner*, *supra*.

III. Judicial Misconduct Claim

Defendant also argues that the trial court committed judicial misconduct when it relied on specialized knowledge gleaned from its previous experience as an Assistant United States Attorney to find that defendant's handwriting expert was not helpful and that defendant had signed the advice of rights card. We disagree.

A. Standard of Review

As stated in *People v Simon*, 189 Mich App 565, 568; 473 NW2d 785 (1991):

> It is [] well established in Michigan that a judge in a bench trial must arrive at his or her decision based upon the evidence in the case. The judge may not go outside the record in determining guilt. When the factfinder relies on extraneous evidence, the defendant is denied his constitutional right to confront all the witnesses against him and to get all the evidence on the record. [Internal citations omitted.]

Thus, as a constitutional issue, we review de novo defendant's allegation that the trial court relied on specialized knowledge in disagreeing with the handwriting expert. *People v McIntire*, 232 Mich App 71, 93; 591 NW2d 231 (1998); see also *Simon*, *supra*.

B. Analysis

The trial court made the following comments in conjunction with his finding that that the handwriting expert's opinion did not convince the court that defendant had not signed the card:

> The handwriting expert pointed out various things in the samples of handwriting which he said showed some significant differences in the handwriting. He did not conclude that it was not the defendant's signature. He concluded that it may not be his signature because of those significant differences, and he said, also, that he could not determine that in fact it was his signature. So basically his testimony doesn't tell us a great deal, particularly because on cross-examination he admits that if the man was handcuffed it might significantly change his signature.

> *I have looked at the original. I have looked at the samples. I have to say – and I spent a number of years as an assistant US attorney trying cases which involved forgery of signatures, and I dealt with the United States Treasury Department handwriting analysts – what the signature on the Miranda card looks like is a signature of someone who was trying hard to sign their name while handcuffed, because it bears some significant similarities to [defendant's] ordinary signature. It's just constrained as if someone's hands were bound and they couldn't write as clearly as they ordinarily would.*
>
> I can't say that I would conclude – and I'm not an expert, so I can't conclude it is his signature based on the handwriting alone, but as even the expert called by the defense cannot conclude that it isn't his signature, only that there are differences, I don't think that the handwriting expert's opinion really carries any weight under the circumstances. [Italics added.]

Specifically, defendant contends that the italicized portion of the above comments indicate that the trial court relied on its specialized knowledge. However, because the italicized comments must be read in context with the rest of the trial court's comments regarding the handwriting expert, see *People v Haynes*, 199 Mich App 593, 606; 502 NW2d 758 (1993) (Murphy, J., concurring in part, dissenting in part), and *People v Collier*, 168 Mich App 687, 697-698; 425 NW2d 118 (1988), it is evident that this statement was simply extraneous to the trial court's ultimate factual findings, which were clearly based on the evidence before the court. Indeed, the trial court expressly stated that no conclusions could be drawn as to whether the signature on the card was defendant's, based on the handwriting alone. Rather, the trial court merely found that the handwriting expert's testimony was not entitled to much weight given the expert's admitted ignorance with regard to what affect being handcuffed would have on one's signature. It is also clear that the trial court's ultimate finding that defendant signed the advice of rights card while handcuffed was based on the testimony of Officer Rozema. As such, we conclude that the trial court did not rely on extraneous evidence when finding that defendant signed the advice of rights card.

IV. Conclusion

Because the trial court's factual findings were not clearly erroneous and demonstrate that the trial court was aware of the factual issues in the case, and since the trial court did not rely on extraneous evidence, the trial court properly found defendant guilty of possession of marijuana.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra