

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM EVANS,

Defendant-Appellant.

UNPUBLISHED
November 5, 2002

No. 234441
Wayne Circuit Court
LC No. 00-011986

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of possession of heroin less than 25 grams, MCL 333.7403(2)(a)(v), and possession of codeine, MCL 333.7403(2)(b), entered after a bench trial. The court sentenced defendant to a two-year term of probation. We affirm.

After knocking and identifying themselves, the police entered defendant's home to execute a search warrant. Randall Miller, one of the police officers, testified that he saw defendant run into the bathroom, empty drugs into the toilet, and then flush the toilet. This officer retrieved .5 grams of heroin and thirteen Tylenol 3 tablets containing codeine from the toilet.

Defendant contends that the evidence at trial was insufficient to support a guilty verdict. When reviewing a challenge of the sufficiency of the evidence in a bench trial, we view the evidence in a light most favorable to the prosecution, and determine whether a rational trier of fact could find guilt beyond a reasonable doubt. *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992). The trier of fact may make reasonable inferences from the facts, if those inferences are supported by direct or circumstantial evidence. *Id.*

In a bench trial, the trial court must make findings of fact and state separately its conclusions of law. MCR 6.403. We review findings of fact for clear error. MCR 2.613(C). "A finding is 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 Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

The elements of possession of heroin less than 25 grams are: (1) defendant possessed a controlled substance; (2) the substance was heroin; (3) defendant knew that he was possessing heroin; and (4) the substance was in a mixture that weighed less than 25 grams. CJI2d 12.5. The

elements of possession of codeine are: (1) defendant possessed a controlled substance; (2) the substance possessed was codeine; (3) defendant knew that he was possessing the codeine; and (4) the substance was not obtained by a valid prescription given to defendant. CJI2d 12.5.

Officer Miller's testimony established that defendant possessed, and, by his conduct, knew that he was possessing, heroin and codeine. The lab report, which was stipulated to by the parties, indicated that the heroin weighed .5 grams and that the thirteen Tylenol 3 tablets tested positive for a controlled substance. Officer Miller's testimony further established that the Tylenol 3 tablets with codeine were not obtained by a valid prescription.

Defendant argues that Officer Miller's testimony was inherently incredible. The trial court "may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict." *People v Cummings*, 139 Mich App 286, 294; 362 NW2d 252 (1984). We will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

Viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's convictions.

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter