

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY DEAN YHARBOUGH,

Defendant-Appellant.

UNPUBLISHED

June 10, 2004

No. 246777

Wayne Circuit Court

LC No. 02-007448

Before: Sawyer, P.J., and Gage and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), and possession of marijuana, MCL 333.7403(2)(d), entered after a bench trial. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's car was observed by a Detroit police officer traveling at a high rate of speed. The officer followed the car and saw the driver, who he identified as defendant, lean forward and make movements as if he were attempting to put something under the seat. The officer stopped the car and removed defendant and the two other passengers from the car. The officer then searched the area under the driver's seat of the car and found plastic bags containing cocaine and marijuana.

On appeal, defendant argues that the evidence was insufficient to support his convictions, and that the verdicts were against the great weight of the evidence. We disagree.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

A new trial may be granted on some or all of the issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). Determining whether a verdict is against the great weight of the evidence requires a review of the entire body of proofs. The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to

allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). If the evidence conflicts, the issue of credibility ordinarily should be left for the trier of fact. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). A defendant convicted in a bench trial need not move for a new trial in order to preserve the issue for appeal. MCR 7.211(C)(1)(c).

Possession of a controlled substance exists when a defendant has dominion or control over the substance with knowledge of its possession or character. *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000). Possession of a controlled substance may be actual or constructive. Mere presence is insufficient. Some additional link between the defendant and the controlled substance must be shown. Circumstantial evidence and reasonable inferences drawn from the evidence are sufficient to prove possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

Here, plastic bags containing cocaine and marijuana were found under the driver's seat of defendant's car. An officer testified that he observed defendant make movements as if he were attempting to place something underneath the driver's seat. The trial court was entitled to accept the officer's testimony and to reject that given by defendant, *Lemmon, supra*; *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989), and was entitled to infer from the evidence that defendant had dominion and control over the narcotics and placed them under the seat. *Vaughn, supra*; *Fetterley, supra*. The evidence was sufficient to support defendant's convictions, *Petrella, supra*, and he is not entitled to a new trial. *Gadomski, supra*.

Affirmed.

/s/ David H. Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens