

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EMANUEL JONES,

Defendant-Appellant.

UNPUBLISHED

June 15, 2004

No. 246885

Wayne Circuit Court

LC No. 02-004116

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

PER CURIAM.

Defendant appeals as of right from his conviction of possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v), for which he was sentenced to two years' probation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that there was insufficient evidence to support his conviction. We disagree. In reviewing the sufficiency of the evidence to support a conviction, we view the evidence in a light most favorable to the prosecution to decide if any rational factfinder could have found the essential elements of the crime were proven beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002). Possession of a controlled substance means dominion or right of control over the drug with knowledge of its presence and character. *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000).

Officer John Anderson's testimony describing defendant as having his hand under his leg before leaving the seat in which a bag containing heroin was found was sufficient evidence to allow the jury to find that defendant placed the heroin there in an effort to avoid the police finding it on his person and, thus, to conclude beyond a reasonable doubt that defendant possessed the heroin. Accordingly, there was sufficient evidence to support defendant's conviction.

Further, defendant's conviction was independently supported by the evidence related to the heroin found on Michael McAfee's person. The jury could reasonably have inferred that defendant possessed the heroin prior to giving it to McAfee based on Officer Johnson's testimony indicating that he saw McAfee give money to defendant and then saw defendant remove what appeared to be a plastic baggie from his jacket. This is further supported by the testimony of Officers Anderson and Derrick Carter indicating that the packaging of the heroin

found on McAfee's person was substantially the same as the packaging of the heroin found where defendant had been sitting.¹

While McAfee indicated in his testimony that he possessed the heroin at issue prior to encountering defendant at the time of the incident, the jury was free to reject the credibility of that testimony and instead convict defendant based on the inculpatory inferences that could be drawn from the testimony of the police officers. See *People v Gonzalez*, 468 Mich 636, 640-641; 664 NW2d 159 (2003) (in determining the sufficiency of the evidence a reviewing court must make credibility choices in support of the jury verdict).

Defendant also argues that the jury's verdict was against the great weight of the evidence. Because defendant did not bring a motion for a new trial on this basis in the trial court, review is limited to plain error affecting his substantial rights. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). There is no plausible basis for finding plain error in this regard. To the contrary, the testimony of Officer Anderson regarding the movement of defendant's hand and the location of heroin on the seat where defendant had been sitting provided strong evidence to support his conviction.

Affirmed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens

¹ We recognize that defendant was acquitted of a charge involving possessing with intent to distribute heroin that presumably was primarily based on the heroin found on McAfee's person. However, that does not mean that the heroin found on McAfee's person cannot be used to support defendant's conviction of simple possession of heroin because jury verdicts in a criminal trial are not required to be logically consistent. See *People v Ellis*, 468 Mich 25, 26; 658 NW2d 142 (2003), quoting *People v Walker*, 461 Mich 908; 603 NW2d 784 (1999) ("juries are not held to rules of logic").