STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 28, 2004
v	No. 248644 Wayne Circuit Court
JEFFERY KENT HOLLINGSHED, Defendant-Appellant.	LC No. 02-015120-01

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

Defendant Jeffrey Hollingshed appeals as of right from a nonjury conviction of possession with intent to deliver less than fifty grams of heroin,[1] for which the trial court sentenced him to eighteen months to twenty years in prison. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

John Burris and Jay Allor, Detroit police officers, were on road patrol on the evening of May 8, 2002. They were in uniform in a fully marked patrol car. While southbound in an alley running parallel to Livernois toward Clements, they came upon a suspected narcotics transaction. Specifically, they observed Hollingshed handing a foil packet to a woman in exchange for cash, which Hollingshed placed in his shirt pocket. Hollingshed and the woman then walked off in opposite directions. The woman, Lisa Legue, discarded the packet, which was recovered. It contained "an off-white powdery substance."

Hollingshed and Legue were both stopped. Hollingshed had $177 in cash and eleven more foil packets of suspected narcotics on his person. The parties stipulated that if called, a chemist would testify that he tested the contents of two of the eleven foil packets. They contained a light brown powder weighing .24 grams and contained heroin.

Hollingshed testified that on the evening of May 8, 2002, he ran into his friend Legue, who was at a restaurant ordering some food for her children. Either the restaurant was

[1] MCL 333.7401(2)(a)(iv).

somewhere near the alley or Legue had parked or walked there. Regardless, the two of them were in the alley talking when the police drove up. Legue's boyfriend and children were apparently waiting in her vehicle.

According to Hollingshed, the police turned down Clements, parked at a coney island restaurant about 100 feet down the road, and one officer walked back. The officer "asked us what was going on, and we told him we were there just talking waiting on some food. Then he went into the restaurant to see if we were telling the truth or not. So the situation went on and on, then he asked if I had any weapons. Then he went on to ask to search me." Hollingshed admitted that he was in possession of packets of heroin but denied that he was selling them at the time. He further stated that Legue did not give him any money and that she did not discard a foil packet. In fact, "she had no knowledge of me having what I had on me." He contended that the police arrested Legue, not for buying heroin from him, but because she refused to corroborate his version of events.

In closing, the prosecutor argued that Hollingshed was guilty of possession with intent to deliver while Hollingshed argued that he was guilty of simple possession. The trial court found that Hollingshed was in possession of heroin and, given that it was bundled in several separate packets, it found that he intended to deliver.

Hollingshed filed a post-trial motion to suppress the evidence, arguing that trial counsel was ineffective for failing to challenge whether the officers had probable cause for the search. The trial court granted a *Ginther*[2] hearing. Trial counsel, Matthew Evans, was not available for the hearing. Defense counsel said he had spoken to Evans and "he couldn't really tell me why he hadn't asked the Court to make that extra ruling as to 'did you believe the officers, or did you believe my client when they say how it was obtained?' " It was defense counsel's position "that if the Court says it believes the officers, then there was probable cause. And if it says it doesn't believe the officers, there wasn't." The trial court stated that, "I believed the police officers' testimony because I didn't believe the defendant. That's all there was to it." Specifically, the trial court did not believe that Legue's boyfriend and children were present as Hollingshed had testified. The trial court added, "I cannot imagine a man sitting there with two kids in the car, who probably aren't even his, and his girlfriend getting arrested by the cops, and he doesn't do anything. He just sits there. No." The trial court therefore denied the motion.

II. The Great Weight Of The Evidence

A. Standard Of Review

Hollingshed's sole claim on appeal is that he is entitled to a new trial because the verdict was against the great weight of the evidence. The issue has not been preserved for appeal because Hollingshed did not file an appropriate motion in the trial court.[3] Because the issue has

[2] *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

[3] *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003).

not been preserved for appeal, review is precluded unless the defendant demonstrates plain error that affected the outcome of the trial court proceedings.[4]

B. The Trial Court's Decision

The crux of Hollingshed's argument is that the trial court erred in disbelieving his testimony that delivery of the controlled substance never took place. Because the trial court is in the best position to judge credibility, we will not substitute our judgment for that of the trial court, but will defer to the trial court's resolution of factual issues that involve the credibility of witnesses.[5] Absent exceptional circumstances not present here, conflicting testimony is an insufficient basis on which to grant a new trial.[6]

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Richard A. Bandstra

[4] *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

[5] *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993).

[6] *People v Lemmon*, 456 Mich 625, 643-644, 647; 576 NW2d 129 (1998).