

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH G. STRAUSS,

Defendant-Appellant.

UNPUBLISHED
November 9, 2004

No. 248641
Wayne Circuit Court
LC No. 02-006186-01

Before: Murray, P.J., and Sawyer and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), entered after a bench trial. He was sentenced to three years' probation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that there was insufficient evidence to support his conviction. 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; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990). A trial court's findings of fact are reviewed for clear error. MCR 2.613(C).

Possession of a controlled substance exists when a defendant has dominion or control over the substance with knowledge of its possession or character. Possession may be actual or constructive and may be proven by circumstantial evidence and reasonable inferences drawn from the evidence. *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000). The critical question is whether the defendant had dominion or control over the substance. Mere presence is insufficient. Rather, some additional link between the defendant and the controlled substance must be shown. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

In this case, the police officers who executed the traffic stop on the vehicle in which defendant was riding observed defendant reach into his pocket with his left hand, and then place his hand behind his back. One officer testified that he saw a clear plastic bag in defendant's hand after defendant removed his hand from his pocket. An immediate search of the area in

which defendant placed his hand revealed a clear plastic bag containing crack cocaine. The trial court, sitting as the finder of fact, was entitled to disregard the inconsistencies in the officers' testimony and conclude that the testimony was credible. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). The evidence, both direct and circumstantial, viewed in a light most favorable to the prosecution, was sufficient to support defendant's conviction of possession of less than twenty-five grams of cocaine. *Nunez, supra*; *Fetterley, supra*.

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Michael R. Smolenski