STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 20, 2005
v	No. 256748 Wayne Circuit Court
TITUS DIMON ROSS, Defendant-Appellant.	LC No. 03-012202-02

Before: Whitbeck, C.J., and Talbot and Murray, JJ.

PER CURIAM.

Defendant Titus Ross appeals as of right his bench trial convictions of possession with intent to deliver less than 50 grams of cocaine[1] and possession with intent to deliver marijuana.[2] The trial court sentenced Ross to five years' probation. We affirm.

I. Basic Facts And Procedural History

This case arises out of events that occurred on September 23, 2003, at 20021 Derby Street in Detroit, Michigan. Duncan Dorsey testified that he is a Detroit Police Officer who took part in the execution of a search warrant at that time and place. Officer Dorsey was the second or third police officer to enter the flat after the police broke the door down. Inside the flat, Officer Dorsey observed Ross and codefendant, Ervin Crawford, standing by a couch. Officer Dorsey initially testified that Ross fled into another room and threw something behind a dresser. Officer Dorsey later testified that he actually pursued the fleeing Crawford into another room and found suspected cocaine that Crawford had discarded. The suspected cocaine was in ten ziplock bags. The parties later stipulated that an expert would have testified that the substance found was .21 grams of cocaine. Officer Dorsey also stated that Ross and Crawford were the only people in the flat, but he later admitted that there were two other individuals in the flat at the time the search warrant was executed.

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

[2] MCL 333.7401(2)(d)(iii).

Michael Bryant testified that he is a Detroit Police Officer who also took part in the execution of the search warrant. Officer Bryant was the first person to enter the room. Officer Bryant observed Ross and Crawford by a couch in the dining room. Ross ran into a bedroom and Officer Bryant pursued. Officer Bryant observed Ross discarding suspected narcotics in the bedroom. Ross was never out of Officer Bryant's sight. The police found one marijuana cigar and eight ziplock bags of suspected marijuana in the bedroom where Ross discarded it. The parties later stipulated that an expert would have testified that the substance found was marijuana Officer Bryant also took a statement from Crawford in which he admitted that he knew drugs were inside the apartment.

Kathy Singleton also testified that she is a Detroit Police Officer who took part in the execution of the search warrant. Officer Singleton helped search the flat, and she found a loaded shotgun in the dining room between the cushions of a couch. (At a preliminary examination, Officer Singleton had earlier stated that the gun was not loaded).

Michael Dekun, another Detroit Police Officer, testified that he took part in the execution of the search warrant, confiscated one digital scale, numerous empty ziplock bags, and one bulletproof vest from the flat.

Fred Watkins testified that he was the Detroit Police Officer in charge of the execution of the search warrant. Officer Watkins stated that, according to Ross, he did not live at the location where the search warrant was executed.

The parties stipulated that Officer Lynn Moore of the Detroit Police Department would have testified that he took part in the execution of the search warrant and that he confiscated a loaded shotgun from underneath the couch.

After Ross was convicted and sentenced, he moved for a new trial based, in part, on the argument that he was denied his rights of due process when the trial court found him guilty beyond a reasonable doubt based on the evidence against him. Ross also argued that the admission of Crawford's statement that Crawford knew drugs were in the flat, violated the Confrontation Clause of the United States Constitution. The trial court denied that motion, holding that there was sufficient evidence presented to convict Ross. The trial court also held that there was nothing said about Ross in Crawford's statement and that the statement could actually be used by the defense to argue that Ross was not guilty of the charges.

II. Sufficiency Of The Evidence

A. Standard Of Review

Ross argues that there was insufficient evidence to support either of his convictions. When reviewing a claim of insufficient evidence, we must view the evidence de novo, in the light most favorable to the prosecutor, and determine whether a rational trier of fact could find

that the essential elements of the crime were proven beyond a reasonable doubt.[3] Questions of credibility should be left to the trier of fact to resolve.[4]

B. Elements Of The Crimes

The elements of possession with intent to deliver less than 50 grams of cocaine are: (1) the recovered substance is cocaine, (2) the cocaine is in a mixture weighing less than 50 grams, (3) the defendant was not authorized to possess the substance, and (4) the defendant knowingly possessed cocaine with the intent to deliver.[5] The elements of possession with intent to deliver marijuana are (1) the recovered substance is marijuana, (2) the marijuana is in a mixture weighing less than five kilograms, (3) the defendant was not authorized to possess the substance, and (4) the defendant knowingly possessed marijuana with the intent to deliver.[6] "Intent to deliver has been inferred from the quantity of narcotics in a defendant's possession, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest."[7]

C. Intent

With regard to both of the convictions, Ross only challenges whether sufficient evidence was presented to show that he intended to deliver the drugs. Questions of intent should be left to the trier of fact to resolve.[8] Moreover, considering the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to infer intent.[9]

Here, Ross and Crawford were found together. Both fled the police. Ross discarded marijuana in ziplock bags while Crawford tried to do the same with cocaine. The police found drugs in ziplock bags. The police also found empty ziplock bags in the room Ross fled from. The police further found a digital scale, guns, and a bulletproof vest in that room. Some of the evidence in this case may be, as Ross suggests, consistent with personal usage, but all of it is consistent with the drug trade. Deferring to the trial court's superior position to judge witness credibility, and viewing the evidence in a light most favorable to the prosecution, we conclude that sufficient evidence was presented to support the finding that Ross had the intent to deliver cocaine and marijuana.

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[3] *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

[4] *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

[5] *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748, amended 441 Mich 1201 (1992); MCL 333.7401(2)(a)(iv).

[6] *Wolfe, supra* at 516-517; MCL 333.7401(2)(d)(iii).

[7] *Wolfe, supra* at 524.

[8] *People v Brooks*, 37 Mich App 403; 194 NW2d 722 (1971).

[9] *People v Fennell*, 260 Mich App 261, 270-271; 677 NW2d 66 (2004).

III. Great Weight Of The Evidence

A. Standard Of Review

Ross claims that the verdict is against the great weight of the evidence and that the trial court erred in denying his motion for new trial on that ground. The test for whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.[10] If there is conflicting evidence, the question of credibility should be left for the finder of fact.[11] We review for abuse of discretion the trial court's denial of a motion for new trial.[12]

B. Evaluating The Evidence

We conclude, based on the evidence discussed above, that the evidence did not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. We, therefore, also conclude that the verdict was not against the great weight of the evidence and that the trial court did not abuse its discretion in denying Ross's motion.

IV. Confrontation Clause

A. Standard Of Review

Ross argues that the admission of Crawford's statement (that Crawford knew about the drugs) during their joint bench trial violated Ross's constitutional rights under the Confrontation Clauses of the federal and state constitutions and *Crawford v Washington*.[13] This issue was unpreserved and is therefore reviewed for plain error affecting substantial rights.[14] "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights."[15] "The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings."[16] The defendant bears the burden of persuasion with respect to prejudice.[17]

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[10] *People v McRay*, 245 Mich App 631, 637; 630 NW2d 633 (2001).

[11] *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998).

[12] *McCray, supra* at 637.

[13] *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004).

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

[15] *Id*.

[16] *Id*.

[17] *Id*.

B. The *Crawford* Standards

The United States Supreme Court has held that testimonial out-of-court statements are not admissible against a defendant unless the witness is unavailable and the defendant had prior opportunity to cross-examine the witness.[18] Moreover, admission of a codefendant's confession, inculpating the defendant, in a joint jury trial where the codefendant does not testify may violate the defendant's right of cross-examination.[19]

In this case, we conclude that there was no plain error with regard to Crawford's statement that he knew about the drugs. This was a joint trial and the statement was properly admitted against Crawford. Nothing in the record indicates that the trial court used Crawford's statement at all in Ross's case. This was a bench trial, and there is little risk that the trial court would incorrectly use the statement against Ross. "'A judge, unlike a juror, possesses an understanding of the law which allows him to ignore such errors and to decide a case solely on the evidence properly admitted at trial.'"[20] There is even less risk in this case because nothing in Crawford's statement inculpates Ross or even mentions him at all. Without a showing that the trial court impermissibly used Crawford's statement or that the statement inculpated Ross, we conclude that there was no plain error.

Affirmed.

/s/ William C. Whitbeck
/s/ Michael J. Talbot
/s/ Christopher M. Murray

[18] *Crawford*, *supra* at 68.

[19] *Bruton v United States*, 391 US 123, 127; 88 S Ct 1620; 20 L Ed 2d 476 (1968); *People v Hartford*, 117 Mich App 413, 418-420; 324 NW2d 31 (1982).

[20] *People v Taylor*, 245 Mich App 293, 305; 628 NW2d 55 (2001), quoting *People v Jones*, 168 Mich App 191, 194; 423 NW2d 614 (1988).