STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 30, 2009
v	No. 283892 Washtenaw Circuit Court
JOHN DAVID LAUGHREY, Defendant-Appellant.	LC No. 05-00898-FH

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession of less than 25 grams of a controlled substance, MCL 333.7403(2)(a)(v), and the court sentenced him to 12 months' probation. Defendant appeals as of right. We reverse and remand for entry of a judgment of acquittal.

On April 4, 2004,[1] defendant spent the evening at the American Legion Hall in Saline, Michigan, where he is a member. At approximately 1:00 a.m., as the establishment closed for the night, defendant offered to assist the staff, as he had on previous occasions, by carrying several trash bags to containers located behind the building in an unlit area. At about the same time, an individual named Jeffrey Chandler asked defendant for a ride to his residence a couple of miles away. Defendant, who apparently knew Chandler from his workplace, agreed and both men went to defendant's vehicle, which was parked in the north side of the front parking lot. Defendant drove his vehicle to the rear area of the building to illuminate the area, exited the vehicle, and proceeded to carry three or four trash bags to canisters located nearby. Defendant explained during his testimony the events that followed:

> I hop back in the car and I observe Mr. Chandler with a . . . Health Ali [sic] Alliance Plan manual that I had in the back seat of my car. It was a flimsy little magazine. Mr. Chandler was proceeding to cut up a line, I guess, and things like this and I asked Mr. Chandler, I go what the hell are you doing? He said he was

[1] A three-year delay existed between defendant's arrest and his arraignment.

> doing a quick line before I took him home, because of the fact that he can't do this in front of his parents.
>
> * * *
>
> He was raising the book . . . and he had one hand with a – with a dollar . . . and he asked me to hold part of the manual, because the fact this book was – was very weak. He had the – the – he raised the book. I extended my right hand to hold the book. I – I did do that for him. This is when Officer Maag tapped on the window and – and shined the flashlight.

Officer Stephen Maag of the Saline Police Department testified that at approximately 1:40 am. on April 10, 2004, he observed a vehicle drive behind the American Legion hall and turn off all of its lights. Maag proceeded to park his vehicle in the entryway to the establishment and walked to the "corner of the building," about twenty feet, where he observed the vehicle for approximately two minutes. Maag testified that he observed two white males sitting in the vehicle with the dome light on, and he did not see anyone enter or exit the building. Maag testified that

> they had the dome light on, so I was able to see that there was a red book with a white powdery substance on it that I believed was possibly cocaine and it appeared as if the driver and passenger both had their hand on the book as if they were passing it from one person to the other. At that time I walked up to the driver's side door, knocked on the window and activated my flashlight. The passenger in the vehicle, which was later identified as Jeffrey Chandler, pulled the book that had the suspected cocaine at that time out of the driver's hands and dumped it on the floor.

Maag never observed defendant place anything into his pocket or remove something from his pocket.

After both Chandler and defendant were arrested, Maag performed a search of defendant's person. Maag testified that he found a "rolled up" five-dollar bill in defendant's front pants pocket. According to Maag, defendant stated, "that's not mine." Maag testified that he observed white substance on the end of the bill and he placed it in his police vehicle to preserve as evidence. The bill was later sent to the Michigan State Police Crime Laboratory for testing, and the lab report indicated that the bill contained cocaine residue. On cross-examination, defense counsel asked Maag why the lab report described the currency as "folded" as opposed to "rolled." Maag responded by stating that he did not fold the bill before it was sent to the laboratory and that the laboratory must have made a mistake in describing the bill as "folded." Defendant testified that he did not have a five-dollar bill in his pocket and he stated that Maag's testimony concerning the bill was "totally fabricated." Police also discovered a plastic card in the vehicle, but Maag did not recall where the card was located inside the vehicle. Upon arrival at the police station, police searched both Chandler's and defendant's wallets. Police discovered cocaine in Chandler's wallet, but did not find any cocaine in defendant's wallet or on any of defendant's credit cards.

Following the testimony of Maag and defendant, the trial court found defendant guilty of possessing less than 25 grams of cocaine. The court concluded that the cocaine was not defendant's, but that defendant exercised sufficient dominion and control over the cocaine when he placed his hand on the manual. The court opined in relevant part:

> [Defendant], however, then testified to what was going on. I – I – I think certainly part of his testimony was believable. I -- I've no doubt given [defendant's] place in life that he wasn't the one who brought the cocaine in there; that it – and given the physical evidence that it probably was Mr. Chandler. Certainly based on what they found in his wallet, it was probably Mr. Chandler who brought the cocaine. But the reality is, and the law, that when [defendant] by his own admission held the book, the manual . . . with the cocaine on it, he is exercising dominion and control over that cocaine, just as much as the person who's holding the other side of it.

Defendant contends that his conviction was not supported by sufficient evidence. We review a challenge to the sufficiency of the evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In determining whether the prosecution has presented sufficient evidence in a bench trial to sustain a conviction, we construe the evidence in a light most favorable to the prosecution and determine whether there was sufficient evidence to justify a rational trier of fact in finding all of the elements of the crime beyond a reasonable doubt. *People v Kanaan*, 278 Mich App 594, 618; 751 NW2d 57 (2008).

The offense of possession of a controlled substance, MCL 733.7403, requires a showing that defendant had knowledge of the substance's presence and character and had dominion or control over the substance. *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003). Possession of a controlled substance may be joint or exclusive and either actual or constructive. *Id*. at 166. "[C]onstructive possession exists where the defendant has the right to exercise control over the narcotics and has knowledge of their presence." *People v Hardiman*, 466 Mich 417, 421 n 4; 646 NW2d 158 (2002). Presence at the location where drugs are found, by itself, is insufficient to establish possession. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Rather, the prosecution must demonstrate that "some additional connection between the defendant and the contraband" exists. *Id.* When the "totality of the circumstances indicates a sufficient nexus between the defendant and the contraband," constructive possession is established. *Id.* at 521. In addition, constructive possession may be shown by either direct or circumstantial evidence "that the defendant had the power to dispose of the drug," or "the ability to produce the drug . . . . ," or that the defendant had the "exclusive control or dominion over property on which contraband narcotics are found . . ." *Id.*

In deciding sufficiency of the evidence issues this Court will not interfere with the fact finder's role of determining the weight of evidence or credibility of witnesses. *Wolfe, supra* at 514. However, the trial court's comments reveal that he found defendant's testimony believable,[2] but that it found defendant's testimony that he held the corner of the manual to assist

[2] The trial court noted that he expected this case to simply be a credibility contest, and that he found no motivation for the officer to lie, but that he also found defendant's testimony (continued…)

defendant sufficient to find that defendant exercised dominion and control over the cocaine. The trial court's finding that possession has been established, based solely on the evidence that defendant held the corner of the manual containing Chandler's cocaine, is clearly erroneous.

The trial court found that Chandler brought the cocaine into defendant's car. No testimony was presented to establish that defendant was aware, before getting into his car after taking the trash to the containers, that Chandler possessed cocaine or was going to use cocaine in defendant's car. Although Chandler informed defendant when defendant returned to the car that he was going to do a "quick line," and defendant observed a white substance on the insurance manual, defendant testified that he merely briefly held the corner of the flimsy manual on which Chandler had placed the cocaine after asking Chandler "what the hell" he was doing. No evidence was presented that defendant had cocaine or cocaine residue on his person. Although Officer Maag testified that he removed a "rolled up" five dollar bill from defendant's right front pants pocket, the forensic lab report indicated that a "folded up" five dollar bill was tested for residue. According to Officer Maag, defendant held the manual with his right hand, and Officer Maag did not observe defendant place anything into his pants pocket. Defendant testified that the bill did not belong to him, that he did not possess the bill, and that the bill was not removed from his pocket but, rather, from the floor on the passenger side of the vehicle where Chandler dropped it. He further testified that it would not have been possible for him to use his left hand to put a bill into his right front pants pocket while sitting in the car and holding the corner of the manual with his right hand. Officer Maag conceded that he did not see defendant put anything into, or remove anything from, his pants pocket.

Under the circumstances, evidence that defendant held the corner of the flimsy manual after entering his car and discovering Chandler preparing to use cocaine, is insufficient to establish that defendant actually possessed the cocaine. Under the totality of the circumstances, a "sufficient nexus" between the defendant and the cocaine does not exist to support a finding that defendant constructively possessed the cocaine. The evidence was not sufficient to establish that defendant had dominion and control over Chandler's cocaine, and was insufficient to support defendant's conviction for possessing less than 25 grams of cocaine.[3]

Reversed and remanded for entry of a judgment of acquittal. Jurisdiction is not retained.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra

(…continued)

believable.

[3] In light of our conclusion we need not address the remainder of the issues raised by defendant.