

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY JONES,

Defendant-Appellant.

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UNPUBLISHED

March 9, 2010

No. 288762

Kalamazoo Circuit Court

LC No. 2007-001708-FH

Before: Servitto, P.J., and Bandstra and Fort Hood, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), and sentenced to 66 days in jail with 66 days credit for time served. The trial court denied defendant's timely filed motion for a directed verdict. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews a trial court's decision denying a motion for new trial on the ground that the verdict was against the great weight of the evidence for an abuse of discretion. *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008); *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). "The test to determine 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." *People v Horn*, 279 Mich App 31, 41 n 4; 755 NW2d 212 (2008); *McCray*, 245 Mich App at 637.

Where the verdict is against the great weight of the evidence, a new trial may be granted on some or all of the issues. MCR 2.611(A)(1)(e). "A verdict may be vacated only when it 'does not find reasonable support in the evidence, but is more likely to be attributed to causes outside the record, such as passion, prejudice, sympathy or some extraneous influence.'" *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993) (citation omitted). Absent compelling circumstances, the credibility of witnesses is for the jury to decide. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). Thus, "unless it can be said that directly contradictory testimony was so far impeached that it 'was deprived of all probative value or that the jury could not believe it,' or contradicted indisputable physical facts or defied physical realities, the trial court must defer to the jury's determination." *Id.* at 645-646 (citation omitted).

The evidence of defendant's possession of cocaine was presented through the testimony of Officer Millard who observed defendant on a bicycle and another individual on foot together at an intersection in what appeared to be a possible drug exchange. When the two individuals saw Officer Millard's marked police car, they separated and went in different directions. Backup officers attempted to find and talk to the other individual. Officer Millard followed defendant because his bicycle did not have a headlight in violation of a city ordinance. He observed defendant look back at him several times, reach into his pocket with his right hand, remove a brown object, reach back into his pocket, extend his arm back and open and close his hand, and put the brown object back into his pocket. Officer Millard noted where defendant appeared to discard something from his hand and, after stopping defendant and receiving backup, he went back to the area and found a rock of crack cocaine. Officer Millard further testified that defendant appeared angry when confronted with the crack cocaine and stated that Officer Millard planted it there because defendant was black. In addition, while being transported to the police station, defendant was rambling and yelling. One of the statements made by defendant was that he should have purchased a "marijuana blunt" instead but did not have enough money. Defendant did not testify.

Defendant argues that police officers can lie and that Officer Millard's testimony was fabricated. Furthermore, he argues the jury gave too much weight to Officer Millard's testimony. Defendant also argues that Officer Millard could not "say for certain" that the crack cocaine was not on the ground before defendant was present in the area. The jury concluded from Officer Millard's testimony that defendant was in possession of a controlled substance and found him guilty. The credibility of Officer Millard was for the jury to resolve. *Lemmon*, 456 Mich at 642-643. Under the facts of this case, we conclude that the trial court did not abuse its discretion when it determined that the jury's verdict was not against the great weight of the evidence and thus, must be left undisturbed. *Unger*, 278 Mich App at 232.

We affirm.

/s/ Deborah A. Servitto

/s/ Richard A. Bandstra

/s/ Karen M. Fort Hood