STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN OLIVER WOOTEN,

Defendant-Appellant.

UNPUBLISHED
June 10, 2010

No. 289286
Wayne Circuit Court
LC No. 08-009477

Before: HOEKSTRA, P.J., and MARKEY and DAVIS, JJ.

PER CURIAM.

Defendant appeals by right his bench trial convictions of possession of methamphetamine, MCL 333.7403(2)(b)(i), and possession of marijuana, MCL 333.7403(2)(d). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Detroit Police Officer Barnett testified that he was in a raid van with a raid team on June 26, 2008, in Detroit when he saw defendant standing at the passenger window of a vehicle stopped on Van Dyke, partly in the right lane. Defendant held a bag of what Barnett thought was marijuana. Barnett yelled at the van's driver to stop. Barnett saw defendant look at the officers as though he was startled, toss the bag inside the window of the vehicle, and attempt to run inside a barber shop. Another officer left the van and chased defendant. Detroit Police Officer McKinney testified that she went to the passenger side of the car and found a clear plastic sandwich bag on the passenger floorboard. The bag contained five knotted wraps of apparent marijuana, and a plastic wrap containing two ecstasy pills. The parties stipulated to a laboratory report that indicated that the baggie contained 3.25 grams of marijuana and intact pills plus pieces of pills totaling four tablets of MDMA, commonly known as ecstasy.

After the close of proofs, the trial court issued a written opinion. In its findings of fact, the trial court summarized Barnett's testimony concerning his observation of defendant throwing a baggie of what he believed to be marijuana into the car, and the subsequent seizure of the baggie containing the marijuana and methamphetamines. The trial court stated:

> The Court draws the following conclusions, based on the aforementioned facts.
>
> That the prosecution has proven, beyond a reasonable doubt, that the Defendant, at the time this particular incident occurred possessed

> methamphetamine, commonly known as Ecstasy, in violation of MCL 333.7403 (2)(b)(i) and further, possessed at that time marijuana, a violation of MCL 3337403 [sic] (2)(d). The tossing of the baggie by the Defendant and the recovery of the baggie was almost instantaneous by Officer McKinney and therefore, does not, in the opinion of this Court, and cannot be attributable to the driver or the passenger in that vehicle but more likely than not, was the substance that was thrown by the Defendant into that particular vehicle.

On appeal, defendant argues that the trial court's findings of fact and conclusions of law, including the statement that it was "more likely than not" that it was defendant rather than the individuals seated in the vehicle who possessed the drugs, falls short of the due process requirement that a verdict of guilty must be sustained by proof beyond a reasonable doubt. He maintains that the trial court's finding is not constitutionally sufficient to support a verdict of guilt for possession of the drugs and that his convictions must be therefore be reversed.

In actions tried without a jury, we review a trial court's factual findings for clear error and its conclusions of law de novo. MCR 2.613(C); *People v Connor*, 209 Mich App 419, 423; 531 NW2d 734 (1995). We view the evidence in the light most favorable to the prosecution, drawing all reasonable inferences in support of the verdict, and will affirm a bench trial conviction where the evidence justifies a rational trier of fact in finding that the essential elements of the crime were proved beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000); *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000).

Verdicts and decisions by trial courts and appellate courts must be logically consistent. *People v Burgess*, 419 Mich 305, 310-311; 353 NW2d 444 (1984). A trial court sitting without a jury must make specific findings of fact and state conclusions of law, *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993), and '"may *not* enter an inconsistent verdict."' *People v Ellis*, 468 Mich 25, 26; 658 NW2d 142 (2003), quoting *People v Walker*, 461 Mich 908; 603 NW2d 784 (1999). The verdict reached in a bench trial must be consistent with the trial court's findings of fact. See *People v Smith*, 231 Mich App 50, 52-53; 585 NW2d 755 (1998). If the verdict's underlying findings of fact are inconsistent, then the verdict is inconsistent. See *People v Fairbanks*, 165 Mich App 551, 557; 419 NW2d 13 (1987).

The offense of possession of a controlled substance, MCL 733.7403, requires a showing that the 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). Defendant essentially argues that the evidence was insufficient to support the verdict because the trial court found only that the bag of marijuana and methamphetamines found in the car was "more likely than not" the substance thrown by defendant into the vehicle. Seizing on this phrase, which generally connotates a standard of review more akin to a preponderance of the evidence, defendant argues that the trial court did not find beyond a reasonable doubt that defendant had possessed the marijuana and methamphetamines. We disagree.

Defendant attempts to read this phrase in a vacuum rather than in context with the remainder of the trial court's factual findings and conclusion. The paragraph above, when read as a whole, supports the trial court's decision that the prosecution had proven defendant's guilt beyond a reasonable doubt. The trial court found that the "tossing of the baggie by defendant"

was not and "cannot be attributable to the driver or the passenger" in the car. Contrary to defendant's assertion that the trial court found only by a preponderance of the evidence that defendant possessed the marijuana and amphetamines, we view the challenged phrase as a (perhaps inartful) conclusion by the trial court that the prosecution proved beyond a reasonable doubt that drugs were, in fact, defendant's. In a bench trial, the trier of fact is presumed to know the law. *People v Alexander*, 234 Mich App 665, 675; 599 NW2d 749 (1999); *People v Garfield*, 166 Mich App 66, 79; 420 NW2d 124 (1988). We find it extremely unlikely that the trial court would have actually intended to apply a lower standard of review concerning the main element of the instant offense and then used that finding to apply the correct standard of review for the finding of guilt as a whole. We find that defendant's assertion of reversible error without merit.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Jane E. Markey
/s/ Alton T. Davis