

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC A. MOTEN,

Defendant-Appellant.

UNPUBLISHED

February 1, 2002

No. 226752

Wayne Circuit Court

LC No. 99-009239

Before: Sawyer, P.J., and O’Connell and Zahra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver less than fifty grams of cocaine and possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv), for which he was sentenced to lifetime probation with the first ninety days in jail. Defendant appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant’s sole claim on appeal was that the evidence was insufficient to support the verdict. In reviewing a nonjury criminal case, this Court “is required to review the entire record to determine whether the trial judge clearly erred.” *People v Rush*, 48 Mich App 478, 482; 210 NW2d 467 (1973). This court must review the record to determine whether there was sufficient evidence to warrant a verdict of guilty beyond a reasonable doubt. *People v Garcia*, 398 Mich 250, 263; 247 NW2d 547 (1976). The trial court’s factual findings are reviewed for clear error. A finding of fact is considered “clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made.” *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). This Court will defer to the trial court’s resolution of factual issues, especially where it involves the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

The elements of the crimes charged are (1) defendant knowingly possessed a controlled substance, (2) defendant intended to deliver the substance to someone else, (3) the substance possessed was cocaine or heroin, and (4) the substance was in a mixture that weighed less than fifty grams. *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998). Intent to deliver may be inferred from all of the facts and circumstances, and minimal circumstantial evidence is sufficient. *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

“Possession is a term that ‘signifies dominion or right of control over the drug with knowledge of its presence and character.’” *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000), quoting *People v Maliskey*, 77 Mich App 444, 453; 258 NW2d 512 (1977). The defendant need not own or have actual physical possession of the substance to be found guilty of possession; constructive possession is sufficient. *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992), modified 441 Mich 1201 (1992). Constructive possession, which may be sole or joint, is the right to exercise control over the drug coupled with knowledge of its presence. *Id.* at 520. Possession may be proved by circumstantial evidence and any reasonable inferences drawn therefrom. *Nunez, supra* at 615.

The evidence showed that defendant had constructive possession of the paper bag, which contained the controlled substances. It was on the ground beside his chair and he exercised dominion and control over it, as shown by the facts that he reached into it and appeared to remove something which he gave to another person and then tried to throw it away when a police officer approached. Defendant’s intent to deliver can be inferred from the fact that he appeared to trade something from the bag for cash and from the way in which the controlled substances were packaged. The bag contained thirty-five separate packets, each containing a small amount of cocaine or heroin, and there was no evidence that defendant possessed any paraphernalia associated with personal use. *Wolfe, supra* at 524-525; *People v Metzler*, 193 Mich App 541, 548; 484 NW2d 695 (1992). Finally, the evidence established that the two substances weighed less than fifty grams each. The evidence was clearly sufficient to prove the elements of the crimes beyond a reasonable doubt.

Affirmed.

/s/ David H. Sawyer
/s/ Peter D O’Connell
/s/ Brian K. Zahra