STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT RAY MAPP,

Defendant-Appellant.

UNPUBLISHED
November 26, 1996

No. 186051
LC No. 94-013771

Before: Hoekstra, P.J., and Sawyer and T.P. Pickard,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for possession with the intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), for which he was sentenced to serve two to twenty years in prison. The sentence was vacated and enhanced to four to twenty years in prison pursuant to the habitual offender statute, MCL 769.12; MSA 28.1084. We affirm.

Defendant's only claim on appeal is that he is entitled to a new trial because his conviction was against the great weight of the evidence. We disagree. It is only appropriate for this Court to order a new trial where the verdict does not find reasonable support in the evidence but is more likely attributable to causes outside the record such as passion, prejudice, sympathy, or other extraneous influences. *People v DeLisle*, 202 Mich App 658, 661, 509 NW2d 885 (1993). In other words, a new trial is only appropriate where the verdict is so contrary to the great weight of the evidence as to disclose an unwarranted finding. *Fletcher v Fletcher*, 447 Mich 871, 878; 526 NW2d 889 (1994).

The verdict rendered below was not against the great weight of the evidence. To convict defendant of possession with the intent to deliver less than fifty grams of cocaine, it was necessary for the trial court to conclude beyond a reasonable doubt: (1) that the substance recovered from defendant's possession was cocaine, (2) that the cocaine was in a mixture weighing less than fifty grams, (3) that defendant was not authorized to possess the substance, and (4) that defendant knowingly possessed the cocaine with the intent to deliver. *People v Wolfe*, 440 Mich 508, 516-517; 489

* Circuit judge, sitting on the Court of Appeals by assignment.

NW2d 748 (1992), modified 441 Mich 1201 (1992). The trial court is justified in concluding that element three has been satisfied where the defendant has failed to produce some competent evidence of authorization. MCL 333.7531; MSA 14.15(7531), *People v Pegenau*, 447 Mich 278; 523 NW2d 325 (1994). In finding that element four has been established beyond a reasonable doubt, the trial court is justified in its conclusion where defendant had constructive possession of the cocaine and circumstantial evidence established that defendant possessed the cocaine with the intent to deliver. *Wolfe*, 440 Mich at 521-524.

The evidence in this case established that at approximately 9:30 a.m., on December 3, 1994, defendant was seen by two Detroit police officers standing along side the driver's window of a van stopped left wheel to the curb. When defendant saw the police, he flagged away the van. As the police officers approached defendant, one of the two watched defendant walk from the curb to within five feet of a broken out window in a structure known to have been a former drug house. When defendant stopped near the window, he threw from chest level what the officer believed to be a bag containing narcotics.

The two officers stopped the car and detained defendant after witnessing the above. The one who had seen defendant throw the object entered the structure and walked near the inside of the subject window. A plastic bag was on the ground near the window. Inside the bag were three smaller tied bags each containing twenty ziplocked packets of a white substance. Laboratory tests of the contents of six of the packets revealed that each contained .60 grams of rock cocaine. The officer who recovered the cocaine testified that there was nothing else nearby and inside the house which resembled the bag he saw defendant throw through the window.

Defendant was arrested following recovery of the bag. The police conducted a search incident to the arrest and found $1521 on defendant's person. The denominations were as follows: seven $50's, forty-nine $20's, eighteen $10's, two $5's, and one single.

A friend of defendant's was nearby when defendant was arrested. He testified that he never saw defendant walk up to the broken out building nor throw anything. Defendant claims that based on this testimony and the facts and circumstances that he should not have been convicted. Defendant claims that it is unreasonable to believe that he would act as the police said while in their presence and that it is more reasonable to believe that the drugs at issue were previously abandoned in the former drug house.

Defendant's conviction was not against the great weight of the evidence. The trial judge could reasonably have concluded that the friend's testimony was biased or that the friend did not see all of what transpired. The testimony of the two police officers was corroborative and worthy of belief. The evidence reasonably supports the conclusion that defendant was guilty of possession with the intent to deliver less than fifty grams of cocaine.

The police recovered a substance that proved to be at least 3.6 grams of cocaine. Defendant produced no evidence of authorization. The evidence supported the conclusion that defendant at one

time had possession of the cocaine and the power to discard the substance. Further, circumstantial evidence supported the conclusion that defendant had the intent to deliver. He was seen on the street next to the driver's window of a van stopped left wheel to the curb. Defendant was seen discarding the substance at issue. Nothing else inside the house resembled the discarded bag. The quantity and packaging of the substance supported the conclusion that it was being sold and that defendant possessed the requisite intent. The quantity and denominations of cash on defendant's person when he was arrested further supports that conclusion. In short, the evidence reasonably supports beyond a reasonable doubt the conclusion that defendant possessed less than fifty grams of cocaine with the intent to deliver. We therefore hold that defendant's conviction was not against the great weight of the evidence.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Timothy P. Pickard