

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEMARKO G. DURRELL,

Defendant-Appellant.

UNPUBLISHED

November 26, 2002

No. 237173

Wayne Circuit Court

LC No. 01-002244-01

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendant appeals by right his conviction of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant occupied the driver's seat of an illegally parked car. Three other persons also occupied the car. A police officer testified that as defendant stepped out of the car, he dropped a clear plastic bag to the ground. A second officer testified that he retrieved the bag, which contained two pieces of what appeared to be crack cocaine. The officers testified that no other occupant tossed anything out of the car. The parties stipulated that laboratory tests revealed that the substance in the bag was crack cocaine. The jury found defendant guilty. Defendant did not move for a new trial in the trial court.

A new trial may be granted on some or all of the issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). Determining whether a verdict is against the great weight of the evidence requires a review of the entire body of proofs. The test 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 Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). If the evidence conflicts, the issue of credibility ordinarily should be left for the trier of fact. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). An objection going to the great weight of the evidence can be raised only by a motion for a new trial before the trial court. *People v Bradshaw*, 165 Mich App 562, 565; 419 NW2d 33 (1988). Failure to raise the issue by an appropriate motion waives the issue on appeal. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). The issue may be considered if the failure to do so would result in a miscarriage of justice. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999).

Possession of a controlled substance may be actual or constructive. The critical question is whether the defendant had dominion or control over the substance. Mere presence is insufficient. Some additional link between the defendant and the controlled substance must be shown. Circumstantial evidence and reasonable inferences drawn from the evidence are sufficient to prove possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

Defendant argues that his conviction of possession of less than twenty-five grams of cocaine was against the great weight of the evidence. We disagree and affirm. A police officer testified that defendant stepped out of the car and dropped an object to the ground. The object was a bag containing two rocks of what appeared to be crack cocaine. The jury was entitled to find this testimony credible, and to accept it. *Lemmon, supra*; *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). The evidence that defendant discarded the bag containing what was stipulated to be crack cocaine demonstrated that he exercised dominion and control over and thus had at least constructive possession of the controlled substance. *Fetterley, supra*. No evidence established that any other occupant of the car threw the bag out the window. The evidence did not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *Gadomski, supra*; *Noble, supra*.

We affirm.

/s/ Jane E. Markey

/s/ Henry William Saad

/s/ Michael R. Smolenski