

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARWIN P. HALL,

Defendant-Appellant.

---

UNPUBLISHED

March 13, 2007

No. 264911

Wayne Circuit Court

LC No. 05-003476-01

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), entered after a bench trial. We affirm.

**I. FACTS**

Defendant was charged with possession with intent to deliver marijuana, felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon in a vehicle, MCL 750.227, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was arrested after police officers found a loaded handgun in the vehicle he was driving. A search of the vehicle revealed two black shaving kits on the front passenger seat. One kit contained two bandanas and a weapons holster, and the other kit contained two plastic bags of marijuana. The marijuana was individually packaged in smaller bags. Defendant was found to have \$284 on his person. The parties stipulated that the vehicle and the gun were registered to Danielle Wright.

Defendant testified that he left a party to pick up take-out food. He stated that he borrowed an accessible vehicle from Danielle Wright. Defendant indicated that after the car was stopped and searched, he told the officers that the gun and the marijuana did not belong to him. Initially, defendant asserted that he placed the food on the back seat of the car because various items were located on the front passenger seat, but then he later stated that he did not see anything on the passenger seat, and simply placed the food in the back seat.

The trial court acquitted defendant of carrying a concealed weapon in a vehicle, felon in possession of a firearm, and felony-firearm, but convicted him of possession with intent to deliver marijuana. The trial court noted that defendant maintained that he placed his food on the back seat because other items were sitting on the front passenger seat, and that this evidence

supported a finding that defendant knew of the presence of and possessed the marijuana. The trial court found that the evidence that the marijuana was packaged in individual bags supported a finding that defendant intended to sell it. The trial court sentenced defendant to two years' probation.

## II. GREAT WEIGHT OF THE EVIDENCE

### A. Standard of Review

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 heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *People v Gadowski*, 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). A defendant convicted in a bench trial need not move for a new trial in order to preserve the issue for appeal. MCR 7.211(C)(1)(c).

### B. Analysis

The elements of the offense of possession of marijuana are that: (1) the defendant knowingly possessed a controlled substance; (2) the defendant intended to deliver the controlled substance to someone else; and (3) the substance possessed was marijuana, and the defendant was aware that it was marijuana. *People v Williams*, 268 Mich App 416, 419-420; 707 NW2d 624 (2005).

Possession of a controlled substance exists when a defendant has dominion or control over the substance with knowledge of its possession or character. *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000). 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 the trial court's verdict of guilty on the charge of possession with intent to deliver marijuana was against the great weight of the evidence. He reasons that if the evidence did not support a finding that he was aware that the gun was located in the car, it also did not support a finding that he was aware that the marijuana was in the car. We disagree.

Individual bags of marijuana were found in a shaving kit on the front passenger seat of the car of which defendant was the driver and sole occupant. The marijuana was within defendant's reach. The packaging of the marijuana in small bags supported an inference that the marijuana was intended to be sold to numerous persons. *Id.* at 518. Moreover, the evidence that \$284 was found on defendant's person supported an inference that defendant knowingly possessed and was selling the marijuana. *Id.* Defendant asserted that he was returning from a trip to pick up food; however, an officer testified that his search of the car revealed no food. The

trial court, as the finder of fact, was entitled to conclude that no food was present in the car. *Lemmon, supra* at 642-643. The direct evidence, and the reasonable inferences based thereon, supported a finding that defendant possessed the marijuana and intended to sell it. *Fetterley, supra* at 515.

We reject defendant's assertion that because the trial court acquitted him of the weapons offenses it should have acquitted him of the controlled substance offense. The trial court, sitting as the trier of fact, was required to decide the facts from the evidence presented and apply the law to the facts. *People v Casal*, 412 Mich 680, 689; 316 NW2d 705 (1982). The offenses with which defendant was charged were comprised of different elements. The trial court's decision that the elements of the charge of possession with intent to deliver marijuana were proven beyond a reasonable doubt was not against the great weight of the evidence. *Gadomski, supra* at 28.

Affirmed.

/s/ Deborah A. Servitto

/s/ Michael J. Talbot

/s/ Bill Schuette