

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

ANTONIO DEMETRIUS ANDREWS,

Defendant-Appellant.

UNPUBLISHED

September 18, 2007

No. 270726

Kent Circuit Court

LC No. 05-002546-FH

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

PER CURIAM.

Defendant appeals by right his conviction of possession of less than 50 grams of cocaine with intent to deliver. MCL 333.7401(2)(a)(iv). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing both direct and circumstantial evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *Hardiman, supra* at 428.

A necessary element of the crime of possession with intent to deliver is that the defendant knowingly possessed the substance with the intent to deliver. *People v Wolfe*, 440 Mich 508, 517; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). “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. *Wolfe, supra* at 519-520. 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. Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the controlled substance. *Id.* at 521. Circumstantial evidence that a defendant had the exclusive control or dominion over the property on which the drugs were found is sufficient to establish that he constructively possessed the drug. *Id.*

Here, the police found cocaine in the glove compartment of a car that defendant exclusively possessed. The cocaine was packaged in a “corner tie” and a baggie with a detectable odor of cocaine. A torn-off corner was found on the floor by the driver’s seat. An expert in illicit drug trafficking testified that neither users nor dealers willingly abandon their drugs. There was also evidence from which one could infer that defendant was involved in the selling of drugs: the cocaine was described as a “sale amount” of the drug; defendant had over \$1,000 in his pocket for which he gave conflicting explanations of its origins, and had two cell phones. This evidence was sufficient to enable a rational juror to conclude beyond a reasonable doubt that defendant had possession of the cocaine with the intent to deliver. Because the evidence was sufficient to sustain the verdict, trial counsel was not ineffective for failing to move for a directed verdict. “Defense counsel is not required to make [sic] a meritless motion or a futile objection.” *People v Goodin*, 257 Mich App 425, 433; 668 NW2d 392 (2003).

We affirm.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder