

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

December 18, 1998

Plaintiff-Appellee,

v

No. 207464

Detroit Recorder's Court

ELICONIS CASTELLANO,

LC No. 97-002785

Defendant-Appellant.

Before: Cavanagh, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession of a controlled substance, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). The trial court sentenced defendant to eight to forty-eight months' imprisonment. Defendant appeals as of right. We affirm.

In his sole issue on appeal, defendant argues that the trial court erred in finding that defendant possessed the cocaine. Findings of fact in a bench trial will not be disturbed unless clearly erroneous. MCR 2.613(C); *In re Forfeiture of US Currency*, 164 Mich App 171, 179; 416 NW2d 700 (1987).

A person need not have physical possession of a controlled substance to be found guilty of possessing it. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). Possession may be either actual or constructive; the essential question is whether the defendant had dominion or control over the controlled substance. *Id.* Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. *Id.*

Two officers involved in the drug raid at issue testified that defendant was found in a bedroom with a quantity of crack cocaine. One officer stated that he observed defendant looking in his direction while kicking something underneath a chair. After defendant was detained, several rocks of crack cocaine were found beneath and surrounding the chair. After considering this evidence, we conclude that the trial court's finding that defendant possessed the cocaine is not clearly erroneous; sufficient evidence links defendant to the cocaine found in his presence. Contrary to defendant's assertion, the prosecution need not negate every reasonable theory consistent with the defendant's innocence, but must only prove its own theory beyond a reasonable doubt in the face of whatever contradictory

evidence the defendant may provide. See *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Stephen J. Markman

/s/ Michael R. Smolenski