

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ESMERELDA EMANUEL,

Defendant-Appellant.

UNPUBLISHED

September 18, 2007

No. 272679

Oakland Circuit Court

LC No. 2005-204364-FH

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Following a jury trial, defendant Esmerelda Emanuel was convicted of possession of 450 grams or more, but less than 1,000 grams, of cocaine, MCL 333.7403(2)(a)(ii), and possession of marijuana, MCL 333.7403(2)(d). The trial court sentenced defendant to 60 to 360 months' imprisonment for her possession of cocaine conviction and to five days' imprisonment for her possession of marijuana conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On May 9, 2005, at approximately 8:00 p.m., police officers went to 942 Stanley to conduct a "knock and talk." A male answered the front door and allowed the officers to enter the house. Defendant was present in the house when the police officers entered. When defendant saw the police officers, she ran into the master bedroom where, in plain view, officers observed a bag with white powder and drug paraphernalia. The police discovered 531.5 grams of white lumpy powder, which tested positive for cocaine, and approximately 442.9 grams of plant material, which tested positive for marijuana, in the home.

Defendant first contends that the trial court erred in denying her motion for a directed verdict because the prosecutor failed to present sufficient evidence to prove beyond a reasonable doubt that she knowingly possessed cocaine and marijuana.

We review de novo a ruling on a motion for a directed verdict. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). When reviewing a trial court's denial of a motion for a directed verdict of acquittal, we must consider the evidence presented by the prosecution to the time the motion is made and in a light most favorable to the prosecution, and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Werner*, 254 Mich App 528, 530; 659 NW2d 688 (2002). If the evidence presented by the prosecution is insufficient to justify a reasonable trier of

fact in finding guilt beyond a reasonable doubt, due process requires that the trial court direct a judgment of acquittal. MCR 6.419(A); *People v Lemmon*, 456 Mich 625, 634; 576 NW2d 129 (1998).

To sustain a conviction for the unlawful possession of 450 to 999 grams of cocaine the prosecutor must prove beyond a reasonable doubt that: (1) defendant possessed cocaine without being authorized to do so, (2) the substance possessed was cocaine, (3) defendant knew that she was possessing cocaine, and (4) the substance was in a mixture that weighed between 450 and 999 grams. MCL 333.7403(2)(a)(ii). To sustain a conviction for the unlawful possession of marijuana, the prosecutor must prove beyond a reasonable doubt that: (1) defendant possessed marijuana without being authorized to do so; (2) the substance possessed was marijuana; and (3) defendant knew that she was possessing marijuana. MCL 333.7403(2)(d).

Possession “signifies dominion or right of control over the drug with knowledge of its presence and character.” *People v Maliskey*, 77 Mich App 444, 453; 258 NW2d 512 (1977). Possession of a controlled substance may be either actual or constructive. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (2002); *People v Harper*, 365 Mich 494, 506-507; 113 NW2d 808 (1962). “A person need not have actual physical possession of a controlled substance to be guilty of possessing it.” *Wolfe, supra* at 520. However, mere presence at a location where drugs are found is insufficient to prove constructive possession. *Id.* A prosecutor must present additional evidence to prove a connection between a defendant and the drugs. *Id.* Further, circumstantial evidence and reasonable inferences drawn from the evidence is sufficient to establish possession of a controlled substance. *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000).

Plaintiff presented evidence that, when defendant was arrested in this case, police officers found a “bud of marijuana” in her back pocket. Based on this testimony, a rational trier of fact could have found, beyond a reasonable doubt, that defendant knowingly possessed marijuana without being authorized to do so. “[A] jury is free to believe or disbelieve, in whole or in part, any of the evidence presented.” *People v Perry*, 460 Mich 55, 63; 594 NW2d 477 (1999). Thus, defendant was not entitled to a directed verdict on the charge of possession of marijuana.

The prosecutor also presented sufficient evidence to establish that defendant knowingly possessed the seized cocaine. Defendant was present in the home when the cocaine was found. She told the police that she resided at the home. Further, the police found defendant’s identification card, her hospital discharge paperwork, women’s pants, underwear, shoes, jewelry, hair products, and feminine hygiene products inside of the house. When the police arrived at the home, the home smelled of fresh marijuana and acetone. Plaintiff presented evidence that acetone is a chemical processing agent used in cocaine production. In addition, plaintiff presented evidence that, when the police entered the home, defendant ran into the master bedroom, where the majority of the cocaine was found. Finally, there was cocaine and drug paraphernalia in plain view throughout the house. Thus, on the record, the trial court properly denied defendant’s motion for a directed verdict on the charge of possession of cocaine. See *Wolfe, supra* at 522-523; *People v Mumford*, 60 Mich App 279, 283; 230 NW2d 395 (1975).

Defendant next argues that there was insufficient evidence presented at trial to support her convictions.

We review de novo challenges to the sufficiency of evidence in a criminal trial. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In reviewing the sufficiency of the evidence, we “must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *Wolfe, supra* at 515.

Defendant waived the issue whether there was sufficient evidence to support her unlawful possession of marijuana conviction. In his closing argument, defense counsel conceded that defendant was guilty of that offense. “[A] defendant should not be allowed to assign error on appeal to something his own counsel deemed proper at trial. To do so would allow a defendant to harbor error as an appellate parachute.” *People v Green*, 228 Mich App 684, 691; 580 NW2d 444 (1998). Further, “error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence.” *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997).

Finally, the prosecutor presented sufficient evidence to support defendant’s conviction of possession of cocaine. Defendant’s aunt testified at trial that defendant lived with her on May 9, 2005. Her testimony was presented to establish that defendant was a visitor at, and not a resident of the home where the drugs were found. However, “this Court will not interfere with the jury’s role of determining the weight of evidence or the credibility of witnesses.” *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). We must resolve all credibility conflicts in favor of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto