

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

GEORGE DANIEL HIGGINS,

Defendant-Appellant.

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UNPUBLISHED

June 26, 2007

No. 269140

Wayne Circuit Court

LC No. 05-010328-01

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

PER CURIAM.

Defendant appeals as of right his bench trial convictions of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to four years' probation for the possession with intent to deliver conviction, and two years in prison for the felony-firearm conviction. Because there was sufficient evidence to convict defendant of the above charges and because the trial court did not err in denying defendant's motion for a directed verdict, we affirm.

In early October 2005, a police informant made a drug buy at 12315 Flanders in Detroit. The informant made the purchase through a hole in the door and the seller was not identified. Officers conducted surveillance of the home for the next few days and, on October 4, 2005, executed a search warrant at that address. When the officers entered the residence (which appeared to be a vacant home containing minimal furniture) they observed defendant and two other men seated at a dining room table. On the dining room table, in plain view, was a rifle, individual bags of cocaine, drug packaging materials, a scale, and money. Defendant was arrested at the scene and, after a bench trial, convicted of possession with intent to deliver cocaine and felony firearm.

On appeal, defendant argues that there was insufficient evidence to convict him of the crimes charged and that the trial court erred by denying his motion for a directed verdict. We disagree.

When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime charged were proven beyond a reasonable doubt. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006). When

reviewing a claim of insufficient evidence, this court reviews the record de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In determining whether the prosecution has presented sufficient evidence to sustain a conviction, this Court must view the evidence in a 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 Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

To convict a defendant of possession with intent to deliver a controlled substance, the prosecution must prove: (1) that the substance was a narcotic, (2) the weight of the substance, (3) that the defendant was not authorized to possess the substance, and (4) that the defendant knowingly possessed the substance intending to deliver it. *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005); MCL 333.7401(2)(a)(iv). To convict a defendant of felony-firearm, the prosecution must prove: (1) defendant possessed a firearm, (2) during the commission of, or the attempt to commit, a felony. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999); MCL 750.227b.

Defendant contests the sufficiency of the evidence only with regard to the possession element of each crime. He argues that the evidence presented by the prosecution only established his presence in the house, not possession of the narcotics or the rifle. He also argues that the trial court erred in denying his motion for a directed verdict based on the same facts.

Possession of narcotics may be actual or constructive, joint or exclusive. *People v Meshell*, 265 Mich App 616, 622; 696 NW2d 754 (2005). Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the controlled substance. *Id.* at 621. A person's presence at a location where drugs are found is, by itself, insufficient to prove that he constructively possessed the drugs. *People v Echavarria*, 233 Mich App 356, 370; 592 NW2d 737 (1999). Instead, some additional connection between the defendant and the contraband must be shown. *Id.* Proof of possession of a controlled substance requires a showing of dominion or right of control over the drug with knowledge of its presence and character. *Meshell, supra* at 621.

The standard for constructive possession of a firearm is similar: a person has constructive possession if there is proximity to the firearm together with indicia of control. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). Put another way, a defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant. *Id.* Possession may be proved by circumstantial evidence and reasonable inferences drawn from this evidence. *Meshell, supra* at 621.

Courts have found sufficient evidence of dominion or control in where there is some link between the defendant and either the specific drugs, or at least the same type of drug, that form the basis of the charges against the defendant. In *People v Konrad*, 449 Mich 263; 536 NW2d 517 (1995), for example, the Court found sufficient evidence that the defendant had control over the drugs where a large quantity of cocaine was delivered to the defendant's house by a person the defendant was expecting. *Id.* at 273. In *People v Wolfe*, 440 Mich 508; 489 NW2d 748 (1992), the Michigan Supreme Court found that one factor linking the defendant to the cocaine found in an apartment was the defendant's apparent control of the premises. The defendant had invited several people from Detroit to a vacant apartment in Saginaw and showed them to the apartment. He was also the only person found to have a key to the apartment. On that basis, the

Court found it reasonable for the fact finder to conclude that the evidence demonstrated more than the defendant's mere presence at the apartment as a guest. *Id.* at 522.

Finally, in *Thompson v United States*, 567 A2d 907 (DC App, 1989), which is cited by the Michigan Supreme Court in *Wolfe, supra* at 521, the court was presented with facts somewhat similar to those in the instant case. There, the defendant was present in an apartment that was virtually empty except for a mattress. When the police entered, a handgun, a large amount of money, and a purse filled with packets of cocaine were lying on the floor in plain view and near the defendant. "Coupled with these facts of proximity," the Court concluded, were "circumstances giving rise to an inference of a concert of illegal action involving drugs by the occupants of the premises where the drugs [we]re found." *Id.* at 909. The Court noted repeated references on the record to the defendant hiding in the apartment while the police questioned a juvenile occupant of the apartment. It also noted that a bag of defendant's clothing had been recovered from the apartment. The Court found that these facts permitted an inference of criminal activity on the part of the defendant and a finding that the defendant possessed the requisite control over the premises necessary to support constructive possession. *Id.*

In this case, the evidence, viewed in the light most favorable to the prosecution, suggests that defendant was present in a vacant house with little furniture and no television set, seated in front of a large quantity of cocaine, a scale, empty Ziploc bags, and a rifle. One officer testified that the drugs and the rifle were closer to defendant than to the other two men, and two of the officers testified that the butt of the rifle was toward defendant. The proximity of the drugs and weapon to defendant as well as their positioning suggest that defendant had control over the same.

Additionally, defendant's testimony concerning the condition of the home and the execution of the warrant was far different than that presented by the testifying officers. While the officers testified that the home appeared vacant, given that the only livable furniture in the home was the dining room table and that the home contained a lot of trash and debris, defendant testified that the home was fully furnished and clean. The officers further testified that they observed defendant sitting at the dining room table with the drugs and rifle on the table before him. Defendant, however, testified that he was asleep in a bedroom when several officers entered the home and that one officer punched him, then took him into the kitchen or dining room and placed him on the floor. Defendant also testified that drugs were found in a broom in the home, and that the rifle was not on the dining room table. Defendant further testified that he was at the home to get a haircut, but he was inconsistent as to when the haircut was supposed to take place. The trial court found defendant's version of the events and the condition of the home to be completely incredible and thus, a tacit indication of a guilty conscience. Questions of credibility are for the trier of fact, *Avant, supra* at 506, so the trial court was free to believe the police officers and completely disbelieve defendant's account of the facts.

Consistent with an officer's testimony concerning an earlier drug buy through a hole in one of the doors, defendant confirmed that one of the doors leading outside the home had a hole where a door handle should have been, thus raising questions concerning defendant's knowledge of the home and its possible use. While the police officers did not know when defendant entered the house or how long he had been there, and had no information linking him to the house before the date in question, the totality of the circumstances supports defendant's convictions. Because this Court's review of the trial court's decision to deny defendant's motion for a directed verdict

is virtually identical to the sufficiency of the evidence inquiry, we also conclude that the trial court did not err in denying defendant's motion for a directed verdict.

Affirmed.

/s/ Deborah A. Servitto

/s/ Bill Schuette