

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

September 13, 2007

No. 271716

Wayne Circuit Court

LC No. 06-002079-01

Before: Markey, P.J., and Saad and Wilder, 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), possession with intent to deliver less than 50 grams of heroin, MCL 333.7401(2)(a)(iv), and possession with intent to deliver less than five kilograms of marijuana, MCL 333.7401(2)(d)(iii). Defendant was sentenced to one year in jail and five years' probation for his convictions. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the evidence presented at trial was insufficient to sustain his convictions. We disagree.

When reviewing a claim of insufficiency of the evidence, this Court reviews the record *de novo*. *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). Evidence is sufficient if, when viewed in the light most favorable to the prosecutor, a rational fact-finder could determine that each element of the crime had been proved beyond a reasonable doubt. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001), citing *People v Petrella*, 424 Mich 221, 269; 380 NW2d 11 (1985). Circumstantial evidence and reasonable inferences can be sufficient to sustain a conviction. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

In order to support a conviction for possession with intent to deliver cocaine/heroin, the prosecutor must show that: “(1) the recovered substance [was] cocaine [or heroin]; (2) that the cocaine [or heroin] [was] in a mixture weighing less than fifty grams; (3) that defendant was not authorized to possess the substance; and (4) that defendant knowingly possessed the cocaine [of heroin] with the intent to deliver.” *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992). In order to sustain a conviction for possession with intent to deliver marijuana, the prosecution must show that: “(1) defendant knowingly possessed a controlled substance, (2)

defendant intended to deliver the controlled substance to someone else, (3) the substance possessed was marijuana and defendant was aware that it was, and (4) the marijuana was in a mixture that weighed less than five kilograms.” *People v Williams*, 268 Mich App 416, 419-420; 707 NW2d 624 (2005). A person need not have actual physical possession of a controlled substance to be guilty of possessing it; possession may be either actual or constructive. *People v Johnson*, 466 Mich 491, 500; 647 NW2d 480 (2002); *Wolfe, supra*, pp 519-520.

Constructive possession exists if the defendant had “dominion or right of control over the drug with knowledge of its presence and character.” *Johnson, supra*, p 500; *Williams, supra*, p 421; *People v McKinney*, 258 Mich App 157, 165-166; 670 NW2d 254 (2003). Possession may be joint and may be found even if the defendant is not the owner of the controlled substance. *Wolfe, supra*, p 520; *McKinney, supra*, pp 165-166. Also, while mere presence at a location where drugs are found is insufficient to prove constructive possession, constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband. *Johnson, supra*, p 500; *Wolfe, supra*, pp 520-521.

The prosecution presented sufficient evidence at trial for a reasonable fact-finder to conclude that defendant constructively possessed the narcotics. The marijuana found on the coffee table was located right in front of where defendant was sleeping. Additionally, he admitted to possessing that marijuana. The cocaine, heroin, and remaining marijuana were found in the kitchen. The cocaine and marijuana were on the kitchen counter, in plain sight. The heroin was also in the kitchen, in the refrigerator. Defendant was the only person in the house at the time the search warrant was executed.

Constructive possession exists if the defendant had “dominion or right of control over the drug with knowledge of its presence and character.” *Wolfe, supra*, p 520; *McKinney, supra*, pp 165-166. Here, defendant admitted he knew the cocaine and marijuana were present. In addition, as a regular visitor for the last three weeks and as the only person in the house at the time the search warrant was executed, defendant had the right to exercise control over the heroin as well. The fact that the description of the seller of narcotics did not match the description of defendant does not defeat the conclusion that he constructively possessed the drugs because possession may be joint and constructive possession may be found even if the defendant is not the owner of the controlled substance. *Wolfe, supra*, pp 519-520; *Williams, supra*, p 421. Defendant constructively possessed the narcotics because he had the right to exercise control even though there were other people who also had access to the house.

In order to be convicted of possession with intent to deliver, the prosecution must show that defendant not only had possession over the narcotics, but also intent to deliver them to someone else. *Wolfe, supra*, pp 516-517; *Williams, supra*, pp 419-420. Intent to deliver can be inferred from the quantity of narcotics in a defendant's possession, from the way in which those narcotics are packaged and from other circumstances surrounding the arrest. *Wolfe, supra*, p 524.

In this case, the intent to deliver the narcotics can be inferred. While there was not a large quantity of drugs, the way in which the drugs were packaged allowed a reasonable fact-finder to infer intent to deliver. The cocaine was packaged in ten small Ziploc bags, which is a common packaging style for the delivery of cocaine. Also, the marijuana that was found in the kitchen was found in 18 clear zip-loc bags and three clear plastic bags. A rational fact-finder

may use circumstantial evidence and reasonable inferences therefrom to justify a conviction. *Carines, supra*, p 757. Here, the intent to deliver can be inferred from the way in which the narcotics were packaged.

The evidence was sufficient to sustain defendant's convictions, i.e., defendant constructively possessed substances he knew to be narcotics and intended to deliver them to someone else. *Wolfe, supra*, pp 516-517. The evidence, viewed as a whole and in a light most favorable to the prosecution, was sufficient for a rational fact-finder to conclude that defendant possessed narcotics with the intent to deliver.

Affirmed.

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