STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES CARLOS WALKER,

Defendant-Appellant.

UNPUBLISHED
May 7, 1996

No. 173321
LC No. 91-012745

Before: MacKenzie, P.J., and Cavanagh and T.L. Ludington, * JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of possession with intent to deliver more than 225 grams but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401(2)(a)(ii), delivery of more than 225 grams but less than 650 grams of cocaine, MCL 333.7401(2)(a)(ii); MSA 14.15(7401)(2)(a)(ii), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to consecutive terms of twenty to thirty years' imprisonment on each drug conviction and two years' imprisonment on the felony-firearm conviction. We affirm.

Defendant first argues that the evidence presented at trial was not sufficient to support his convictions. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

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* Circuit judge, sitting on the Court of Appeals by assignment.

A person need not have actual physical possession of a controlled substance to be found guilty of possessing it. Possession may be either actual or constructive. Moreover, possession may be joint, with more than one person actually or constructively possessing a controlled substance. *Wolfe, supra* at 519-520. The intent to deliver may be proven through circumstantial evidence and may be inferred from the amount of drugs possessed. *People v Ray*, 191 Mich App 706, 708-709; 479 NW2d 1 (1991).

We conclude that there was sufficient evidence to support defendant's convictions. The undercover police officer testified that defendant pointed a shotgun at him while the drug sale occurred. Accordingly, there was sufficient evidence that defendant at a minimum aided and abetted in the delivery of the cocaine to the undercover officer. See *People v Berry*, 101 Mich App 399, 401-403; 300 NW2d 575 (1980). In addition, the police recovered a phone card in defendant's name and a phone bill addressed to defendant at the Glastonbury address. The trier of fact could have inferred the intent to deliver from the amount of the cocaine found and the presence of a large amount of money in the house. *Ray, supra*. Thus, the totality of the circumstances indicates a sufficient nexus between defendant and the contraband. *Wolfe, supra* at 521.

Defendant also argues that the trial court erred in excusing for cause two prospective jurors who had been convicted of felonies. We find no error. The trial court properly excused the prospective jurors under MCR 2.511(D)(2).

Next, defendant claims that the trial court erred in imposing consecutive sentences. This is a question of law which we review de novo on appeal. *People v Young*, 206 Mich App 144, 154; 521 NW2d 340 (1994). We find no error. Mandatory sentences imposed for certain controlled substances violations must be consecutive to any term of imprisonment imposed for the commission of another felony. MCL 333.7401(3); MSA 14.15(7401)(3). The consecutive sentencing requirement applies to convictions for other felonies, including another controlled substance violation. *People v Davenport*, 205 Mich App 399, 401-402; 522 NW2d 339 (1994); *People v Kent*, 194 Mich App 206, 209; 486 NW2d 110 (1992). The imposition of consecutive sentences for a controlled substance violation and another felony is proper even when the second felony is a violation of the same subsection and arises out of the same criminal transaction as the controlled substance violation. *People v Hadley*, 199 Mich App 96, 102-103; 501 NW2d 219 (1993). Accordingly, the trial court did not err in imposing consecutive sentences for defendant's convictions.

Defendant also asserts that his sentences are disproportionate. We disagree. The statutory minimums for controlled substance offenses generally presume that the applicable minimum is the appropriate sentence, and a legislatively mandated sentence is presumed to be proportionate and valid. Because defendant did present any circumstances to the trial court that would take his sentence out of the statutorily mandated minimum, he has failed to overcome the presumption that his sentences were proportionate and that he was not entitled to a downward departure. *People v Poppa*, 193 Mich App 184, 187-189; 483 NW2d 667 (1992). Because defendant's individual sentences are proportionate,

the cumulative effect of the consecutive sentences does not violate the principle of proportionality. *People v Warner*, 190 Mich App 734, 736; 476 NW2d 660 (1991).

In his final issue, defendant contends that the trial court erred in excluding evidence that the codefendants fled the jurisdiction and failed to appear for trial. The decision whether to admit or exclude evidence is within the trial court's discretion. This Court will find an abuse of discretion only when an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994).

It is well established in Michigan law that evidence of flight is admissible. *People v Coleman*, 210 Mich App 1 , 4; 532 NW2d 885 (1995). However, even if the trial court did abuse its discretion in excluding evidence of the codefendants' failure to appear at trial, we find no error requiring reversal. The prosecution established that defendant aided and abetted the codefendants. Thus, even if the codefendants' flight were evidence of their guilty minds, such evidence would only have served to strengthen the case against defendant.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Mark J. Cavanagh
/s/ Thomas L. Ludington