

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

June 25, 1996

Plaintiff-Appellee,

v

No. 170767

LC No. 92-003838

KENNETH BAILEY,

Defendant-Appellant.

Before: White, P.J., and Smolenski, and R. R. Lamb,* JJ.

PER CURIAM.

Defendant appeals his bench trial conviction of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), for which he was sentenced to lifetime probation. We affirm..

Defendant's only issue on appeal is whether the prosecution presented sufficient evidence of his possession of cocaine. A review of a challenge to the sufficiency of the evidence requires this Court to view the evidence in a light most favorable to the prosecution and determine whether the evidence was sufficient to support a conclusion by a reasonable trier of fact that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-516; 489 NW2d 748 (1992). The elements that must be established to support a conviction of possession with intent to deliver less than fifty grams of cocaine are: (1) the recovered substance is cocaine; (2) the cocaine is in a mixture weighing less than fifty grams; (3) defendant was not authorized to possess the substance; and (4) defendant knowingly possessed the cocaine with the intent to deliver it. *Wolfe, supra* at 516-517. Defendant challenges only the sufficiency of the evidence with respect to the possession component of the fourth element.

Possession may be either actual or constructive and may either be joint or exclusive. *People v Sammons*, 191 Mich App 351, 371; 478 NW2d 901 (1991); *Wolfe, supra* at 520. Constructive possession may be shown by evidence that defendant had the power and intent, either directly or through another person, to exercise dominion and control over the cocaine. *Sammons, supra* at 371.

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

Constructive possession may also be shown by defendant's proximity to the cocaine combined with other indicia of control. *Id.* Possession may be proven by circumstantial evidence and reasonable inferences drawn from such evidence. *Id.*; *People v Mumford*, 60 Mich App 279, 283; 230 NW2d 395 (1975).

This Court has rejected mere residency in the premises where the contraband was found as sufficient to establish constructive possession of the contraband. *People v Simpson*, 104 Mich App 731, 733-734; 305 NW2d 249 (1980). The evidence must also establish a nexus between the accused and the contraband under the totality of the circumstances. *Wolfe, supra* at 520. Defendant argues that it is this nexus that is lacking. While we agree that the evidence against defendant was not overwhelming, we conclude that when viewed in a light most favorable to the prosecution, it was sufficient.

Police officers executed a search warrant on a two-bedroom house on Rutland in Detroit. In one bedroom of the house, police found a quantity of a substance which proved to be 1382 grams of cocaine, along with a quantity of lactose. A quantity of a substance later determined to be marijuana was found in the bedroom closet. In a dresser of the bedroom in which the cocaine and marijuana was found, police found a W-2 form with defendant's name and the Rutland address on it and a letter from the Dearborn Police Department addressed to defendant at the Rutland address. In addition, there was testimony that the dressers and the closet in the bedroom contained both men's and women's clothing. In another portion of the house, police confiscated two scales. While the search was in progress, defendant and his girlfriend, Rita Jimenez, arrived at the house. At the conclusion of the search, defendant and Cindy Hernandez were arrested. Thereafter, Cindy Hernandez pleaded guilty to a narcotics charge arising from the search.

Rita Jimenez testified that she and Cindy Hernandez shared the bedroom where the cocaine was found with their mother. According to Rita and Rosemary Jimenez, their mother was bed-ridden from cancer at the time of the raid. There was evidence that their mother was in the bedroom in bed when the officers conducted the search. Rita Jimenez further testified that defendant did not live at the house, but on occasion stayed overnight on the living room couch. Rita and Rosemary Jimenez also testified that some of the men's clothing belonged to them and the rest belonged to their brother, who was then in prison.

Defendant testified that he did not live at the Rutland address and had no clothes there. Rather, he lived with his mother on the east side, thirty to forty miles away. Defendant testified he gave Jimenez's address to his employer in order to appear to live within the vicinity of the business, apparently a requirement of his employment. He was not sure how the Dearborn police got the Rutland address, but he had been stopped for a traffic offense. Defendant stated he did not actually or constructively possess the drugs.

The parties stipulated that some of the cocaine was found on top of the dresser, and some in a dresser drawer.

The trial court found that the documents belonging to defendant and having the Rutland address on them were found in close proximity to the cocaine, that men's clothes were found in the bedroom, and that while witnesses testified to the contrary, defendant was a resident of the house. The court concluded that the prosecution proved beyond a reasonable doubt that defendant had constructive possession.

Viewed most favorably to the prosecution, we conclude that there was sufficient evidence to demonstrate that defendant had dominion and control over the cocaine, and thus constructive possession. The court was not obliged to believe defendant's testimony or the testimony of his witnesses. Rather, the court was free to rely on the physical evidence.

Affirmed.

/s/ Helene N. White
/s/ Michael R. Smolenski
/s/ Richard R. Lamb