

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES KINNEY,

Defendant-Appellant.

UNPUBLISHED

July 16, 1996

No. 179671

LC No. 93-0047808

Before: Wahls, P.J., and Murphy and C.D. Corwin,* JJ.

PER CURIAM.

Defendant appeals as of right his conviction by jury of possession with intent to deliver 50 grams or more, but less than 225 grams of a mixture containing the controlled substance cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401(2)(a)(iii). Defendant was sentenced to a ten to twenty-year term of imprisonment. We affirm.

Defendant contends that the evidence was insufficient to support his conviction. We disagree. In reviewing a claim of insufficient evidence, this Court views the evidence in a light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979).

Defendant specifically contends that the prosecution failed to establish that defendant had knowing possession of the cocaine. We disagree. Knowing possession requires that the alleged possessor be aware of the presence and character of the particular substance and be intentionally and consciously in possession of it. *People v Delongchamps*, 103 Mich App 151, 159; 302 NW2d 626 (1981). Actual physical possession is unnecessary for a conviction. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Constructive possession, where a defendant knowingly has the power and intention to exercise dominion or control over a substance will suffice. *People v Sammons*, 191 Mich App 351, 371; 478 NW2d 901 (1991).

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

At trial, three Detroit Police officers testified that upon executing a valid search warrant at the flat on Harding, they found defendant alone in the dining room, in the process of getting up from the dining room table upon which was a scale, some cocaine in small zip-lock bags, and a large amount of cocaine that had not yet been cut up. Defendant was in possession of the only keys to the flat that were found. On this record, a rational trier of fact could conclude defendant had constructive possession. Accordingly, we see no error warranting reversal.

Affirmed.

/s/ Myron H. Wahls
/s/ William B. Murphy
/s/ Charles D. Corwin