

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

July 19, 1996

Plaintiff-Appellee,

v

No. 172208

LC No. 93-001719-FH

DARRELL LEE SMITH, a/k/a
LYNN WADE SMITH,

Defendant-Appellant.

Before: Neff, P.J., and Fitzgerald and C.A. Nelson,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession with intent to deliver a controlled substance less than fifty grams, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He was sentenced to life probation. Defendant appeals as of right. We affirm.

Defendant was arrested and charged following a routine traffic stop in Port Huron. When defendant was unable to produce identification, a driver's license, a vehicle registration, or proof of insurance, the police officer on the scene decided to impound the vehicle. The officer proceeded to search the vehicle, and found a quantity of crack cocaine.

Defendant first contends that the search of his vehicle was unreasonable and that the trial court's denial of his motion to suppress the cocaine was clearly erroneous. To be reasonable, an inventory search of a vehicle must be conducted in accordance with established procedures and must not be a pretext for criminal investigation. *People v Toohey*, 438 Mich 265, 284; 475 NW2d 16 (1991). Defendant argues that there was no established policy in place in Port Huron, since the only guidance available to officers was an inventory form with blanks to be filled in. We disagree. Testimony at the suppression hearing established that there is a general order in place at the Port Huron Police Department that requires a vehicle to be inventoried whenever it is impounded. Thus, there is no discretion left to an individual officer regarding whether to search an impounded vehicle -- it must be

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

done. While neither the general order nor the inventory form addressed the sequence or method of search, such details may be left to the discretion of the individual officer. *Id.* at 284-286. Defendant stipulated to the propriety of the impoundment at the motion hearing and, therefore, we will not review the propriety of the officer's decision to impound. The trial court properly denied the motion to suppress.

Defendant also contends that the wholly circumstantial evidence presented at trial was insufficient to support his conviction because he was not connected to the cocaine. We disagree. To support a conviction for possession with intent to deliver cocaine, the prosecutor must prove that (1) the substance in question was cocaine; (2) the defendant was not authorized by law to possess the substance; and (3) the defendant knowingly possessed the cocaine with the intent to deliver. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant challenges only the third element. He argues that anyone could have placed the cocaine in his vehicle without his knowledge, which would negate knowing possession and, by extension, intent to deliver. We note that possession with intent to deliver a controlled substance can be established by circumstantial evidence and reasonable inferences arising from that evidence. *People v Wolfe*, 440 Mich 508, 526; 489 NW2d 748 (1992). Furthermore, constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband. *Id.* at 521. The record indicates that defendant was the driver and sole occupant of the stopped vehicle, that he was stopped at 2:00 a.m. in an area known for drug trafficking, and that he was equivocal with police regarding his name, age and destination. Intent to deliver may be inferred from the quantity and packaging of the narcotics. *Id.* at 524. The cocaine in question was packaged in a plastic bag containing several individually-wrapped rocks in a manner to be sold, and no other drug paraphernalia was found which would indicate that defendant only intended to smoke the cocaine himself. Viewing the evidence in the light most favorable to the prosecution, the evidence was sufficient to permit a rational jury to conclude that defendant was aware of the cocaine and exercised sufficient control over it such that there was knowing possession and intent to deliver it.

Affirmed.

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald

/s/ Charles A. Nelson