

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRELL JOVAN HEARD,

Defendant-Appellant.

UNPUBLISHED

April 25, 1997

No. 193352

Kent Circuit Court

LC No. 95-002777-FH

Before: Griffin, P.J., and Doctoroff and Markman, JJ.

PER CURIAM.

Defendant was convicted by a jury 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). Defendant was sentenced to three to twenty years' imprisonment. He appeals as of right. We affirm.

Defendant's sole argument on appeal is that the evidence was insufficient to sustain his conviction. We disagree. In reviewing a claim of insufficiency of evidence, this Court must view the evidence in the light most favorable to the prosecution and decide whether it is sufficient to prove the essential elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). This standard inherently precludes this Court from interfering with the factfinder's task of weighing the evidence or making determinations as to witnesses' credibility. *Id.* at 514-515.

Conviction of possession with intent to deliver less than fifty grams of cocaine requires proof that (1) the substance recovered is cocaine, (2) the cocaine is an amount less than fifty grams, (3) the defendant was not authorized to possess the cocaine, and (4) the defendant knowingly possessed the cocaine with the intent to deliver. *Id.* at 516-517. Defendant in this case argues that the last element was not satisfied as to possession or intent.

The possession element may be satisfied by either physical or constructive possession of the controlled substance. *Id.* at 520. Constructive possession can be shown by knowledge of the presence of the cocaine coupled with the right to exercise control over it; and while mere presence is not enough by itself to establish constructive possession, many factors may be considered to find a sufficient nexus between the defendant and the drugs. *Id.* Applying this standard to the present case, there is sufficient

evidence to find that defendant at least constructively possessed the cocaine. Defendant admits that he was present where the cocaine was found, that he knew that drugs were being sold, and that the money in his possession was obtained from the sale of drugs. Further, there was evidence presented that defendant was the person who threw the cocaine out the window. Therefore, we conclude that there was sufficient evidence for a jury to reasonably infer that defendant possessed the cocaine.

Defendant also contends that the prosecution failed to prove beyond a reasonable doubt that defendant had the intent to deliver cocaine. Again, the intent to deliver can be shown constructively without actual delivery. *Id.* at 524. Surrounding circumstances such as the quantity of drugs recovered and the way in which the drugs are packaged can demonstrate an intent to deliver. *Id.* Here, defendant tossed two baggies of crack cocaine rocks and approximately \$820 out of the window after police announced the search warrant. There was expert testimony that the amount of money possessed and the amount and form of the discarded cocaine is consistent with what a drug dealer, rather than an average user, would possess. Additionally, there was evidence that defendant possessed a pager and the marked money which the police had earlier used to purchase cocaine. We hold that this evidence, when viewed in a light most favorable to the prosecution, is sufficient to allow a reasonable trier of fact to find that the essential elements of the crime were proved beyond a reasonable doubt. *Wolfe, supra* at 515.

Affirmed.

/s/ Richard Allen Griffin

/s/ Martin M. Doctoroff

/s/ Stephen J. Markman