STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RENEE MARSHA KEELS,

Defendant-Appellant.

UNPUBLISHED
August 22, 1997

No. 192404
Oakland Circuit Court
LC No. 95-138524-FH

Before: Cavanagh, P.J., and Holbrook, Jr. and Jansen, JJ.

PER CURIAM.

Defendant appeals as of right her jury convictions of possession less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and maintaining a drug house, MCL 333.7405(d); MSA 14.15(7405)(d). Defendant was sentenced as an habitual offender to concurrent terms of two to eight years for the possession conviction, two to four years for the maintaining a drug house conviction, and a consecutive term of two years for the felony-firearm conviction. We affirm.

Defendant first argues that there was insufficient evidence to convict her of possession of less than twenty-five grams of cocaine. We disagree. We 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 Medlyn*, 215 Mich App 338, 340; 544 NW2d 759 (1996). To establish possession of a controlled substance, the prosecution must establish that defendant had actual or constructive possession of the controlled substance, that is, that defendant exercised control or had the right to exercise control of the substance and knew that it was present. *People v Hellenthal*, 186 Mich App 484, 486; 465 NW2d 329 (1990). Possession need not be exclusive. More than one person can actually or constructively possess a controlled substance. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Evidence of possession has been found to be sufficient where cocaine was found in a drawer of a water bed, which also contained receipts and personal papers with the defendant's name on them, *People v Richardson*, 139 Mich App 622, 625-626; 362 NW2d 583 (1984), and where the male defendant was found lying on a bed in the same bedroom where drugs were in plain view, the bedroom contained men's clothing, and the defendant's

wallet was near the drugs, *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995). Similarly, in the instant case, defendant was found in a bedroom where cocaine was found on a woman's mirror, next to letters addressed to defendant, on top of a dresser which contained women's clothing. A reasonable jury could find that defendant possessed the cocaine based on this evidence. The fact that a man was in the bedroom with defendant is immaterial, since joint possession will suffice. *Konrad, supra*.

Defendant next argues that the trial court abused its discretion in denying defendant's request for a jury instruction on the misdemeanor offense of use of a controlled substance, MCL 333.7404; MSA 14.15(7404). We disagree. A trial court is obligated to instruct on a lesser misdemeanor offense only when five conditions are met. First, a proper request must be made. Second, an appropriate relationship must exist between the charged offense and the requested misdemeanor. Third, the requested misdemeanor must be supported by a rational view of the evidence at trial. Fourth, if the prosecutor requests the instruction, the defendant must be given adequate notice. Fifth, the requested instruction must not result in undue confusion or injustice. *People v Stephens,* 416 Mich 255, 261-264; 330 NW2d 675 (1982); *People v Lucas,* 188 Mich App 554, 582; 470 NW2d 460 (1991). Defendant's request for a jury instruction on the use of cocaine fails on the second prong. An appropriate relationship does not exist between the charged offense and the requested misdemeanor. Determination of an "appropriate relationship" consists of a two-part inquiry: (1) the greater and lesser offense must both relate to the protection of the same interests, and (2) the offenses must be related in an evidentiary manner so that proof of the misdemeanor is necessarily presented as part of the proof of the greater offense. *Stephens, supra,* p 262. The proof for use of cocaine is entirely different from the proof of possession and is not necessarily presented as part of the offense of possession. A showing of use is immaterial to establish possession.

Defendant next argues that the trial court abused its discretion in admitting evidence of prior raids at defendant's house and the evidence seized during the raids. We disagree. Prior bad acts may not be admitted to prove character or propensity under MRE 404(b), however, they may be admitted if they are relevant to a fact in issue. *People v VanderVliet,* 444 Mich 52, 74; 508 NW2d 114 (1993), modified 445 Mich 1205; 520 NW2d 338 (1994). In the instant case, evidence of prior raids and the evidence seized during the raids was not admitted to show defendant's character, but rather was admitted for the purpose of establishing that defendant knowingly maintained a drug house. The evidence was not needless presentation of cumulative evidence under MRE 403, because the prior raids took place on different days and different evidence relating to the maintenance of drugs was found. The trial court, therefore, did not abuse its discretion in admitting the evidence. *People v Catanzarite,* 211 Mich App 573, 579; 536 NW2d 570 (1995).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Donald E. Holbrook, Jr.
/s/ Kathleen Jansen