

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NATHANIEL LEE,

Defendant-Appellee.

UNPUBLISHED

November 25, 1997

No. 199734

Oakland Circuit Court

LC No. 95-139225 FH

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of possession with intent to deliver more than 50 but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant then filed a motion for a directed verdict of acquittal, MCR 6.419(B), which the trial court granted. The prosecutor now appeals as of right. We affirm.

In reviewing the sufficiency of the evidence, this Court is required to view the evidence in a light most favorable to the prosecution, and to determine whether there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748, amended on other grounds 441 Mich 1201 (1992). Here, the evidence indicated that a number of items personal to defendant were found in the bedroom of a dwelling, in proximity to a substantial amount of cocaine, cash, and a .45 caliber pistol, all of which were hidden in a secret compartment in the closet of the bedroom. Ammunition for the weapon and a plastic case were found on the bed next to the referenced personal items.

These personal items consisted of: (1) a certified letter addressed to defendant at a different address, (2) a temporary Michigan's driver's license dated over 21 months prior to the date of the police raid which uncovered the contraband, (3) a second letter to defendant over 7 months old, (4) a fishing license issued 40 months before the date of the raid, and therefore long

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

since expired, MCL 324.43542; MSA 13a.43542 (see also the predecessor statute, MCL 316.326), (5) a janitorial cleaning receipt dated a month before the raid, and (6) a receipt for automobile repairs on defendant's vehicle dated five months earlier.

The place where the raid was conducted had been under police surveillance on two previous occasions about two weeks before the raid in question, and although numerous persons were seen coming and going, defendant was never seen on the premises, nor was defendant on the premises when the raid was conducted. These premises were owned by one of defendant's brothers and apparently occupied, at least in part, by a second brother.

While this evidence might raise some suspicions about defendant and his relation to the contraband and the pistol, it simply fails to rise to the level necessary to erase reasonable doubts. All the materials were outdated; none was the sort of item which an average person would need readily at hand, such as a current driver's license or fishing license, recent correspondence, or a receipt for something of importance. To the contrary, the only such receipt was the warranty registration for a triple beam scale, but that was in the name of one of defendant's brothers. None of these materials was examined for fingerprints, and thus the prosecution adduced no evidence either that defendant's fingerprints were found on these items or that the fingerprints of third persons did not overlay defendant's fingerprints. While the out of date driver's license was found in a wallet, there was no evidence to indicate that, when arrested, defendant did not have a new wallet, to dispel the at least equally logical inference that the wallet was worn out and had been discarded along with the outdated items.

The prosecution relies on cases involving similar circumstantial evidence, but it appears that in each such case the defendant was on the premises when the contraband and personal items were discovered. *People v Hellenthal*, 186 Mich App 484, 487; 465 NW2d 329 (1990); *People v Hahn*, 183 Mich App 465, 467; 455 NW2d 310 (1989), vacated in part 437 Mich 867; 462 NW2d 590 (1990); *People v Richardson*, 139 Mich App 622, 627; 362 NW2d 853 (1984). Additionally, in *Richardson* the defendant's personal papers were found in immediate proximity to the contraband; here, the papers were on the bed and the contraband was in a secret compartment in the closet. Neither the gun, the case, nor the ammunition was examined for fingerprints, and thus none of these items was linked in some tangible way to defendant.

Accordingly, defendant's motion for directed verdict of acquittal was properly granted.

Affirmed.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber