

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARLOS ORTEGA,

Defendant-Appellant.

UNPUBLISHED

December 19, 1997

No. 196815

Recorder's Court

LC No. 95-008696

Before: Holbrook, Jr., P.J., and Young and J.M. Batzer*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession of 50 grams or more, but less than 225 grams, of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii). Defendant was sentenced to ten to twenty years' imprisonment. He appeals as of right. We affirm.

Defendant argues that there was insufficient evidence to convict him because the prosecution failed to prove that defendant possessed 122.06 grams of cocaine that the police discovered in a van located on his property. Defendant concedes that there was sufficient evidence that he possessed 20.64 grams of cocaine buried near his garage. In reviewing the sufficiency of the evidence following a bench trial, 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 Petrella*, 424 Mich 221, 269-270; 380 NW2d 11 (1985).

The offense of possession of a controlled substance requires the prosecution to prove that defendant had actual or constructive possession of the substance. *People v Hellenthal*, 186 Mich App 484, 486; 465 NW2d 329 (1990). In determining whether a defendant constructively possessed a controlled substance, the essential question is whether the defendant had dominion or control over it. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Constructive possession may be found

where a defendant knowingly has the power and intention to exercise dominion or control over a substance, either directly or through another person, or if there is

proximity to the substance together with indicia of control. *People v Sammons*, 191 Mich App 351, 371; 478 NW2d 901 (1991).

However, evidence of a defendant's mere presence at a location where a controlled substance is located is insufficient to prove constructive possession. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1992). Rather, the prosecution must prove some additional connection between the defendant and the contraband. *Id.* Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. *Sammons*, *supra*.

In this case, the prosecution presented sufficient evidence to show that defendant possessed the cocaine found in the van. Officer McNamara testified that he saw defendant enter the van that was parked on defendant's property. Defendant remained in the van for a "couple minutes" before exiting the vehicle and walking to the north side of the garage, where Officer McNamara observed defendant burying something in the ground. Upon execution of the search warrant, cocaine was discovered next to the garage where defendant had been digging, as well as in a hidden compartment in the van. Viewed in a light most favorable to the prosecution, the evidence was sufficient for the trial court to find that defendant possessed the cocaine in the van, and that he was therefore guilty beyond a reasonable doubt of possession of 50 grams or more, but less than 225 grams, of cocaine. *Petrella*, *supra*.

Defendant also contends that the trial court applied the wrong legal standard in determining defendant's guilt. We disagree. While the trial court commented that it was "more likely than not" that defendant possessed the cocaine in the van, the court immediately noted that "the question is is that enough beyond a reasonable doubt." Therefore, we are convinced that the trial court applied the correct legal standard.

Affirmed.

/s/ Donald E. Holbrook
/s/ Robert P. Young, Jr.
/s/ James M. Batzer