

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES LEVELL HURT,

Defendant-Appellant.

UNPUBLISHED

May 13, 2008

No. 275887

Oakland Circuit Court

LC No. 2005-202365-FH

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant was convicted of possession with intent to deliver between 50 and 449 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). The trial court sentenced defendant, as a fourth habitual offender, MCL 769.12, to 10 to 40 years in prison for the possession with intent to deliver between 50 and 449 grams of cocaine conviction and 3 to 15 years in prison for the possession with intent to deliver marijuana conviction. This Court granted defendant's delayed application for leave to appeal. *People v Hurt*, unpublished order of the Court of Appeals, entered August 3, 2007 (Docket No. 275887). We affirm.

Defendant's sole argument on appeal is that there was insufficient evidence to prove that he had dominion and control of cocaine and marijuana recovered during the execution of a search warrant in a Madison Heights home. He relies on his statement to Officer Jeffrey Jagielski, made prior to the search, that he "was staying" with his parents in Detroit, contradicting proof of his residency recovered during the search. We disagree.

This Court reviews sufficiency of the evidence claims de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We "must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences may be satisfactory proof of the elements of a crime. *Id.* at 526; *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

The elements of possession with intent to deliver between 50 and 449 grams of cocaine are: "(1) the defendant knowingly possessed a controlled substance; (2) the defendant intended to deliver this substance to someone else; (3) the substance possessed was cocaine and the

defendant knew it was cocaine; and (4) the substance was in a mixture that weighed between 50 and [449] grams.” *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998). The elements of possession with intent to deliver marijuana are: (1) defendant knowingly possessed a controlled substance, (2) defendant intended to deliver the controlled substance to someone else, and (3) defendant was aware that the controlled substance was marijuana. MCL 333.7401(2)(d); *People v Williams*, 268 Mich App 416, 419-420; 707 NW2d 624 (2005). On appeal, defendant argues the prosecution presented insufficient evidence to prove that he knowingly possessed the cocaine and marijuana. We disagree.

Possession includes actual and constructive possession. *Wolfe, supra* at 520. A defendant constructively possesses drugs if he knowingly has the power and intention to exercise dominion or control over a substance, 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). But “a person’s presence, by itself, at a location where drugs are found is insufficient to prove constructive possession. Instead, some additional connection between the defendant and the contraband must be shown.” *Wolfe, supra* at 520 (citations omitted).

Viewing the evidence from which it could be inferred that defendant lived at the home where the drugs were found in a light most favorable to the prosecution, the prosecutor presented sufficient proof to demonstrate defendant’s power to exercise dominion and control over the cocaine and marijuana. *Wolfe, supra* at 521; *Sammons, supra* at 371. Although defendant was not present in the home during the execution of the search warrant, his driver’s license listed it as his primary address. In addition, defendant and Sabrina Peden held a lease for this home. The trial court noted that, at the time of the search, there was no evidence that the lease was terminated or that defendant requested to have his name removed from it. Also, defendant’s minivan was parked in the driveway. Documents, such as a money order receipt and an expired insurance policy belonging to defendant, were recovered in the family room, near a plate with cocaine residue, during the search. Defendant’s résumé was stored in a trunk with marijuana, cocaine, packaging materials and a digital scale. In the same bedroom where the trunk, additional packaging materials and a larger scale were recovered, the police found “quite a bit” of men’s clothing that appeared to be defendant’s size, cologne, shaving cream and deodorant. Therefore, we conclude that there was sufficient evidence for a trier of fact to find beyond a reasonable doubt that defendant knowingly possessed the cocaine and marijuana.

Although defendant maintains that his statement that he “was staying” with his parents in Detroit contradicted the proofs of his residency, conflicting testimony and witness credibility are generally issues for the trier of fact. *Wolfe, supra* at 514-515; *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). We defer to the trial court’s resolution of this issue.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey