

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK LAMAR CRY,

Defendant-Appellant.

UNPUBLISHED

June 30, 2009

No. 283611

Wayne Circuit Court

LC No. 06-009068-FH

Before: O’Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver 50 or more but less than 450 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to consecutive terms of 51 months’ to 20 years’ imprisonment for the cocaine conviction and two years’ imprisonment for the felony-firearm conviction. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant’s sole issue on appeal is that the evidence was insufficient to sustain the verdict. In reviewing a verdict reached in a bench trial, we review the trial court’s factual findings for clear error and its conclusions of law de novo. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). “We review the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001).

The pertinent element relative to both charges is that of possession. Possession with intent to deliver requires proof that the defendant knowingly possessed a controlled substance. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). Felony-firearm requires proof that the defendant possessed a firearm. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession may be actual or constructive and may be established with circumstantial evidence. *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Hill*, 433 Mich 464, 469-470; 446 NW2d 140 (1989); *People v Nunez*, 242 Mich App 610, 615-616; 619 NW2d 550 (2000). Constructive possession of a controlled substance is the right to exercise control over the drug coupled with knowledge of its presence. *Wolfe, supra* at 520. Constructive possession of a firearm exists “if there is proximity to the [firearm] together with indicia of control.” *Hill, supra* at 470. Generally

speaking, “[c]onstructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the controlled substance” or contraband. *People v Meshell*, 265 Mich App 616, 622; 696 NW2d 754 (2005).

In this case, the contraband was found inside a car parked outside a known drug house; specifically, it was inside the armrest of the driver’s side door. Defendant indicated that he had obtained the car from a friend. Although defendant was with two other men, he was the sole occupant of the car, and he was seated in the front passenger seat facing out the open door. When the officers appeared on the scene, defendant leaned back out of sight while extending his right hand over his head in the direction of the driver’s side door, where the contraband was located. The evidence supports a reasonable inference that defendant was either hiding the contraband or trying to close the armrest’s control panel, thereby demonstrating knowledge and control of the contraband. Further, defendant was the only person in possession of a large amount of cash in small denominations, which was consistent with drug sales, and which permitted a reasonable inference that defendant also had possession of the drugs in the car. Thus, the evidence was sufficient to permit a reasonable factfinder to conclude that defendant had constructive possession of the handgun and cocaine.

Affirmed.

/s/ Peter D. O’Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio