

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellant,

UNPUBLISHED  
March 22, 2011

v

WILBERT JAMES FORD,  
  
Defendant-Appellee.

No. 296142  
Wayne Circuit Court  
LC No. 09-024451-FH

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Before: K.F. KELLY, P.J., and BORRELLO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Following a preliminary examination, defendant was bound over for trial on one count each of possession with intent to deliver less than 50 grams of a controlled substance (heroin), MCL 333.7401(2)(a)(iv), possession with intent to deliver less than 50 grams of a controlled substance (heroin) on school or library property, MCL 333.7410(3), and possession of less than 25 grams of a controlled substance (heroin) on school or library property, MCL 333.7403(2)(a)(v) and MCL 333.7410(4). The circuit court granted defendant's motion to quash the information and dismiss the charges. The prosecution appeals as of right and, for the reasons set forth in this opinion, we reverse and remand for reinstatement of the charges.

According to the testimony at defendant's preliminary examination, Police Officer Brian Russell and Sergeant Ramon Valdez went to 9257 Penrod to execute a search warrant. Upon arriving, they observed defendant leaving the home and shutting the door behind him. Defendant presented an approximate match to the description provided in the search warrant. The home was within 1,000 feet of a high school.

Inside the home, the officers observed narcotics and paraphernalia on an ironing board in the middle of the living room, which was the first room encountered upon entering the house. Officer Russell recovered a knotted baggie of suspected heroin and a Ziploc baggie of suspected heroin. The parties stipulated that the contents tested positive for the presence of 1.7 grams of heroin. Officer Russell also recovered a digital scale, Lotto slips that are commonly used for packaging heroin, empty Ziploc baggies, and used baggies from the ironing board. According to Officer Russell, these items were consistent with narcotics sales. Sergeant Valdez testified that the house was in disarray, with garbage and narcotics paraphernalia, including baggies with ripped corners, scattered throughout the house. Sergeant Valdez confiscated keys to the front door of the house and \$260 from defendant. Inside the house, Sergeant Valdez discovered a

Department of Corrections identification for defendant on a speaker in the living room, and an undated “ITT letter” addressed to defendant at that address.

Defendant provided an address in Belleville, Michigan. Sergeant Valdez thought that defendant stated that his brother lived at the Penrod Street address.

The district court made the following findings following the conclusion of defendant’s preliminary examination:

The Court believes that there is sufficient evidence and finds that there is sufficient evidence on this record to show that on September the 4th of 2009 at an address of 9257 Penrod in the City of Detroit; that the officers were there to execute a search warrant; observed the accused, Mr. Ford, exiting the premises and shutting the door behind him.

The officers indicated that they detained him; announced and forced the location; discovered narcotics on the premises; he was arrested.

The individual on the—described by the officers, on the sidewalk, was not arrested as they did not see him on the premises.

The officers testified to the quantity of drugs found on an ironing board in the living room, all in the dwelling in which the defendant was observed exiting—it presents a question of fact that must be resolved by the fact-finder.

The Court will bind this over. . . .

Defendant thereafter filed a motion to quash the information. The circuit court granted the motion, concluding that there was insufficient evidence to link defendant to the contraband inside the house:

I understand that but there has to be some some [sic] link. There has to be some link and I don’t think that that [sic] we have yet gotten to a point where we’re a country that everybody that has keys to a house is responsible for everything found in the house; and at this point, that’s all that we have in terms of evidence, is that he had keys to the house and he was seen leaving the house. I’ll grant the motion.

The prosecutor appeals the trial court’s decision to grant defendant’s motion to quash the information.

This Court reviews a magistrate’s decision whether to bind a defendant over for trial for an abuse of discretion. *People v Starks*, 473 Mich 227, 233; 701 NW2d 136 (2005). “A magistrate has a duty to bind over a defendant for trial if it appears that a felony has been committed and there is probable cause to believe that the defendant committed the felony.” *Id.* (citation omitted). As explained in *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003), probable cause requires:

a quantum of evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt. Yet, to find probable cause, a magistrate need not be without doubts regarding guilt. The reason is that the gap between probable cause and guilt beyond a reasonable doubt is broad and finding guilt beyond reasonable doubt is the province of the jury.

“If the evidence conflicts or raises reasonable doubt, the defendant should be bound over for trial, where the questions can be resolved by the trier of fact.” *People v Henderson*, 282 Mich App 307, 312; 765 NW2d 619 (2009). This Court gives no deference to a circuit court's decision. *Id.* at 313.

Possession is an essential element of each offense of which defendant was charged. The sole issue on appeal is whether there was sufficient evidence that defendant knowingly possessed the controlled substances to justify the district court's decision to bind him over for trial.

It is well-settled law in Michigan and numerous other jurisdictions that possession may be actual or constructive. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Constructive possession exists where a defendant has the right to exercise control over contraband and knows that it is present. *Id.* A person's presence in a location where contraband is found, by itself, is insufficient to establish constructive possession. *Id.* An additional connection must be shown. *Id.* Because it is difficult to prove an actor's state of mind, only minimal circumstantial evidence is required. *People v Brown*, 279 Mich App 116, 136-137; 755 NW2d 664 (2008). In *Wolfe*, our Supreme Court listed some examples of circumstances that are sufficient to establish the requisite connection. Such circumstances include “where the defendant was found in a sparsely furnished apartment that contained cocaine packets and large sums of money lying about in plain view.” *Wolfe*, 440 Mich at 521, citing *Thompson v United States*, 567 A2d 907, 908-909 (DC App, 1989). The Court also quoted with approval, *United States v Disla*, 805 F2d 1340 (CA 9, 1986), in which the court stated “that constructive possession may be demonstrated by direct or circumstantial evidence that the defendant . . . had the exclusive control or dominion over property on which contraband narcotics are found. . . .” (Internal quotation marks omitted.) See also *Brown*, 279 Mich App at 136-137 (“[c]ircumstantial evidence that a defendant had the exclusive control or dominion over property on which contraband narcotics are found is sufficient to establish that the defendant constructively possessed the narcotics”), and *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005). As the case law suggests, constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband. *Wolfe*, 440 Mich at 521.

In the present case, the question is not whether the evidence is sufficient to support a conviction, but whether the district court abused its discretion in determining that there was “a quantum of evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt.” *Yost*, 468 Mich at 126. In reviewing the evidence presented, we conclude that there exists legally sufficient evidence that defendant had constructive possession of the controlled substances. When defendant was apprehended by the police, he was found leaving the premises with no one else inside, in possession of a key to the house and having left behind an identification card and mail at the

house. All of these factors establish a legally sufficient connection between defendant and the house for the district court to have properly concluded that defendant was not merely a casual invitee. See *Wolfe*, 440 Mich at 522. In accordance with our Supreme Court’s holding in *Wolfe*, the evidence presented at the preliminary examination also supports the district court’s finding that by defendant possessing dominion and control over the premises, and having the knowledge of the existence of the heroin, he had constructive possession of the heroin. *Id.* at 524. The existence of evidence that other family members lived at the house does not defeat the propriety of the district court’s bind over. To the extent that the evidence was conflicting regarding defendant’s control or dominion over the house, the matter was for the trier of fact to resolve. Conflicts regarding evidence are to be resolved by the trier of fact. See *People v Abraham*, 234 Mich App 640, 657; 599 NW2d 736 (1999) (“where the evidence is conflicting, or otherwise raises a reasonable doubt with respect to the defendant’s guilt, the defendant should be bound over for trial for resolution of the issue by the trier of fact”); see also *Henderson*, 283 Mich App at 312.

The district court did not abuse its discretion in determining that there was probable cause to believe that defendant committed the charged crimes. Accordingly, the circuit court erred in quashing the information and dismissing the charges.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly  
/s/ Stephen L. Borrello  
/s/ Amy Ronayne Krause