

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC BRUCE SHEPARD,

Defendant-Appellant.

---

UNPUBLISHED

May 23, 2013

No. 308867

Wayne Circuit Court

LC No. 11-011186-FH

Before: STEPHENS, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Defendant, Eric Bruce Shepard, was convicted by a jury of felon in possession of a firearm, MCL 750.224f; possession of cocaine less than 25 grams, MCL 333.7403(2)(a)(v); and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. He was sentenced to concurrent terms of 9 to 60 months' imprisonment for felon in possession of a firearm and 5 to 48 months' imprisonment for possession of cocaine, and a consecutive term of 24 months' imprisonment for felony-firearm. Defendant now appeals by right, and we affirm.

**I. BASIC FACTS**

Defendant's convictions arise out of his encounter with Detroit Police Officer William Thomas, who was investigating an incident unrelated to this matter. Officer Thomas spotted defendant coming out of a bar which Officer Thomas believed to be permanently closed and vacated. Officer Thomas observed that defendant was wearing a black waist-length jacket, with what appeared to be the barrel of a semiautomatic firearm protruding from underneath. Officer Thomas announced his presence and defendant fled back into the bar, shouting that the police were outside. After backup arrived, about two minutes after he first saw defendant, Officer Thomas entered the bar. Inside, Officer Thomas saw defendant take off the black jacket and toss it onto a nearby pile of boxes. After detaining defendant, Officer Thomas searched the jacket. Underneath, he found the firearm matching what he had seen defendant carrying earlier. Officer Thomas also found a pill bottle containing cocaine inside the jacket's pocket. After his arrest, defendant asked Officer Thomas to hand him his jacket, identifying it as the jacket Officer Thomas had searched. At trial, the parties stipulated that the pill bottle contained less than 25 grams of cocaine.

## II. ANALYSIS

On appeal, defendant argues that his convictions are based on insufficient evidence. We disagree.

Initially, although defendant requests reversal of all three convictions, he fails to present any argument as to his convictions for felon in possession of a firearm and felony-firearm. “The failure to brief the merits of an allegation of error constitutes an abandonment of the issue.” *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004). Accordingly, defendant has abandoned his challenges to his felon in possession and felony-firearm convictions and we will not consider them. We will consider only his challenge to the sufficiency of the evidence regarding his conviction for possession of cocaine.

“A claim of insufficient evidence is reviewed de novo, in a light most favorable to the prosecution, to determine whether the evidence would justify a rational jury’s finding that the defendant was guilty beyond a reasonable doubt.” *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005). Jury determinations of witness credibility and weight of the evidence will not be interfered with, and any conflicts in the evidence will be resolved in the prosecution’s favor. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (citation and quotations omitted).

MCL 333.7403(2)(a)(v) prohibits the knowing or intentional possession of a mixture containing an amount of cocaine less than 25 grams. Because the parties stipulated to the cocaine’s weight, the only issue before us is whether defendant had knowing or intentional possession. The term “possession” includes both actual and constructive possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

The essential question is whether the defendant had dominion or control over the controlled substance. A person’s presence at the place where the drugs are found is not sufficient, by itself, to prove constructive possession; some additional link between the defendant and the contraband must be shown. However, circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. [*Id.* (citations omitted).]

Officer Thomas testified that he saw defendant wearing the jacket in the alley. Approximately two minutes later, he found defendant inside the bar and saw defendant remove and toss the jacket onto a nearby pile of boxes. When Officer Thomas searched the jacket, he found cocaine inside the jacket’s pocket. Defendant also identified the jacket as his own when he asked Officer Thomas to hand it to him. Based on this testimony, a rational jury could conclude that the jacket belonged to defendant. Accordingly, it is also reasonable to conclude that defendant knew of the cocaine in the jacket’s pocket and that he had dominion or control over it, thereby establishing his constructive possession. Thus, viewing the evidence in the light most favorable to the prosecution, a rational jury could find beyond a reasonable doubt that defendant possessed the cocaine.

Defendant argues against this evidence's sufficiency on three bases: that the prosecution failed to produce testimony demonstrating his actual possession of the cocaine, that the prosecution failed to introduce the jacket into evidence, and that defendant testified that he did not own the jacket. These arguments are without merit. Sufficient evidence was introduced to find that defendant had constructive possession of the firearm. Further, physical presentation of the jacket was not essential to finding that defendant possessed the cocaine because the jury was permitted to draw reasonable inferences from Officer Thomas' testimony. *Carines*, 460 Mich at 757. Finally, defendant's conflicting testimony is immaterial on review of sufficiency of the evidence because conflicting evidence is to be resolved in favor of the prosecution. *Kanaan*, 278 Mich App at 619.

Defendant filed a Standard 4 pro se brief in which he argues that the black coat was the nexus linking him to the contraband, and that because the coat was never admitted into evidence the prosecution failed to present sufficient evidence of his guilt. Defendant also argues that Officer Thomas lied when he testified that he saw defendant wearing the black coat—indeed, defendant claims that no such coat ever existed and that Officer Thomas fabricated his testimony. These arguments are meritless. Again, the prosecution was not required to introduce the coat itself because Officer Thomas' testimony was sufficient to give rise to reasonable inferences of defendant's guilt. *Carines*, 460 Mich at 757. Regarding defendant's claim that Officer Thomas fabricated his testimony, again, “[i]t is the province of the jury to determine questions of fact and assess the credibility of witnesses.” *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). The jury found Officer Thomas' testimony credible and we will not disturb its finding.

Affirmed.

/s/ Cynthia Diane Stephens

/s/ David H. Sawyer

/s/ Patrick M. Meter