

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
January 25, 2011

v

RALPH EUGENE BROWN, Jr.,

Defendant-Appellant.

No. 294495
St. Clair Circuit Court
LC No. 09-000890-FH

Before: O'CONNELL, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

A jury convicted defendant of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(3), maintaining a drug house, MCL 333.7405(1)(d), and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced defendant to 42 days in jail for the first two convictions, with 42 days credit for time served, followed by two years in prison for the felon-firearm conviction. Defendant appeals his convictions and, for the reasons set forth below, we affirm.

I. FACTS

On March 11, 2009, police officers drove to a home at 8290 Yager Street in Wales Township. The officers had received a tip that a man who had warrants for his arrest, Paul Davidson, was inside the house. As Deputy Damon Duva and his partner pulled into the driveway, another vehicle also arrived at the house. Defendant was a passenger in the vehicle and he told Deputy Duva that he lived at the house. However, when Deputy Duva asked permission to search the house for Mr. Davidson, defendant was reluctant to give his consent. Defendant informed Deputy Duva that a woman named Cathy Rolack also lived in the house, so Deputy Duva approached the open front door and knocked. Deputy Duva testified that Ms. Rolack came to the door, informed them that she lived in the house, and agreed to let the officers inside to search for Mr. Davidson. When they arrested Mr. Davidson in a bedroom of the house, Deputy Duva smelled marijuana and saw a substantial amount of marijuana on top of a dresser. Officers from the St. Clair County Drug Task Force later found over a pound of marijuana in the bedroom as well as weapons, scales, baggies, and other paraphernalia that indicated the room was used to package marijuana for sale. After defendant was arrested, he admitted to the police that the bedroom in which the drugs were found belonged to him.

II. ANALYSIS

A. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the prosecutor presented insufficient evidence to support his convictions. “In challenges to the sufficiency of the evidence, this Court reviews the record evidence de novo in the light most favorable to the prosecution to 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 Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009). Possession of marijuana with intent to deliver requires knowing possession with intent to deliver. *People v Gonzalez*, 256 Mich App 212; 663 NW2d 499 (2003). “Possession with intent to deliver can be established by circumstantial evidence and reasonable inferences arising from that evidence, just as it can be established by direct evidence.” *People v Wolfe*, 440 Mich 508, 526; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). As this Court further explained in *People v Brown*, 279 Mich App 116, 136-137; 755 NW2d 664 (2008):

Actual physical possession is not required to meet the possession element. *Wolfe*, 440 Mich at 519-520. Instead, possession may be either actual or constructive. *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000). Constructive possession of an illegal substance signifies knowledge of its presence, knowledge of its character, and the right to control it. *Id.* Because it is difficult to prove an actor's state of mind, only minimal circumstantial evidence is required. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

Defendant maintains that he was wrongly convicted because no witness testified that he or she saw defendant in physical possession of the drugs, because police did not find defendant's fingerprints on the marijuana or drug paraphernalia, and because, although there may have been evidence of marijuana use in the house, no evidence showed that defendant was selling drugs.

Defendant admitted to the police that the bedroom in which the drugs were found was his bedroom and that he had lived in the house for 20 years. Police found paperwork and a pill bottle in the bedroom bearing defendant's name and the address of the house. Defendant also conceded that he owned one of the digital scales found near the marijuana. In addition to more than one pound of marijuana, defendant's bedroom contained other scales, sandwich baggies, and individual baggies with the corners cut out, which is evidence of a typical packaging technique for selling drugs. Police also found a marijuana grinder, a shake box, a garbage bag containing a significant amount of marijuana stems, and a “play tray” containing marijuana on which drugs are typically processed or packaged. Much of the marijuana was in plain view on the dresser of the bedroom. Police also found a large amount of marijuana residue in the bed rail and on the floor, which indicated that marijuana was packaged there. Moreover, defendant's cell phone had the street names and phone numbers of various individuals known to the police to be drug dealers in the area. “Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of possession.” *Nunez*, 242 Mich App at 615-616. Contrary to defendant's assertions, the evidence described above supports more than a finding of mere personal use of marijuana. Rather, the quantity of drugs, the numerous items used for measuring and packaging drugs, and the numerous drug-related contacts in defendant's phone constitutes strong evidence of possession with intent to deliver.

Defendant asserts that the prosecutor presented insufficient evidence that he maintained a drug house. MCL 333.7405(1)(d) provides that a person “[s]hall not knowingly keep or maintain a . . . dwelling, . . . that is frequented by persons using controlled substances in violation of this article for the purpose of using controlled substances, or that is used for keeping or selling controlled substances in violation of this article.” Defendant argues that he did not have control over any part of the house, his father owned the house, and defendant did not pay rent to live there or pay any bills. However, the statute does not require that a defendant own or even reside at the dwelling in question. Rather, to “keep or maintain” a drug house, a defendant must have used the dwelling “with some degree of continuity that can be deduced by actual observation of repeated acts or circumstantial evidence” *People v Thompson*, 477 Mich 146, 155; 730 NW2d 708 (2007). Again, defendant admitted that he lived in the house and that he stayed in the bedroom in which drugs were discovered in plain view. Defendant’s name and the address of the home appeared on evidence photographed by police and the room contained numerous articles of clothing. A reasonable jury could conclude that defendant used the house to keep and package drugs based on this evidence as well as the amount of drugs found in his bedroom, the marijuana residue and stems that collected over a period of time, and the substantial amount of drug dealing paraphernalia.

Defendant further claims that he should not have been convicted of felony-firearm because, while he had guns in his bedroom, the prosecutor failed to show that he was selling drugs out of the house. To support a felony-firearm conviction, the prosecutor must show that the defendant possessed a firearm during the commission of a felony. It is undisputed that police officers found an assault rifle and a shotgun in what defendant conceded was his bedroom, along with the drugs and drug-dealing devices enumerated above. As discussed, sufficient evidence supported defendant’s conviction of possession with intent to deliver marijuana, which is a felony pursuant to MCL 333.7401(2)(d)(3). Accordingly, there was sufficient evidence to support defendant’s felony-firearm conviction and it was not necessary for the prosecutor to show that defendant “used a gun for drug sales” as defendant suggests.

B. MOTION TO SUPPRESS

Defendant contends that the police violated his Fourth Amendment rights and that the trial court denied him a fair trial. Specifically, defendant argues that the police did not have consent to enter the house to search for Mr. Davidson and, therefore, the trial court should have suppressed evidence of drugs and drug activity discovered inside the house.

When reviewing a motion to suppress evidence, we review a trial court’s findings of fact for clear error and we review de novo the court’s decision whether to suppress the evidence. *People v Hyde*, 285 Mich App 428, 436; 775 NW2d 833 (2009). We also review de novo the question of whether a Fourth Amendment violation occurred. *Id.* As this Court explained in *Brown*, 279 Mich App at 130:

US Const, Am IV, and Const 1963, art 1, § 11, guarantee the right of the people to be free from unreasonable searches and seizures. *People v Borchard-Ruhland*, 460 Mich 278, 293-294, 597 NW2d 1 (1999). However, this right is personal and may not be invoked by third parties. *People v Zahn*, 234 Mich App 438, 446; 594 NW2d 120 (1999). For an individual to assert standing to

challenge a search, the individual must have had a legitimate expectation of privacy in the place or location searched, which expectation society recognizes as reasonable. *People v Powell*, 235 Mich App 557, 560; 599 NW2d 499 (1999).

Generally, warrantless searches are unreasonable per se. *People v Dagwan*, 269 Mich App 338, 342; 711 NW2d 386 (2005). However, if a search is conducted with valid consent, it constitutes an exception to the warrant requirement. *People v Galloway*, 259 Mich App 634, 648; 675 NW2d 883 (2003).

As a preliminary matter, we observe that defendant has taken the position that he had no authority or control over the house, he did not actually reside there, and that his father owned the house. As discussed, there was ample evidence to show that defendant lived and kept drugs at the house. However, it is directly contrary to defendant's arguments below and on appeal for him to now take the position that the police violated his privacy rights in searching the house based on his failure to give his consent.

In any case, Deputy Duva testified that, though defendant was reluctant to give permission for the search, he told Deputy Duva that Ms. Rolack lived in the house and Ms. Rolack freely and voluntarily granted permission for the police to enter and look for Mr. Davidson.¹ No evidence showed that defendant explicitly denied the police officers permission to enter the house. Rather, Deputy Duva testified that defendant did not want to make a decision regarding the search because his father owned the house. Because there was no express denial of permission to enter, the police legally relied on Ms. Rolack's consent because she either had adequate possession and control of the premises or the police reasonably believed she did. *People v Jordan*, 187 Mich App 582, 589; 468 NW2d 294 (1991); *People v Goforth*, 222 Mich App 306, 312; 564 NW2d 526 (1997). Once the police legally entered the house to search for Mr. Davidson, they observed the drugs and drug paraphernalia in plain view, and they did not search for further incriminating evidence until they obtained a written warrant. Defendant's Fourth Amendment rights were not violated and the trial court correctly denied his motion to suppress.

Affirmed.

/s/ Peter D. O'Connell
/s/ Henry William Saad
/s/ Jane M. Beckering

¹ Though Ms. Rolack testified that the police entered the house and never asked for her consent, this was directly contrary to the testimony given by Deputy Duva. In considering a trial court's ruling on a motion to suppress, we defer to the "trial court's special opportunity to determine the credibility of witnesses appearing before it." *Dagwan*, 269 Mich App at 342.