

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDWARD NORTHERN,

Defendant-Appellant.

UNPUBLISHED

November 21, 2006

No. 263561

Oakland Circuit Court

LC No. 2002-187148-FH

Before: Whitbeck, C.J., and Sawyer and Jansen, JJ.

PER CURIAM.

A jury convicted defendant James Northern of possession with intent to deliver less than five kilograms of marijuana.¹ The trial court sentenced Northern as a fourth habitual offender² to 183 days in jail and one year probation. We affirm.

I. Basic Facts And Procedural History

In the afternoon of March 14, 2002, Officer Sean Birch, who was working for the Pontiac Police Department in the plain-clothes surveillance unit, went to 523 Pike Street, Pontiac, to do a pre-raid surveillance. Before the warrant was executed, Officer Birch observed five vehicles coming and going from the residence. Some of the individuals occupying the vehicles went into the house, but some remained in the vehicles. According to Officer Birch, Northern sometimes went out to the cars to talk to the individuals and then went back into the house, or he just talked to them from the doorway. Those who went inside the residence left within five minutes.

Officer Birch testified that when a gold SUV pulled up to the house, Northern walked to “a black Cadillac that was parked on the east side of the property along the fence line . . . , maybe 20 feet away from the east side entry door to the residence . . . , went into the back seat of the vehicle for about five or 10 seconds, got out, went directly to the driver’s side door of the gold SUV,” and, holding his hands inside the driver’s side window, had a brief conversation with the occupant of the vehicle. Although Officer Birch did not see Northern holding or handing any

¹ MCL 333.7401(2)(d)(iii).

² MCL 769.12.

drugs or receiving any money, Officer Birch believed that a drug transaction might have occurred. Michael Story, a supervisor sergeant in the special operations division of the Pontiac Police Department, testified that it was common not to see the drugs or money when a hand-to-hand drug transaction occurred inside a car. According to Officer Birch, Northern went back into the house, and the SUV left.

Shortly after, Officer Birch said, Northern went outside to “put a piece of mail inside the mail box. When Northern came back around towards the east side entry door, he looked down and used his right foot to kick at an object that was near the corner of the stairs that were leading up to the east side door in between the stairs and the house . . . [for about] two to three seconds.” Birch testified that defendant’s kick was “like a positional kick.” During the time when Officer Birch was observing the residence, an Escort was at the residence as well. Officer Birch communicated his observations to Sergeant Story and Officer Olsen, the officer in charge of this case.

Officer Birch testified that a raid team arrived at the residence about one hour after he began the surveillance. When the raid team arrived and secured the persons inside the residence, Officer Birch went to the area where Northern had kicked the object. Officer Birch testified that he found a brown paper bag containing “four individually packaged bags of marijuana, each containing about 40 dollars of marijuana.” Officer Birch checked who the legal owner of the residence was, but he did not do any vehicle registration checks. Officer Story also testified that, although he believed someone did a vehicle registration check, he did not know who the registered owners of the cars were.

After a police dog alerted to the presence of drugs in the Cadillac, Officer Story got the keys to the Cadillac from Northern’s front pants pocket. While Northern remained handcuffed in the house, Officers Birch and Story searched the Cadillac and found a Digitech digital scale in the magazine holder behind the passenger seat, right in the same area where Northern went when the SUV stopped at the residence. They also found “about two ounces of marijuana packaged inside of a paper bag” behind the back seat armrest of the vehicle. In the trunk of the Cadillac, Officer Story found “a loaded 25 Raven Arms semi-automatic pistol, . . . a 40 dollar corner-knot bag of marijuana and a . . . small digital scale.” Officer Birch also searched an old red GMC truck that was located on the far north end of the property. Officer Birch found another digital scale “on the front passenger or front driver’s seat . . . ,” and a loaded “380 semi-automatic handgun with a holster” behind the front driver’s seat. Officer Story testified that the scales seized had marijuana residue on them. Officer Birch gave the seized items to Steven Mellado, a deputy sheriff working in the Narcotics Enforcement Team unit who was participating in the raid. Deputy Mellado’s job was to log in the evidence found on the premises.

Deputy Mellado testified that three individuals were present at the residence when he and the other officers executed the search warrant. (On the other hand, Officer Story testified that four people were found inside the residence). On the kitchen table, Deputy Mellado found two marijuana blunts in an ashtray tin in front of Northern and paperwork with Northern’s name on it. According to Deputy Mellado, another individual was sitting at the kitchen table across from Northern. Although Deputy Mellado did not know who the title owner of the house was, he found evidence that Northern resided there. The proof of residence consisted in the paperwork with Northern’s name on it, “some mail correspondence,” and a photograph of Northern found “on the table or on top of a shelf” in the kitchen. No pictures of anyone else were found. Deputy

Mellado did not discover any proof that the other persons found on the premises resided there. Officer Story testified that only Northern had his address registered at 523 East Pike Street, Pontiac.

The raid team also found packaging material, in the form of sandwich baggies, in the house and about \$1,200 in cash on Northern. None of the narcotics seized were recovered from Northern “personally.” The team found no tally sheets or brown paper bags and tape, which are other common indicia that the marijuana was for distribution.

Officer Story testified that the raid team found “about 400 dollars worth” of marijuana that “was broke[n] down and packaged into approximately one eight [sic] of an ounce . . . a common amount to be sold . . . , [but] not common for a user.” Broken down in that manner, the marijuana seized had a street value of \$640. Officer Story testified that a marijuana user would not usually divide his marijuana in small packages, nor would he buy small packages because it was more expensive. He stated that the presence of “the loaded firearms with the marijuana and the scale and the amount of money that [Northern] had on his person and the fact that there were controlled purchases made from the house” led him to believe that the marijuana was for distribution. Officer Story testified that it was common for drug dealers not to deposit the money earned in a bank, to have easily accessible guns for protection, to hide the drugs inside or outside their residence, and to “allow the people who purchase[d] marijuana to use it at their residence.”

Deputy Mellado testified that he field-tested the substance found in the bags and the blunts and determined it was marijuana.

During the first day of trial, Northern moved for a directed verdict, which the trial court denied as premature. At the end of the prosecution’s case, Northern again moved for a directed verdict, which the trial court denied.

II. Possession With Intent To Deliver

A. Standard Of Review

Northern argues that the prosecution failed to show beyond a reasonable doubt that he possessed the marijuana with intent to deliver it, and therefore, the trial court erred in denying his motion for a directed verdict. Northern asserts that the case should be remanded for entry of a conviction of possession of marijuana. “When reviewing a trial court’s decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt.”³

³ *People v Werner*, 254 Mich App 528, 530; 659 NW2d 688 (2002), quoting *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

B. Legal Standards

To establish the offense of possession with intent to deliver less than five kilograms of marijuana, the prosecution must prove beyond a reasonable doubt that: (1) the defendant knowingly possessed the controlled substance, (2) the defendant intended to deliver the controlled substance to someone else, (3) the substance possessed was marijuana and the defendant knew that it was, and (4) the marijuana was in a mixture that weighed less than five kilograms.⁴ Possession with intent to deliver less than five kilograms of marijuana can be established by circumstantial evidence and reasonable inferences arising from that evidence.⁵

The prosecution must present sufficient evidence to persuade a rational trier of fact that the element of possession was proven beyond a reasonable doubt. Possession of a controlled substance may be actual or constructive.⁶ Constructive possession exists if the defendant knew that the substance was present and had the right to exercise control over it.⁷ The defendant's presence, by itself, at a location where drugs are found is insufficient to prove constructive possession.⁸ The prosecution must show a link between the defendant and the narcotics.⁹ A sufficient nexus exists if the totality of the circumstances indicates some additional connection between the defendant and the contraband.¹⁰ Circumstantial evidence that the defendant had exclusive control or dominion over the property on which the narcotics were found is sufficient to establish that the defendant constructively possessed the drugs.¹¹ Possession may be exclusive or joint, with more than one individual constructively possessing the contraband, and constructive possession may be found even when the defendant is not the owner of the controlled substance.¹²

C. Applying The Standards

Here, the raid team found about \$400 worth of marijuana broken down and packaged into one eighth of an ounce. The police officers found two marijuana blunts on the kitchen table, four \$40 bags of marijuana contained in a brown paper bag by the stairs leading to the eastside entrance to the residence, about two ounces of marijuana packaged inside of a paper bag behind

⁴ MCL 333.7401(2)(d)(iii); *People v Williams*, 268 Mich App 416, 419-420; 707 NW2d 624 (2005).

⁵ *People v Hunter*, 466 Mich 1, 7; 643 NW2d 218 (2002); *People v Gonzales*, 256 Mich App 212, 226; 663 NW2d 499 (2003).

⁶ *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1992).

⁷ *Id.*

⁸ *People v Hardiman*, 466 Mich 417, 422; 646 NW2d 158 (2002).

⁹ *Wolfe*, *supra* at 520.

¹⁰ *People v Johnson*, 466 Mich 491, 500; 647 NW2d 480 (2002).

¹¹ *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005).

¹² *Wolfe*, *supra* at 520.

the armrest of the back seat of the Cadillac, and a \$40 corner-knot bag of marijuana in the trunk of the Cadillac. Northern argues that the only marijuana that was linked to him was the marijuana found in the kitchen. He also argues that he was situated similarly to the defendant in *People v Peterson*,¹³ and there was insufficient connection between him and the marijuana found in the Cadillac to establish constructive possession. We disagree.

In *Peterson*, the defendant was convicted of possession with intent to deliver marijuana. The defendant was one of the residents in the house where seven and one-half ounces of marijuana were found. Most of the marijuana was located in the rooms occupied by the other residents, and none was found in the areas over which the defendant had exclusive control. No evidence was introduced to show that the defendant knew about the presence of the marijuana in the house. The only marijuana linked to the defendant consisted of a slight quantity of marijuana seeds found in a manila envelope stored in a box in which the title to the defendant's motorcycle was also located. This Court found that the defendant possessed only the small quantity of marijuana seeds, and, in the absence of other evidence on the question of the defendant's intent, that quantity was too slight to indicate an intent to deliver.¹⁴

Here, we conclude that Northern was not situated similarly to the defendant in *Peterson*. The raid team found evidence that Northern resided in the house. The proof of residence consisted of paperwork with Northern's name on it, mail correspondence, and a photograph of Northern displayed in the kitchen. Northern's address was registered at the residence. Although other people were present in the house at the time of the search, the raid team did not discover any proof that they resided there. The raid team found Northern sitting at the kitchen table in front of two marijuana blunts. Moreover, even though the raid team did not know who the owner of the Cadillac was, there was sufficient evidence to infer that Northern had dominion and control over the Cadillac. The Cadillac was parked "on the east side of the property along the fence line," about 20 feet away from the side door of the house. Just minutes before the raid, Officer Birch observed Northern entering the Cadillac in the area where a digital scale and two ounces of marijuana were found. Northern kept the keys to the car in his front pants pocket. Nobody else was seen entering the Cadillac prior to the execution of the search warrant. We conclude that there was also sufficient evidence to show that Northern constructively possessed the paper bag containing marijuana located at the eastside entrance to the house. Before the raid team arrived at Northern's residence, Officer Birch observed Northern positioning an object by the stairs leading to the eastside entrance to the residence; the object was determined to be a brown paper bag containing four marijuana bags. We conclude that the evidence presented at trial, as well as the reasonable inferences that may be drawn therefrom, when viewed in the light most favorable to the prosecution, could have persuaded a rational jury that Northern possessed the marijuana found in the kitchen, in the bag positioned outside the entrance to the residence, and in the Cadillac.

¹³ *People v Peterson*, 63 Mich App 538; 234 NW2d 692 (1975).

¹⁴ *Id.* at 546-548.

D. Intent To Deliver

The prosecution must also present sufficient evidence to persuade a rational trier of fact beyond a reasonable doubt that the defendant had an intent to deliver the marijuana. Delivery of marijuana means the actual, constructive, or attempted transfer from one person to another of marijuana, whether or not there is an agency relationship.¹⁵ Actual delivery is not required to prove intent to deliver marijuana. An intent to deliver may be inferred from all the facts and circumstances, and because of the difficulty of proving the defendant's state of mind, minimal circumstantial evidence is sufficient.¹⁶ Intent to deliver may be inferred from the amount of marijuana possessed, the manner in which it is packaged, and other circumstances surrounding the arrest, such as the presence of packaging material, weapons, marijuana residue, and large amounts of cash.¹⁷

We conclude that the jury here could have reasonably found that Northern possessed the marijuana with the intent to deliver it. Northern's intent to deliver may be inferred from the quantity of marijuana that he possessed, the manner in which it was packaged, the high volume of traffic at the house, the presence of the three scales with marijuana residue on them, the sandwich bags, the two firearms, and the large amount of cash he carried. Northern argues that the amount of marijuana linked to him was insufficient to support a finding that he intended to deliver it. However, unlike the situation in the *Peterson* case, in addition to the quantity of marijuana Northern possessed, the prosecution presented other evidence showing that Northern had the intent to deliver the marijuana. The amount of marijuana possessed is only one of the factors taken into consideration by a rational jury when determining whether the defendant had an intent to deliver.¹⁸ Northern resided in a house at which two controlled buys had occurred. Before the raid, Officer Birch observed five vehicles coming and going from Northern's residence and witnessed what appeared to be a hand-to-hand drug transaction from Northern to the occupant of the gold SUV. The raid team found three digital scales and two loaded firearms in the two vehicles: two scales and a firearm in the Cadillac and a scale and a firearm in the GMC truck. The digital scales had marijuana residue on them. The raid team found "about 400 dollars worth" of marijuana that "was broke[n] down and packaged into approximately one eighth of an ounce . . . a common amount to be sold . . . , [but] not common for a user." Northern carried \$1,200 in cash and sandwich baggies were found in the house. Sergeant Story testified that it was common for drug dealers not to deposit the money earned in a bank, to have easily accessible guns for protection, and to hide the drugs inside or outside their residence. Thus, even assuming that, alone, the amount of marijuana seized was not so great as to compel an inference of an intent to deliver, such an inference was permissible given the other

¹⁵ *Williams, supra* at 422.

¹⁶ *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

¹⁷ *Hardiman, supra* at 423; *Williams, supra* at 422-423; *Gonzales, supra* at 226; *People v McKinney*, 258 Mich App 157, 159; 670 NW2d 254 (2003); *People v Delongchamps*, 103 Mich App 151, 160; 302 NW2d 626 (1981).

¹⁸ *Williams, supra* at 422.

circumstantial evidence presented by the prosecution.¹⁹ When viewed in a light most favorable to the prosecution, the totality of the facts and circumstances were sufficient to demonstrate that defendant had an intent to deliver the marijuana he possessed.

Northern also argues that the paraphernalia found does not create an inference of intent to deliver. Usually, the presence of glass pipes and other paraphernalia typically used to smoke marijuana suggests that the marijuana was possessed for personal use.²⁰ Here, the raid team found two marijuana blunts on the kitchen table. However, Sergeant Story testified that it was common for drug dealers to “allow the people who purchase[d] marijuana to use it at their residence.” Further, the prosecution need not rebut all theories that could have proven Northern not guilty but need only submit sufficient evidence to convince a reasonable jury of the existence of the elements of the crime.²¹ In addition, as shown above, the presence of the scales and sandwich bags suggests just the opposite: that Northern had an intent to deliver. Accordingly, we hold that, when viewed in a light most favorable to the prosecution, the evidence presented at trial could have persuaded a rational jury that the essential elements of possession with intent to deliver less than five kilograms of marijuana were proven beyond a reasonable doubt.

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ Kathleen Jansen

¹⁹ See *Peterson, supra* at 547-548.

²⁰ *Wolfe, supra* at 525.

²¹ *Hardiman, supra* at 423-424.