

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE DANIEL HIGGINS,

Defendant-Appellant.

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UNPUBLISHED

June 26, 2007

No. 269140

Wayne Circuit Court

LC No. 05-010328-01

Before: Servitto, P.J., and Jansen and Schuette, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent. When ruling on a motion for a directed verdict in a bench trial, the trial court must consider the evidence presented by the prosecution up to the time the motion is made, view that evidence in a light most favorable to the prosecution, and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-270; 380 NW2d 11 (1985).

I fully acknowledge that possession of narcotics may be constructive, and that possession may be proved by circumstantial evidence and reasonable inferences. *People v Meshell*, 265 Mich App 616, 622; 696 NW2d 754 (2005). However, “[a] person’s presence, by itself, at a location where drugs are found is insufficient to prove constructive possession.” *People v Echavarría*, 233 Mich App 356, 370; 592 NW2d 737 (1999). “Instead, some additional connection between the defendant and the contraband must be shown.” *Id.* Constructive possession exists only “when the totality of the circumstances indicates a sufficient nexus between the defendant and the controlled substance.” *Meshell, supra* at 622. After reviewing the record, I am compelled to conclude that there was no “additional connection” tying defendant to the drugs found in this case.

There were no fingerprints or other physical evidence connecting defendant to the drugs, there was no strong indication that defendant lived in or regularly occupied the house where the drugs were found, and there was no evidence that defendant otherwise had control over the drugs at issue. He was merely present in the same general vicinity where the drugs and drug paraphernalia were located. Therefore, regardless whether the trial court believed that defendant’s testimony was credible or incredible, I conclude that there was insufficient evidence to establish constructive possession of the narcotics by defendant in this case. See *People v Lewis*, 178 Mich App 464, 468-469; 444 NW2d 194 (1989); see also *People v Simpson*, 104 Mich App 731, 733-734; 305 NW2d 249 (1980).

Because there was quite simply insufficient evidence to prove that defendant possessed the drugs at issue in this case, I would reverse defendant's drug conviction. By extension, I would reverse defendant's felony-firearm conviction as well. *People v Burgess*, 419 Mich 305, 311-312; 353 NW2d 444 (1984).

/s/ Kathleen Jansen