

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CEDRIC LEE WELCH, JR.,

Defendant-Appellant.

UNPUBLISHED

May 21, 2009

No. 285385

Kent Circuit Court

LC No. 07-010717-FH

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of possession with intent to deliver less than five kilograms of marijuana, MCL 333.7401(2)(d)(iii). Defendant was sentenced to three months in jail. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

On August 10, 2007, a Grand Rapids police officer responded to a dispatch regarding a group of males gathering to fight, one of whom possibly had a gun. Upon arriving at the scene, the officer confronted four males who were seated inside a vehicle and defendant, who was standing outside the vehicle. The officer pointed his firearm at the men and instructed everyone to put their hands up. All of the men, except defendant, immediately complied with the officer's verbal request. Defendant was standing behind the open car door, which precluded the officer's ability to observe defendant's hands or to determine whether he had a gun. However, the officer noted that defendant's arms were "kind of moving, kind of fiddling back and forth." After approximately five to six seconds passed, defendant raised his hands into view.

The officer conducted a thorough search of the area but did not locate a firearm. However, the officer did find a package of marijuana located beneath the vehicle, approximately two feet from the rear passenger tire. Defendant was arrested following discovery of the marijuana. Defendant denied the marijuana belonged to him.

Defendant argues on appeal that the prosecution presented legally insufficient evidence to prove beyond a reasonable doubt that he possessed marijuana with the intent to deliver it. We disagree.

This Court reviews sufficiency of the evidence challenges in a criminal trial de novo to determine whether, when viewed in the light most favorable to the prosecution, the evidence

would warrant a trier of fact in finding that all the elements of the crime were proven beyond a reasonable doubt. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006); *People v Cox*, 268 Mich App 440, 443; 709 NW2d 152 (2005). “Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of a crime.” *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). In determining whether sufficient evidence had been presented to support a conviction, “[t]his Court will not interfere with the jury’s role of determining the weight of the evidence or deciding the credibility of the witnesses.” *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004).

To support a conviction of possession with intent to deliver less than five kilograms of marijuana, the prosecution must “prove beyond a reasonable doubt that (1) defendant knowingly possessed a controlled substance, (2) defendant intended to deliver the controlled substance to someone else, (3) the substance possessed was marijuana and defendant was aware that it was, and (4) the marijuana was in a mixture that weighed less than five kilograms.” *People v Williams*, 268 Mich App 416, 419-420; 707 NW2d 624 (2005). Defendant challenges the sufficiency of the evidence as it pertains to the first and second elements.

Defendant argues the evidence failed to establish that he possessed the marijuana. “A person need not have actual physical possession of a controlled substance to be guilty of possessing it. Possession may be either actual or constructive.” *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748, amended 441 Mich 1202 (1992). “A person’s presence, by itself, at a location where drugs are found is insufficient to prove constructive possession. Instead, some additional connection between the defendant and the contraband must be shown.” *Id.* at 520 (citations omitted). Generally, “a person has constructive possession if there is proximity to the article together with indicia of control.” *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000).

The prosecution presented the testimony of several police officers to support its theory that defendant had constructive possession of the marijuana. It is reasonable to believe that defendant was the only person with the ability to deposit the marijuana under the vehicle because (1) he was the only person whose hands were obscured, (2) he was the only person whose arms were moving, (3) he stood close in proximity to where the marijuana was found, and (4) he was the only person who did not initially cooperate with the officer’s demand to put his hands up. Viewed in a light most favorable to the prosecution, there was sufficient circumstantial evidence presented to enable a rational trier of fact to find that defendant had constructive possession of the marijuana.

Defendant also argues there was insufficient evidence to show that he intended to deliver the marijuana. While “it can be difficult to prove a defendant’s state of mind on issues such as knowledge and intent, minimal circumstantial evidence will suffice to establish the defendant’s state of mind, which can be inferred from all of the evidence presented.” *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). Also, “[i]ntent to deliver has been inferred from the quantity of narcotics possessed, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest.” *Wolfe, supra* at 524.

Two police officers testified that the amount of marijuana and the manner it was packaged indicated that defendant intended to distribute it. There were nine baggies containing \$10 or \$30 quantities of marijuana, for a total of 14 grams of marijuana. An officer stated that a

user would not normally carry this much marijuana in different quantities for economic reasons, i.e., the user would pay less for buying a bulk amount rather than separately packaged baggies.

A police detective testified that the nine individual baggies of marijuana indicated that someone expended considerable effort to separate it from a larger quantity, weigh it, and create the baggies. The detective opined that the marijuana in this case was meant for sale because (1) a user would not risk getting caught with nine individual baggies out of fear of prosecution for possession with intent to deliver, (2) a user would not buy nine individual baggies when he could buy the same quantity in bulk for half the price, and (3) a user would not buy nine individual baggies because the quantity is more difficult to verify.

Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant possessed with the intent to deliver less than five kilograms of marijuana.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot

/s/ Douglas B. Shapiro