

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MERLEAN FLETCHER,

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 184391

Muskegon Circuit Court

LC No. 94-037428-FH

Before: Murphy, P.J., and Markey and A.A. Monton,* JJ.

PER CURIAM.

Defendant was charged with possession of less than twenty-five grams of a mixture containing cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v), and being a second drug offender, MCL 333.7413(2); MSA 14.15(7413)(2). Defendant was found guilty as charged after a one-day bench trial, and the trial judge sentenced defendant to nine months' imprisonment to be served consecutively to her sentence for a parole violation. Defendant appeals as of right from her conviction. We affirm.

Defendant claims that the prosecutor introduced insufficient evidence to support her conviction for drug possession. We disagree. We examine the evidence introduced at trial in a light most favorable to the prosecution to determine whether a reasonable jury would be able to find that all the elements of the charged offense had been proven beyond a reasonable doubt. *People v Johnson*, 215 Mich App 658, 671; 547 NW2d 65 (1996).

In a criminal action, the prosecution has a duty to introduce sufficient evidence concerning the charged offense that would allow a reasonable jury to decide that the accused is guilty beyond a reasonable doubt. *People v Fisher*, 193 Mich App 284, 287; 483 NW2d 452 (1992). When reviewing this type of issue, we must find that all the elements of the charged offense could be proven beyond a reasonable doubt. *People v Medlyn*, 215 Mich App 338, 340; 544 NW2d 759 (1996). Here, the prosecution charged defendant with possession of less than twenty-five grams of a mixture

* Circuit judge, sitting on the Court of Appeals by assignment.

containing cocaine. This offense requires proof that the defendant had actual or constructive possession of the substance in question. *People v Hellenenthal*, 186 Mich App 484, 486; 465 NW2d 329 (1990). The prosecutor may establish the possession element by introducing evidence that the defendant had either exercised or had the right to exercise control over the substance and knew that the substance was present. *Id.* “Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession.” *Id.* at 486-487.

Yet, defendant contends that the prosecutor also had the burden to negate all theories of innocence that arise from the evidence that she introduced at trial. Defendant is correct that the prosecutor had this burden at one time. See, e.g., *People v Ridgeway*, 74 Mich App 306, 316; 253 NW2d 743 (1977). However, this burden proved too unworkable. *People v Walker*, 93 Mich App 189, 194-195; 285 NW2d 812 (1979). Currently, in cases relying upon circumstantial evidence, “the prosecution need not negate every reasonable theory consistent with the defendant’s innocence, but merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide.” *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995). Therefore, defendant’s first argument is without merit. Thus, we will apply the current burden to the facts at hand to determine whether there was sufficient evidence to support defendant’s conviction.

Even though defendant denied that the bag and its contents were hers, the testimony of the arresting officers shows that defendant had the bag in her hand just before she hid it under the seat. Similarly, the presence of the woman’s stockings in the bag would also allow one to infer that defendant either owned or controlled the bag in question. Regarding defendant’s knowledge of the cocaine being within the bag, defendant’s actions in hiding the bag upon the officer’s approach and in providing the officer with false identification allow us to infer such knowledge. Contrary to defendant’s assertion, we do not consider the use of the evidence showing that she responded to and gave the officer false information to violate her right to remain silent. See *People v Richardson*, 139 Mich App 622, 627-628; 362 NW2d 853 (1984). Consequently, we conclude that the record shows that when taking the evidence in a light most favorable to the prosecutor, he introduced sufficient evidence for the trial court to find that all the elements of the charged crime were present.

Affirmed.

/s/ William B. Murphy

/s/ Jane E. Markey

/s/ Anthony A. Monton