

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY LAMONT HOUSTON,

Defendant-Appellant.

UNPUBLISHED

February 23, 1999

No. 203500

Muskegon Circuit Court

LC No. 96-140125 FH

Before: Whitbeck, PJ., and Cavanagh and Griffin, JJ.

PER CURIAM.

A jury found defendant guilty of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). The trial court sentenced defendant to five and one-half to forty years' imprisonment. Defendant appeals as of right and argues that the prosecution failed to present sufficient evidence to convict him. We deny his claim and affirm.

I. Basic Facts

Defendant fled from a house located at 2108 Jefferson Street in the City of Muskegon Heights when the police executed a search warrant on December 5, 1996. The police apprehended defendant while he hid on a porch at 2030 Fifth Street. The police found no crack cocaine on defendant's person. However, while retracing defendant's footprints, officer Tom Fine found two bloodstained plastic bags on top of the snow, containing approximately 8.7 grams of crack cocaine and lying within three feet of the footprints. Several officers testified that it had snowed earlier in the day.

II. Standard Of Review

In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "In a criminal case, due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt." *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998).

III. Elements Of The Offense

In *People v Lewis*, 178 Mich App 464, 468; 444 NW2d 194 (1989), this Court set forth the elements for the offense charged here:

The crime of possession with intent to deliver less than fifty grams of a mixture containing cocaine requires proof of four elements: (1) the substance in question must be shown to be cocaine; (2) the cocaine must be in a mixture of less than fifty grams weight; (3) it must be shown that defendant was not authorized to possess the substance; and (4) it must be shown that defendant knowingly possessed the cocaine with the intent to deliver.

Here, defendant does not dispute that the two plastic baggies contained about 8.7 grams of crack cocaine nor assert that he was entitled to possess the drug. Rather, defendant argues that the prosecutor did not prove beyond a reasonable doubt that he possessed the 8.7 grams of cocaine discovered by the police.

IV. Knowing Possession With Intent To Deliver

We have held that, “circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession.” *People v Fetterly*, 229 Mich App 511, 515; 583 NW2d 199 (1998). Further, proof of actual physical possession of a controlled substance is unnecessary for a conviction under MCL 333.7401; MSA 14.15(7401). *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Rather, proof of *constructive* possession, i.e., “prior actual physical possession that can be inferred from the circumstances surrounding an arrest,” is sufficient. The essential question therefore is whether the defendant had dominion or control over the controlled substance. *Id.* at 271, 280. A defendant’s intent to deliver may be proven by circumstantial evidence and inferred from the amount of cocaine possessed. *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991).

Based upon the evidence presented at trial, viewed in the light most favorable to the prosecution, we conclude that a rational trier of fact in this case could find beyond a reasonable doubt that defendant possessed the crack cocaine. The evidence at trial established that the police officers saw no one else in the area as they pursued defendant from 2108 Jefferson Street to 2030 Fifth Street. Officer Kevin Stier saw defendant reach into a coat pocket while running. Officer Fine found the two bloodstained baggies lying on top of the snow near defendant’s footprints. Several officers testified that defendant’s hands were bleeding when he was apprehended, which would account for the blood on the baggies. Under these circumstances, a rational trier of fact could infer that defendant had actual prior physical possession of the crack cocaine. Accordingly, we find that the prosecutor presented sufficient evidence to convict defendant of the charged offense.

Affirmed.

/s/ William C. Whitbeck
/s/ Mark J. Cavanagh
/s/ Richard Allen Griffin