

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT CURTIS KITZMILLER,

Defendant-Appellant.

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UNPUBLISHED

July 30, 1999

No. 208328

Kalamazoo Circuit Court

LC No. 97-000709 FH

Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette,\* JJ.

PER CURIAM.

Defendant appeals of right from his conviction of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii); MSA 14.15(7401)(2)(d)(iii), entered after a bench trial. We affirm.

The Kalamazoo Valley Enforcement Team (K-VET), a multi-jurisdictional narcotics unit, received an anonymous tip that a male known as “Rocky” and a female named Cindy Crouch were selling narcotics from a motel room. The tipster connected a Chevrolet Blazer to defendant and Crouch. Officers observed defendant driving a vehicle matching the description provided. Defendant was seen making brief stops at different locations and then picking up Crouch. When officers knocked on the motel room door and identified themselves, they heard sounds from the room, including the shuffling of items and the flushing of a toilet. When officers entered the room they observed an active police scanner and a portable safe. Defendant and Crouch consented to a search of the room. Crouch opened the safe, which was found to contain marijuana, methamphetamine, drug paraphernalia, and papers listing police radio frequencies, names, dollar amounts, and street weights and prices for marijuana. Other evidence discovered included scales and small plastic bags. After initially denying involvement, defendant admitted that he sold marijuana for and with Crouch and that he used the described vehicle to do so.

The trial court found defendant guilty as charged. The trial court found that the presence of the active police scanner, coupled with the other evidence, supported a finding that defendant was engaged in the delivery of marijuana. The trial court concluded that defendant had constructive possession of the

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

marijuana and the safe, and that he knowingly possessed marijuana with the intent to deliver same. Subsequently, the trial court sentenced defendant as an habitual offender to one and one-half to fifteen years in prison.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

To establish that defendant was guilty of possession with intent to deliver marijuana, the prosecution was required to prove: (1) that defendant knowingly possessed a controlled substance, (2) that defendant intended to deliver the substance to someone else, and (3) that the substance defendant possessed was marijuana and that defendant knew as much. CJI2d 12.3; see also *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992).

Defendant argues that the evidence produced at trial was insufficient to support a conviction of possession with intent to deliver marijuana. We disagree and affirm. The prosecution presented sufficient evidence from which it could be found that defendant knowingly possessed marijuana and that he intended to deliver it to someone else. Possession may be actual or constructive, and may be joint or exclusive. The critical question is whether the defendant had dominion or control over the controlled substance. Mere presence is insufficient. Some additional link between the defendant and the controlled substance must be shown. Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to prove possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). Furthermore, actual delivery is not required in order to prove intent to deliver. *Wolfe, supra*, at 524. Intent may be inferred from all of the facts and circumstances. Minimal circumstantial evidence is sufficient. *Fetterley, supra*, at 517-518. Intent to deliver can be inferred from the quantity of the controlled substance in the defendant's possession and the way in which the substance is packaged. *Wolfe, supra*. The evidence showed that the room shared and controlled by defendant and Crouch contained marijuana, drug paraphernalia, and documentation of weights, prices, and sales. Scales and small bags allowed for packaging the marijuana in order to make smaller, individual sales. When viewed in a light most favorable to the prosecution, this evidence, coupled with that obtained when K-VET officers conducted surveillance of defendant's activities, was sufficient to allow the court, as the trier of fact, to find that defendant knowingly possessed the marijuana and intended to deliver it to others. *Wolfe, supra; Fetterley, supra*.

Affirmed.

/s/ David H. Sawyer  
/s/ Donald E. Holbrook, Jr.  
/s/ William E. Collette