

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEREK LAVERNE EASON,

Defendant-Appellant.

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UNPUBLISHED

September 28, 1999

No. 207098

Genesee Circuit Court

LC No. 96-054207 FH

Before: Gribbs, P.J., and O'Connell and R.B. Burns,\* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for possession of more than 50 but less than 225 grams of cocaine, MCL 333.7403(2)(a)(iii); MSA 14.15(7403)(2)(a)(iii). Defendant was sentenced to ten to twenty years' imprisonment. We affirm.

Defendant first argues that the trial court's failure to enforce its subpoena deprived him of his constitutional right to compel the attendance of a witness in his favor. We disagree. Constitutional issues are reviewed de novo on appeal. *People v Houstina*, 216 Mich App 70, 73; 549 NW2d 11 (1996).

The Compulsory Process Clause of the Sixth Amendment guarantees every criminal defendant the right to present witnesses in his defense. *People v McFall*, 224 Mich App 403, 407; 569 NW2d 828 (1997). While this right is fundamental, it is not absolute. *Id.* at 408. A defendant must demonstrate that the witness' testimony is both material and favorable to the defense. *Id.* Defendant failed to demonstrate that Sillman's testimony was both material and favorable to his defense. At the most, Sillman would have corroborated defendant's testimony that the car was not towed, and had been driven by a police officer. While Sillman's testimony may have corroborated defendant's version of some of the facts, it cannot be considered material. Defendant had already testified that the car had not been towed. The jury was presented with that evidence and with the officers' conflicting testimony. Had Sillman testified that the car was not towed, it would not have changed the outcome of the case. Nor is there any evidence that Sillman's testimony would have been favorable to his defense. Because

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

defendant was unable to show that Sillman's testimony would have been material and beneficial to the defense, the court was not obligated to force Sillman to appear.

Defendant next argues that he received ineffective assistance of counsel during voir dire when counsel failed to object to answers regarding prospective jurors' feelings about drug use. Defendant contends that the answers were prejudicial and inflammatory and counsel was required to object. We disagree. Because defendant failed to move for an evidentiary hearing or new trial in the lower court, we are limited to deficiencies which are apparent from the existing record. *People v Hedelsky*, 162 Mich App 382, 387; 412 NW2d 746 (1987). To establish a denial of effective assistance of counsel under the state and federal constitutions, a defendant must demonstrate that counsel's performance was deficient and that, under an objective standard of reasonableness, counsel made an error so serious that counsel was not functioning as an attorney as guaranteed by the Sixth Amendment. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). The deficiency must have prejudiced the defendant. *Id.* at 58. In addition, defendant has the burden of overcoming the presumption that the challenged conduct was sound trial strategy. *Id.* A defendant must demonstrate that, but for counsel's errors, there is a reasonable probability that the result of the trial would have been different and that the proceedings were fundamentally unfair or unreliable. *People v Poole*, 218 Mich App 702, 718; 555 NW2d 485 (1996). Effective assistance of counsel is presumed. *People v Wilson*, 180 Mich App 12, 17; 446 NW2d 571 (1989).

Voir dire is conducted for the purpose of ensuring that a criminal defendant receives a fair and impartial trial. *People v Sawyer*, 215 Mich App 183, 187; 545 NW2d 6 (1996). "The function of voir dire is to elicit sufficient information from prospective jurors to enable the trial court and counsel to determine who should be disqualified from service on the basis of an inability to render decisions impartially." *Id.* at 186. Because of the importance of voir dire, the trial court is given discretion in both its scope and conduct. *Id.*

Defendant maintains that the voir dire in this case was inappropriate and defense counsel was deficient in failing to object to questions asked by the trial court. However, the questions that were placed before the prospective jurors by both the trial court and defense counsel were highly relevant in testing the prospective jurors' impartiality. In one instance, the questioning led to the court dismissing a prospective juror for cause. It is not clear that defendant was in any way prejudiced by the questioning. Because the court was within its right to question the prospective jurors in a manner which it deemed fit and necessary, counsel was not required to make a meritless objection. *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991).

Next, defendant argues that the trial court erred in failing to grant his motion for directed verdict. We disagree. On a motion for directed verdict, the reviewing court tests the validity of the motion by the same standard as the trial court, and must consider the evidence presented by the prosecution up until the time the motion was made in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979).

In order to find defendant guilty of possession with intent to deliver more than 50 but less than 225 grams of cocaine, the prosecutor must show that the defendant had actual or constructive possession of the cocaine. *People v Crawford*, 458 Mich App 376, 389; 582 NW2d 785 (1998). Circumstantial evidence and reasonable inferences therefrom may be sufficient to prove the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Nothing prohibits a finder of fact from making more than one inference in reaching its decision so long as each inference is supported by established facts. *People v McWilson*, 104 Mich App 550, 555; 305 NW2d 536 (1981).

Defendant argues the prosecution failed to present sufficient evidence that he was in possession of the cocaine seized from the car. Specifically, defendant argues that because the car belonged to another and the cocaine was not in plain view, the cocaine could not automatically be attributed to him. However, a defendant need not have actual physical possession of the cocaine to be guilty of possession where the law holds that possession may be actual or constructive. *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748, modified on other grounds 441 Mich 1201 (1992); *Richardson, supra*, 139 Mich App 625. Even in the absence of direct evidence, possession may be established by showing that the defendant controlled or had the right to exercise control over the illegal substance and knew the substance was present. *People v Hellenthal*, 186 Mich App 484, 486; 465 NW2d 329 (1990); *Richardson, supra*, 139 Mich App 625. “Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband.” *Wolfe, supra*, 440 Mich 521.

The officers testified that defendant was the sole occupant of the vehicle. The car was registered to Sillman, but at the time defendant was pulled over he told the officer that he drove the car most of the time. While the cocaine may have been out of plain view, it was not out of defendant’s reach. The cocaine was found under the driver’s seat and in a compartment right behind the front passenger’s seat. An electronic scale was found between the passenger’s seat and the center console. Defendant was also carrying a large sum of cash in small bills. Defendant contends that the officers’ testimony was incredible; however, questions of credibility are left to the trier of fact. *People v Daoust*, 228 Mich App 1, 17; 577 NW2d 179 (1998). This evidence could lead a rational trier of fact to conclude that defendant was guilty of possession with intent to deliver more than 50 but less than 225 grams of cocaine. *Hampton, supra*, 407 Mich 368.

Finally, defendant argues that the cumulative errors at trial denied him a fair trial. We disagree. The test to determine whether a case requires reversal for cumulative error is not whether there are some irregularities at trial, but whether defendant was denied a fair trial.

*People v Skowronski*, 61 Mich App 71, 77; 232 NW2d 306 (1975). Here, defendant has failed to show any errors on appeal, thus there could not have been a cumulation of errors depriving him of a fair trial.

Affirmed.

/s/ Roman S. Gibbs

/s/ Peter D. O'Connell

/s/ Robert B. Burns