

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARELL C. CARTER,

Defendant-Appellant.

UNPUBLISHED

January 12, 2001

No. 210322

Oakland Circuit Court

LC No. 95-138822-FH

Before: Bandstra C.J., and Gage and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted 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), and possession of a firearm during the commission of a felony, MCL 750.227(b); MSA 28.424(2). The trial court sentenced defendant as an habitual offender, third offense, MCL 769.13; MSA 28.1085, to consecutive terms of one to forty years' imprisonment for the possession conviction and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant's sole claim on appeal is that the evidence offered at trial was insufficient to support his convictions. Specifically, defendant argues that the evidence did not establish that he was in possession of the cocaine or the shotgun and, therefore, his convictions should be reversed. We disagree.

In reviewing a challenge to the sufficiency of the evidence to support a conviction, this Court views the evidence presented in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Mass*, 238 Mich App 333, 335; 605 NW2d 322 (1999). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of an offense. *People v Plummer*, 229 Mich App 293, 299; 581 NW2d 753 (1998). It is not necessary for the prosecutor to negate every reasonable theory consistent with the defendant's innocence; rather, it is sufficient if the prosecution proves its own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant may introduce. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 487, modified 441 Mich 1201 (1992); *People v Carsen*, 189 Mich App 268,

269; 471 NW2d 655 (1991). Further, in reviewing the evidence, this Court may not interfere with the jury's resolution of credibility disputes. *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993).

The elements of possession with intent to deliver less than fifty grams of cocaine are: (1) the defendant knowingly possessed a controlled substance; (2) the defendant intended to deliver the controlled substance to someone else; (3) the substance possessed was cocaine and the defendant was not authorized to possess the cocaine; and (4) the substance recovered was in a mixture weighing less than fifty grams. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). See *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998); *Wolfe, supra* at 516-517.

Defendant challenges the evidence with respect to the first element, namely, that he possessed the cocaine. Defendant claims that he was merely present at the house where the cocaine was discovered and, therefore, he cannot be convicted of the offense. The possession element can be satisfied by circumstantial evidence and reasonable inferences arising therefrom. *Wolfe, supra* at 520. Actual possession is not required. *Id.* Possession may be found even if the defendant is not the owner of the drugs. Further, possession may be joint, with more than one person actually or constructively possessing a controlled substance. *Id.*; *People v Williams*, 188 Mich App 54, 57; 469 NW2d 4 (1991). However, a person's presence at a location where drugs are found, without more, is insufficient to prove constructive possession. *Wolfe, supra*. "The essential question is whether the defendant had dominion or control over the controlled substance." *People v Griffin*, 235 Mich App 27, 34; 597 NW2d 176 (1999), quoting *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995).

After reviewing the record, we conclude that the evidence shows that defendant was more than simply present at the house where cocaine was found. Defendant admitted that he opened the door and slammed it shut as soon as he saw "guys with ski masks and guns" approaching. Cocaine was being flushed down the toilet at the time the police entered the premises. Cocaine was also found in plain view on the kitchen counter when defendant's codefendant was arrested. Defendant had a beeper on him at the time of his arrest, which the officers testified is commonly used for selling drugs. A "flushman" (i.e., individual assigned to flush the cocaine if the police arrived) was found hiding in the bathroom when the cocaine was recovered. The house in which defendant and the cocaine were discovered appeared abandoned, with no pillows, beds, toiletries, or kitchen supplies for personal use. A blue bag containing baking soda (commonly used in cooking crack cocaine), razor blades (used to cut chunks of cocaine) and shotgun shells matching the shells found in the shotgun next to defendant were found inside the home. Finally, the search warrant was premised upon a prior controlled drug purchase at that location suggesting that the premises had previously been used to traffic cocaine.

Defendant essentially asks this Court to reweigh the evidence and make credibility determinations, both of which are within the sole province of the jury. *DeLisle, supra*. This, we decline to do. Viewing the evidence in a light most favorable to the prosecution, we find that a rational trier of fact could have found that defendant was in constructive possession of the cocaine (i.e., he had dominion or control over the cocaine although not physical possession) at the time of his arrest. *Wolfe, supra*; *Williams, supra*. Accordingly, we affirm defendant's possession with intent to deliver cocaine conviction.

The prosecution also presented sufficient evidence that defendant possessed the shotgun found in the home at the time of his arrest. The offense of felony-firearm requires the prosecution to show that the defendant carried or possessed a firearm during the commission or attempted commission of a felony. MCL 750.227b; MSA 28.424(2); *People v Burgenmeyer*, 461 Mich 431, 436, 438; 606 NW2d 645 (2000); *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Possession of the firearm may be actual or constructive and proved by circumstantial evidence. *People v Williams*, 212 Mich App 607, 609; 538 NW2d 89 (1995), overruled on other grounds 461 Mich 431, 440; 606 NW2d 645 (2000). A defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to him. *Id.*

As noted above, defendant admitted that he opened the door to the house and slammed it shut as soon as he saw the police approaching. After the police entered the premises, two officers testified that defendant made a downward pitching motion with his hands. A “loud bang” was heard “within seconds” after defendant motioned with his hands. Within two to three steps away from defendant, police officers discovered a loaded .410 shotgun on the floor, which was reasonably accessible to defendant. Based on these facts, a rational trier of fact could find that defendant constructively possessed the shotgun at the same time he constructively possessed the cocaine. See *Burgenmeyer, supra* at 438-439; *Wolfe, supra* at 516; *Williams, supra* at 609-610. Therefore, we reject defendant’s challenge to the sufficiency of the evidence for his felony-firearm conviction. See *Burgenmeyer, supra* at 439-440; *Wolfe, supra* at 516.

Affirmed.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder