

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICARDO J. WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

July 10, 2001

No. 221858

Wayne Circuit Court

LC No. 98-003919

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of possession of less than fifty grams of cocaine with intent to deliver. MCL 333.7401(2)(a)(iv). Defendant was sentenced to six months in jail and lifetime probation. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that the evidence was insufficient to prove beyond a reasonable doubt that he was in possession of the cocaine. We disagree. In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

"Possession is a term that 'signifies dominion or right of control over the drug with knowledge of its presence and character.'" *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000), quoting *People v Maliskey*, 77 Mich App 444, 453; 258 NW2d 512 (1977). The defendant need not own or have actual physical possession of the substance to be found guilty of possession; constructive possession is sufficient. *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Constructive possession, which may be sole or joint, is the right to exercise control over the drug coupled with knowledge of its presence. *Id.* at 520. Possession may be proved by circumstantial evidence and any reasonable

inferences drawn therefrom. *Nunez, supra* at 615. The defendant's mere presence at a place "where drugs are found is insufficient to prove constructive possession. Instead, some additional connection between the defendant and the contraband must be shown." *People v Echavarria*, 233 Mich App 356, 370; 592 NW2d 737 (1999).

After reviewing the evidence, we conclude that a rational jury could have concluded from such evidence that defendant knew the cocaine was present in the car and had the right to exercise control over it. *Wolfe, supra* at 524. Officer Johnson testified that he maintained surveillance over a parked car in which two people were sitting. As he watched through binoculars, Johnson saw a man approach the driver. After a brief conversation, the driver reached down toward the floor, rose back up, and thrust a baggie containing several smaller baggies out the window. The man rummaged through the larger bag, removed an off-white item, and gave the driver some money. Later, when the occupants exited the car, Johnson saw that defendant was the driver. The baggie was found on the floor of the car and contained several individual packets of cocaine. Defendant's argument that Johnson's testimony was incredible and thus does not support the verdict is without merit "because the determination of witness credibility is the function of the jury and not of the reviewing court." *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828 (1997).

Affirmed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy