

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEITH FARMER a/k/a BRIAN FARMER,

Defendant-Appellant.

UNPUBLISHED

August 31, 2001

No. 226303

Wayne Circuit Court

LC No. 98-005803

Before: Bandstra, C.J., and Whitbeck and Owens, JJ.

PER CURIAM.

Defendant Keith Farmer appeals as of right from his jury convictions of possession with intent to deliver less than fifty grams of a controlled substance¹ and possession of a firearm during the commission of a felony (felony-firearm).² The trial court sentenced Farmer to five to twenty years in prison for the drug offense and a consecutive two-year prison term for the firearm offense. We affirm.

I. Basic Facts And Procedural History

On May 7, 1998, two Detroit police officers were in an area known for drug transactions when they observed Farmer and Tracy Webb³ sitting in a car parked approximately fifty to seventy feet behind their marked squad car. The officers, looking in their rear and side mirrors, saw a third person approach Farmer's car and give Farmer green paper that appeared to be money. One officer saw Farmer make a motion as if to hand something to this man who had approached Farmer's car. The other officer saw something drop from Farmer's hand into this third person's hand. The officers, concluding that they had just witnessed a drug transaction, turned their squad car, and drove toward Farmer's car. At about the same time, Farmer started to

¹ MCL 333.7401(2)(a)(iv).

² MCL 750.227b.

³ *People v Webb*, Docket No. 221859, has been submitted on appeal with this case.

drive away from where he had parked the car. Farmer turned right, but failed to stop at a nearby intersection.

The officers stopped Farmer four to five blocks from where the alleged drug transaction took place and asked him for identification. When he could not produce a driver's license, the officers ordered Farmer out of the car, searched him for weapons, and arrested him. The officers also ordered Webb out of the car and searched him for weapons. One of the officers found seventeen individually wrapped packages in Webb's right front pocket. While searching Farmer's car, the officers found a handgun beneath the driver's seat where Farmer had been sitting. The police never determined who owned the car Farmer was driving. The property found on and seized from Farmer included \$290 in small bills, jewelry, and a pager, but no paraphernalia employed to use cocaine. Laboratory testing of two of the seventeen packages found in Webb's pocket revealed that they contained approximately .25 grams of a cocaine mixture.

On appeal, Farmer's sole contention is that this evidence was insufficient to prove his guilt of the drug offense of possession with intent to deliver beyond a reasonable doubt because the officers only found narcotics on Webb's person.⁴

II. Standard Of Review

We review de novo a constitutional challenge to the sufficiency of evidence presented at trial supporting a defendant's conviction because the legal standard used to test the sufficiency of the evidence does not call for any deference to the jury's ultimate determination that the evidence was sufficient to convict the defendant.⁵

III. Sufficiency Of The Evidence

When reviewing the record for itself, this Court views the evidence adduced at trial in the light most favorable to the prosecutor.⁶ This perspective accommodates the widely-held opinion that, on close factual questions that must be resolved in part on the credibility of witnesses because the evidence is conflicting, the jury is in the superior position to decide who or what to believe.⁷ When reviewing the evidence, the goal is to "determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable

⁴ In a single sentence at the end of his brief, Farmer contends that his felony-firearm conviction must be vacated because there is insufficient evidence of the narcotics offense and the underlying felony. Not only did he fail to present this issue for appeal, see MCR 7.212(C)(5), our analysis in this case shows that there is no merit to this specific argument; there was sufficient evidence.

⁵ See, generally, *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999).

⁶ *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, modified 441 Mich 1201 (1992).

⁷ See *id.*; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

doubt.”⁸ We are mindful that circumstantial evidence and reasonable inferences arising from it may be used to demonstrate that the evidence is sufficient.⁹

Possession with intent to deliver less than fifty grams of cocaine consists of four elements. The prosecutor must prove beyond a reasonable doubt that

(1) that the recovered substance is cocaine, (2) that the cocaine is in a mixture weighing less than fifty grams, (3) that defendant was not authorized to possess the substance, and (4) that defendant knowingly possessed the cocaine with the intent to deliver.^[10]

Farmer does not contest the evidence on the first three elements. Rather, Farmer contends that the prosecutor failed to prove that he possessed the cocaine because the officers found the packets containing cocaine in *Webb's* pocket, not in Farmer's pocket.

In the narcotics context, possession can be actual or constructive.¹¹ “[C]onstructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband,” even though the drugs were not found under the defendant's actual, physical control¹² “Moreover, possession need not be exclusive and may be joint, with more than one person actually or constructively possessing a controlled substance.”¹³ Regardless of which variant of possession is at issue, “[t]he essential question is whether the defendant had dominion or control over the controlled substance.”¹⁴

The evidence presented at trial indicated that officers saw Farmer exchange a packet of drugs for money. The number and the size of the packets the police found on Webb, though not all were tested to identify the substances they contained, suggested that Webb was in the business of delivering cocaine, rather than merely possessing cocaine for his personal use. The absence of drug use paraphernalia in the car only adds to this conclusion. That Farmer was in the car with Webb suggests that the packet he handed to the unidentified third person was, in fact, cocaine. We can infer from the fact that Farmer personally gave the unidentified third person the packet that he exercised dominion and control over the substances in the car. The police also found that Farmer had \$290 in small bills, which could be interpreted reasonably as the proceeds from this and other drug transactions. Further, this exchange took place in an area known to have drug traffic. While any single piece of this evidence, standing alone, may not have been enough to

⁸ See *Wolfe*, *supra* at 515.

⁹ See *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

¹⁰ *Wolfe*, *supra* at 515-516.

¹¹ See *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000).

¹² *Wolfe*, *supra* at 521.

¹³ *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995).

¹⁴ *Id.*

sustain Farmer's conviction, this evidence viewed as a whole and in the light most favorable to the prosecutor was sufficient to prove beyond a reasonable doubt that Farmer jointly and constructively possessed this cocaine with Webb.

Affirmed.

/s/ Richard A. Bandstra
/s/ William C. Whitbeck
/s/ Donald S. Owens