STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW DELL,

Defendant-Appellant.

UNPUBLISHED
August 30, 2002

No. 232829
Wayne Circuit Court
LC No. 00-005061

Before: Cooper, P.J., and Hoekstra and Markey, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for possession of less than fifty grams of cocaine with intent to deliver, MCL 333.7401(2)(a)(iv). The trial court sentenced defendant as a fourth-offense habitual offender, MCL 769.12, to 232 days imprisonment and lifetime probation. We affirm.

Defendant first argues that the evidence presented at trial was insufficient to support his conviction for the charged offense. Specifically, defendant contends that the evidence presented at trial was "clearly insufficient to show beyond a reasonable doubt the necessary possession element." We disagree. When reviewing a sufficiency of the evidence challenge, this Court considers the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the crime were proven beyond a reasonable doubt. *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995).

"To support a conviction for possession with intent to deliver less than fifty grams of cocaine, it is necessary for the prosecutor to prove four elements: (1) that the recovered substance is cocaine, (2) that the cocaine is in mixture weighing less than 50 grams, (3) that defendant was not authorized to possess the substance, and (4) that defendant knowingly possessed cocaine with the intent to deliver." *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748, amended 441 Mich 1201 (1992). Possession may be shown by actual physical possession or constructive possession. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Further, "possession need not be exclusive and may be joint, with more than one person actually or constructively possessing a controlled substance." *Id.* In determining whether defendant possessed a controlled substance, the fundamental question centers is whether defendant had "dominion or control" over the controlled substance. *Id.*; *Wolfe, supra* at 521.

Here, when viewed in a light most favorable to the prosecution, the evidence was sufficient to allow the trial court to conclude beyond a reasonable doubt that defendant had at least constructive possession of the cocaine. Evidence indicated that defendant had paid for the hotel room in which the cocaine and drug-related paraphernalia were discovered. Testimony indicated that when police officers and a hotel security guard arrived at the room, the guard knocked on the door and, after a delay and another bout of knocking, an occupant of the room opened the door. The officers testified that once the door was opened, they saw, from their location in the common hallway, various items that they identified as drug-related paraphernalia and defendant, among others, was present in the room. This evidence demonstrates defendant's dominion and control over the drugs, solely, or at least jointly with the other occupants. From this evidence, a rational trier of fact could conclude that the element of possession was proven beyond a reasonable doubt.

Defendant next argues that the trial court erred in admitting evidence of the contraband because it was obtained as a result of an improper warrantless arrest. Defendant contends, in essence, that the police officers illegally entered his hotel room, absent a search warrant or an exception to the warrant requirement, and that all evidence obtained as a result of the illegal entry must be suppressed. Again, we disagree. The trial court's factual findings in deciding a motion to suppress are reviewed for clear error, but its ultimate decision regarding suppression is reviewed de novo. *People v Garvin*, 235 Mich App 90, 96; 597 NW2d 194 (1999); *People v Marsack*, 231 Mich App 364, 372; 586 NW2d 234 (1998).

In the present case, based on a specific complaint from an employee of the hotel concerning the possible existence of narcotics in the hotel room, the police officers accompanied a hotel security guard to the room in question as part of their routine public safety responsibilities, and, when an occupant of the room voluntarily opened the door, observed drug-related paraphernalia. The police may approach individuals suspected of engaging in illegal activity to investigate a situation. See *People v Frohriep*, 247 Mich App 692; 637 NW2d 562 (2001) (the police may initiate contact with a person, even by knocking on their door). Further, the plain view exception to the warrant requirement allows for the seizure, without a warrant, of objects of an immediately apparent incriminating character falling within the plain view of the officers if they have a right to be in the position to have that view. *People v Champion*, 452 Mich 92, 101; 549 NW2d 849 (1996). Because the police had the lawful right of access to the complained of evidence when an occupant voluntarily opened the door and because the drug paraphernalia was in plain view of the police officers from the common hallway before they entered the room, the police officers' actions were justified. The trial court did not err in denying defendant's motion to suppress.

Affirmed.

/s/ Jessica R. Cooper
/s/ Joel P. Hoekstra
/s/ Jane E. Markey