

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARLOS ROSHUN TIPTON,

Defendant-Appellant.

UNPUBLISHED

March 4, 2004

No. 244410

Oakland Circuit Court

LC No. 02-182912-FH

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his jury convictions for possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and two counts of felony-firearm, MCL 750.227b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The issue in this case is whether there was sufficient evidence presented to support defendant's convictions. On appeal, defendant argues that there was not. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Possession of narcotics may be either actual or constructive. *Wolfe, supra*, 519. Evidence that defendant had the right to exercise control of drugs and knew that they were present is sufficient to establish constructive possession. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). Possession may be proved by circumstantial evidence and reasonable inferences drawn from this evidence. *People v Nunez*, 242 Mich App 610, 615-616; 619 NW2d 550 (2000).

Here, the evidence showed that defendant lived in the apartment, and his personal effects were located in the room where the drugs were found. A reasonable juror could infer that defendant had the right to exercise dominion over the drugs. Where the drugs were packaged for

resale, and a scale and a weapon were found nearby, a reasonable juror could find that defendant intended to deliver the drugs. *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991).

There was sufficient evidence to support defendant's felony-firearm convictions. To be guilty of felony-firearm, one must carry or possess the firearm when committing or attempting to commit a felony. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). In a case involving controlled substances as the predicate felony, there must be evidence to allow a jury to reasonably conclude that the drugs and weapons were close enough that the defendant possessed both at the same time. *Id.*, 440. Here, the weapon was found in the same room, a short distance away from the drugs. The evidence was sufficient to support the felony-firearm conviction.

Affirmed.

/s/ Bill Schuette
/s/ Patrick M. Meter
/s/ Donald S. Owens