

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONYA MARIE MONCURE,

Defendant-Appellant.

UNPUBLISHED

October 28, 2004

No. 248740

Wayne Circuit Court

LC No. 02-008849-01

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

PER CURIAM.

Defendant appeals as of right her bench trial convictions for possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to one year of probation for the possession with intent to deliver marijuana conviction, and a mandatory sentence of two years in prison for the felony-firearm conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that the prosecution failed to present sufficient evidence to support her convictions. We disagree.

Where there is an insufficiency of the evidence claim, this Court's review is de novo. *People v Bulmer*, 256 Mich App 33; 662 NW2d 117 (2003). This Court must determine whether, viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find that the prosecution proved all of the essential elements of the crime beyond a reasonable doubt. *Id.*

The offense of possession with intent to distribute marijuana requires that the prosecution prove beyond a reasonable doubt that: 1) the substance recovered is marijuana, 2) the marijuana weighed less than five kilograms, 3) the defendant was not authorized to possess the marijuana, and 4) the defendant knowingly possessed the marijuana with the intent to deliver it. *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992). The offense of possession with intent to deliver marijuana requires proof that the defendant had actual or constructive possession of the substance. *Id.* While it is true that mere presence of an individual at a location where drugs are found is not sufficient to sustain a conviction, constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband. *Id.* Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to

establish possession. *Id.* Viewing the evidence in a light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence of a nexus between defendant and the marijuana.

A police officer saw defendant sitting inside the home involved in the take-down operation. One officer observed two drug transactions where a runner would make an exchange with a vehicle that pulled in front of the home, go to the door of the residence to retrieve another item, and return to the car to conduct another exchange. The officer also observed defendant standing at the door when he entered the home. When another officer entered the home he saw defendant seated on the couch with marijuana, packed in twenty-eight zip-lock bags, on a table near her. Defendant was the only individual in the home and there was only one entrance to the home. No one entered or left the premises during the take-down. A laboratory analysis of three packs of evidence yielded 7.02 grams of marijuana. A rational trier of fact could find beyond a reasonable doubt, based on these facts, that defendant possessed the marijuana with the intent to deliver it. See *Wolfe, supra*.

The offense of felony-firearm requires that the prosecution prove beyond a reasonable doubt that defendant had a firearm in his or her possession during the time he or she commits or attempts to commit a felony. *People v Avant*, 235 Mich App 499; 597 NW2d 864 (1999). A defendant has constructive possession of a firearm if the location of the weapon is known and it is reasonably accessible to the defendant. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). Physical possession is not necessary as long as the defendant has constructive possession. *Id.*

Defendant was seated on a couch near the door as police entered the home. One of the police officers saw a handgun six or seven feet in front of defendant on a coffee table. Defendant would have been able to access the weapon were she to stand and reach for it. The gun was loaded with live ammunition. As such, a rational trier of fact, viewing this evidence in a light most favorable to the prosecution, could find beyond a reasonable doubt that defendant possessed a firearm during the commission of a felony.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Richard A. Bandstra