

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID DEXTER SMITH,

Defendant-Appellant.

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UNPUBLISHED  
November 9, 2004

No. 249866  
Washtenaw Circuit Court  
LC No. 02-001608-FH

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

PER CURIAM.

Defendant was convicted by a jury of possession of between 225 and 649 grams of cocaine, MCL 333.7403(2)(a)(ii); conspiracy to possess between 225 and 649 grams of cocaine, MCL 333.7403(2)(a)(ii); and possession of less than twenty-five grams of heroin, MCL 333.7403(2)(a)(v). He was sentenced as an habitual offender, second offense, MCL 769.10, to consecutive prison terms of seventy-two months to forty-five years for the cocaine convictions and to a term of one to six years for the heroin conviction. Defendant appeals as of right. We affirm.

Defendant first argues that insufficient evidence was presented to support a finding that defendant possessed the cocaine and heroin. A claim that evidence was insufficient to support a conviction raises an issue of law that must be reviewed de novo by this Court. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found all of the elements of the offense proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999). Circumstantial evidence and reasonable inferences therefrom may constitute sufficient evidence to find all the elements of an offense beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Possession may be actual or constructive. Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband. *People v Wolfe*, 440 Mich 508, 521; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). Trooper Seibt testified that defendant and three other occupants were in a car that was stopped by police. Defendant was the largest of the occupants. A backpack in the trunk of the car contained a pair of extra large boxer shorts and a pair of size 12 Reebok shoes. Inside the shoes was a large quantity of cocaine. Another backpack in the trunk of the car contained another large quantity of cocaine, twelve individually wrapped units of heroin, a gun, and some

clothing. Additionally, \$1,155 was seized from defendant. Defendant told Detective Campbell that he wore a size 12 shoe and extra-large boxer shorts. Defendant initially told Detective Campbell that he was in Michigan for a family reunion, and that he only suspected that there were drugs in the car. After Detective Campbell later confronted defendant with new information he obtained from the other occupants of the car, defendant admitted that they had driven to Detroit to rob the “dope man.” From this the jury could have reasonably inferred that defendant knew the drugs were in the car and that he had at least constructive possession of the drugs.

With respect to the conspiracy charge, defendant argues that the prosecution failed to satisfy the corpus delicti rule by presenting evidence independent of defendant’s confession that he and the others agreed to possess the cocaine. We disagree. MCL 750.157a provides that “[a]ny person who conspires together with one or more persons to commit an act prohibited by law . . . is guilty of the crime of conspiracy . . .” Circumstantial evidence is sufficient to prove the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Contrary to defendant’s assertion on appeal, the prosecution presented sufficient independent evidence that defendant and the others agreed among themselves to possess the drugs. Given that defendant and the other occupants of the car came together from South Bend, Indiana, to Detroit that drug paraphernalia was found in the car, that cocaine was found in the trunk in a backpack containing defendant’s personal items as well as in a second backpack in the trunk, and that large sums of money were found on both defendant and another occupant, a reasonable inference may be made that defendant and the other occupants of the car agreed to possess the contraband. The prosecution presented sufficient evidence that defendant and the others agreed among themselves to possess the contraband. Defendant’s confession was properly admitted.

Affirmed.

/s/ Jessica R. Cooper  
/s/ E. Thomas Fitzgerald  
/s/ Joel P. Hoekstra