

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES MARTIN HEATH,

Defendant-Appellant.

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UNPUBLISHED

October 23, 2007

No. 270192

Wayne Circuit Court

LC No. 05-007899-01

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES MARTIN HEATH,

Defendant-Appellant.

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No. 270193

Wayne Circuit Court

LC No. 05-012341-01

Before: Kelly, P.J., and Meter and Gleicher, JJ.

PER CURIAM.

Defendant was convicted in Docket No. 270192 of possession of 50 grams or more but less than 450 grams of cocaine, MCL 333.7403(2)(a)(iii), following a bench trial. In Docket No. 270193, defendant was convicted of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), following a jury trial. Defendant was sentenced to concurrent prison terms of nine to 20 years for the possession conviction and three to 20 years for the possession with intent to deliver conviction. Defendant appeals as of right. We affirm.

I. Docket No. 270192

On July 24, 2005, members of the Detroit Police Department spotted defendant on the street holding a bag containing suspected cocaine. When the police announced their presence and ordered defendant to the ground, he initially switched the bag from his right to his left hand

and indicated that he would comply. Defendant then got up, threw the bag to the ground, and fled. The police recovered cocaine, as well as scattered money, from the ground in the area.

Defendant argues that the prosecution failed to produce sufficient evidence of his possession of the narcotics because he was unaware of the bag's contents and did not intentionally and consciously possess the cocaine. Defendant also argues that the verdict was against the great weight of the evidence. We disagree.

Defendant's knowledge about the cocaine could be inferred from the circumstances. "Because it is difficult to prove an actor's state of mind, only minimal circumstantial evidence is required." *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2005). A police officer testified that defendant switched the narcotics from his right hand to his left hand once he heard the officer announce "Detroit Police." A rational trier of fact could conclude that the transfer of narcotics from one hand to the other was an attempt to conceal possession and to make the narcotics easier to discard out of the officer's view. Moreover, defendant's flight and his throwing the bag to the ground could be interpreted as evidence of a consciousness of guilt. See *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Consciousness of guilt implies the knowledge that a crime was being committed, i.e., that there was something to be guilty of, which in this case was the knowing actual possession of cocaine. Police recovered cocaine, as well as an unspecified amount of money, from the ground in the area. Under all the circumstances, a reasonable fact-finder could have concluded that defendant had knowledge of the contents of the bag in question and intentionally possessed the cocaine. See *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999) (discussing the standard for reviewing a claim that the prosecutor presented insufficient evidence to sustain a conviction).

Additionally, the verdict was not against the great weight of the evidence. There is no compelling justification to disbelieve the officer's testimony regarding defendant's manipulation of the drugs and flight thereafter. See *People v Lemmon*, 456 Mich 625, 642-646; 576 NW2d 129 (1998) (discussing the standard for reviewing a claim that a verdict is against the great weight of the evidence). As noted above, the evidence and the reasonable inferences arising therefrom supported the conclusion that defendant was aware of the nature of the substance in the bag and intentionally possessed the cocaine.

## II. Docket No. 270193

On June 29, 2005, undercover Detroit police officers were sent to a residence where they spotted an individual standing in the doorway. When the individual entered the house, one of the officers proceeded around the back. Looking through a basement window into the residence, the officer observed defendant and another man descending a staircase with suspected cocaine. The other man placed the suspected cocaine beneath a heater. The two men then placed two guns in a bag that was then placed behind the heater. Eventually, the officers entered the house and recovered two handguns, money, and crack cocaine.

Defendant argues that there was insufficient evidence to show that he possessed the cocaine. We disagree. Possession can be either actual or constructive, and possession can occur even if the defendant is not the owner of the recovered narcotics. *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748, amended 441 Mich 1201 (1992). "Constructive possession may . . . be

proven by the defendant's participation in a 'joint venture' to possess a controlled substance." *Id.* at 521 (internal citations and quotation marks omitted).

The ultimate question is whether, viewing the evidence in a light most favorable to the government, the evidence establishes a sufficient connection between the defendant and the contraband to support the inference that the defendant exercised a dominion and control over the substance. [*Id.* (internal citations and quotation marks omitted).]

"Possession with intent to deliver can be established by circumstantial evidence and reasonable inferences arising from that evidence, just as it can be established by direct evidence." *Id.* at 526.

Viewing all of the evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have concluded that defendant was guilty beyond a reasonable doubt of possession with intent to deliver less than 50 grams of cocaine. See *Johnson, supra* at 723. The presence of animal feces in the house, a non-functioning refrigerator, a non-functioning stove, and a locked but tampered with electric meter supported the conclusion that the house was vacant. Further, defendant was observed running into the basement with another man, who was seen holding the suspected cocaine. Both men were observed walking over to a heater, underneath which the cocaine was placed. The two were also seen placing two guns in a bag that was placed behind the heater. Relying on the testimony of the police, a reasonable juror could have concluded that defendant was acting in concert with the other man to hide the cocaine, which in turn implies an awareness of the nature of the contraband and a shared right to exercise control over it. See *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000) (observing that "a person has constructive possession if there is proximity to the article together with indicia of control" ).

Both cases are affirmed.

/s/ Kirsten Frank Kelly  
/s/ Patrick M. Meter  
/s/ Elizabeth L. Gleicher