

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ADRIAN KORWAND LEWIS,

Defendant-Appellant.

UNPUBLISHED

December 27, 2007

No. 273739

Wayne Circuit Court

LC No. 06-000556-01

Before: Murray, P.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, third offense, MCL 750.227b. Defendant was sentenced to 30 months to 20 years' imprisonment for his conviction of possession with intent to deliver cocaine, one to five years' imprisonment for the felon in possession of a firearm conviction, and ten years' imprisonment for the felony-firearm conviction. Defendant was also sentenced to one to five years' imprisonment for one count of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), to which defendant entered a plea of guilty before trial. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that there is insufficient evidence to demonstrate that he knowingly possessed the cocaine and handgun. We disagree. This Court reviews the record de novo when presented with a claim of insufficient evidence. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). Considering the evidence in a light most favorable to the prosecution, this Court determines whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *Id.* This Court will not interfere with the fact-finder's role in weighing the evidence and judging the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992). It is for the trier of fact to decide what inferences can be fairly drawn from the evidence and to judge the weight it accords to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Conflicts in the evidence are resolved in the prosecution's favor. *People v Fletcher*, 260 Mich App 531, 561-562; 679 NW2d 127 (2004).

Contrary to defendant's argument that there was no evidence of a nexus between the cocaine and defendant, a rational trier of fact could conclude otherwise. In Michigan, reasonable

inferences arising from circumstantial evidence can be sufficient evidence to sustain a criminal conviction. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). “Possession may be either actual or constructive, and may be joint as well as exclusive.” *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). Constructive possession of cocaine exists where direct or circumstantial evidence shows that defendant had “dominion and control” over it, and may be found where the defendant had the power to dispose of the substance. *Wolfe, supra* at 521.

In this case, trial testimony indicated that during the course of a police chase, several items were thrown from the passenger side of a sport-utility vehicle occupied by defendant and Jason Will. There was also testimony to show that Will was the driver of the vehicle, and defendant was the passenger. Moreover, the prosecution presented evidence that the police recovered crack cocaine from the roadside, and that it was packaged for individual sale. According weight to this evidence, a jury could properly infer that defendant possessed the cocaine and threw it out of the vehicle, while rejecting the theory that the driver reached over and threw the items out on defendant’s side of the vehicle. Because this evidence shows defendant exercised the power to dispose of the substance, a rational trier of fact could conclude that defendant possessed the cocaine. Accordingly, there is sufficient evidence of possession with intent to deliver 50 grams or less of cocaine by defendant to convict him on this charge.

There is also sufficient evidence for a rational trier of fact to convict defendant on the felon in possession of a firearm and felony-firearm charges. Constructive possession of a firearm exists when the defendant knows the location of the weapon and it is reasonably accessible to the defendant. *People v Burgenmeyer*, 461 Mich 431, 438; 606 NW2d 645 (2000). Circumstantial evidence from which a trier of fact could infer that defendant actually possessed the weapon includes testimony that a “dark object” was thrown from the passenger window of the vehicle, defendant was the passenger, and that the police recovered a pistol on the route of the police chase soon thereafter.

The prosecution presented evidence demonstrating that defendant knew that a firearm was located in the vehicle on the night of the incident. The gun was reasonably accessible to defendant because of the close proximity of the occupants of the vehicle, and under defendant’s version of events, for the reason that Will was constantly reaching over defendant to throw items out of the passenger window. From this evidence, a rational jury could conclude that the elements of constructive possession were met. A fact-finder could also infer from this evidence that defendant had joint access to the weapon for the purpose of facilitating the drug transactions or to enable defendant to defend himself and/or Will in the event the sale turned violent.

A rational trier of fact could find that defendant committed the charged crimes beyond a reasonable doubt. Viewing the evidence in a light most favorable to the prosecution, resolving all conflicts in the prosecution’s favor, and deferring to the trial court’s role as fact-finder, there was sufficient evidence to convict defendant of possession with intent to deliver 50 grams or less of cocaine, felon in possession of a firearm, and felony-firearm.

Affirmed.

/s/ Christopher M. Murray

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder