

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY ROGERS,

Defendant-Appellant.

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UNPUBLISHED

September 18, 2008

No. 279245

Wayne Circuit Court

LC No. 07-003158-01

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant Gregory Rogers appeals as of right his bench trial convictions for possession of hydrocodone,<sup>1</sup> possession of codeine,<sup>2</sup> possession of alprazolam,<sup>3</sup> possession of less than 25 grams of heroin,<sup>4</sup> possession of less than 25 grams of cocaine,<sup>5</sup> and possession of marijuana.<sup>6</sup> The trial court sentenced Rogers to 18 months' probation. We affirm.

I. Basic Facts And Procedural History

Rogers's convictions arise from an arrest that occurred in September 2006, at a house in Detroit, Michigan. Detroit Police Officer Andrew White coordinated the execution of a search warrant at the home. Officer White conducted pre-raid surveillance from a nearby location, using a pair of binoculars to watch the back door of the property. He saw two different people approach that door, and each exchanged paper currency with Rogers for suspected narcotics. Rogers received money from the buyers and gave each something in the "cuffed hand position." Rogers stepped away from the door for a few seconds, returning to give each buyer what White

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<sup>1</sup> MCL 333.7403(2)(b)(ii).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> MCL 333.7403(2)(a)(v).

<sup>5</sup> *Id.*

<sup>6</sup> MCL 333.7403(2)(d).

suspected were narcotics. This was consistent with Officer White's experience with street sales of narcotics. Officer White described Rogers to the other officers on his team and sent them in to execute the warrant.

Detroit Police Officer Aubrey Sargent was the first member of the arrest team to enter the residence. She entered through the door where the transactions had occurred, which opened into the kitchen, and she saw Rogers standing there alone. She pointed her shotgun at Rogers, told him not to move, and watched Detroit Police Officer Keith Marshall handcuff and arrest him. Officer Marshall searched Rogers and recovered a pill vial containing "Tylenol Number 3." Officer White confiscated \$1,922 from Rogers. Detroit Police Officers Tyrone Bates and Demetrius Brown were also members of the arrest team. Officers Sargent, Marshall, Bates, and Brown all saw Rogers in the kitchen and a bag of narcotics on the stovetop when they entered the property. Officer Sargent noted that Rogers was less than two feet away from the bag when she entered the kitchen. After Rogers was secured, Officer Sargent moved into the living room, where she encountered three people. Detroit Police Officer Keba Rhone served as outside security during the police raid and only entered after the property had been cleared. When she entered the kitchen, Rogers and four others were lined up against the wall in handcuffs, and she saw a bag on the stove.

Alan Williams, a friend of Rogers, was in the living room when the police arrived. He testified that Rogers arrived at the property only ten minutes before the police raid was executed. According to Williams, Rogers went to a first floor bedroom when he arrived and was still in that bedroom when he was arrested.

Rogers testified that he had been home for approximately 30 minutes before the police arrived and that Officer Rhone arrested him while he was in the bathroom on the first floor. He stated that the police found money in his pocket but no drugs. He testified that there were no drugs on the stove and that there could not have been because, since it was the only source of heat for the house, the burners were on. He stated that the police were primarily interested in searching the second floor of the house, and they showed him a bag they found there at the time of his arrest, which he later learned contained pills. Rogers testified that the second floor of the home was kept locked by his brother, who was the primary occupant. He also stated that he did not have a key to that floor. Rogers previously owned the property, but was leasing it from its new owner at the time of trial, and using it to sell cars from the back door. He made no sales on the day of his arrest, but had sold a car the day before, which was why he possessed approximately \$1,900 at the time of his arrest. He allowed his brother, who had nowhere else to stay, to live at the house.

After the prosecution rested its case, Rogers moved for a directed verdict on the charges for possession of heroin and possession with intent to deliver cocaine. Rogers argued that one or both of these charges should be dismissed because the charges related to a folded piece of paper that only contained .03 grams of a powder made up of both cocaine and heroin, contending that such a small amount was not enough to qualify as possession of one or the other. Rogers further argued that the possession with intent to deliver cocaine charge should be dismissed because

there had been no evidence of containers found that could be used in its sale and distribution. The trial court denied the motion regarding the charge for possession of heroin, but granted it regarding the charge for possession with intent to deliver cocaine, reducing that charge to possession of less than 25 grams of cocaine.<sup>7</sup>

The trial court found that Rogers knowingly possessed the controlled substances found by the police during his arrest. Rogers now appeals.

## II. Sufficiency Of The Evidence

### A. Standard Of Review

Rogers argues that there was insufficient evidence to convict him of possession of the controlled substances. We review de novo a claim of insufficient evidence.<sup>8</sup> We review the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.<sup>9</sup>

### B. Analysis

The elements of possession of a controlled substance are: (1) the substance is one of those proscribed by statute, (2) the defendant was not authorized to possess it, and (3) the defendant knowingly possessed it.<sup>10</sup> Possession can be either actual or constructive, and “[c]onstructive possession exists when the totality of the circumstances indicates a sufficient nexus between defendant and the contraband.”<sup>11</sup> Possession may also be joint or exclusive.<sup>12</sup> Proof of possession can be satisfied by circumstantial evidence and the reasonable inferences that arise from that evidence.<sup>13</sup>

Citing *People v Davenport*,<sup>14</sup> Rogers argues that his convictions must be reversed because all of the evidence linking him to the controlled substances was circumstantial. In *Davenport*, the two defendants were arrested while attempting to dispose of marijuana in a toilet.<sup>15</sup> After recovering the marijuana before it could be flushed away, the police searched the

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<sup>7</sup> MCL 333.7403(2)(a)(v).

<sup>8</sup> *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

<sup>9</sup> *Id.*

<sup>10</sup> See *People v Gonzalez*, 256 Mich App 212, 225-226; 663 NW2d 499 (2003).

<sup>11</sup> *People v Johnson*, 466 Mich 491, 500; 647 NW2d 480 (2002).

<sup>12</sup> *People v Meshell*, 265 Mich App 616, 622; 696 NW2d 754 (2005).

<sup>13</sup> *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000).

<sup>14</sup> *People v Davenport*, 39 Mich App 252; 197 NW2d 521 (1972).

<sup>15</sup> *Id.* at 254.

house and found a barrel in the basement that contained heroin and soiled clothes.<sup>16</sup> The defendants were charged with possession of both heroin and marijuana, and convicted on both counts.<sup>17</sup> This Court reversed the defendants' heroin convictions, however, because "[t]he evidence in this case regarding possession of the heroin is entirely circumstantial."<sup>18</sup>

We first note that we are not bound by the pre-1991 *Davenport* decision.<sup>19</sup> Second, we note that more recent panels of this Court have declined to enforce this *Davenport* standard, stating that "[t]he prosecutor is not required to present direct evidence linking the defendant to the crime."<sup>20</sup> The prosecution's theory can be satisfactorily proved beyond a reasonable doubt by circumstantial evidence and the reasonable inferences that arise from that evidence.<sup>21</sup> And finally, we find the present case distinguishable from *Davenport* because, as this Court stated in that case, "there [was] no evidence whatever tending to show that Davenport knew of the presence of the heroin found in the barrel in the basement." In so stating, the *Davenport* panel distinguished the facts at issue from those of *People v Cardenas*, 21 Mich App 636; 176 NW2d 447 (1970), in which "there was evidence tending to show that the defendant knew precisely where the marijuana was located[,]" and *People v Davis*, 29 Mich App 443; 185 NW2d 609 (1971), in which "the defendants were in close proximity to the heroin at the time the police entered and were all aware of the presence of the narcotics."<sup>22</sup>

Here, sufficient evidence was offered to prove that Rogers knew where the substances were located because they were in plain view and he was in close proximity to them at the time the police entered. Further, the arresting police officers' testimony was sufficient to link Rogers to the recovered substances. Officer White witnessed Rogers engaging in two transactions at the back door of the house that fit the profile of narcotics sales and confiscated \$1,922 in cash from him. The back door of the house led directly to the kitchen. Shortly after witnessing the drug transactions, Officers Sargent, Marshall, Bates, and Brown all saw Rogers in the kitchen and a bag of narcotics on the stovetop when they entered the property. Officer Sargent, who was the first to enter, found Rogers within two feet of the drugs on the stove. Officer Keith confiscated a bottle of pills from Rogers during the arrest. From this evidence, albeit circumstantial, a rational trier of fact could infer that Rogers had been engaged in the sale of the controlled substances found on the stovetop and, therefore, possessed them.

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<sup>16</sup> *Id.* at 255.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 256.

<sup>19</sup> MCR 7.215(J)(1).

<sup>20</sup> *People v Saunders*, 189 Mich App 494, 495; 473 NW2d 755 (1991).

<sup>21</sup> *Id.*, citing *People v Drayton*, 168 Mich App 174, 176; 423 NW2d 606 (1988); *People v Daniels*, 163 Mich App 703, 707; 415 NW2d 282 (1987); *People v Richardson*, 139 Mich App 622, 625; 362 NW2d 853 (1984). See also *People v Greenwood*, 209 Mich App 470, 472; 531 NW2d 771 (1995).

<sup>22</sup> *Id.* at 256 n 4.

Moreover, sufficient evidence was provided for a rational trier of fact to conclude that Rogers had sufficient control of the property where the controlled substances were found. He was the previous owner of the house and a current lessee. He allowed his brother and Alan Williams to live at the house. And he conducted a business selling cars from the property.

Nevertheless, Rogers further argues that he was not arrested in the kitchen of the house and that the controlled substances were not found on the stovetop, but rather, on the second floor of the house, to which he did not have access. This argument is supported by his own testimony at trial, and that of Williams, who lived in the house. Whether to believe the testimony of Rogers and Williams, whose testimony contradicted each other and the police testimony, regarding the events at the time of Rogers's arrest is a question of credibility. Such questions are properly left to the trier of fact to determine, and all matters involving conflicting evidence must be resolved in favor of the prosecution.<sup>23</sup> In this case, the trier of fact found the testimony of the police officers to be credible and this Court defers to the trial court's credibility determinations.

Affirmed.

/s/ William C. Whitbeck  
/s/ Richard A. Bandstra  
/s/ Pat M. Donofrio

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<sup>23</sup> *People v Fletcher*, 260 Mich App 531, 562; 679 NW2d 127 (2004).