

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CHARLES DION-EDWARDS JOHNICAN,

Defendant-Appellant.

---

UNPUBLISHED

May 5, 2009

No. 283952

Monroe Circuit Court

LC No. 07-036095-FH

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

Defendant was found guilty by a jury of possession with intent to deliver 50 grams or more but less than 450 grams of a controlled substance (to wit: cocaine), MCL 333.7401, for which he was sentenced to 5 to 20 years' imprisonment. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was the passenger in a vehicle traveling on Interstate-75 in Monroe County, when the Michigan State Police executed a traffic stop because the driver was following a semi tractor-trailer truck at an unsafe distance. During a consensual search of the vehicle, the police found approximately 361 grams of cocaine in the engine compartment. Trial testimony by a sergeant with the Michigan State Police established some general characteristics of persons trafficking in controlled substances.

Defendant first challenges the sufficiency of the evidence that he possessed the cocaine, asserting that the prosecution presented no evidence connecting him to it. In reviewing the sufficiency of the evidence, we determine whether the evidence, when viewed in the light most favorable to the prosecution, would permit a trier of fact to find that all the elements of the crime were proven beyond a reasonable doubt. *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). "Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). In determining whether sufficient evidence had been presented to support a conviction, "this Court must not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses." *People v Stiller*, 242 Mich App 38, 42; 617 NW2d 697 (2000).

The elements of possession with intent to deliver cocaine are: (1) the recovered substance is cocaine; (2) the cocaine was in a mixture weighing 50 grams or more but less than 450 grams; (3) the defendant was not authorized to possess the substance; and (4) the defendant knowingly

possessed the cocaine with intent to deliver. MCL 333.7401(2)(a)(iii); *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998). Defendant challenges only the fourth element.

Possession may be actual or constructive. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748, amended 441 Mich 1201 (1992). Constructive possession exists if the defendant knew that the substance was present and had the right to exercise control over it. *Id.* In other words, constructive possession exists if “the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband.” *Id.* at 521. Possession may be joint, with more than one individual constructively possessing the contraband. Constructive possession may be found even if the defendant is not the owner of the controlled substance. *Id.* at 520. Constructive possession may be proved by circumstantial evidence and the reasonable inferences that can be drawn from that evidence. *People v Hardiman*, 466 Mich 417, 420-421, 646 NW2d 158 (2002).

At the time of the traffic stop in an area known for drug trafficking, defendant was an occupant of the vehicle that his girlfriend had rented for him three days before the stop. A bag containing approximately 361 grams of cocaine was found in the engine compartment of the vehicle. When questioned on where they were coming from, both defendant and the driver of the car indicated they had visited Dayton, Ohio only, despite the police finding a receipt for a purchase made in South Carolina the previous day. Also, defendant and the driver were inconsistent when asked how much time they were allegedly in Dayton. A police officer testified that defendant reported that he and the driver of the vehicle had been in exclusive possession of the vehicle from the time it was rented. Given this evidence, a rational trier of fact could conclude that defendant was in possession of the cocaine recovered from the vehicle.

The jury could also have rationally concluded that defendant possessed the requisite intent to deliver the cocaine. The intent to deliver “may be proven by circumstantial evidence and also may be inferred from the amount of controlled substance possessed.” *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991). “‘Deliver’ or ‘delivery’ means the actual, constructive, or attempted transfer from 1 person to another of a controlled substance, whether or not there is an agency relationship.” MCL 333.7105(1); *see also People v Schultz*, 246 Mich App 695, 703-704; 635 NW2d 491 (2001).

There was testimony from a law enforcement narcotics expert that the large amount of cocaine (361 grams) possessed by defendant was indicative of an intent to deliver for monetary gain. *Ray, supra* at 708. Thus, when viewed in the light most favorable to the prosecution, there was sufficient evidence to sustain defendant’s conviction of possession with intent to deliver the cocaine.

Defendant next argues that testimony regarding drug trafficking constituted improper drug profile testimony that was highly prejudicial to his defense. The admission of evidence is reviewed for abuse of discretion. *People v Ullah*, 216 Mich App 669, 673, 550 NW2d 568 (1996).

The testimony that Detroit is a source city for drug trafficking, and that drug traffickers occasionally utilize hidden compartments and rental cars to transport contraband, was not admissible as substantive evidence of defendant’s guilt. However, evidence of this sort, commonly called drug profile evidence, may be admissible under particular circumstances of a

case to assist the jury in understanding the evidentiary backdrop of a case and the modus operandi of drug dealers. *People v Murray*, 234 Mich App 46, 52-53; 593 NW2d 690 (1999). The profile, without more, should not normally enable a jury to infer the defendant's guilt. The prosecutor must introduce and argue some additional evidence from the case that the jury can use to draw an inference of criminality. *Id.* at 57.

Pieces of the drug profile by themselves should not be used to establish the link between innocuous evidence and guilt. *Id.* In this case, the prosecutor did not rely on the profile evidence to establish a link between innocuous evidence and guilt. The evidence tending to show defendant was guilty of possession with intent to deliver cocaine was ample. Defendant was a passenger in the vehicle that his girlfriend rented for him. The vehicle had been in defendant's possession since that time and contained a large amount of cocaine when stopped.

Although the trial court should have instructed the jury with regard to the proper and limited use of profile testimony, *id.*, but failed to do so in this case, omission of the limiting instruction was harmless error. Given the evidence against defendant, it is highly doubtful that the verdict would have been different but for the drug profile evidence. *Id.* at 64. In the instant case, none of the challenged testimony or prosecutorial remarks isolated or taken together, was so prejudicial or serious as to affect the outcome of the proceeding. To the extent that admission of the drug profile testimony was improper, the error was harmless given the evidence against defendant.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Patrick M. Meter  
/s/ Deborah A. Servitto