

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVIN EARL DEWALT,

Defendant-Appellant.

UNPUBLISHED

January 28, 2010

No. 284890

Genesee Circuit Court

LC No. 08-022022-FH

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv).. Because the prosecutor presented sufficient evidence for a reasonable trier of fact to convict defendant of possession of less than 50 grams of cocaine with intent to distribute, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case arises from an incident that occurred in the housing complex of Atherton Terrace in Flint, Michigan on June 23, 2007. On that night, officers from the Crime Area Target Team (CATT) patrolled the residential area after receiving citizen complaints referencing drug activity. Police attempted to make a traffic stop of a vehicle wherein defendant was the passenger. The vehicle fled away from the officers but eventually came to a stop. Defendant exited the vehicle and Officer Kevin Smith gave chase. Despite Officer Smith's orders to the contrary, defendant continued to run for about four blocks during which time Officer Smith noticed that defendant had pulled, possibly from his left side, a clear plastic baggie with a white substance in it. Officer Smith eventually arrested defendant after finding him lying on a brush pile. Officer Smith noticed a plastic baggie with suspected cocaine along the top of the brush. Police searched defendant at the station and found a plastic baggie containing \$510 in the insole of his shoe.

Defendant challenges the sufficiency of the evidence supporting his conviction on appeal. This Court reviews a claim of insufficient evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). When determining whether the prosecutor presented sufficient evidence to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

In order to secure a conviction for possession with intent to deliver less than fifty grams of cocaine, the prosecutor must prove four elements beyond a reasonable doubt: “(1) that the recovered substance is cocaine, (2) that the cocaine is in a mixture weighing less than fifty grams, (3) that defendant was not authorized to possess the substance, and (4) that defendant knowingly possessed the cocaine with the intent to deliver.” *People v Gonzalez*, 256 Mich App 212, 225-226; 663 NW2d 499 (2003).

Here, Officer Smith testified that he noticed the plastic baggie of suspected cocaine lying four feet from defendant in the brush. Inside the clear plastic bag, Officer Smith found ten individually wrapped bags. Five of the bags contained crack cocaine and five bags contained powder cocaine. Defendant does not challenge that the discovered substance was cocaine or that it amounted to less than 50 grams. Likewise, there is no evidence in the record that defendant was authorized to possess the substance. On the contrary, defendant argues that he did not constructively possess the plastic bag of cocaine. But defendant’s argument fails when considering the police testimony regarding defendant pulling a clear plastic baggie with a white substance in it, possibly from his left side, during the foot chase, as well as the proximity of where the police found the cocaine to defendant’s person in the brush. When viewing the evidence in the light most favorable to the prosecution, a rational jury was permitted to conclude that the prosecution established that defendant possessed the illegal substance. Defendant is not entitled to relief.

Furthermore, “actual physical possession is unnecessary for a conviction of possession with intent to deliver; constructive possession will suffice.” *People v Johnson*, 466 Mich 491, 500; 647 NW2d 480 (2002). “Constructive possession exists if the defendant knew that the substance was present and had the right to exercise control over it.” *People v Williams*, 268 Mich App 416, 421; 707 NW2d 624 (2005). When the totality of the circumstances demonstrates a sufficient nexus between the defendant and the contraband, constructive possession exists. *Id.* Being in a location where drugs are discovered is insufficient to prove constructive possession; instead, some additional connection between the defendant and the contraband must be shown. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002).

In the present case, there was sufficient circumstantial evidence to connect defendant to the cocaine that was found near his person. Defendant was not merely in the same area as the narcotics. Defendant ran from police and, during the chase, Officer Smith saw defendant reach to his left side and pull out a clear plastic bag with a white substance in it. The chase ended when defendant was found with his foot stuck in a thick pile of brush, with the clear plastic bag of white substance lying approximately four feet from defendant. The plastic bag of cocaine was just sitting on top of the pile of brush as if it was dropped or tossed by defendant. Officer Smith found ten individually wrapped bags inside the clear plastic bag—five bags contained crack cocaine and five bags contained powder cocaine. The packaging is indicative of possession with intent to deliver as opposed to possession for personal use. Officers testified that no one else was in the area where they apprehended defendant. Furthermore, police found \$510 under the insole of defendant’s shoe despite the fact that he was not employed. When viewed in the light most favorable to the prosecution, the circumstantial evidence was sufficient for a reasonable trier of fact to conclude that defendant was aware of the presence of the cocaine and that defendant had the right to exercise control over the cocaine. Defendant does not challenge the other elements

of the accused offense. Therefore, because the prosecution adequately proved the possession element, defendant is not entitled to relief on appeal.

Affirmed.

/s/ Pat M. Donofrio

/s/ Patrick M. Meter

/s/ Christopher M. Murray