

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONT WESLEY DATES,

Defendant-Appellant.

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UNPUBLISHED

June 17, 2010

No. 291332

Wayne Circuit Court

LC No. 08-010416-FH

Before: ZAHRA, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver less than 50 grams of a controlled substance (cocaine), MCL 333.7401(2)(a)(iv), and was sentenced to one year of probation. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Detroit Police Sergeant Andrew White was conducting surveillance in response to complaints about street level narcotics sales when he received information that people were selling narcotics from a blue and tan van. He saw the van stopped at a corner. Two women approached the van, one on each side. White testified that he could see the women passing money to the people inside the van, and the men handing what White thought were narcotics to the women. The van drove away, and White followed it. Other officers stopped the van shortly thereafter. Defendant was the driver, and Andre Inges<sup>1</sup> was the passenger. According to an arresting officer, after the men were removed from the vehicle, he saw three knotted wraps of cocaine on the floor of the van between the driver's seat and the front passenger seat. The officer also testified that the packaging indicated that the cocaine was ready for sale or delivery. The officers confiscated \$250 from defendant and \$7,488 from Inges.

Defendant argues that the prosecution failed to present sufficient evidence to support his conviction. We review a defendant's allegations regarding insufficiency of the evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v*

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<sup>1</sup> Defendant was tried jointly with Inges.

*Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). *Id.* Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and the reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences fairly can be drawn from the evidence and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002); *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1202 (1992).

To support a conviction for possession with the intent to deliver less than 50 grams of cocaine, it is necessary for the prosecutor to prove: (1) that defendant knowingly possessed the cocaine, (2) that defendant intended to deliver the cocaine to someone else, (3) that the substance was cocaine and that defendant knew it was cocaine, and (4) that the cocaine was in a mixture that weighed less than 50 grams. MCL 333.7401(2)(a)(iv); *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998).

“A person need not have actual physical possession of a controlled substance to be guilty of possessing it. Possession may be either actual or constructive.” *Wolfe*, 440 Mich at 519-520. Constructive possession, which may be sole or joint, is the right to exercise control over the drug coupled with knowledge of its presence. *Id.* at 520. “A person's presence, by itself, at a location where drugs are found is insufficient to prove constructive possession.” *Id.* Rather, “some additional connection between the defendant and the contraband must be shown.” *Id.* When the totality of the circumstances shows a sufficient nexus between the defendant and the narcotics, it can constitute constructive possession. *Id.* at 521; see also *People v Johnson*, 466 Mich 491, 500; 647 NW2d 480 (2002). Constructive possession may be proved by circumstantial evidence and the reasonable inferences that can be drawn. *Hardiman*, 466 Mich at 428-431.

Intent to deliver may be inferred from the amount of controlled substance possessed, from the packaging material, and other circumstances indicating an intent to sell. *Wolfe*, 440 Mich at 523-525; *People v Ray*, 191 Mich App 706, 708; 479 NW2d 1 (1991). Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to establish the element of intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

Here, the prosecution presented sufficient evidence to support the conviction. White testified that he witnessed defendant and his co-defendant participate in what he believed to be drug sales. The arresting officer testified that after he stopped defendant's van he found cocaine on the floor of the van located between the driver's seat and the front passenger seat. The cocaine was in plain view, which supports a finding that defendant knew of the existence of the cocaine. Based on his experience and training, the officer opined that the cocaine was packaged for resale. The location of the cocaine, and the testimony that defendant and the codefendant were involved in a previous drug sale, formed a basis for the trial court to reasonably conclude that defendant had the right to exercise control over the cocaine. Even if the co-defendant could also exercise control over the cocaine, the trial court could reasonably conclude that their possession was joint. White's testimony, the location and packaging of the cocaine, and the money found on co-defendant, when viewed in the light most favorable to the prosecution, support a finding of both possession by defendant and an intent to deliver the cocaine.

Defendant's assertion that the prosecution did not present evidence of the nature of the controlled substance is incorrect. During trial, defense counsel stated that the record would be supplemented with "the criminal analysis." The trial court asked whether the chemist report indicated three knotted baggies, and defense counsel stated that the weight was ".3 including packaging." The trial court received the parties' stipulation.<sup>2</sup> Given the parties' stipulation, we find that the prosecution presented sufficient evidence concerning this element of the offense.

Affirmed.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ E. Thomas Fitzgerald

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<sup>2</sup> During the preliminary examination, the parties stipulated, for purposed of the examination, that the substance seized by the officers had been sent for laboratory testing, that it tested positive for cocaine, and that its weight, including packaging, was .3 grams. We find it clear from the latter discussion at trial that the stipulation concerned the laboratory testing of the substance found in defendant's van.