STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 1, 2012
v	No. 301365 Wayne Circuit Court
MELVIN MAURICE MAYS, Defendant-Appellant.	LC No. 2006-207822-FH

Before: OWENS, P.J., and JANSEN and MARKEY, JJ.

PER CURIAM.

Defendant appeals by right his bench trial convictions of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). We affirm.

Defendant argues that there was insufficient evidence to convict him. We disagree.

We review de novo a challenge to the sufficiency evidence. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010). In reviewing a conviction following a bench trial, we view the evidence in the light most favorable to the prosecutor to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). "Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime." *Id*.

The elements of possession with intent to deliver a controlled substance are (1) that the recovered substance is a controlled substance, and (2) that the defendant knowingly possessed the substance intending to deliver it. See *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Defendant first challenges whether the evidence was sufficient to show that he knowingly possessed cocaine and marijuana. He also challenges whether the evidence was sufficient to show that he intended to deliver only the cocaine.

I. CONSTRUCTIVE POSSESSION

Defendant first argues that the prosecution presented insufficient evidence to establish that he possessed the drugs found in the apartment. Defendant argues that because the apartment was leased to Taesha Scott, others necessarily had access to the apartment and could have been

involved in the drug activity there. Defendant notes that the police never investigated what involvement Scott may have had with the drugs in the apartment. Defendant also notes that the prosecution introduced no fingerprints connecting him to the drugs, nor did the prosecution meaningfully link the clothes found in the apartment to defendant. Accordingly, defendant argues that the prosecution's evidence merely establishes his presence in the apartment, which does not provide sufficient evidence to support his convictions.

Possession of a controlled substance may be actual or constructive. *Wolfe*, 440 Mich at 520. Constructive possession over contraband is shown by evidence that "the defendant had dominion or control over the controlled substance." *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). "[C]onstructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband." *Wolfe*, 440 Mich at 521. However, a defendant's mere presence in the vicinity of contraband, without more, is insufficient to sustain a finding of constructive possession. *Id. at* 520.

The facts of this case are similar to those in *People v Hardiman*, 466 Mich 417, 419-420; 646 NW2d 158 (2002), where police executed a search warrant at an apartment when the defendant was not present. In a nightstand, police found heroin, marijuana, and a letter addressed to the defendant. *Id*. The police also found both male and female clothing, and a loan payment book addressed to someone other than the defendant. *Id*. The *Hardiman* Court reversed this Court's finding of insufficient evidence and affirmed the jury's determination that the defendant constructively possessed the contraband. *Id*. at 419. The Court overruled *People v Atley*, 392 Mich 298; 220 NW2d 465 (1974), which held "that an inference can not be built upon an inference to establish an element of the offense." *Hardiman*, 466 Mich at 424-428. The *Hardiman* Court relied on the reasoning of Professor Edward J. Imwinkelreid and cases like *Dirring v United States*, 328 F2d 512 (CA 1, 1964):

> "The rule is not that an inference, no matter how reasonable, is to be rejected if it, in turn, depends upon another reasonable inference; rather the question is merely whether the total evidence, including reasonable inferences, when put together is sufficient to warrant a jury to conclude that defendant is guilty beyond a reasonable doubt. . . . If enough pieces of a jigsaw puzzle fit together the subject may be identified even though some pieces are lacking." [*Hardiman*, 466 Mich at 425-426, quoting *Dirring*, 328 F2d at 515.]

Similarly, here, it is reasonable to infer, based on the available circumstantial evidence, that defendant possessed the drugs the police found in the apartment. The police observed defendant entering the apartment building on multiple occasions in the weeks leading up to the execution of the warrant. Moreover, the apartment contained defendant's personal property: the police recovered pieces of mail addressed to defendant in two rooms of the apartment, and they recovered a tape recorder in the apartment, on which defendant identifies himself. Although the apartment was not in defendant's name, Officer Main testified that a common tactic in the drug trade involves the use of straw lessees as a way to separate traffickers from drug activity, which also offered an explanation for the lack of furniture and food in the apartment. Although the police found men's clothing, approximately defendant's size, the police found no women's clothing. Cocaine was found in a men's shaving kit in a closet containing only men's clothing. In short, the prosecution presented enough "pieces of the puzzle" to permit the trial court to find

beyond a reasonable doubt that defendant exercised dominion and control over the marijuana and cocaine recovered at the apartment.

II. INTENT TO DELIVER COCAINE

Defendant next argues that the prosecution presented insufficient evidence that he intended to deliver cocaine; he does not argue that the prosecution presented insufficient evidence that he intended to deliver marijuana. Specifically, defendant argues that the quantity of cocaine recovered, less than five grams, is insufficient to support finding that he intended to deliver it. Defendant further argues that the baggies and scale are consistent with intent to distribute marijuana, not cocaine. Finally, defendant argues that the police never ran toxicology tests on the residue from the pot to determine if it were, in fact, cocaine.

"An actor's intent may be inferred from all the facts and circumstances, and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient." *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998). Thus, defendant's intent to deliver may be inferred from the quantity of contraband, the way it is packaged, and from other facts and circumstances. *Wolfe*, 440 Mich at 524-525.

Here, the prosecution presented sufficient evidence for a reasonable fact finder to conclude that defendant intended to deliver cocaine. The prosecution's evidence of intent to deliver was not limited to the 4.05 grams of cocaine found in the shaving kit, but included baggies, and a scale. Defendant argues that the scale and baggies are consistent with marijuana delivery and not cocaine; however, viewing the evidence in the light most favorable to the prosecution, it was not unreasonable for the trial court to conclude that the baggies and scale could also be used to prepare cocaine for distribution. The police also found dust masks, which Officer Janczarek testified are often worn to prevent inhaling cocaine dust during processing. Police also found a white powdery residue in a pot on the stove in the kitchen. Although police never sought a toxicology report to confirm that the residue was cocaine, they conducted field tests on the substance, which indicated that the residue was cocaine. The trial judge properly concluded that admitting the results of the field test in lieu of laboratory results was a matter of weight, not admissibility. See *People v Koehler*, 54 Mich App 624, 633-634; 221 NW2d 398 (1974). Accordingly, the trial judge did not abuse his discretion by admitting the results of the field test because those results were helpful in resolving the pending charges. See *People v Murphy (On Remand)*, 282 Mich App 571, 578, 580; 766 NW2d 303 (2009).

Therefore, viewing the evidence in the light most favorable to the prosecution, sufficient circumstantial evidence exist in this case to justify a rational fact finder's conclusion that defendant intended to deliver cocaine.

We affirm.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Jane E. Markey