

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHELBY MAURICE DAVISON,

Defendant-Appellant.

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UNPUBLISHED

March 20, 2012

No. 302201

Berrien Circuit Court

LC No. 10-002472-FH

Before: METER, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

A jury convicted defendant of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and possession of marijuana, MCL 333.7403(2)(d). The trial court sentenced defendant as a third-habitual offender, MCL 769.11, to a prison term of 2 to 40 years for the possession with intent to deliver cocaine conviction and 166 days in jail for the possession of marijuana conviction. Defendant appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction for possession with intent to deliver less than 50 grams of cocaine. We review a challenge to the sufficiency of the evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). “[W]hen determining whether sufficient evidence has been presented to sustain a conviction, a 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, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime. *People v Lee*, 243 Mich App 163, 167-168; 622 NW2d 71 (2000).

Defendant claims that the prosecution failed to prove the required element that defendant “knowingly possessed the cocaine . . . .” *Id.* at 516-517; MCL 333.7401(2)(a)(iv). Possession may be either actual or constructive. *Wolfe*, 440 Mich at 520. A person’s presence, by itself, at a location where drugs are found is insufficient to prove constructive possession. *Id.* “Possession” is a term that “signifies dominion or right of control over the drug with knowledge of its presence and character.” *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000), quoting *People v Maliskey*, 77 Mich App 444, 453; 258 NW2d 512 (1977). “[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.

Here, cocaine was found in a car owned and occupied only by defendant. The cocaine was found beneath a floor mat hook located by the driver's seat. Defendant had dominion and a right of control over the area where the drugs were found. *Nunez*, 242 Mich App at 615. Further, circumstantial evidence of defendant's knowledge of the cocaine's existence and character also was presented. A large number of air fresheners, duct tape, and rubber bands were found in defendant's car. At trial, three witnesses testified that the air fresheners could be used to deter detection of drugs, that the tape could be used to package controlled substances, and that the rubber bands could be used to hold drugs together or to bundle cash, all of which suggested that defendant was associated with narcotics and drug trafficking. Additionally, the plastic bags that contained the cocaine appeared new. A rational trier of fact could conclude that the plastic bags with the cocaine were placed in the car within the two months defendant owned the car. The evidence, viewed in a light most favorable to the prosecution, was sufficient to allow a rational juror to find beyond a reasonable doubt that defendant constructively possessed the cocaine.

Defendant also argues that the trial court abused its discretion when it failed to grant his request for a mistrial. We review a court's denial of a motion for mistrial for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). Defendant's motion was premised on an unresponsive statement by a police officer regarding how he became involved in this case.

"A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant, and impairs his ability to get a fair trial." *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995) (citations omitted). The error must be more than prejudicial; it must have been egregious and had the effect of denying the defendant a fair and impartial trial. *People v Lumsden*, 168 Mich App 286, 298; 423 NW2d 645 (1988).

In this case the officer testified that he heard over the radio that defendant had a warrant for his arrest. While evidence tying a defendant to other crimes is prejudicial, *People v Holly*, 129 Mich App 405, 416; 341 NW2d 823 (1983), we do not believe that the testimony in this case rose to the level of egregious error that denied defendant a fair trial. The testimony regarding the warrant was unresponsive to the line of questioning being pursued. See *Haywood*, 209 Mich App at 228 (observing that "an unresponsive, volunteered answer to a proper question is not grounds for the granting of a mistrial"). Moreover, the trial court gave the jury a curative instruction directing the jury to disregard the officer's reference to defendant's warrants. Jurors are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). The trial court's curative instruction alleviated any possible prejudice resulting from defendant from the officer's testimony. *People v Waclawski*, 286 Mich App 634, 710; 780 NW2d 321 (2009).

Affirmed.

/s/ Patrick M. Meter  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey