STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES RENARDO SMITH,

Defendant-Appellant.

UNPUBLISHED
November 22, 1996

No. 184151
LC No. 91-004656

Before: Saad, P.J., and Corrigan and R. A. Benson,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15 (7403)(2)(a)(v). We affirm.

I

Defendant first argues that the trial court erred in admitting certain testimony; we disagree. The decision to admit evidence is within the sound discretion of the trial court and is subject to review on appeal for abuse of discretion. *In re* Flury, 218 App Mich 211, 217; ___ NW2d ___ (1996). Defendant contends that his Sixth Amendment right to confront adverse witnesses was denied when the trial court admitted the following testimony into evidence, which was elicited from the investigating officer on cross-examination by defense counsel:

> Q. Then you go into the house and the only Cocaine you find is in the rear bedroom closet; am I correct?
>
> A. The only Cocaine I found. There was additional Cocaine found on the premises.

Defendant argues that if the witness did not personally discover the additional cocaine, he could only have knowledge of its existence as a result of a third-party statement and, therefore, testimony as to the existence of the additional cocaine constituted hearsay, not within any recognized exception.

* Circuit judge, sitting on the Court of Appeals by assignment.

"Hearsay" is defined as a statement, including an oral or written assertion or nonverbal conduct of a person intended to be assertive, other than one made by the declarant while testifying at the trial, offered into evidence to prove the truth of the matter asserted. MRE 801. Hearsay evidence is not admissible unless it is within a recognized exception to the prohibition against the admission of hearsay. *People v Meeboer*, 439 Mich 310, 322; 489 NW2d 621 (1992). Here, the record does not show that the witness' response was based upon any extra-judicial statement or other assertive conduct which would, if admitted into evidence, serve to defeat defendant's right to confront witnesses against him. The officer may have seen the cocaine as it was being retrieved from another room.

II

Defendant next argues that insufficient evidence was presented at trial to sustain a conviction for the crime of possession of less than twenty-five grams of cocaine. We disagree. In determining whether evidence presented at trial was sufficient to sustain a conviction we must, viewing the evidence presented in a light most favorable to the prosecution, determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

Conviction of possession of a controlled substance requires that the prosecutor prove that the defendant had actual or constructive possession of the substance. *People v Konrad*, 449 Mich 263, 271-275; 536 NW2d 517 (1995). Possession may be either actual or constructive, as well as joint or exclusive. *People v Hill*, 433 Mich 464, 470; 446 NW2d 140 (1989). Circumstantial evidence, with reasonable inferences drawn therefrom, are sufficient to establish knowing possession of a controlled substance. *People v Hellenthal*, 186 Mich App 484, 486-487; 465 NW2d 329 (1990).

Viewing the evidence in a light most favorable to the prosecution, we hold that sufficient evidence was presented to support defendant's conviction. Detroit police officers executed a search warrant at 2449 Van Dyke, Detroit, Michigan on April 10, 1995. Cocaine weighing 0.33 grams, a Michigan Consolidated payment agreement, traffic tickets, a Michigan income tax form, a default notice and a photo identification card, all bearing defendant's name and the above address, were discovered in the rear bedroom closet of the residence. Also discovered in that closet was a safe to which defendant possessed a key. Taken in the aggregate, this evidence was sufficient to establish that defendant was in knowing, constructive possession of the cocaine.

Affirmed.

/s/ Henry W. Saad
/s/ Maura D. Corrigan
/s/ Robert Benson