

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE A. BUTLER, JR.,

Defendant-Appellant.

UNPUBLISHED

December 27, 1996

No. 184025

LC No. 94-70145 FH

Before: Markey, P.J., and Michael J. Kelly and M.J. Talbot,* JJ.

PER CURIAM.

Defendant was convicted by a jury of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v). As an habitual offender, fourth offense, he was sentenced to 36 months' probation, including 365 days in jail, with credit for 2 days served. Defendant appeals as of right. We affirm.

The only issue on appeal is whether there was sufficient evidence to prove that defendant had possession of the cocaine, which may be shown by either actual or constructive possession. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). In reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in the light most favorable to the prosecution and decide whether the evidence is sufficient to justify a reasonable trier of fact in finding that the elements were proved beyond a reasonable doubt. *Id.*, 514-515.

In this case, there is contradictory evidence as to whether defendant actually possessed the cocaine: The police officer stated that he saw the cocaine on a couch when defendant lifted his hand to be handcuffed, and defendant stated that he saw the cocaine nearby but his hand was not on it. Nevertheless, there was sufficient evidence to conclude that defendant had at least constructive possession of the drug, which can be shown by knowledge of the presence of the cocaine coupled with the right to exercise control over it. *Wolfe, supra*, 520.

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

Defendant admits that he was present where the cocaine was found. Defendant was the only person in the room; he was close to, if not touching, the cocaine; drug paraphernalia was found on the couch next to him; he admits he was aware of the presence of cocaine; and he admits his intention to acquire cocaine at the residence. Further, although defendant testified that he never actually obtained possession of cocaine from the other individuals at the residence, it is the jury's duty to determine whether a witness' testimony is credible. We will not disturb the jury's finding that defendant had possession where, as shown above, there is sufficient evidence to reasonably conclude that defendant at least constructively possessed cocaine. *Wolfe, supra*, 515.

When viewed in the light most favorable to the prosecution, the evidence presented in this case is sufficient to support the jury's finding that defendant's constructive possession of the cocaine was proven beyond a reasonable doubt.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Michael J. Talbot