

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARL SIMS, a/k/a CARL SIMMS, a/k/a FREDDIE
CARTER,

Defendant-Appellant.

UNPUBLISHED

September 26, 1997

No. 191070

Kent Circuit Court

LC No. 94-002807-FH

Before: Griffin, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of possession with intent to deliver under 50 grams of a controlled substance, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and possession of a firearm during commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to consecutive terms of two years for felony-firearm and two to twenty years for the drug offense. We affirm.

Defendant's only claim on appeal is that the prosecution failed to present sufficient evidence to support his convictions. We disagree.

When reviewing the sufficiency of evidence in a criminal case, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the elements of the crime were proved beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). Proof of possession is necessary for conviction for both crimes. MCL 333.7401(1); MSA 14.15(7401)(1) states that "a person shall not manufacture, deliver, or *possess* with intent to manufacture or deliver, a controlled substance" (Emphasis added.) MCL 750.227b; MSA 28.424(2) states that a "person who carries or has in his *possession* a firearm at the time he commits or attempts to commit a felony . . . is guilty of a felony" (Emphasis added.) Defendant contends that the evidence at trial was insufficient to support the findings that he satisfied these possession elements.

“Proof of actual physical possession . . . is unnecessary for a conviction under MCL 333.7401; MSA 14.15(7401); proof of constructive possession will suffice.” *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). There are various ways to establish constructive possession. One is to prove that the defendant attempted to hide contraband when police raided. *United States v Rodriguez*, 761 F2d 1339, 1340-1341 (CA 9, 1985). “The essential question is whether the defendant had dominion or control over the controlled substance.” *Id.*

In the present case, the prosecution presented sufficient evidence of a connection between defendant and the contraband for the trier of fact to find constructive possession. During a raid of a suspected crack house, the police discovered defendant in the same room where crack cocaine was found in two plastic bags inside a crumpled brown paper bag in a trash container. Also found in the room under a couch was a loaded .44 Magnum revolver. The cocaine was at the very top of the trash, and the gun was barely hidden under the couch and located only three feet from defendant. There was further testimony that defendant admitted to living at the location and routinely sleeping in the room where he and the contraband were found. Police testified that the only other person in the apartment at the time was in a different room and so intoxicated as to be nearly unconscious. The record gives no indication that others may have been present, or that anyone escaped as police arrived.

From this evidence, a trier of fact could reasonably infer that defendant attempted to dispose of the cocaine and gun when the police arrived, thus placing the contraband in defendant’s hands and under his control. Viewed in a light most favorable to the prosecution, sufficient evidence was produced to support the trial court’s finding that defendant was in constructive possession of the cocaine and gun.

Affirmed.

/s/ Richard Allen Griffin

/s/ Myron H. Wahls

/s/ Roman S. Gribbs