STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LIONEL ANTHONY GREEN, a/k/a LIONEL ANTHONY HOLLOWAY,

Defendant-Appellant.

UNPUBLISHED
March 20, 1998

No. 203456
Crawford Circuit Court
LC No. 96-001424-FH

Before: Markey, P.J., and Griffin and Whitbeck, JJ.

PER CURIAM.

A jury convicted defendant was convicted of being a prisoner in possession of contraband (marijuana), MCL 800.281; MSA 28.1621. The trial court sentenced defendant as an habitual offender, second offense, MCL 769.10; MSA 28.1082, to sixty to ninety months' imprisonment, to be served consecutive to the sentence defendant was already serving at the time he committed the instant offense. Defendant appeals as of right. We affirm.

I

Defendant first argues that the trial court improperly admitted test results showing that the contraband at issue was in fact marijuana. Defendant maintains that the prosecution failed to lay an adequate foundation demonstrating the reliability of the test that the prosecution's expert witness used. At trial, defendant did not object to testimony regarding the methods used to identify the substance. A defendant who, at trial for marijuana possession, stipulates to the expert's qualifications and voices no objection to the expert's methods is foreclosed from raising the reliability of those methods for the first time on appeal. *People v Smith*, 58 Mich App 76, 78; 227 NW2d 233 (1975). Therefore, we decline to review this issue.

II

Defendant argues that the trial court improperly admitted the marijuana into evidence because the prosecution failed to lay a foundation showing the complete chain of custody. Defendant asserts that

the prosecution introduced insufficient testimony to show that the marijuana that the prosecution's expert tested was the actual marijuana entered into evidence because there was insufficient testimony regarding what happened to the packets once they were tested and then turned over to the police. We review a trial court's decision on whether to admit evidence for an abuse of discretion. *People v McElhaney*, 215 Mich App 269, 280; 545 NW2d 18 (1996). We have repeatedly stated that the admission of real evidence does not require a perfect chain of custody. *People v White*, 208 Mich App 126, 130; 527 NW2d 34 (1994), citing *People v Prast (On Rehearing)*, 114 Mich App 469, 490; 319 NW2d 627 (1982); *People v Stevens*, 88 Mich App 421, 424; 276 NW2d 910 (1979). It is only necessary that the prosecution lay enough of a foundation to render it reasonably probable that the original piece of evidence has not been tampered with or contaminated. *White*, *supra* at 133-134.

We conclude that the trial court did not err in finding that a solid chain of evidence was established for the packets from their original location through the analysis. The prosecution presented substantial testimony regarding the chain of custody of marijuana packets found on another prisoner to whom defendant apparently passed something as well as the packets that prison officers found in defendant's locker both before and after the chemical testing. Therefore, any deficiency in the chain of custody after testing goes to the weight of the evidence rather than its admissibility. *White*, *supra* at 130. Accordingly, the trial court did not abuse its discretion in allowing the packets of marijuana into evidence.

III

Defendant next argues that there was insufficient evidence for a reasonable jury to find all of the elements of prisoner possession of contraband, MCL 800.281(4); MSA 28.1621(4). In reviewing the sufficiency of the evidence in a criminal case, we view the evidence in the light most favorable to the prosecution and decide whether a rational trier of fact could find that the prosecution proved each essential element of the crime charged beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). Only the jury determines the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992). Also, when there is conflicting evidence, we resolve those conflicts in favor of the prosecution. *People v Terry*, 224 Mich App 447, 449; 569 NW2d 641 (1997), citing *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993).

The prosecutor may satisfy the element of possession by showing that the accused had either actual or constructive possession of the contraband. *Wolfe*, *supra* at 519. Moreover, the prosecution must show some link between the person charged with the possession offense and the contraband discovered. *People v Vaughn*, 200 Mich App 32, 36; 504 NW2d 2 (1993).

Defendant claims that the testimony linking him to the marijuana that prison officers found on another prisoner was insufficient to allow a rational jury to find him guilty of possession. However, a prison officer testified that he watched as defendant, while running, spoke with and then passed something to another prisoner, who then placed something into his pocket. The officer further testified that, following the alleged hand-off, he kept the other prisoner in sight and that, before to being taken into custody, the other prisoner did not interact with any other prisoners, nor did he place anything into

or remove anything from his pockets. Two other officers escorted this prisoner to the crew foreman's office to be strip searched. From the time of his apprehension until the strip search, he was prevented from removing anything from or placing anything into his pockets. The officer who pulled a sack from this prisoner's coat testified that he recovered two packages of "a green leafy substance." Construing the evidence in favor of the prosecution, one could reasonably infer that defendant passed marijuana to the other prisoner, who then put it into his pocket where the officers found it during the search. Accordingly, one could conclude that defendant was in actual possession of the contraband.

Defendant also claims that because his locker was not locked all the time, any one of the other inmates might well have possessed the marijuana found in defendant's locker, i.e., another inmate put the contraband in his locker. While the marijuana found in defendant's locker is merely circumstantial evidence that the marijuana belonged to defendant, circumstantial evidence and the reasonable inferences that arise from such evidence may constitute satisfactory proof of an element of a crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). Therefore, when we view the evidence in the light most favorable to the prosecution, we find that the prosecution presented sufficient evidence to support defendant's conviction.

IV

Finally, defendant argues that the trial court abused its discretion in imposing a disproportionate sentence. We disagree. We review sentencing decisions for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). A sentence that is disproportionate "to the seriousness of the circumstances surrounding the offense and the offender" can constitute an abuse of discretion. *Id*. at 636, 661 & n29. We note, however, that defendant is an habitual offender. The Michigan Supreme Court in *People v Hansford*, 454 Mich 320, 326; 562 NW2d 460 (1997), stated:

> We believe that a trial court does not abuse its discretion in giving a sentence within the statutory limits established by the Legislature when an habitual offender's underlying felony, in the context of his previous felonies, evidences that the defendant has an inability to conform his conduct to the laws of society.

The sentence in the instant case was within the limits authorized by the Legislature for an habitual offender, second offense, for a violation of MCL 800.281; MSA 28.1621, pursuant to MCL 800.285; MSA 28.1625 and MCL 769.10; MSA 28.1082. The presentencing report details defendant's substance abuse problem, indicating that defendant "has a history of substance abuse of long-standing duration which has not improved with treatment." The trial court took into account the nature of defendant's crime, defendant's extensive criminal history and his clear inability to reform. We therefore conclude that the trial court did not abuse its discretion in imposing defendant's sentence.

We affirm.

/s/ Jane E. Markey
/s/ Richard Allen Griffin
/s/ William C. Whitbeck