STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARIN LAMAR BRAGGS,

Defendant-Appellant.

UNPUBLISHED
December 15, 2000

No. 220819
Washtenaw Circuit Court
LC No. 98-010803-FH

Before: O'Connell, P.J., and Zahra and MacKenzie,* JJ.

PER CURIAM.

Defendant appeals as of right his convictions of fleeing and eluding a police officer, third degree, MCL 257.602a(3); MSA 9.2303(1), resisting and obstructing an officer, MCL 750.479; MSA 28.747, operating while license suspended or revoked, second offense, MCL 257.904; MSA 9.2604, refusing fingerprinting, MCL 28.243a; MSA 4.463(1), and possession of less than fifty grams of cocaine, MCL 333.7403(2)(a)(iv); MSA 14.15(7403)(a)(iv). The trial court sentenced defendant to one to five years' imprisonment for the fleeing and eluding conviction, one to two years' imprisonment for the resisting and obstructing conviction, one year imprisonment for the operating while license suspended or revoked conviction, ninety days' jail for the refusing fingerprinting conviction, and two to eight years' imprisonment for the cocaine possession conviction. Defendant appeals as of right. We affirm.

Defendant contends that the evidence was insufficient to support his conviction for possession of less than fifty grams of cocaine. We disagree. When reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the prosecutor established the essential elements of the crime beyond a reasonable doubt. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999).

First, defendant argues that the only evidence supporting his cocaine possession conviction was the untrustworthy testimony of two sheriff's deputies. When reviewing an appeal based on the sufficiency of evidence, this Court must not interfere with the role of the jury. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992),

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

quoting *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974). In finding defendant guilty of the possession offense, the jury apparently found the testimony of the deputies to be credible. We will not disturb the jury's determination.

Second, defendant asserts that the prosecutor failed to prove the elements of the crime. We disagree. "The offense of possession of a controlled substance requires proof that defendant had actual or constructive possession of the substance. Possession may be established by evidence that defendant exercised control or had the right to exercise control of the substance and knew it was present. Circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession." *People v Hellenthal*, 186 Mich App 484, 486-487; 465 NW2d 329 (1990) (citations omitted). Here, defendant attempted to outrun police when they tried to make a traffic stop. Two sheriff's deputies testified that they observed defendant drop a brown paper bag from his right hand. One of the deputies immediately retrieved the paper bag. The other deputy chased defendant for several blocks, never losing sight of him, and made the arrest. Both deputies were able to identify defendant at trial. The uncontroverted testimony of the Michigan State Police lab technician indicated that the white powdery substance found in the discarded paper bag was in fact cocaine and that the cocaine weighed over fifty grams. We conclude that the evidence, when viewed most favorably to the prosecutor, was sufficient to find defendant guilty of the possession offense.

Defendant next argues that the police violated his right to due process when they failed to preserve the brown paper bag so that defendant could test it for fingerprints. Again, we disagree. Initially, defendant claims that the prosecutor violated various court rules pertaining to discovery in failing to provide defendant with the brown paper bag. Defendant did not set forth these arguments in his questions presented for this Court's review. We therefore decline to address these arguments. MCR 7.212(C)(5); *Phinney v Perlmutter*, 222 Mich App 513, 564; 564 NW2d 532 (1997).

In *Arizona v Youngblood*, 488 US 51, 57; 109 S Ct 333; 102 L Ed 2d 281 (1988), the United States Supreme Court opined:

> The Due Process Clause of the Fourteenth Amendment . . . makes the good or bad faith of the State irrelevant when the State fails to disclose to the defendant material exculpatory evidence. But we think the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.

The Court was unwilling to impose "on the police an undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution." *Id*. at 58. To prevail on a due process claim, where police failed to preserve evidence, a defendant must demonstrate: "(1) that the government acted in bad faith in failing to preserve the evidence; (2) that the exculpatory value of the evidence was apparent before its destruction; and (3) that the nature of the evidence was such that the defendant would be unable to obtain comparable evidence by other reasonably available means." *United States v Jobson*, 102 F3d 214, 218 (CA 6, 1996), citing *Youngblood*, *supra* at 57-58. See also *People v Johnson*, 197 Mich App 362, 365; 494 NW2d 873 (1992). "The presence or absence of bad faith by the

police for purposes of the Due Process Clause must necessarily turn on the police's knowledge of the exculpatory value of the evidence at the time it was lost or destroyed. To establish bad faith, then a defendant must prove 'official animus' or a 'conscious effort to suppress exculpatory evidence.'" *Jobson, supra* at 218 (citations omitted).

First, our review of the record revealed no evidence that the police acted in bad faith. The testimony of both deputies indicated that they believed that retaining the brown paper bag was unnecessary because, in their experience, a crumpled worn paper bag was not a surface from which they could obtain fingerprints. Additionally, the deputies testified that they believed that testing the brown paper bag for fingerprints was unnecessary because they had both witnessed defendant drop the bag as he exited his car.

Second, the record below did not establish that the brown paper bag was exculpatory. Indeed, "[t]he government's constitutional duty to preserve evidence is limited to evidence that possesses an exculpatory value which was apparent before the evidence was destroyed." *Jobson, supra* at 219. In this case, defendant did not controvert the deputies' testimony that fingerprints could not be obtained from the paper bag. Defendant's speculation is insufficient to persuade us to conclude otherwise. *Id*. at 219; *People v Leigh*, 182 Mich App 96, 98; 451 NW2d 512 (1989). Thus, defendant's claim that the deputies violated his due process rights in not preserving the paper bag is without merit.

Affirmed.

/s/ Peter D. O'Connell
/s/ Brian K. Zahra
/s/ Barbara B. MacKenzie