

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARMAN A. HARDIMAN,

Defendant-Appellant.

UNPUBLISHED

February 6, 2001

No. 213402

Oakland Circuit Court

LC No. 97-150129-FH

Before: Fitzgerald, P.J., and Holbrook, Jr., and McDonald, JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial conviction of possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d). Defendant was sentenced to lifetime probation for the possession with intent to deliver heroin conviction, and one year probation for the possession of marijuana conviction. We reverse.

On October 22, 1996, police officers executed a search warrant at an apartment in Pontiac. Although several people were in the hallway outside the apartment, no one was in the apartment when the police entered. Police stopped defendant in the apartment's parking lot sometime during the raid. During the search, officer's found in the dining room wastebasket, eight plastic sandwich bags, each with one corner cut away. Police also searched the apartment's northwest bedroom and found in a nightstand a letter addressed to defendant at that address, six \$10 bags of heroin, a \$10 bag of marijuana, \$130 in cash, an ID card, and a loan payment book belonging to Rodney Crump. Both male and female clothing were found in the bedroom closet, including a blue denim dress that contained forty \$10 packs of heroin in the pocket. Four hundred dollars was found in a sock in a dresser drawer. Written correspondence and a telephone calling card belonging to Crump were found in a television stand. Police also found an unpostmarked letter addressed to defendant in the mailbox of the apartment.

Defendant contends that the prosecutor failed to present sufficient evidence that she possessed the heroin and marijuana found inside the apartment. We agree. When reviewing the sufficiency of the evidence in a criminal case, this Court must determine whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 478, amended 441 Mich 1201 (1992); *People v Fetterley*, 229 Mich App

511, 515; 583 NW2d 199 (1998). “Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

For both of the crimes for which defendants stands convicted, possession can be actual or constructive, and may be established by evidence showing that defendant exercised control or had the right to exercise control of the drug involved. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995); *People v Griffin*, 235 Mich App 27, 34; 597 NW2d 176 (1999); *People v Hellenthal*, 186 Mich App 484, 486; 465 NW2d 329 (1990). Possession may be either actual or constructive. *Griffin, supra* at 34. Viewing the evidence presented at trial in the light most favorable to the prosecution, we do not believe that a rational juror could find that the elements of possession were proven beyond a reasonable doubt.

The prosecutor did present evidence linking defendant to the apartment. For example, mail addressed to defendant was found both inside the apartment and outside in a mailbox. Further, defendant was found near the apartment at the time the search warrant was executed. However, we do not believe that sufficient evidence was adduced connecting defendant to the drugs themselves. No direct evidence was presented establishing that defendant was a resident in the apartment or that she had knowledge of the drugs found. No fingerprint evidence was presented placing defendant in close proximity to the drugs, nor was it established that the blue denim dress belonged to defendant. Therefore, we conclude that the prosecution failed to establish the requisite nexus between defendant and the contraband beyond a reasonable doubt. See *Wolfe, supra* at 521.

Reversed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald