STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 10, 2001
v	No. 221256 Oakland Circuit Court
GARY TERRAIL MADHI, Defendant-Appellant.	LC No. 99-164931-FH

Before: Doctoroff, P.J., and Holbrook, Jr. and Hoekstra, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession with intent to deliver less than fifty grams of heroin and possession with intent to deliver less than fifty grams of cocaine. MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). He was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to consecutive terms of two to twenty years' imprisonment. He appeals as of right. We affirm.

Pontiac police officers executed a search warrant at 295 Howard McNeal Street. After knocking and announcing their presence, the police rammed the door to the residence. Defendant, the only person in the home at the time of the raid, was found sitting on a couch. While an officer was searching a closet, defendant told the officer that he did not need to tear up his girlfriend's house and directed the officer to look for narcotics in a coat next to one he was checking. In the coat, the officer found a plastic bag containing fifty-five packets of heroin and two individual packets of heroin. The officer also found a cable television bill addressed to Gary Madhi, Jr., at 295 Howard McNeal. The supervising officer claimed that he did not know whether defendant was Gary Madhi, Jr. or Sr., and no investigation was conducted into that matter. When defendant was booked at the police station, he stated that he lived at 295 Howard McNeal.

During a search of the kitchen, officers found a plastic corner tear[1] containing thirteen rocks of suspected crack cocaine, and a razor blade with suspected cocaine residue. The officers

[1] A corner tear is made by putting narcotics in the corner of a plastic bag, twisting it up and tearing off the excess plastic.

also found three empty plastic corner tears in a cupboard and a box of plastic sandwich bags in a garbage can. At trial, an officer identified the rocks of crack cocaine as twenty dollar rocks, which the officer claimed were the most common size sold on the street. Other items recovered in the search included a .25 caliber semi-automatic handgun and a bankroll of $835.

One of the officers stated that, after he told defendant they found cocaine, defendant shook his head and said, "I know you did." After reading defendant his *Miranda*[2] rights, defendant told the officer that he wanted an attorney because "he knew he was hit because the dope was his." The officer believed that the manner in which the heroin was packaged and the quantity of heroin and cocaine found indicated that the narcotics were for sale. The officer's opinion was also supported by the presence of a gun in the house and the fact that no paraphernalia for using the narcotics was found.

Defendant first argues that the prosecution presented insufficient evidence to show that he possessed both the cocaine and the heroin. We disagree.

To determine whether sufficient evidence was presented to support a conviction, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). To establish guilt of possession with intent to deliver less than fifty grams of cocaine or heroin, the prosecution must prove that the defendant knowingly possessed the narcotics with the intent to deliver them. *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748, amended 441 Mich 1201 (1992). The prosecution need not prove that the defendant had actual physical possession of the narcotics, and constructive possession is sufficient. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995). In addition, the defendant need not have exclusive possession; possession may be joint with more than one person actually and constructively possessing the narcotics. *Id*. "The essential question is whether the defendant had dominion or control over the controlled substance." *Id*. However, a person's mere presence at the location where the narcotics are found is not sufficient to prove constructive possession, and the prosecution must present evidence showing some additional connection between the defendant and the controlled substance. *Wolfe*, *supra* at 520.

Here, the prosecution presented sufficient evidence linking defendant to the narcotics. Defendant was the only person present in the home when the police entered, the police found a bill addressed to defendant at that address, and defendant indicated that his address was the same as the house where the narcotics were found. In addition, defendant told the police where they could find the heroin, and admitted that the "dope" belonged to him. This evidence was sufficient to allow the jury to find beyond a reasonable doubt that defendant knowingly possessed both the heroin and cocaine with the intent to deliver them.

Next, defendant challenges the trial court's decision to allow the prosecution to question one of the officers regarding his motivation for testifying, claiming that the questioning was

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[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

impermissible bolstering of the officer's testimony. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

A prosecutor is not permitted to vouch for the credibility of witnesses to the effect that she has some special knowledge concerning a witness' truthfulness. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). Similarly, the prosecution cannot ask a witness to comment or provide an opinion regarding the credibility of other witnesses because credibility is a matter for consideration by the trier of fact. *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985). Moreover, in the absence of an attack on credibility, bolstering evidence is not permitted. MRE 608(a)(2); *Lukity*, *supra* at 491.

During the prosecutor's direct examination of one of the officers, the following exchange took place:

> *Q*. Okay. Do you get a—a bonus in you [sic] paychecks for a conviction in this case?
>
> *A*. No.
>
> *Q*. Do any of your officers get a bonus in their paychecks for coming in and testifying or getting a conviction in any case?
>
> *A*. No.

This testimony was allowed over defendant's objection. The prosecutor explained that she elicited the challenged testimony from the officer to show the absence of bias on the part of the police officers. However, it is apparent that she was attempting to use the evidence to boost the credibility of the officers. Defense counsel tested the officers' credibility, but presented only limited challenges by attempting to impeach two officers with their preliminary examination testimony. These challenges were minor, and defense counsel did not directly attack the officers' credibility or attempt to unveil their motivation to lie. Because the officers' testimony was not impeached by the defense, the prosecution's questioning amounted to bolstering, and the trial court abused its discretion in admitting this testimony.

Nonetheless, preserved, nonconstitutional error, such as the erroneous admission of evidence, is not grounds for reversal unless, upon consideration of the entire case, it affirmatively appears that it is more probable than not that the error was outcome determinative. *Lukity*, *supra* at 495-496. Here, the challenged questioning was a minor part of the testimony offered. The jurors had a full opportunity to assess the credibility of the police officers, and defendant offered little evidence that called the officers' credibility into question. In addition, the remainder of the testimony and evidence overwhelmingly supported the jury's verdict. Because it is unlikely that the jury's verdict would have been different had the court prevented the prosecution from bolstering the credibility of the officers, the erroneous admission of the testimony was not outcome determinative and reversal is not required.

Finally, defendant challenges the prosecutor's closing arguments in which the following statements were made:

> Ladies and gentlemen, during the pendency of this trial, you're not allowed to talk to the lawyers, you're not allowed to talk to each other, you're not allowed to talk to the Judge about what you've heard and what's been going on in the courtroom. But when this case is over, you can talk to anybody you want about this case. And if you go and you tell 50 of your closest friends the facts that they heard in this case—the facts that you heard—the fact that there were narcotics in the—in the living room closet; the facts [sic] that there were narcotics in the kitchen; the fact that there was additional packaging material on the T.V.—on the floor, on the T.V. stand; that there was a razor blade in the cupboard; that there was additional packaging material in the cupboard; that there was $8,300--$853 in a closet upstairs; that there was a gun in the living room closet; that the defendant was lying on the couch, sleeping or doing whatever when the police came in, then when they started searching the house—or as he—he might want to call it, tearing it up or running through it, that the defendant turned over and said, hey, you don't got to mess up my girl's house, I'll tell you where the dope is" [sic]; and then afterwards, when he was told that he has the right to an attorney, he says, yeah, I do need an attorney, I'm hit, the dope is mine" [sic]—if you tell 50 of your closest friends those facts, you know what they're going to say? That guy was dealing dope—

After defendant objected, the trial court instructed the prosecutor to rephrase her argument and not continue with that particular argument. The prosecutor continued:

> If you discuss it with your—with your friends or if you discuss it with each other, you're going to go back in that room and you're going to say he was selling dope. And you know why? Because that is what's reasonable and that's my verdict. Not what's ridiculous—it's what's reasonable.

Defendant argues that these remarks were not supported by the evidence and constituted an improper plea to the jurors to do their civic duty. We disagree.

When reviewing a prosecutor's comments, the remarks must be read as a whole and considered in light of the relationship or lack of relationship they bear to the evidence admitted at trial. *Bahoda, supra* at 267 n 7. Prosecutors are given great latitude with regard to their arguments and conduct and are free to argue the evidence and all reasonable inferences drawn from the evidence as it relates to their theory of the case. *Id* at 282. However, they "should not resort to civic duty arguments that appeal to the fears and prejudices of the jury." *Id*. Here, it is apparent that the prosecutor's remarks were intended as a comment on the strength of the prosecutor's case, and did not improperly present a civic duty argument.

Defendant also claims that the argument made assertions based on evidence not contained in the record. We disagree. The prosecutor was arguing the evidence and asserting that it

was sufficiently strong to find defendant guilty. The facts referred to by the prosecutor are all contained in the record, and there was nothing improper about the closing remarks in this respect.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Joel P. Hoekstra