

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT MICHAEL SCHNEIDT,

Defendant-Appellant.

UNPUBLISHED

June 25, 2002

No. 231389

Oakland Circuit Court

LC No. 98-163540-FH

Before: Holbrook, Jr., P.J., and Gage and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of possession of less than twenty-five grams of marijuana, MCL 333.7403(2)(a)(v). Defendant was sentenced to one-year probation, costs and fees. We affirm.

Defendant's sole argument on appeal is that there was insufficient evidence adduced at trial to support a finding that he possessed the marijuana that was found in his home. We disagree. "When reviewing a claim regarding the sufficiency of the evidence, this Court examines the evidence in a light most favorable to the prosecution to determine if a rational jury could find that the essential elements of the offense were proved beyond a reasonable doubt." *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

In the evening of September 23, 1998, eight officers from the Madison Heights Police Department executed a search warrant for drugs and narcotics at defendant's residence. Defendant's wife allowed the officers to enter the home. Defendant's wife and three children were eating in the living room. Three officers proceeded to the master bedroom, where they encountered defendant and another man. Within moments, one of the officers saw, in plain view, what he believed to be a marijuana cigarette on a black plastic tray next to the TV. Inside the black tray, the officers also discovered the residue of marijuana cigarettes and other marijuana paraphernalia. Defendant testified that the marijuana cigarette belonged to the other man.¹ The other man also produced a small baggy the police suspected also contained marijuana. Both defendant and the police agree that defendant told them where to look in the bedroom for an additional approximately eight ounces of marijuana. Their testimony differs

¹ This other man had died as of trial.

only in that one of the officers testified that defendant pointed them directly to the headboard of the only bed in the room, whereas defendant claimed that he identified several places where it might be because he was not sure of its exact location. Defendant's wife testified that the drugs found in the bedroom belonged to her.

There was no evidence adduced at trial that defendant was in actual possession of the marijuana when the police entered the bedroom. However, "[a] person need not have actual physical possession of a controlled substance to be guilty of possessing it. Possession may be either actual or constructive." *People v Wolfe*, 440 Mich 508, 520-521; 489 NW2d 748 (1992). We conclude that viewed in a light most favorable to the prosecution, the evidence introduced at trial was sufficient to establish defendant's constructive possession over the marijuana. The marijuana was found in defendant's home and in the bedroom he admits he shared with his wife. The marijuana cigarette was in plain view of the bed where defendant was sitting. An additional approximately eight ounces of marijuana was located in the headboard of the bed, where defendant had indicated it would be found. See *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995). We disagree with defendant that this evidence established only an association with the drug. *People v Davenport*, 39 Mich App 252, 257; 197 NW2d 521 (1991).

Defendant also argues that the prosecution failed in disproving every innocent theory that might accord with the facts. Specifically, defendant asserts that the evidence shows that either the other man or defendant's wife actually possessed or owned the marijuana. This argument fails for two reasons. First and foremost, the prosecution "is not obligated to disprove every reasonable theory consistent with innocence to discharge its responsibility; it need only convince the jury 'in the face of whatever contradictory evidence the defendant may provide.'" *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000), quoting *People v Konrad*, 449 Mich 263, 273, n 6; 536 NW2d 517 (1995). Second, "possession may be found even when the defendant is not the owner of recovered narcotics. Moreover, possession may be joint, with more than one person actually or constructively possessing a controlled substance." *Wolfe, supra* at 521.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Hilda R. Gage
/s/ Patrick M. Meter