

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE MCCREARY,

Defendant-Appellant.

UNPUBLISHED
December 13, 2002

No. 235911
Wayne Circuit Court
LC No. 00-012044

Before: Bandstra, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction for possession with intent to deliver marijuana, MCL 333.7401(2)(d)(3). Defendant was sentenced to seventeen months to four years in prison. We affirm.

Defendant argues on appeal that the prosecution failed to present sufficient evidence to support his conviction. We disagree.

When reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution. *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993). “The question is whether the evidence presented at trial, together with all reasonable inferences therefrom, was sufficient to allow a rational trier of fact to find each element of the crime proven beyond a reasonable doubt.” *Id.*

In order to support a conviction for possession with intent to deliver marijuana, the prosecution must prove three elements: (1) that the recovered substance is marijuana, (2) that the defendant was not authorized to possess the marijuana, and (3) that the defendant knowingly possessed the marijuana with the intent to deliver. *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748, amended 441 Mich 1201 (1992). Defendant does not challenge the first two elements, but argues that the prosecution failed to prove beyond a reasonable doubt that he possessed the marijuana with the intent to deliver.

“Possession with intent to deliver can be established by circumstantial evidence and reasonable inferences arising from that evidence, just as it can be established by direct evidence.” *Wolfe, supra*, 440 Mich 526. A person need not have physical possession of a controlled substance to be found guilty of possessing it. *Id.* at 519-520. “Possession may be either actual or constructive, and may be joint as well as exclusive.” *People v Fetterley*, 229 Mich App 511,

515; 583 NW2d 199 (1998). The essential question is whether the defendant had dominion or control over the controlled substance. *People v Konrad*, 449 Mich 263, 271; 536 NW2d 517 (1995).

Viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence to establish beyond a reasonable doubt that defendant possessed the marijuana. Two police officers testified that defendant was sitting at a table with a large bag of marijuana in front of him. One officer testified that defendant's hand was inside the bag as if defendant was taking marijuana out of it. The evidence showed that neither of the other two adults in the house were anywhere near the table. Lastly, defendant admitted that he was in possession of the marijuana. This evidence is sufficient to establish that defendant possessed the marijuana.

Viewing the evidence in a light most favorable to the prosecution, there is also sufficient evidence to establish that defendant intended to deliver the marijuana. Actual delivery is not required to prove a defendant's intent to deliver. *Wolfe, supra*, 440 Mich 524. "Intent to deliver can be inferred from the quantity of the controlled substance in the defendant's possession and from the way in which the controlled substance is packaged." *Fetterley, supra*, 229 Mich App 518.

The evidence showed that next to the large bag, which contained nearly a pound of marijuana, were many smaller baggies. An officer testified that the size of the baggies indicated that defendant was breaking down the larger bag into the smaller bags. The officer testified that the baggies appeared to be "dime bags," which are \$10 bags of marijuana. Defendant also admitted to the police that the marijuana was his and that he sells marijuana to help him pay the bills. Given the large amount of marijuana found in defendant's possession, the number of smaller baggies found in defendant's possession, and defendant's statement to the police, the prosecution presented sufficient evidence to establish beyond a reasonable doubt that defendant possessed marijuana with the intent to deliver.

Affirmed.

/s/ Richard A. Bandstra

/s/ Brian K. Zahra

/s/ Patrick M. Meter