STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROGER LOUIS WHITE,

Defendant-Appellant.

UNPUBLISHED
December 23, 2003

No. 241082
Oakland Circuit Court
LC No. 2000-175558-FH

Before: Wilder, P.J., and Griffin and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for possession with intent to deliver cocaine, MCL 333.7401(2)(a)(iii), and possession of marijuana, MCL 333.7403(2)(d). Defendant was sentenced to ten to twenty years in prison for the possession with intent to deliver cocaine conviction, and ninety-six days in jail for the possession of marijuana conviction. We affirm.

Defendant first argues that the trial court erred in not specifically instructing the jury that possession with intent to deliver is a specific intent crime. However, because defendant expressed his satisfaction with the jury instructions in the lower court, defendant has waived this issue on appeal. *People v Carter*, 462 Mich 206; 612 NW2d 144 (2000).

Waiver has been defined as "the intentional relinquishment or abandonment of a known right." *Carter*, *supra* at 215. It differs from forfeiture, which has been explained as the failure to timely assert a right. *Id.* "One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error." *Id.*, citing *United States v Griffin*, 84 F3d 912, 924 (CA 7, 1996).

Defense counsel specifically stated, "We've gone through the jury instructions. We agree on all except one, which is CJI 2d, 4.4, flight, concealment, escape or attempt to escape." Because defense counsel expressed his satisfaction with the jury instructions on the record, this issue has been waived on appeal. *Id.* at 215. Furthermore, a trial court is not required to use the phrase "specific intent" in an instruction to the jury. *People v Perry*, 119 Mich App 207, 214; 326 NW2d 451 (1982). In the present case, the trial court carefully explained the elements of possession with intent to deliver cocaine with clarity and precision. The instructions, when reviewed as a whole, did not mislead the jury and were adequate to protect defendant's rights.

Next, defendant argues that the evidence presented at trial was insufficient to convict him of possession with intent to deliver cocaine and possession of marijuana. We disagree.

In order to obtain a conviction for possession with intent to deliver between 50 and 225 grams of cocaine, the prosecution must prove that defendant knowingly possessed a controlled substance, that defendant intended to deliver the substance to someone else, that the substance possessed was cocaine and defendant knew it was cocaine, and that the substance was in a mixture weighing between 50 and 225 grams. *People v Wolfe*, 440 Mich 508, 516-517; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). In order to obtain a conviction for possession of marijuana, the prosecution must prove that defendant possessed a controlled substance, that the controlled substance was marijuana, and that defendant knew he was possessing marijuana. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

A person need not have actual physical possession of a controlled substance to be guilty of possessing it. *Wolfe, supra* at 519-520. Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband. *Id.* at 521. Evidence that defendant had the right to exercise control over the narcotics and knew that they were present is sufficient to establish constructive possession. *Id.* at 520. Likewise, possession may be found even when the defendant is not the owner of the recovered narcotics. *Id.* at 520-521. Moreover, possession may be joint, with more than one person actually or constructively possessing the controlled substance. *Id.* at 520.

"In reviewing whether there was sufficient evidence to support a conviction, . . . we view the evidence in a light most favorable to the prosecution to decide whether any rational fact-finder could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Knowles*, 256 Mich App 53, 58; 662 NW2d 824 (2003), citing *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

In the present case, there was no direct evidence that defendant actually possessed the cocaine or marijuana. Rather, the evidence produced at trial established that he constructively possessed the narcotics, i.e., he had the right to exercise control of the narcotics and knew that they were present.

The ultimate question on review is whether, viewing the evidence in a light most favorable to the prosecution, the evidence established beyond a reasonable doubt sufficient connection between defendant and the contraband to support the inference that defendant exercised dominion and control over it. *Wolfe, supra* at 521. We conclude that there is a sufficient nexus between defendant and the contraband to support the inference that defendant had control over it. Defendant's name was on the lease of the apartment where the cocaine and marijuana were located. Defendant's girlfriend testified that defendant lived with her at the apartment at the time of the search. Correspondence addressed to defendant and defendant's state identification card were located in the master bedroom, where most of the narcotics were also located. Defendant's clothes were hanging in the same closet where the duffle bag of marijuana, the cocaine and crack-cocaine, and the $1,500 were found. Defendant's girlfriend testified that she did not sleep in the master bedroom where the narcotics were located, and that she did not use the bathroom off of the master bedroom, where ends of marijuana cigarettes and scales containing cocaine residue were located. Defendant stayed at the apartment during the day to watch his children while his girlfriend was at work. Defendant's girlfriend testified that

defendant did not have a job and has never had a job. She also testified that she did not bring the drugs into the house and she was unaware of the drug proceeds found in a pair of her old jeans. The resident manager of the apartment complex testified to seeing defendant at the complex on a daily basis. He also testified that defendant had recently requested new carpet for the apartment, which leads to the inference that defendant was living at the apartment when the search warrant was executed. Based on the above evidence, a rational jury could logically have inferred from all the circumstances that beyond a reasonable doubt defendant had the right to exercise control over the narcotics and knew that they were present.

Finally, defendant asserts on appeal that the trial court erred in failing to instruct the jury regarding the proper use and effect of a prior inconsistent statement made by defendant's girlfriend. Again, because defendant expressed his satisfaction with the jury instructions in the lower court, defendant has also waived this issue on appeal. *Carter, supra* at 215. Moreover, defendant fails to specifically identify or argue what the alleged prior inconsistent statement was or when it was made. In this regard, "[i]t is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims . . . ." *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Therefore, we consider the issue abandoned. *People v Sowders*, 164 Mich App 36, 49; 417 NW2d 78 (1987).

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard Allen Griffin
/s/ Jessica R. Cooper