

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERMAINE KENNETH COLE,

Defendant-Appellant.

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UNPUBLISHED

August 4, 2005

No. 253116

Oakland Circuit Court

LC No. 03-191664-FH

Before: Borrello, P.J., and Bandstra and Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession with intent to deliver less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv), and possession of marijuana, MCL 333.7403(2)(d). Defendant appeals as of right, challenging only the cocaine conviction. We affirm.

On July 25, 2003, police officers executed a search warrant at a house in Pontiac. Defendant and his wife, along with two other adults, and three juveniles were found in the house at that time. In addition to defendant's wife's testimony stating that she and defendant rented the house, officers found Michigan identification for defendant at the house and a wallet belonging to him in the master bedroom. During the search, police officers found a \$20 rock of crack cocaine in the master bedroom, in a dresser drawer that belonged to defendant. A larger quantity of cocaine, .77 grams, was found on a phone connection box outside the backdoor of the house, and a third amount of cocaine was found in the living room of the house. Officers also found a scale and razor blades, one of which had a white powdery substance on it. Officers did not, however, locate any drug paraphernalia associated with the personal use of cocaine.

When reviewing a challenge to the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether there was sufficient evidence for a rational trier of fact to find the defendant guilty beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002). Neither physical possession nor actual delivery is required to find that there was possession with an intent to deliver. *Id.* at 421-422. "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." *People v Wolfe*, 440 Mich 508, 526; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Possession can be either actual or constructive. *Id.* at 520. Further, “possession may be found even when the defendant is not the owner of recovered narcotics.” *Id.* Constructive possession exists when the defendant has the right to exercise control over the contraband and has knowledge of their presence. *Id.* “[C]onstructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband.” *Id.* at 521. Intent to deliver can also exist based on a totality of the circumstances without the need to show actual delivery. *Id.* at 524. “Intent to deliver has been inferred from the quantity of narcotics in a defendant’s possession, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest.” *Id.*

In the instant case, the evidence showed that defendant rented a home and had control of the house where cocaine was found in three different places, including his dresser drawer in the master bedroom. Circumstantial evidence suggested that the cocaine was not to be used at that house, but rather was part of an intent to traffic or deliver the drugs. Those circumstances included evidence that the amount of cocaine found was greater than what a typical user would generally purchase. Additionally a scale, which is an item commonly used for drug trafficking, was also found in the house along with razor blades, one of which had a white powdery substance on it. There was also no paraphernalia associated with the personal use of crack cocaine found in the search. When viewed in the light most favorable to the prosecution, there was sufficient evidence for a rational jury to find defendant guilty beyond a reasonable doubt of possession with intent to deliver less than fifty grams of cocaine.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Richard A. Bandstra  
/s/ Kirsten Frank Kelly