

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE A. KIRKLAND,

Defendant-Appellant.

UNPUBLISHED

August 16, 2005

No. 253686

Wayne Circuit Court

LC No. 03-009084-02

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant George Kirkland appeals as of right his bench convictions of possession with intent to deliver marijuana¹ and possession of a firearm during the commission of a felony.² The trial court sentenced Kirkland to four days in jail for possession with intent to deliver marijuana, with credit for four days served, and to two years in prison for felony-firearm. We affirm. We decide this appeal without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

The police executed a search warrant at a residence. The first officer to enter the house ordered several people, including Kirkland, to lie on the floor. The officer testified that he saw Kirkland slide a handgun across the floor and into a rear bedroom. The officer searched Kirkland's person and found a plastic bag containing eleven plastic zippered bags of marijuana, two knotted bags of marijuana, and one bulk bag of marijuana.³ Kirkland testified that that he was a visitor at the residence, and denied that he possessed a gun or marijuana.

II. Sufficiency Of The Evidence

A. Standard Of Review

We review de novo challenges to the sufficiency of the evidence, taking the evidence in the light most favorable to the prosecutor and determining whether a rational trier of fact could

¹ MCL 333.7401(2)(d)(iii).

² MCL 750.227b.

³ The parties stipulated that the marijuana found on Kirkland weighed 46.39 grams.

find that the essential elements of the crime were proven beyond a reasonable doubt.⁴ We review the trial court's findings of fact in a bench trial for clear error, giving consideration "to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it."⁵

B. Possession Of A Controlled Substance

Kirkland argues that insufficient evidence was produced to support his conviction for possessing a controlled substance. Possession of a controlled substance exists when a defendant has dominion or control over the substance with knowledge of its possession or character.⁶ Possession of a controlled substance may be actual or constructive.⁷ "The essential question is whether the defendant had dominion or control over the controlled substance."⁸ The fact that a defendant happened to be present where drugs were found is insufficient; the prosecutor must establish "some additional link between the defendant and the contraband."⁹ "[C]ircumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession."¹⁰ Actual delivery of a controlled substance is not necessary to prove intent to deliver.¹¹ Intent to deliver can be inferred from all the facts and circumstances, including the amount of narcotics involved and the way in which they are packaged. Minimal circumstantial evidence is sufficient to prove intent to deliver.¹²

In this case, Kirkland was not merely present in a house where drugs were discovered; a police officer found marijuana in Kirkland's pants pocket. A portion of the marijuana was in a bulk package, and another portion had been divided into individual packages. This evidence, which the trial court was entitled to accept,¹³ supported an inference that Kirkland intended to deliver the marijuana to other people.¹⁴ The evidence that marijuana was discovered on Kirkland's person after he was observed discarding the gun supported an inference that Kirkland

⁴ *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

⁵ MCR 2.613(C); see also *People v Peerenboom*, 224 Mich App 195, 198; 568 NW2d 153 (1997).

⁶ *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000).

⁷ *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *People v Wolfe*, 440 Mich 508, 524; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

¹² *Id.*; *Fetterley*, *supra* at 517-518.

¹³ *See id.*

¹⁴ *Wolfe*, *supra* at 524; *Fetterley*, *supra* at 517-518. Kirkland was not charged with possession with intent to deliver the marijuana found elsewhere in the residence; therefore, the parties' discussions of evidence relating to that marijuana are irrelevant to the issues raised in this appeal.

possessed the gun at the same time he possessed the marijuana.¹⁵ Viewing the evidence in a light most favorable to the prosecution, we conclude that there was sufficient evidence to support Kirkland's conviction.

C. Felony-Firearm

Kirkland argues that the prosecutor also provided insufficient evidence to support his conviction of felony-firearm. The elements of felony-firearm are: (1) the possession of a firearm; (2) during the commission of, or the attempt to commit, a felony.¹⁶ A person has "possession" of a firearm if the firearm is accessible and available during the commission of or the attempt to commit a felony.¹⁷

Here, a police officer testified that he saw Kirkland use his hand to slide a gun across the floor into a bedroom. Kirkland denied possessing a gun; however, the trial court, sitting as the trier of fact, was entitled to accept the officer's testimony as credible and to reject Kirkland's testimony.¹⁸ The evidence, viewed in a light most favorable to the prosecution, was sufficient to support Kirkland's convictions.¹⁹

Affirmed.

/s/ William C. Whitbeck

/s/ David H. Sawyer

/s/ E. Thomas Fitzgerald

¹⁵ See *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990); *People v Williams (After Remand)*, 198 Mich App 537, 541; 499 NW2d 404 (1993).

¹⁶ MCL 750.227b.

¹⁷ See *Williams*, *supra*.

¹⁸ *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989).

¹⁹ *Johnson*, *supra* at 723; *Herndon*, *supra* at 415.