

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LONNIE LONELL PATRICK BURRIES,

Defendant-Appellant.

UNPUBLISHED

November 16, 2006

No. 260905

St. Clair Circuit Court

LC No. 04-002071-FH

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of one count of possession with intent to deliver less than 50 grams of cocaine, and one count of possession with intent to deliver less than 50 grams of heroin, MCL 333.7401(2)(a)(iv). Defendant was sentenced as a second offense habitual offender, MCL 769.10, to concurrent terms of 2 to 30 years in prison, to be served consecutive to a term of imprisonment for armed robbery for which he was on parole at the time of his arrest for the instant offenses. We affirm. We decide this appeal without oral argument under MCR 7.214(E).

I. FACTS

On July 21, 2004, officers from the Drug Task Force of the St. Clair County Sheriff's Department, assisted by officers from the cities of Marysville and Port Huron, executed a search warrant on room 207 of a Super 8 Motel located in Marysville. The officers found lottery slips lying on a table inside the room, some of which were intact and some of which had been ripped or cut into pieces. They also found a plastic trash bag with several smaller bags inside of it, which contained what one officer believed to be crack cocaine, heroin, and marijuana, as well as additional lottery slips, a digital scale, and two bags of sandwich baggies. The officers also found a crack pipe and a microwave plate with heroin residue on it.

Subsequently, the officers approached a van that had been under surveillance and that had entered the motel parking lot. When the van left the lot, the officers gave chase, eventually stopping the van and arresting the three men found inside. Defendant was one of these men. The officers searched the van, with the assistance of a police dog, recovering from the van's headliner a quantity of crack cocaine and several "bindles" of heroin that were packaged in lottery slips.

II. SUFFICIENCY OF THE EVIDENCE

A. Standard of Review

Defendant argues that his convictions are not supported by sufficient evidence. Specifically, defendant argues that plaintiff failed to prove that he knowingly possessed a controlled substance and that he intended to deliver the substance to someone else. We disagree. We review de novo challenges to the sufficiency of the evidence, viewing the evidence in the light most favorable to the prosecution, and determining whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).

B. Analysis

Possession of a controlled substance may be actual or constructive. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748, amended 441 Mich 1201 (1992). Moreover, “possession may be found even when the defendant is not the owner of recovered narcotics.” *Id.* To show that a defendant constructively possessed narcotics, however, the prosecution needs to show that the defendant “had the right to exercise control of the [narcotics] and knew that [they were] present.” *Id.*, citing *People v Germaine*, 234 Mich 623, 627; 208 NW 705 (1926). Possession can be established by circumstantial evidence and reasonable inferences arising from the evidence. *Id.* at 526.

Defendant was found in a van that had been named in a search warrant pursuant to an investigation of a Detroit to Port Huron drug ring. Defendant was seated closest in proximity to where the drugs were concealed in the van. Indeed, he was the only person in the van who could have accessed the drugs. And defendant’s fingerprint was found on a lottery slip in the motel room—the same material that was used to package the “bindles” of heroin recovered from the van. When viewed in the light most favorable to the prosecution, we conclude that there was sufficient evidence to support that defendant possessed the cocaine and heroin found in the van.

“Delivery” is defined as “the actual, constructive, or attempted transfer from 1 person to another of a controlled substance, whether or not there is an agency relationship.” MCL 333.7105(1). As with possession, proof of actual delivery of narcotics need not be found in order to prove intent to deliver. *Wolfe, supra* at 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.” *People v Fetterley*, 229 Mich App 511, 518; 583 NW2d 199 (1998). Here, the officers recovered large quantities of cocaine and heroin—amounts not consistent with personal use—and the drugs were packaged for easy delivery. Therefore, we conclude that there was sufficient evidence to show that defendant intended to deliver the cocaine and heroin found in the van.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette