

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANK RAPHAEL ADAMS,

Defendant-Appellant.

UNPUBLISHED

September 18, 2007

No. 270103

Monroe Circuit Court

LC No. 05-034513-FH

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of possession of marijuana, MCL 333.7403(2)(d), and possession of methamphetamine, MCL 333.7403(2)(b)(i). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the evidence was insufficient to support his convictions. We disagree. A claim that evidence at trial was insufficient to support a conviction presents an issue of law we review de novo. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). We must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found all of the elements of the offense were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), mod 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences therefrom may be sufficient for a rational trier of fact to find all of the elements of an offense beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

In determining the sufficiency of the evidence, it is the role of the trier of fact to draw reasonable inferences from the evidence to determine if the elements of each conviction are met. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Indeed, this Court is required to review the sufficiency of the evidence with deference by making all reasonable inferences and resolving credibility conflicts in favor of the jury verdict. *Wolfe, supra* at 514-515. The prosecution does not need to negate every reasonable theory of innocence, but only prove its own theory beyond a reasonable doubt. *Nowack, supra* at 400.

Either actual or constructive possession is sufficient to be guilty of possessing contraband. *Wolfe, supra* at 519-520. Constructive possession, which may be sole or joint, is the right to exercise control over the drug coupled with knowledge of its presence. *Id.* at 520.

Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the controlled substance. *Id.* at 521.

We find sufficient evidence existed to support defendant's convictions. Defendant was found in a vehicle where the marijuana and methamphetamine were found under his seat. Defendant was making "furtive gestures," appeared nervous, was perspiring despite the cold temperature, and appeared "as if he was reaching down" during a traffic stop despite being seated very low in his seat. From this, it is reasonable to infer that defendant had dominion or control over the controlled substances.

Defendant claims that the contraband was not his, but rather, belonged to the vehicle's owner, John Hayes. But possession does not need to be exclusive. *Wolfe, supra* at 519-520. When the "totality of the circumstances" is examined, the evidence established a "sufficient nexus" between defendant and the contraband. In light of this, sufficient evidence supported defendant's convictions.

Defendant also argues that the verdict was against the great weight of the evidence. We disagree. Because defendant did not raise this issue in a motion for new trial, our review is limited to plain error affecting defendant's substantial rights. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). A verdict is against the great weight of the evidence when the evidence preponderates so heavily against it that a miscarriage of justice would occur to permit the verdict to stand. *Id.* at 218-219.

To determine whether the verdict is against the great weight of the evidence, this Court views the whole body of proofs. *People v Lemmon*, 456 Mich 625, 638-639, 642; 576 NW2d 129 (1998). Generally, the Court must leave credibility determinations to the jury. *Id.* at 642-643. When testimony is impeached, the Court must defer to the jury's determination unless the testimony is deprived of all probative value by directly contradictory testimony or so contradicted by indisputable physical facts that it defies physical realities. *Id.* at 645-646.

Defendant argues the version of events testified to by Hayes was inconsistent with defendant's and their friend, Nikole Ward's, version of events. These inconsistencies center on whether defendant and Hayes met Ward and Michelle¹ at the bar, and whether Ward and Michelle were also in Hayes's car with defendant. But the discrepancies did not impeach the evidence supporting defendant's conviction to the point where the jury could not believe it. *Id.* It is for the jury to resolve witnesses diametrically opposed versions of the events, not the court. *Id.* at 646-647. The verdict was not against the great weight of the evidence.

We affirm.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder

¹ The record does not indicate a last name for Michelle.