

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRELL EUGENE WALKER,

Defendant-Appellant.

UNPUBLISHED

October 22, 2009

No. 286553

Wayne Circuit Court

LC No. 08-001004-FH

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for possession of methamphetamine/Ecstasy, MCL 333.7403(2)(b)(i). Defendant was sentenced to eighteen months to ten years' imprisonment. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole issue on appeal is that there was insufficient evidence to support his conviction of possession of methamphetamine/Ecstasy, MCL 333.7403(2)(b)(i).¹ We disagree. When reviewing a claim of insufficient evidence, this Court reviews the record de novo in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *In re Contempt of Henry*, 282 Mich App 656, 677; 765 NW2d 44 (2009). In reviewing the sufficiency of the evidence, this Court "must not interfere with the jury's role as the sole judge of the facts." *People v Meshell*, 265 Mich App 616, 619; 696 NW2d 754 (2005).

Defendant argues that the prosecutor failed to present legally sufficient evidence to support his conviction of possession of methamphetamine/Ecstasy beyond a reasonable doubt. Defendant claims that the fact that defendant did not own the vehicle and defendant was the passenger most of the night proves that he did not have knowledge of the drugs within the vehicle. No fingerprints were found on the bag. As such, defendant argues that his mere

¹ Defendant also argued there is insufficient evidence to support his conviction on an aiding and abetting theory. However, this argument is misplaced as defendant was not charged with, nor was the jury instructed, on an aiding and abetting theory.

proximity to where the drugs were found is not sufficient to prove actual or constructive possession. We disagree.

To establish possession, the prosecution must establish: (1) dominion or right of control over the controlled substance and (2) knowledge of the controlled substance's presence and character. *Id.* at 621. Possession may be either actual or constructive, and it may be joint or exclusive. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The defendant's mere presence where the controlled substance is found is not sufficient to establish possession. There must be an additional connection between the defendant and the controlled substance. *Id.* at 520.

Possession may be proven by circumstantial evidence, and the jury may draw reasonable inferences from the evidence. *People v Nunez*, 242 Mich App 610, 615-616; 619 NW2d 550 (2000). There are five factors that can assist the jury in making its determination: (1) the accessibility or proximity of the illegal item to the defendant; (2) the defendant's awareness that the illegal item was present; (3) the defendant's possession of items that connect him to the illegal item; (4) the defendant's ownership or operation of the vehicle or dwelling place; and (5) the length of time during which the defendant drove or occupied the vehicle or dwelling place. *People v Butler*, 413 Mich 377, 390, n 11; 319 NW2d 540 (1982).

In this case, in looking at the evidence in the light most favorable to the prosecution and in determining whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt, the evidence is sufficient to convict defendant of possession of methamphetamine/Ecstasy. The totality of the circumstances creates a sufficient nexus between defendant and the methamphetamine/Ecstasy. Defendant acknowledged his presence in the vehicle for approximately one and a half hours, from 9:30 p.m. until 11:00 p.m. prior to being pulled over. Additionally, defendant was seen lifting his arms toward the driver's side sun visor while he was in the driver's seat as the police were approaching the vehicle. Soon thereafter, the police found the methamphetamine/Ecstasy when it fell from the driver's side sun visor onto the driver's side seat. A rational jury could infer from defendant's driving of the vehicle, his movements in the vehicle, his accessibility to the drugs and his proximity to them that defendant knew of the presence of methamphetamine/Ecstasy and/or that defendant had full access to the methamphetamine/Ecstasy while in the vehicle. "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Here, a reasonable jury would be able to conclude that defendant possessed the methamphetamine/Ecstasy.

Affirmed.

/s/ Karen M. Fort Hood

/s/ David H. Sawyer

/s/ Pat M. Donofrio