

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON MICHAEL NICHOLS,

Defendant-Appellant.

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UNPUBLISHED  
December 12, 2013

No. 311764  
Montcalm Circuit Court  
LC No. 2012-015941-FH

Before: SAWYER, P.J., and MARKEY and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for possession of marijuana, second offense, MCL 333.7403(2)(d); MCL 333.7413(2), and one count of maintaining a drug house, MCL 333.7405(1)(d). The trial court sentenced defendant as an habitual offender, second offense, MCL 769.10, to concurrent sentences of 13 months to 3 years for the offenses. We affirm.

On August 14, 2011, the Central Michigan Enforcement Team (CMET) began a drug investigation centered on drug activity in room 26 of the Flat River Inn and Suites in Greenville, Michigan. Officers witnessed two separate individuals on different occasions arrive at the room and leave after only one or two minutes. The officers obtained a search warrant and entered the motel room. Two individuals, Carrie Ross and Shane Zoerman, were in the room, along with a variety of drug paraphernalia used for the sale and transportation of drugs and about \$1,300. Officers uncovered a backpack containing 70.8 grams of marijuana and defendant's Michigan Bridge Card and possibly his voter registration card. Officers also discovered the room receipt showing that defendant reserved and purchased the room and a shoebox full of mail, including a recent hospital bill addressed to defendant.

Zoerman testified that defendant reserved the motel room. He also testified that the marijuana found in the room belonged to him, that defendant did not live in the room but only kept his clothes there and visited often, and that all of the drug paraphernalia was Zoerman's. Ross testified that she was a recovering heroin addict and that she bought heroin from defendant on at least one occasion while staying in the motel room.

First, defendant challenges the sufficiency of the evidence to convict him of possession of marijuana. Sufficiency of the evidence claims are reviewed de novo. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). This Court views the evidence in a light most

favorable to the prosecution to determine whether a reasonable juror could find that the prosecution proved the essential elements of the charged offense beyond a reasonable doubt. *People v Jackson*, 292 Mich App 583, 587; 808 NW2d 541 (2011). This Court draws all reasonable inferences and makes credibility choices in support of the jury's verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

“A person shall not knowingly or intentionally possess a controlled substance[.]” MCL 333.7403(1). “Actual or constructive possession is one of the elements which must be proven in a prosecution for possession of a controlled substance.” *People v Ridgeway*, 74 Mich App 306, 315-316; 253 NW2d 743 (1977). “Constructive possession, which may be sole or joint, is the right to exercise control over the drug coupled with knowledge of its presence.” *People v Cohen*, 294 Mich App 70, 76; 816 NW2d 474 (2011). “Constructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the controlled substance.” *Id.* at 76-77 (citation omitted). Circumstantial evidence and reasonable inferences may provide satisfactory proof of possession. *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000).

In the instant case, a reasonable juror could find that the prosecution proved that defendant constructively possessed the marijuana beyond a reasonable doubt. First, the motel owner testified that defendant reserved and paid for the motel room and the room reservation agreement on file with the motel contained defendant's signature. Second, the officers found the room receipt in the room and it was addressed to defendant. Third, the officers found defendant's Bridge Card in the backpack with the 70.8 grams of marijuana. There was also testimony that defendant's voter registration card was found in the same backpack. Further, the officers found a hospital bill addressed to defendant in the motel room. Fourth, Zoerman and Ross testified that defendant visited the room. Viewing this evidence in a light most favorable to the prosecution, *Jackson*, 292 Mich App at 587, a reasonable juror could find that the prosecution proved beyond a reasonable doubt that defendant had a right to exercise control over the marijuana and had knowledge of its presence, *Cohen*, 294 Mich App at 76. Defendant claims that the presence of multiple third parties in the room means that he did not have exclusive control of the marijuana and undermines a finding of constructive possession. However, as already stated, possession may be joint or exclusive. *Cohen*, 294 Mich App at 76.

Second, defendant argues that there was insufficient evidence to sustain his conviction for maintaining a drug house because he did not control the premises, he did not have knowledge of illegal conduct and intend for it to occur, and there was no continuity of conduct at the motel room. MCL 333.7405(1)(d) provides:

A person . . . [s]hall not knowingly keep or maintain a . . . dwelling, building, . . . or other structure or place, that is frequented by persons using controlled substances in violation of this article for the purpose of using controlled substances, or that is used for keeping or selling controlled substances in violation of this article.

“Black's Law Dictionary (6th ed) defines ‘knowingly’ as: ‘With knowledge, consciously; intelligently, willfully; *intentionally.*’” *People v Gould*, 225 Mich App 79, 84; 570 NW2d 140 (1997) (emphasis in original). “[A] person may be deemed to keep and maintain a drug house if

that person has the ability to exercise control or management over the house.” *People v Bartlett*, 231 Mich App 139, 152; 585 NW2d 341 (1998). In addition, the “keep or maintain” requirement requires some degree of continuity, whereby there must be evidence of continuity that can be deduced by actual observation of repeated acts or circumstantial evidence. *People v Thompson*, 477 Mich 146, 154-155; 730 NW2d 708 (2007). “[A]n isolated incident without other evidence of continuity” is insufficient. *Id.* at 148. Minimal circumstantial evidence is sufficient to prove an actor’s state of mind. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999).

A reasonable juror could find that the prosecution proved the essential elements of maintaining a drug house beyond a reasonable doubt. In addition to the facts discussed *supra*, officers witnessed two visits on separate occasions by individuals coming to the room’s door for short periods of time. Moreover, the room was full of drug paraphernalia used to pack, distribute, and sell drugs, including pipes, spoons, hypodermic needles, digital scales, lottery tickets, and folded papers with drug residue on them. According to Ross, during one of defendant’s visits to the motel room, he sold her heroin. Viewing the evidence in a light most favorable to the prosecution, *Jackson* 202 Mich App at 587, a reasonable juror could find that the prosecution proved beyond a reasonable doubt that defendant had the ability to exercise control over the motel room and knew of the marijuana and intended for it to be kept or sold in the room and that there was a continuity of drug distribution in the motel room, rather than a mere isolated incident. Defendant’s conviction for maintaining a drug house is supported by sufficient evidence.

Affirmed.

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ Cynthia Diane Stephens