STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DELONZO DUBOSE,

Defendant-Appellant.

UNPUBLISHED
December 22, 2009

No. 289199
Wayne Circuit Court
LC No. 06-005039

Before: K. F. Kelly, and Hoekstra and Whitbeck, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to five years' probation for the drug conviction and the mandatory two-year prison term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant's sole claim on appeal is that the evidence was insufficient to prove that he possessed the cocaine and, because that charge cannot be sustained, the felony-firearm conviction necessarily fails for want of an underlying felony.

In reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is for the trier of fact 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). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of possession with intent to deliver less than 50 grams of cocaine are: (1) the recovered substance is cocaine, (2) the cocaine is in a mixture that weighs less than fifty grams, (3) the defendant did not have valid authorization to possess the cocaine, and (4) the defendant knowingly possessed the cocaine with the intent to deliver. *People v Gonzalez*, 256 Mich App 212, 225-226; 663 NW2d 499 (2003).

Possession with intent to deliver requires proof that the defendant knowingly possessed a controlled substance. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). "Possession is a term that signifies dominion or right of control over the drug with knowledge of its presence and character." *People v Nunez*, 242 Mich App 610, 615; 619 NW2d 550 (2000) (quotation omitted). The defendant need not have actual physical possession of the substance to be found guilty of possession; constructive possession is sufficient. *People v Wolfe*, 440 Mich 508, 519-520; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). 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." *People v Meshell*, 265 Mich App 616, 622; 696 NW2d 754 (2005). Possession may be proven by circumstantial evidence and any reasonable inferences drawn therefrom. *Nunez*, *supra* at 615. However, a defendant's mere presence at a place "where drugs are found is insufficient to prove constructive possession. Instead, some additional connection between the defendant and the contraband must be shown." *People v Echavarria*, 233 Mich App 356, 370; 592 NW2d 737 (1999) (internal citation omitted).

The elements that must be proven to convict the defendant as an aider and abettor are "(1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement." *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995), disapproved of in part on other grounds *People v Mass*, 464 Mich 615; 628 NW2d 540 (2001). "The term 'aiding and abetting' includes all forms of assistance. The term comprehends all words or deeds which may support, encourage, or incite the commission of the crime." *People v Usher*, 121 Mich App 345, 350; 328 NW2d 628 (1982), overruled in part on other grounds by *People v Perry*, 460 Mich 55; 594 NW2d 477 (1999) (quotation omitted). In other words, "the amount of advice, aid, or encouragement is not material if it had the effect of inducing the commission of the crime." *People v Moore*, 470 Mich 56, 71; 679 NW2d 41 (2004). "The 'requisite intent' for conviction of a crime as an aider and abettor is that necessary to be convicted of the crime as principal." *Mass*, *supra* at 628 (quotation omitted). Intent may be established by proving that the defendant had knowledge of the principal's intent, that the criminal act committed by the principal was a natural and probable consequence of the intended offense, or that defendant had the specific intent to commit the crime. *People v Robinson*, 475 Mich 1, 9, 15; 715 NW2d 44 (2006). "Defendant's specific intent or his knowledge of the principal's specific intent may be inferred from circumstantial evidence." *People v Eggleston*, 149 Mich App 665, 668; 386 NW2d 637 (1986).

The evidence, when viewed in a light most favorable to the prosecution, was clearly sufficient to prove that defendant and Terrance Hill jointly possessed cocaine with the intent to deliver it, or that defendant aided and abetted Hill with the offense. Hill had several individually wrapped packets of cocaine and marijuana on his person and other individually wrapped packets of cocaine were inside the house. Before executing a search warrant, an officer observed defendant and Hill jointly engage in an apparent narcotics transaction whereby defendant received money from a customer, passed it to Hill in exchange for narcotics, and then delivered the narcotics to the customer. By the time the police entered the house, defendant had gone inside. He was sitting in the front room where packets of cocaine were sitting in plain view in

front of him on a television, and a gun was nearby. Close proximity to contraband in plain view is evidence of possession. See, e.g., *Wolfe*, *supra* at 521; *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995). Finally, defendant gave a statement in which he admitted that he had been living at the house, was earning money by selling drugs there, and had sold eight "dime bags" already. From such evidence, one could reasonably infer that defendant, alone or jointly with Hill, possessed the three packets of cocaine on the television set and intended to sell them. One could also reasonably infer that defendant knew that Hill possessed the various narcotics with the intent to sell and aided and abetted him by bringing his gun to the house and by actively participating in the sales. Therefore, the evidence was sufficient to sustain defendant's convictions.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck