DIVISION ONE
FILED: 8/15/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 12-0218
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
JOHN DANIEL SCRIVNER,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Yavapai County

Cause No. V1300CR201180090

The Honorable Michael R. Bluff, Judge

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
By Joseph T. Maziarz, Chief Counsel
Criminal Appeals Section
Linley Wilson, Assistant Attorney General
Attorney for Appellee

Napper Law Firm — Prescott
By John David Napper
Attorney for Appellant

C A T T A N I, Judge

¶1 Appellant John Daniel Scrivner appeals from his conviction for possession of methamphetamine, arguing that there

was insufficient evidence to support the conviction. For the reasons that follow, we disagree and affirm Scrivner's conviction and sentence.

FACTS AND PROCEDURAL BACKGROUND[1]

¶2 On February 13, 2011, gas mart clerks called law enforcement in response to Scrivner's belligerent behavior and disheveled appearance, and out of concern for customer safety. Scrivner appeared unkempt, wild-eyed, and very agitated. He was moving around and talking very quickly, and yelling incoherently. At one point, Scrivner placed a torn-up check on the counter and asked the clerks to secure it for him in case he could not hold on to it. Scrivner told the clerks his girlfriend and her sons were chasing him and asked the clerks to call the police.

¶3 When a deputy sheriff arrived, Scrivner was moving around erratically and talking very quickly, so the deputy placed him in handcuffs and escorted him outside. Once outside, the deputy advised Scrivner of his *Miranda*[2] rights, and Scrivner acknowledged that he understood his rights. The deputy asked Scrivner what he "was on," to which Scrivner admitted snorting

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[1] We view the facts in the light most favorable to sustaining the jury's verdict. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

lines of something that looked like methamphetamine, but "was different." Scrivner later agreed to provide a urine sample, which tested positive for methamphetamine.

¶4 The State charged Scrivner with (1) possession or use of a dangerous drug (methamphetamine), a Class 4 felony; (2) possession or use of a narcotic drug (cocaine), a Class 4 felony; and (3) disorderly conduct, a Class 1 misdemeanor. Prior to trial, at the State's request, the trial court dismissed the charge of possession or use of cocaine.

¶5 At the close of the State's case, Scrivner moved for acquittal on both remaining counts pursuant to Rule 20 of the Arizona Rules of Criminal Procedure. The court denied the motion, but the State subsequently decided not to pursue the claim relating to use of a dangerous drug, apparently because of a concern that the evidence did not establish when or where Scrivner used methamphetamine. Scrivner subsequently renewed his Rule 20 motion regarding possession of a dangerous drug. The trial court denied the motion and the jury convicted Scrivner of possessing a dangerous drug (methamphetamine) and disorderly conduct. The trial court sentenced Scrivner to 10 years' imprisonment for the drug offense and to a 33-day jail term for disorderly conduct.

¶6 Scrivner timely appealed his conviction and sentence for possession of methamphetamine.[3] We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and -4033(A).[4]

DISCUSSION

¶7 Scrivner argues the State did not present sufficient evidence to support his conviction. He alleges: (1) the substance in his urine did not fit the definition of methamphetamine contained in A.R.S. § 13-3401(6)(c)(xxxiv) and (2) there was no evidence that he knew of the substance of his urine.

¶8 Whether sufficient evidence supports a conviction is a question of law, subject to de novo review. *State v. West*, 226 Ariz. 559, 562, ¶ 15, 250 P.3d 1188, 1191 (2011). The relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id*. at ¶ 16 (citation omitted). There is "no distinction between the probative value of direct and

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[3] Scrivner has not appealed his conviction or sentence for disorderly conduct.

[4] Absent material revisions after the relevant date, statutes cited refer to the current version unless otherwise indicated.

circumstantial evidence." *State v. Bible*, 175 Ariz. 549, 560 n.1, 858 P.2d 1152, 1163 n.1 (1993).

¶9 "A person shall not knowingly . . . [p]ossess or use a dangerous drug." A.R.S. § 13-3407(A)(1). A dangerous drug includes "[a]ny material, compound, mixture or preparation" that contains certain enumerated substances "having a potential for abuse associated with a stimulant effect on the central nervous system." A.R.S. § 13-3401(6)(c). Methamphetamine is one such dangerous drug. A.R.S § 13-3401(6)(c)(xxxiv).

¶10 Scrivner's argument that the substance in his urine does not meet the statutory definition of a dangerous drug is unavailing. A positive test for methamphetamine in urine is compelling circumstantial evidence that Scrivner possessed methamphetamine prior to ingesting it. *See, e.g.*, *In re R.L.H.*, 116 P.3d 791, 795–96, ¶ 26 (Mont. 2005) ("We conclude that the presence of a controlled substance in a person's blood or urine constitutes sufficient circumstantial evidence to prove prior possession beyond a reasonable doubt only when accompanied by other corroborating evidence of knowing and voluntary possession, such as an admission of drug use."); *State v. Rickard*, 884 P.2d 477, 478 (N.M. 1994) (the defendant's "admission constitutes corroborating evidence that she had the intent to possess the drug," and "[t]hat evidence, combined with the circumstantial evidence of possession provided by the

positive drug test, was sufficient to support her conviction" for possession of cocaine). Moreover, Scrivner not only tested positive for methamphetamine, he acknowledged (after engaging in erratic and unusual behavior) that he had snorted something "like meth." Thus, a rational jury could have reasonably concluded that Scrivner possessed methamphetamine.

¶11 Scrivner argues that the trial court improperly ruled as a matter of law that "methamphetamine found in urine can be a dangerous drug." But the trial court did not make such a ruling. The court simply denied Scrivner's motion for judgment of acquittal. That ruling at no point determined that the substance in his urine was a dangerous drug as a matter of law.

¶12 Relying on *State v. Rea*, 145 Ariz. 298, 299, 701 P.2d 6, 7 (App. 1985), and *State v. Alvarado*, 178 Ariz. 539, 543-44, 875 P.2d 198, 202-03 (App. 1994), Scrivner further argues that the trial court improperly allowed the State to argue that he could be convicted based on a theory of "internal possession" of methamphetamine in the urine. He complains that the State has changed its theory on appeal, by now arguing that it is unnecessary to address the internal possession theory because the trial court's ruling should be upheld if legally correct for any reason. *See State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984). We disagree.

¶13 In *Rea*, this Court held that a (forgery) conviction cannot stand when "the jury was invited to decide the case on an impermissible theory of guilt without corrective action by the court" even when there is substantial evidence supporting guilt on a proper theory. 145 Ariz. at 299, 701 P.2d at 7. In that case, however, the jury was instructed only on an impermissible theory. *Id*. In contrast, here, Scrivner does not challenge the proffered jury instructions and there is no evidence that the jury was incorrectly instructed or otherwise reached a ruling inconsistent with Arizona law. Thus, *Rea* is inapposite.

¶14 Similarly, in *Alvarado*, there was a question whether the trial judge (in a bench trial) relied on an incorrect theory of law in convicting the defendant of offering to sell marijuana. 178 Ariz. at 540-41, 875 P.2d at 199-200. This Court reversed the defendant's conviction and sentence, noting that, because there were no jury instructions and the trial judge did not make specific findings regarding the theory at issue, it was not possible to assess whether the trial court relied on an incorrect theory posited by the State. *Id*. at 543, 875 P.2d at 202. In the instant case, the jury was only instructed on a proper theory of guilt. Thus, *Alvarado* is not controlling.

¶15 Scrivner further argues that the State's changed theory implicates jurisdictional issues he did not raise at

trial because he thought the State's only theory was internal possession at the time of arrest. But nothing prevented Scrivner from raising the jurisdictional issue, which in any event would not have been likely to change the verdict given a lack of evidence that Scrivner was outside Arizona when he possessed and snorted something he thought looked like methamphetamine. A.R.S. § 13-108(A)(1) (jurisdiction is proper if "[c]onduct constituting any element of the offense or a result of such conduct occurs within this state").

¶16 Finally, Scrivner's argument that there was no evidence that he knew of the substance in his urine is unpersuasive. Scrivner does not argue that he mistakenly or inadvertently ingested methamphetamine, and his admission that he snorted something that looked like methamphetamine, but he thought was different, provided evidence from which a jury could rationally conclude Scrivner knowingly possessed methamphetamine.

CONCLUSION

¶17 For the foregoing reasons, we affirm Scrivner's conviction and sentence.

/S/
KENT E. CATTANI, Judge

CONCURRING:

/S/
JON W. THOMPSON, Presiding Judge

/S/
MICHAEL J. BROWN, Judge