

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
June 12, 2012

v

DEREK SCOTT SURGESON,

Defendant-Appellant.

No. 302324
Bay Circuit Court
LC No. 10-010519-FH

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Derek Scott Surgeson appeals as of right his jury trial conviction of two counts of possession of a controlled substance less than 25 grams.¹ We affirm.

The testimony at trial established that on May 13, 2010, Surgeson called Robert Richardson for a ride to the grocery store. Richardson drove Surgeson to a friend's house and then to the grocery store. Richardson testified that Surgeson's friend was a "known drug dealer." Richardson then drove to Surgeson's girlfriend's house. The vehicle was parked in Surgeson's girlfriend's driveway when Michigan State Police Trooper Michael Curtis approached the vehicle to arrest Surgeson on a probation violation warrant. As Curtis approached, he observed Surgeson make a throwing motion. After Curtis arrested Surgeson, he searched the vehicle and found an open pill bottle and pills lying on the back floorboard of the vehicle. The pills were later determined to be oxycodone and morphine.

Surgeson argues that the verdict is not supported by sufficient evidence as the prosecution failed to prove beyond a reasonable doubt that he possessed the narcotics recovered from the vehicle. We disagree. We review challenges to the sufficiency of the evidence de novo² considering the evidence adduced below in the light most favorable to the prosecution.³

¹ MCL 333.7403(2)(a)(v).

² *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

³ *People v Gonzalez*, 468 Mich 636, 640; 664 NW2d 159 (2003).

Reversal is not warranted if the evidence “would warrant a reasonable juror in finding guilt beyond a reasonable doubt.”⁴

“Possession may be either actual or constructive.”⁵ The prosecution sought to prove that Surgeson constructively possessed the narcotics found in the vehicle. Constructive possession is demonstrated when a defendant “has the right to exercise control over the narcotics and has knowledge of their presence.”⁶ “[C]onstructive possession exists when the totality of the circumstances indicates a sufficient nexus between the defendant and the contraband.”⁷ “It is well established that a person’s presence, by itself, at a location where drugs are found is insufficient to prove constructive possession.”⁸

When reviewing whether sufficient evidence was presented, we are mindful not to interfere with the jury’s role in determining witness credibility.⁹ “Juries, not appellate courts, see and hear witnesses and are in a much better position to decide the weight and credibility to be given to their testimony.”¹⁰

Curtis testified that when he approached the vehicle, Surgeson was the only passenger and was seated in the backseat behind the driver’s seat. Surgeson’s girlfriend was standing near the open door next to where Surgeson was seated. Richardson testified that he saw a pill bottle in Surgeson’s girlfriend’s hands and saw Surgeson and his girlfriend handing things to each other. Curtis testified that as he approached the vehicle and ordered everyone to show their hands, he saw Surgeson make a throwing motion. When Curtis searched the vehicle, he found the open pill bottle and pills on the backseat floorboard. The pills were two to three feet from Surgeson and within his reach. Richardson testified that the drugs found in the vehicle did not belong to him. Considering the evidence in the light most favorable to the prosecution, and being attentive to the role of the fact-finder to determine witness credibility and the weight of the evidence, we conclude that sufficient evidence was presented from which a jury could

⁴ *Id.* (quotation marks omitted).

⁵ *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992).

⁶ *People v Hardiman*, 466 Mich 417, 421 n 4; 646 NW2d 158 (2002).

⁷ *Wolfe*, 440 Mich at 521.

⁸ *Id.* at 520.

⁹ *Id.* at 514.

¹⁰ *Id.* at 515.

reasonably infer that Surgeson was guilty beyond a reasonable doubt of constructively possessing narcotics.¹¹

Affirmed.

/s/ Stephen L. Borrello

/s/ Peter D. O'Connell

/s/ Michael J. Talbot

¹¹ *Gonzalez*, 468 Mich at 640; *Wolfe*, 440 Mich at 514-515; *Hardiman*, 466 Mich at 421 n 4.