IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

HUBERT ALAN RICHARDSON,
Appellant.

No. 2 CA-CR 2016-0094
Filed February 23, 2017

Appeal from the Superior Court in Pima County
No. CR20143837001
The Honorable Casey F. McGinley, Judge Pro Tempore

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Chief Counsel, Phoenix
By Mariette S. Ambri, Assistant Attorney General, Tucson
Counsel for Appellee

Dean Brault, Pima County Legal Defender
By Robb P. Holmes, Assistant Legal Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Staring and Judge Espinosa concurred.

M I L L E R, Judge:

¶1 Hubert Richardson appeals his jury trial convictions for possession of a dangerous drug (methamphetamine) and possession of drug paraphernalia. The trial court sentenced him to mitigated, concurrent terms, the longer of which was six years. Richardson challenges the sufficiency of the evidence and contends he qualified for mandatory probation instead of prison time. We affirm.

Factual and Procedural Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding the verdicts. *State v. George*, 206 Ariz. 436, ¶ 3, 79 P.3d 1050, 1054 (App. 2003). In September 2014, a Tucson police officer stopped a vehicle Richardson was driving for an equipment violation. The officer determined Richardson was driving on a suspended license and impounded the vehicle pursuant to department policy. An inventory search of the vehicle revealed a glass "meth pipe" and a small baggie containing methamphetamine in plain view between the driver's seat and the center console. The baggie had a yellow and red design on it that matched the design on an empty baggie found on Richardson's person. After *Miranda* [1] warnings, Richardson initially denied, but later admitted to a police officer that it was his pipe and methamphetamine. Richardson was convicted and sentenced as detailed above. We have jurisdiction over his appeal pursuant to A.R.S. §§ 13-4031 and 13-4033(A)(1).

[1]*See Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966).

Sufficiency of the Evidence

¶3 We review the sufficiency of the evidence de novo, *State v. West*, 226 Ariz. 559, ¶ 15, 250 P.3d 1188, 1191 (2011), and will affirm if the record contains "substantial evidence to warrant a conviction," Ariz. R. Crim. P. 20(a). Substantial evidence is "such proof that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191, *quoting State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). This court will not reweigh the evidence on appeal, *State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997), but will ask only "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," *West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191, *quoting Mathers*, 165 Ariz. at 66, 796 P.2d at 868. When reasonable minds can differ as to the inferences to be drawn from the evidence, the trial court is without discretion to grant a Rule 20 motion and must submit the case to the jury. *State v. Landrigan*, 176 Ariz. 1, 4, 859 P.2d 111, 114 (1993).

¶4 Richardson specifically maintains there was not substantial evidence that he possessed the pipe and the baggie containing methamphetamine. *See* A.R.S. §§ 13-3407(A)(1) (possession is an element), 13-3415(A) (same); *see also* A.R.S. § 13-105(34)-(35) (defining "possess" and "possession"). We disagree. A defendant can be found to have constructively possessed drugs or paraphernalia that were "found in a place under his dominion and control and under circumstances from which it can be reasonably inferred that the defendant had actual knowledge of the[ir] existence." *State v. Villavicencio*, 108 Ariz. 518, 520, 502 P.2d 1337, 1339 (1972); *see also State v. Gonsalves*, 231 Ariz. 521, ¶ 10, 297 P.3d 927, 929 (App. 2013) (dominion or control may be established by direct or circumstantial evidence).

¶5 In this case, the officers found the pipe and the methamphetamine in plain view within arm's reach of the driver's seat of a vehicle Richardson had just been driving. A reasonable jury could therefore conclude that the items were within the area of his dominion and control and that he knew they were there. The

baggie containing the methamphetamine had the same distinctive design on it as the empty baggie that Richardson had on his person, permitting the inference that he controlled both baggies. Additionally, the methamphetamine was positioned next to a pipe, permitting the inference that whoever possessed the methamphetamine also possessed the pipe needed to smoke it. Finally, in the light most favorable to upholding the verdict, a reasonable jury could have rejected Richardson's initial denials, instead accepting his later confession that the pipe and methamphetamine were his and were intended for his own use.

¶6 Richardson attacks the significance of this evidence by emphasizing contrary facts in the record, but weighing the evidence is the role of the jury, not this court. *See Lee*, 189 Ariz. at 603, 944 P.2d at 1217. The evidence was sufficient for a rational trier of fact to conclude Richardson constructively possessed the pipe and the methamphetamine. *West*, 226 Ariz. 559, ¶ 16, 250 P.3d at 1191. The trial court correctly denied Richardson's Rule 20(a) motion. *Landrigan*, 176 Ariz. at 4, 859 P.2d at 114.

Mandatory Probation

¶7 Richardson contends he was entitled to mandatory probation under A.R.S. § 13-901.01[2] because the state failed to prove he had two prior convictions for drug-related offenses. *See* § 13-901.01(A), (H)(1). The prison term, however, was not imposed because of prior convictions. A.R.S. § 13-901.01(H)(4) provides that a defendant convicted of "personal possession or use of a controlled substance or drug paraphernalia [where] the offense involved methamphetamine" is not eligible for mandatory probation. *See State v. Siplivy*, 228 Ariz. 305, ¶¶ 4, 13, 265 P.3d 1104, 1105-06, 1107-08 (App. 2011) ("language of § 13-901.01 unambiguously provides" defendant was ineligible for probation for methamphetamine offenses). Richardson does not dispute that the

[2]Subsection (A) of § 13-901.01 provides: "Notwithstanding any law to the contrary, any person who is convicted of the personal possession or use of a controlled substance or drug paraphernalia is eligible for probation. The court shall suspend the imposition or execution of sentence and place the person on probation."

instant offenses involved methamphetamine. Accordingly, he was not eligible for mandatory probation under § 13-901.01.

¶8 Richardson argues that the state did not cite the methamphetamine exception as the reason he was not probation-eligible in the trial court, but relied instead on the theory that he had two previous drug convictions. Even if he is correct, we will affirm the court's ruling if it is legally correct for any reason. *See, e.g.*, *State v. Huez*, 240 Ariz. 407, ¶ 19, 380 P.3d 103, 109 (App. 2016). It is undisputed that Richardson's offenses involved methamphetamine, and thus the court did not err in concluding he was not eligible for mandatory probation. § 13-901.01(H)(4).

Disposition

¶9 For the foregoing reasons, we affirm Richardson's convictions and sentence.