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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
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THE STATE OF ARIZONA, Appellee, v. MARIO LUIS MANKEL, Appellant.	2 CA-CR 2009-0155 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20050472

Honorable Hector E. Campoy, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Kent E. Cattani, Joseph T. Maziarz, and
Alice Jones, a student certified pursuant
to Rule 38(d), Ariz. R. Sup. Ct.

Phoenix
Attorneys for Appellee

Robert J. Hirsh, Pima County Public Defender
By Michael J. Miller

Tucson
Attorneys for Appellant

E C K E R S T R O M, Judge.

¶1 Appellant Mario Mankel was charged by indictment with theft of a means of transportation, third-degree burglary, possession of burglary tools, possession of a narcotic drug, and possession of drug paraphernalia. A jury found him guilty of possessing a narcotic drug and drug paraphernalia but acquitted him of the remaining charges. The trial court suspended the imposition of sentence and placed him on eighteen months' probation. On appeal, Mankel argues the evidence was insufficient to support his convictions and the trial court should have granted his motion for a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P. We disagree and affirm for the reasons set forth below.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding a jury's verdict. *See State v. Mangum*, 214 Ariz. 165, ¶ 3, 150 P.3d 252, 253 (App. 2007). In the early morning hours of January 25, 2005, Tucson police officers Jack Cross and Benjamin Boschee followed a white Honda Civic into the parking lot of an apartment complex after discovering the vehicle had been reported stolen and saw the driver, Mankel, walking away. Boschee followed him to the north end of the lot and ordered him to stop. After Mankel was detained and placed in the back of the patrol car, Boschee returned to the north end of the parking lot. On the ground, he found a plastic prescription bottle containing cocaine base and part of a steel-wool Brillo pad. Later, when Boschee searched Mankel incident to arrest, he found more of the Brillo pad in Mankel's left pocket.

¶3 Boschee testified at trial that, when he had ordered Mankel to stop and show his hands, Mankel had put them in his pockets and removed them with both hands clenched. He then placed his left hand behind a small wall. When Mankel finally opened and raised his hands, Boschee heard "the clunk of something plastic" hitting the ground.

¶4 At the close of the state's case, Mankel moved for a judgment of acquittal on all charges. As to the charges of possessing cocaine base and drug paraphernalia, Mankel argued the state had not presented sufficient evidence connecting him to the plastic bottle. The trial court denied the motion, and the jury found Mankel guilty of both possession counts. This appeal followed.

Discussion

¶5 Mankel contends there was insufficient evidence to support the convictions because the state did not prove beyond a reasonable doubt he had possessed the pill bottle and the cocaine base it contained. Although Mankel does not specify whether he is asserting the trial court erroneously denied his motion for judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., or is claiming his convictions are not supported by sufficient evidence, the standards of review are essentially the same. *See State v. Neal*, 143 Ariz. 93, 98, 692 P.2d 272, 277 (1984) ("A Rule 20 motion is designed to test the sufficiency of the state's evidence."). A judgment of acquittal should only be granted when "there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20(a); *see also State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990). "'Substantial evidence' is evidence that reasonable persons could accept as adequate and sufficient to

support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980). Similarly, we will not disturb a conviction based on an argument the evidence was insufficient as long as there is evidence from which reasonable jurors could find the defendant guilty beyond a reasonable doubt. *State v. Mincey*, 141 Ariz. 425, 432, 687 P.2d 1180, 1187 (1984). And, "we view the evidence in the light most favorable to sustaining the verdict[s] and resolve all reasonable inferences against the defendant." *Id.* Evidence sufficient to support a conviction may be either circumstantial or direct. *State v. Pena*, 209 Ariz. 503, ¶ 7, 104 P.3d 873, 875 (App. 2005).

¶6 Mankel was convicted of possessing cocaine base and drug paraphernalia in violation of A.R.S. §§ 13-3408(A)(1) and 13-3415(A).[1] To support those convictions, the state was required to prove Mankel had possessed the pill bottle and the cocaine base it contained. "Possession" is defined as "knowingly exercis[ing] dominion or control over property." A.R.S. § 13-105(34).[2] Here, sufficient evidence was presented from which reasonable jurors could find Mankel had possessed both the pill bottle and its contents.

¶7 Officer Boschee testified that, when he had ordered Mankel to stop, Mankel "turned around and put his hands in his pocket." When Mankel removed his hands from

[1]Although § 13-3408 has been amended since Mankel committed the offense in 2005, the material provisions of this law have not changed. *See* 1996 Ariz. Sess. Laws, ch. 217, § 3. We therefore cite the current version of the statute.

[2]We cite the current version of the statute, which has been renumbered since Mankel committed his offenses. *See* 1995 Ariz. Sess. Laws, ch. 199, § 1.

his pockets, "both [were] clenched," and his left hand was placed "behind the wall where [Officer Boschee] couldn't see it." From this evidence, reasonable jurors could have found Mankel's actions suggested he had something to hide. As we noted above, Boschee further testified that, when Mankel finally raised his hands above the wall, he "heard the clunk of something plastic hitting the sidewalk or the gravel that is next to it" and later found the pill bottle in the same area.

¶8 In addition, Boschee testified the pill bottle contained "white rocks that are typical of crack cocaine" and "a small chunk of [B]rillo, the stuff that they use for a filter." When Boschee searched Mankel incident to arrest, he found "more of that [B]rillo" in "his left pocket where the hand with the bottle came out of." According to Boschee, the Brillo "was shaped like a cylinder, like it had just come out of a crack pipe." And it "had residue in it, like it had been used." Reasonable jurors could infer from this evidence that Mankel had possessed the pill bottle immediately before he was apprehended.

¶9 Mankel contends there were reasonable alternative explanations for his conduct and claims that, without fingerprint evidence, reasonable persons could not conclude beyond a reasonable doubt that the pill bottle, found lying on the ground, had been in his actual possession. But it is for a jury, not this court, to resolve any conflicts in the evidence and to draw any inferences permitted by the evidence. *See State ex rel. McDougall v. Superior Court*, 172 Ariz. 153, 156, 835 P.2d 485, 488 (App. 1992). Mankel is essentially asking this court to reweigh the evidence, which we will not do. *See State v. Williams*, 209 Ariz. 228, ¶ 6, 99 P.3d 43, 46 (App. 2004).

¶10 The state presented several pieces of circumstantial evidence to connect Mankel to the pill bottle containing cocaine base, and we make no distinction between direct and circumstantial evidence when reviewing the sufficiency of evidence. *See State v. Stuard*, 176 Ariz. 589, 603, 863 P.2d 881, 895 (1993). Here, there was sufficient evidence from which reasonable jurors could find that Mankel possessed the plastic bottle and cocaine base, and the trial court correctly denied Mankel's Rule 20 motion.

Disposition

¶11 For the foregoing reasons, we affirm Mankel's convictions and the probationary term imposed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge