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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. RICHARD JOSEPH COATES, Appellant.	)	2 CA-CR 2009-0351 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20083227

Honorable Jane L. Eikleberry, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
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K E L L Y, Judge.

¶1 Appellant Richard Coates appeals from his conviction for transporting a dangerous drug for sale. He maintains that the trial court wrongfully admitted certain evidence at his jury trial and should have granted his motion for a judgment of acquittal. Finding no error, we affirm.

Background

¶2 We view the facts and all reasonable inferences therefrom in the light most favorable to upholding the verdict. *See State v. Tucker*, 205 Ariz. 157, n.1, 68 P.3d 110, 113 n.1 (2003). In August 2008, a Tucson police detective who was conducting surveillance of a residence, followed a vehicle he saw leaving the residence. The vehicle evaded him, but was eventually stopped by other officers. Coates was the driver of the vehicle, and a female passenger was with him. Officers found four bags of methamphetamine on the floor of the passenger side of the vehicle, a metal tin containing methamphetamine, and another bag of methamphetamine in the vehicle's center console. They also recovered a cellular telephone from the driver's side of the vehicle. The telephone contained text and voice messages, some of which were directed to "Rick."

¶3 The state charged Coates with transportation of a dangerous drug for sale. He was found guilty by a jury, and the trial court imposed a presumptive ten-year term of imprisonment. This appeal followed.

Discussion

I. Hearsay

¶4 Coates first contends the trial court abused its discretion in admitting certain hearsay statements obtained from the cellular telephone found in the vehicle after he was arrested. He maintains the text messages and voice mail messages obtained from the telephone were hearsay statements not subject to any exception, and therefore should not have been admitted. We review the court's admission of the evidence for an abuse of discretion. *See Tucker*, 205 Ariz. 157, ¶ 41, 68 P.3d at 118.

¶5 Before trial, Coates moved to suppress the messages, arguing they were hearsay because they were "offered to prove the truth of the matter asserted, which is that [Coates] is supposedly bringing drugs to these people." The trial court concluded the statements were not hearsay and denied the motion. During trial, the investigating detective testified he had created a document outlining the text and voice messages found on the telephone. The court admitted the document over Coates's renewed hearsay objection.

¶6 The detective also testified about incoming and outgoing calls made to and from the telephone and about various text and voice messages left on it. Messages on the phone included the following: (1) "I am at Walgreen's alone. ETA?"; (2) "Mark, WTF?"; (3) "I am going to be at the bus stop by the check place across from Walgreen's."; (4) "Are you coming? Let me know what's up?"; (5) I could have got a ride home. Are you going to make it or what?"; (6) "Is your dad okay? I just heard your

address on the scanner, but didn't get the space number. Can you let me know, please? I am going to try to go over there. Love from TE."; and (7) "Are you working? Can you come to my location[?]" The detective testified that the messages found on the telephone were consistent with Coates having been involved in drug activity.

¶7 Coates maintains these statements should have been precluded as hearsay. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ariz. R. Evid. 801(c). Coates argues the state introduced the messages to prove the truth of the matters asserted in them, because the detective "interpreted the statements to show that [they] were in fact solicitations to purchase drugs." We disagree. The state did not need the evidence to prove that any caller had been at the Walgreen's, had heard Coates's address on the scanner, or had actually wanted to buy drugs. Rather, the messages merely allowed the jury to draw the inference that Coates had received calls consistent with drug activity, regardless of whether the callers actually intended to buy drugs or do any of the things mentioned in the calls, and that he had intended to sell the methamphetamine found in the car. Coates attempts to distinguish this case from *State v. McCoy*, 187 Ariz. 223, 928 P.2d 647 (App. 1996), but fails to do so. Like the gang-related materials at issue in that case, the messages here were not admitted for the truth of their content but "rather as evidence of the knowledge and participation of the possessor." *Id.* at 226, 928 P.2d at 650.

II. Rule 20 motion

¶8 Coates also contends the trial court abused its discretion in denying his motion for a judgment of acquittal, made pursuant to Rule 20, Ariz. R. Crim. P. He maintains that the state failed to prove he had knowledge that the methamphetamine had been in the car and that, therefore, "it cannot be said that the evidence presented at trial was sufficient to prove possession."[1] We review a trial court's denial of a Rule 20 motion for an abuse of discretion. *See State v. Paris-Sheldon*, 214 Ariz. 500, ¶ 32, 154 P.3d 1046, 1056 (App. 2007).

¶9 A motion for a judgment of acquittal should only be granted "if there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. "Substantial evidence is proof that reasonable persons could accept as sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *State v. Spears*, 184 Ariz. 277, 290, 908 P.2d 1062, 1075 (1996). Substantial evidence "may be either circumstantial or direct." *State v. Henry*, 205 Ariz. 229, ¶ 11, 68 P.3d 455, 458 (App. 2003). We will reverse a conviction "only if 'there is a complete absence of probative facts to support [the jury's] conclusion.'" *State v. Carlisle*, 198 Ariz. 203, ¶ 11, 8 P.3d 391, 394 (App. 2000), *quoting State v. Mauro*, 159 Ariz. 186, 206, 766 P.2d 59, 79 (1988).

[1]"Arizona's broad definition of 'possess' means that one cannot transport drugs without possessing them." *State v. Cheramie*, 218 Ariz. 447, ¶ 12, 189 P.3d 374, 376 (2008), *citing State v. Chabolla-Hinojosa*, 192 Ariz. 360, 965 P.2d 94 (App. 1998).

¶10 A defendant commits transportation of a dangerous drug for sale by, inter alia, transporting for sale, transferring, or offering "to sell or transfer a dangerous drug." A.R.S. § 13-3407. Although as Coates argues, "'the mere presence without more in an apartment or car of unobviously placed narcotics[2] will not convict the owner or inhabitant of possession,'" the defendant's "dominion is a circumstance which, when considered with other evidence showing knowledge, is sufficient to sustain a conviction of knowledgeable possession." *State v. Gerry*, 15 Ariz. App. 441, 443, 489 P.2d 288, 290 (1971), *quoting State v. Harris*, 9 Ariz. App. 288, 290, 451 P.2d 646, 648 (1969).

¶11 In this case, Coates, as the driver of the car, had dominion over the items in it. And, although Coates's brother was the registered owner of the vehicle, officers found jumper cables with Coates's name on them in the vehicle, as well as documents bearing his name and address. Coates's cellular telephone, discussed above, was also found in the car. And the detective testified that, when Coates called him to ask about the property that had been in the vehicle, he had referred to it specifically as "his car." Furthermore, drugs and drug paraphernalia were found throughout Coates's home and inside a storage shed on the property. Thus, as the state argues, given that drugs and paraphernalia were found in Coates's home and that he had received numerous telephone calls consistent with drug activity, "the jury could [have reasonably] conclude[d] that [Coates] had placed

[2]The state argues the drugs here were "in obvious places in the vehicle" rather than in "'hidden compartments.'" The methamphetamine was found in plastic "baggies" under some women's clothing on the passenger-side floorboard, in a closed portion of the center console, and in a closed tin. Because we resolve this matter on other grounds, we need not address whether these items were "unobviously placed."

the drugs into the car in order to sell them." We therefore cannot say there was "a complete absence of probative facts to support [the jury's] conclusion" that Coates had been aware of the methamphetamine in the car and had intended to transport the drugs for sale. *Carlisle*, 198 Ariz. 203, ¶ 11, 8 P.3d at 394.

Disposition

¶12 Coates's conviction and sentence are affirmed.

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

CONCURRING:

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

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