STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 20, 2009
v	No. 286886 Oakland Circuit Court
RAYMOND PAUL ROCHELEAU, Defendant-Appellant.	LC No. 2008-219720-FH

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of possession of a controlled substance, MCL 333.7403(2)(b)(*ii*), and unlawful use of a license plate, MCL 257.256. Because sufficient evidence exists that defendant knowingly or intentionally possessed the Vicodin, and because defendant has not shown that his counsel's decision not to address defendant's intention to return the Vicodin to its rightful owner was defective or prejudicial, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant testified that on November 1, 2007, defendant and his roommate, William Jobe, Jr., were running errands in defendant's truck. Jobe testified that he had a bottle of Vicodin with him, which had been prescribed because of a "hip disorder and deterioration of the bone." While out, Jobe placed the bottle of Vicodin on the seat of the truck. Jobe left his bottle of Vicodin on the seat in defendant's truck after defendant dropped him off at their residence. After dropping off Jobe, defendant immediately left to pick up some friends. Defendant testified that he discovered the prescription bottle and put it in his pocket with the intent to return it to Jobe. Defendant testified that he did not know what was in the bottle, but he knew it belonged to his roommate. While driving his friends around, an Oakland County Deputy Sherriff pulled defendant over. During the stop, police arrested a female passenger on an unrelated charge. According to police, defendant consented to a search of his person, and police found the bottle of Vicodin in his pocket.

Defendant's arguments on appeal only address his conviction for possession of a controlled substance. Defendant first argues that he was wrongly convicted for possessing a controlled substance because there was insufficient evidence demonstrating he had the requisite mens rea. We review a sufficiency of the evidence claim de novo. *People v Martin*, 271 Mich App 280, 340; 721 NW2d 815 (2006). The evidence is viewed "in the light most favorable to the

prosecution to determine whether a rational trier of fact could have found the essential elements of the crime were proved beyond a reasonable doubt." *Id.*

MCL 333.7403(1) prohibits a person from "knowingly or intentionally" possessing a controlled substance. Thus, the mens rea element would be satisfied if defendant either knowingly possessed the Vicodin or intentionally possessed the Vicodin.

Defendant testified that he did not know what the medicine was when he picked up the bottle. He testified he did not even look at the name on the bottle. However, because defendant knew that the pills belonged to his roommate, a person defendant described as a close friend, a rational trier of fact could infer that defendant knew of his roommate's apparently serious hip condition and that he took Vicodin, and consequently knew what was in the pill bottle. Drawing all reasonable inferences and making all credibility determinations in favor of the jury verdict, there was sufficient evidence upon which a rational trier of fact could have determined that defendant knowingly possessed the Vicodin. *Martin, supra* at 340.

Defendant argues in the alternative that even if all the elements of possession have been satisfied, he should be exempt from guilt because he intended to return the Vicodin to its rightful owner. No such exception exists in the statute. Defendant relies on *People v Perry*, 145 Mich App 778; 377 NW2d 911 (1985) to outline this exception. But it is not controlling. *Perry* dealt with a statute that had no express mens rea requirement. [1] Where there is no express mens rea element, this Court has stated that it will interpret the statute to determine whether one is to be implied. *People v Ramsdell*, 230 Mich App 386, 398; 585 NW2d 1 (1998). *Ramsdell* has also noted that statutes creating strict liability offenses are not favored. *Id.* These principles create the background for *Perry*. These two principles are not implicated in this case. Here, there is an express mens rea requirement. Thus, unlike in *Perry*, there is no need to construe the statute beyond its plain language. Moreover, because there is an express mens rea element, there is no potential for this statute to be construed as a strict liability offense.

Additionally, the statute does not contain an exception for individuals who possess a controlled substance but intend to return it to its rightful owner, and this exception should not be read into the statute. The statute specifically exempts individuals from guilt if they receive a controlled substance "directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise

[1] In *Perry*, the defendant, an inmate, was convicted of possessing a weapon in violation of MCL 800.283(4), which states, "[u]nless authorized by the chief administrator of the correctional facility, a prisoner shall not have in his or her possession or under his or her control a weapon." *Perry, supra* at 779. Because there was no express mens rea element in the statute, the Court interpreted the statutory language to determine whether there was an implied mens rea requirement. *Id.* at 783. In an effort to avoid interpreting the statute as a strict liability offense, the Court stated "if the jury believed that defendant had acquired the [weapon] purely in self-defense and had intended to give it to the guards at the first opportunity, defendant was not guilty of 'possessing' the weapon." *Id.* Additionally, the factual circumstances of *Perry*, implicating control by authorities of potential violence in a volatile environment, serve to distinguish the analysis.

authorized by this article." MCL 333.7403(1). It does not create an exception for individuals who intend to return the substance, or who do not intend to use the substance. *Ramsdell, supra* at 393. ("Where [statutory] language is so plain as to leave no room for interpretation, courts should not read into it words that are not there or that cannot fairly be implied.")

Defendant also argues that he received ineffective assistance of counsel because counsel failed to argue during closing that defendant would be exempt from guilt if he intended to return the Vicodin to its rightful owner. Although we need not consider this argument because it has not been properly presented to this Court, *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990), we nonetheless conclude it is without merit. It is a fundamental tenet of appellate review not to second-guess trial counsel though the lens of hindsight. *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004). Nowhere is this more true than when, as here, what counsel argued was in keeping with the charges pending. What defendant did or did not intend to do with the Vicodin was not relevant to the charge. Thus, there was no ineffective assistance of counsel. *People v Dendel*, 481 Mich 114, 125; 748 NW2d 859 (2008).

Affirmed.

/s/ Karen M. Fort Hood
/s/ David H. Sawyer
/s/ Pat M. Donofrio