

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT DAVID PELIKAN,

Defendant-Appellant.

UNPUBLISHED

October 25, 2018

No. 342279

Allegan Circuit Court

LC No. 16-020375-FH

Before: BOONSTRA, P.J., and O'CONNELL and TUKEL, JJ.

PER CURIAM.

Defendant appeals by right his jury conviction of possession of methamphetamine, MCL 333.7403(2)(b)(i).¹ Defendant was sentenced to three years' probation as a second-offense habitual offender, MCL 769.10, for his conviction for possession of methamphetamine. We affirm.

Defendant's conviction arises from methamphetamine found in the Allegan County Corrections Center and Sheriff's Office during the early morning hours of August 7, 2017. Deputy Ryan Gerke of the Allegan County Sheriff's Department had arrested defendant after a traffic stop. Deputy Gerke testified that he then took defendant directly to the Allegan County Corrections Center. Defendant was taken to the property room, and his property was collected. Defendant was next led from the property room to the main booking area, which required a walk along a secure hallway. At trial, Deputy Gerke testified that no one else was in the hallway at that time and that he did not see anything on the floor of the hallway when he entered with defendant. A short time later, during the early morning hours of August 7, 2017, a small ziplock bag with red and black markings, containing a white powdery substance, was found in the hallway.² After this was brought to Sergeant Brandon Giles' attention, he collected the

¹ The jury also convicted defendant of bringing a controlled substance into a correctional facility, MCL 800.281(3), and operation of a motor vehicle without a valid operator's license, MCL 257.904(1)(b). However, those convictions are not the subject of this appeal.

² The Michigan State Police Forensic Laboratory later confirmed that the substance was methamphetamine, a controlled substance.

suspected contraband and took it directly to his office. There, he reviewed the booking system and surveillance tapes of the hallway from that evening and saw that defendant, accompanied by Deputy Gerke, was the last person led down the hallway and booked before the suspected contraband was found. The hallway videos were submitted as evidence at trial. At trial, defendant denied that the methamphetamine was ever in his possession.

Defendant's appeal is limited to whether there was sufficient evidence to show that he had possessed the methamphetamine. We hold that there was sufficient evidence.

A defendant's challenge to the sufficiency of the evidence is reviewed de novo. *People v Henderson*, 306 Mich App 1, 8; 854 NW2d 234 (2014). All evidence is viewed in the light most favorable to the prosecution and we must determine "whether any rational trier of fact could have found that the essential elements of the crime charged were proven beyond a reasonable doubt." *People v Lundy*, 467 Mich 254, 257; 650 NW2d 332 (2002). "[C]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v McKinney*, 258 Mich App 157, 165; 670 NW2d 254 (2003) (quotation marks and citation omitted; alteration in original). Furthermore, "[i]t is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

Pursuant to MCL 333.7403(1), it is illegal for a person to "knowingly or intentionally possess a controlled substance." To prove possession of a controlled substance, the prosecution must show beyond a reasonable doubt that the defendant had "dominion or right of control over the drug with knowledge of its presence and character." *McKinney*, 258 Mich App at 165-166 (quotation marks and citations omitted).

In this case, defendant was not merely in the area where the controlled substance was found. Rather, defendant was the last inmate to be booked and led down the hallway before the methamphetamine was found there. At trial, Deputy Gerke testified that he did not see anything on the floor of the hallway before he led defendant down it. But, more importantly, the video evidence that was played at trial shows nothing in the hallway immediately prior to defendant walking down it. But as defendant is walking along the hallway, the contraband item "appears" right where he was stepping. Therefore, a reasonable juror could conclude from the evidence that defendant was the source of the methamphetamine and had possessed it before dropping it. In other words, because the methamphetamine only appeared right where defendant immediately had been walking, the jury could reasonably conclude that the methamphetamine came from defendant, i.e., that he possessed it and dropped it. Although this evidence is circumstantial because it does not show defendant actually holding the methamphetamine, circumstantial

evidence and reasonable inferences are sufficient to establish possession. See *id.* at 165. Moreover, the fact that the methamphetamine was dropped inside a jail, where defendant was about to be booked, is sufficient evidence from which a jury could conclude that defendant's possession of the drug was knowing, and that he was attempting to get rid of it before it was discovered by officers. As a result, defendant's claim fails.

Affirmed.

/s/ Mark T. Boonstra
/s/ Peter D. O'Connell
/s/ Jonathan Tukel