

Circuit Court for Carroll County
Case No: C-06-CR-18-000138

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2922

September Term, 2018

GARY RADFORD, JR.

v.

STATE OF MARYLAND

Nazarian,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 8, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a bench trial in the Circuit Court for Carroll County, Gary Radford, Jr., appellant, was convicted of possession of contraband in a place of confinement and possession of a controlled dangerous substance. The court merged the offenses for sentencing purposes and sentenced him to three years' imprisonment, with all but one year suspended, to be followed by a five-year period of supervised probation. In this appeal, Mr. Radford maintains that the evidence was insufficient to support the convictions. We disagree and shall affirm.

On September 12, 2017, Mr. Radford was an inmate at the Carroll County Detention Center, having arrived the day before. He was housed in Unit 40, which contained eight cells with two inmates per cell. Michael Nagel shared a cell with Mr. Radford, with Mr. Radford assigned to the bottom bunk and Mr. Nagel to the top bunk. Each inmate had use of an open container or tub in which to place the few items they were allowed to possess.

Sergeant Derick Goss, then a corporal who had been employed at the Detention Center for over 10 years, testified that the cells measure eight feet by eight feet and contain two bunk beds, two shelves, a toilet, and a sink. Given the lack of space, the inmate assigned to the bottom bunk places his tub underneath the bunk and the other inmate keeps his on the shelf. He described the container or tub as “exactly” like “a bus tote” used in restaurants to clear tables.

Under a Detention Center policy, inmates are not free to go into the cells of other inmates, a policy staff enforces, through among other means, the use of camera monitoring.

On September 12th, the Detention Center staff conducted a random search of the cells. Sergeant Goss testified that the unannounced searches are conducted by multiple

officers (“as many officers as we can”) and are initiated by the officers “open[ing] the door,” “rush[ing] in,” “shout[ing] get up” and “get your uniform on” and “be at the door.” He related that the “reason why we have so many officers and we are doing this in such an organized fashion is to make sure we have eyes on each of the inmates who are in there[.]” Therefore, “it is not likely that they can remove [any contraband] or move it because we are going in and keeping an eye on them as closely as possible. We spread out and cover as much ground as possible and make it quick.” He added that, the inmates “who are in the cells [at the moment the search is initiated] are the ones that we watch most closely because there are more places for them to hide things, and we want to prevent that.”

After Unit 40 was “cleared,” Sergeant Goss searched cell 44 – the cell assigned to Mr. Radford and his cellmate Mr. Nagel. In the tub underneath the bunk assigned to Mr. Radford, Sergeant Goss discovered “something wrapped in a condom,” which lab testing later confirmed was two strips of suboxone, a controlled dangerous substance which Mr. Radford was not permitted to possess. “Court documents” belonging to Mr. Radford were also in the tub.

After the State rested and the defense declined to put on any evidence, the court found that Mr. Radford was in “constructive possession” of the suboxone and found him guilty of both counts.

On appeal, Mr. Radford points out that he was “not in exclusive possession” of the cell and asserts that a “strong suspicion” that the suboxone belonged to him was “not enough” to find him guilty beyond a reasonable doubt. The State maintains that “the evidence was sufficient to allow for an inference that Radford had constructive possession

over the contraband.” The State notes that the contraband was found in a bin under Mr. Radford’s bunk, along with court documents belonging to him.

In analyzing the sufficiency of the evidence admitted at a bench trial to sustain a defendant’s convictions, we “review the case on both the law and the evidence,” but will not “set aside the judgment . . . on the evidence unless clearly erroneous.” Maryland Rule 8-131(c). “We review sufficiency of the evidence to determine 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.” *White v. State*, 217 Md. App. 709, 713 (2014) (internal quotation marks and citation omitted).

“Possession may be established by actual or constructive control and the mere fact that the contraband is not found on the defendant’s person does not necessary preclude an inference by the trier of fact that the defendant had possession of the contraband.” *State v. Guiterrez*, 446 Md. 221, 234 (2016) (further citation omitted). We agree with the State that the evidence presented here was sufficient to establish beyond a reasonable doubt that Mr. Radford had constructive possession of the suboxone found in the container under his bunk bed, in the same container holding his court documents.

**JUDGMENT OF THE CIRCUIT COURT
FOR CARROLL COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**