IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TONY ALLEN PRESSLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 71729

FILED

JUN 16 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

Tony Allen Pressler appeals from a judgment of conviction, pursuant to a jury verdict, of possession of a schedule I or schedule II controlled substance for the purpose of sale, concealing or destroying evidence of the commission of a felony, and possession of a controlled substance. Fourth Judicial District Court, Elko County; Alvin R. Kacin, Judge.

On appeal, Pressler asserts: (1) there was insufficient evidence that he had the intent to sell required by NRS 453.337; (2) instructional error and insufficiency-of-the-evidence claims premised on his contention that a "constructive possession" theory cannot be used to prove possession of a controlled substance and possession of a controlled substance for the purpose of sale; and (3) the district court erred in denying his motion to suppress the heroin found in a bag during a warrantless search of a vehicle. We conclude that these arguments are unpersuasive and therefore affirm the judgment of conviction.

Pressler fails to establish that there is insufficient of evidence of an intent to sell under NRS 453.337

In reviewing a challenge to the sufficiency of the evidence supporting a criminal conviction, this court considers "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." *McNair v. State*, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

At trial, the testimonies of a witness who had been prescribed the controlled substances and of an investigating officer tended to show that Pressler had removed the pills from medication bottles and placed them into four different plastic bags.[1] The officer further testified that the bottles contained several additional pills and empty plastic bags. Moreover, based on his expertise as a narcotics investigator, the officer stated that he was "certain" that the pills had been packaged for sale. We conclude that a rational trier of fact could have relied upon this evidence to find beyond a reasonable doubt that Pressler intended to sell these controlled substances. *Cf. Chambers v. United States*, 564 A.2d 26, 31 (D.C. 1989) ("The fact that the cocaine was in separate packages, rather than in one large mass, is evidence of an intent to distribute."), *overruled in part on other grounds by Berroa v. United States*, 763 A.2d 93, 96 & n.6 (D.C. 2000).

Constructive possession is a valid theory under NRS 453.336 and NRS 453.337

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[1]We do not recount the facts except as necessary to our disposition.

Moreover, Pressler does not dispute that the pills in the plastic bags were the controlled substances that the State alleged he had possessed for the purpose of sale. Furthermore, aside from his contentions that no controlled substances were found on his person and that he could not be convicted under a constructive possession theory, Pressler does not aver that there was insufficient evidence of possession.

"[W]e review de novo whether a particular [jury] instruction . . . comprises a correct statement of the law." *Cortinas v. State*, 124 Nev. 1013, 1019, 195 P.3d 315, 319 (2008). Further, a claim of evidentiary insufficiency requires this court to determine whether, when viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *McNair*, 108 Nev. at 56, 825 P.2d at 573 (quoting *Jackson*, 443 U.S. at 319).

We conclude that Pressler's instructional error and insufficiency-of-the-evidence claims fail because the Nevada Supreme Court has held that constructive possession is a valid theory under NRS 453.336 and NRS 453.337. *See Sheriff, Washoe Cty. v. Steward*, 109 Nev. 831, 832, 835, 858 P.2d 48, 49, 51 (1993) (holding that a violation of NRS 453.336 may be established by demonstrating that a defendant "had actual or constructive possession" of the controlled substance); *see also LaChance v. State*, 130 Nev. ___, ___, 321 P.3d 919, 926-27 (2014) (holding that "[t]he elements of simple possession" provided in NRS 453.336 "are included in possession for sale" under NRS 453.337, and noting that "[n]o sale of narcotics is possible without possession, actual or constructive" (quoting *Lisby v. State*, 82 Nev. 183, 187, 414 P.2d 592, 594 (1966))).

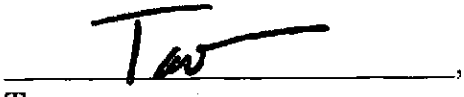
Pressler fails to establish that the district court erred in denying his motion to suppress

Pressler does not challenge the district court's alternative conclusion that the heroin at issue was admissible under the Fourth Amendment's automobile exception. *See California v. Acevedo*, 500 U.S. 565, 566, 580 (1991) ("The police may search an automobile *and the containers within it* where they have probable cause to believe contraband

or evidence is contained." (emphasis added)). Therefore, we need not consider his argument that the district court erred by failing to suppress it.[2] *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that an appellate court need not consider claims that are not cogently argued and supported with relevant authority). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver



_____, J.
Tao

_____, J.
Gibbons

cc: Hon. Alvin R. Kacin, District Judge
David D. Loreman
Attorney General/Carson City
Elko County District Attorney
Elko County Clerk

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[2]Further, we do not address whether Pressler lacked standing to challenge the search because the parties do not raise that issue. Lastly, we have carefully considered Pressler's other arguments and conclude that they are unpersuasive.