

FILED  
August 27, 2013  
Court of Appeals  
Division III  
State of Washington

NO. 311082-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON, Respondent

v.

PETR V. RUDNITSKY, Appellant

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APPEAL FROM THE SUPERIOR COURT  
FOR BENTON COUNTY

NO. 11-1-01007-8

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BRIEF OF RESPONDENT

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ANDY MILLER  
Prosecuting Attorney  
for Benton County

BRENDAN M. SIEFKEN, Deputy  
Prosecuting Attorney  
BAR NO. 41219  
OFFICE ID 91004

7122 West Okanogan Place  
Bldg. A  
Kennewick WA 99336  
(509) 735-3591

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**I. ISSUE PRESENTED**

**1. WHETHER THERE WAS SUFFICIENT EVIDENCE TO FIND THE DEFENDANT GUILTY OF UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE.**

**II. STATEMENT OF FACTS**

On September 8, 2011, AT&T store manager Brian Roders observed suspects steal multiple cell phones from his store and then chased after them. (RP<sup>1</sup> 40-41). Mr. Roders followed the suspects while running as fast as he could and observed them enter a vehicle. (RP 42). Mr. Roders was able to obtain a visual on the make, model, and license plate number of the vehicle and called 911 to relay the information. (RP 42).

City of Kennewick Police Officer John Greenough observed a vehicle matching the description of the suspect's vehicle and performed a traffic stop. (RP 43-44). Officer Greenough identified the defendant as the driver of the vehicle that was stopped, and observed two other males inside the vehicle. (RP 44).

Kennewick Police Officer Darrin Meiners responded to the location of the stop and documented the scene by taking photographs. (RP

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<sup>1</sup> "RP" refers to the Verbatim Report of Proceedings of 10/26/11, 07/31/12, and 09/04/12, reported by Court Reporter Patricia Adams.

46). Officer Meiners observed a piece of plastic that appeared to contain the plunger end of a syringe lying directly on the front passenger seat. (RP 47-48).

Kennewick Police Detective Shirrell Veitenheimer arrived at the vehicle stop and also observed part of a hypodermic needle sticking out of a wrapper of some sort on the front passenger seat. (RP 52-53). Detective Veitenheimer had the vehicle seized and towed so that it could be searched at the impound yard. (RP 54). Detective Veitenheimer performed a search on the vehicle and retrieved the hypodermic needle from the front passenger seat and also located a glass smoking device with dark-colored residue in the door compartment of the front passenger seat. (RP 54-55). Detective Veitenheimer identified a little plastic bindle that was found in the wrapper with the needle. (RP 55). The bindle was collected and sent as item number one to the crime lab for testing. (RP 60). Detective Veitenheimer also identified a sign in the window of the vehicle that read, "For Sale by Owner," and the name "Petr" with a phone number. (RP 58).

Detective Juan Dorame assisted Detective Veitenheimer in searching the vehicle. (RP 67). Detective Dorame searched the front area of the vehicle including the center console area. (RP 68). Detective Dorame located a portion of the center console area that was "somewhat dismantled or broken," and located a couple of different items hidden

down underneath the compartment. (RP 70). Detective Dorame photographed the area of the center console after lifting a piece of the vehicle that normally covers the area. (RP 70). In the hidden compartment, Dorame located a cell phone, a hypodermic needle with the safety cap missing, and a bag with some other items. (RP 71). The bag appeared to be wadded up and no items were observed spilling out of the bag. (RP 72). Inside the bag Dorame observed a small teaspoon kitchen utensil, and outside the bag he observed two tablespoon kitchen utensils. (RP 72-73).

Dorame also found a small piece of plastic that contained some dark tar-like material inside the plastic bag found inside the console. (RP 73-74). Dorame testified that based on his training and experience, the tar-like material was consistent with heroin. (RP 75). The item was collected and sent to the lab for testing. (RP 75). Dorame also observed that the spoons had a black tar-like substance within the bowl areas and burnt areas underneath which were consistent with his training and experience as spoons that were used in preparing heroin. (RP 75). Detective Dorame found several needles in the area under the center console area. (RP 76). Detective Dorame also observed that the area under the center console area was accessible from the driver's side of the vehicle. (RP 78).

Washington State Crime Lab forensic scientist Andrea Ricci testified that she received two items related to this case and both items tested positive for the presence of heroin. ( RP 84-85).

After testimony from the forensic scientist, the State rested and the defense moved for a dismissal based on a lack of evidence. (RP 87-89). The trial court weighed the evidence and determined there was sufficient evidence for the case to go to the jury, and denied the motion. (RP 90).

The defense then called Sergey Anischenko as a witness for the defense. (RP 91). Anischenko testified that he is the defendant's friend and was riding in the car with him when they were stopped. (RP 91-92). Anischenko testified that he had also been charged with possession of a controlled substance and theft, but then plead guilty to the theft in exchange for the possession charge being dropped. (RP 92). Anischenko testified that he knew that he could no longer be charged with possession of a controlled substance and claimed that the heroin and needles found in the car were his. (RP 92-93). Anischenko testified that he was wearing shorts the day they were stopped. (RP 94). He testified that he had all the needles, heroin, spoons, and a cell phone in his pockets and that he panicked and pulled all of the items out of his pockets and hid them in the car when the police officer got behind the vehicle prior to the stop. (RP 94). During cross-examination, Anischenko testified that he had all of the

needles, spoons, and heroin in his shorts pockets when he went into the AT&T store and stole four cell phones. (RP 98-101). He testified that he stuffed the phones into his pockets before running out of the store. (RP 101). Anischenko testified that he was not chased out of the store and that no one followed him. (RP 101). He testified that he then did not run to the yellow car, but he walked to the car after stealing the cell phones. (RP 101). Anischenko testified that the yellow vehicle that the defendant was driving was the defendant's vehicle. (RP 93). Anischenko admitted that he initially denied possessing the heroin. (RP 103). The defense then rested and the case went to the jury. (RP 107). The defendant was found guilty by the jury, was sentenced, and this appeal followed. (CP 77, 79-88, 89).

### **III. ARGUMENT**

#### **1. EVIDENCE INTRODUCED AT TRIAL WAS SUFFICIENT FOR THE JURY TO FIND THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.**

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). When the sufficiency of the evidence is challenged in a criminal case, all reasonable

inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *Id.* at 201. A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *Id.* Credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the evidence's overall persuasiveness. *State v. Lubers*, 81 Wn. App. 614, 619, 915 P.2d 1157, review denied, 130 Wn.2d 1008 (1996). The Court gives circumstantial evidence equal weight with direct evidence. *State v. Varga*, 151 Wn.2d 179, 201, 86 P.3d 139 (2004).

The uncontroverted evidence introduced at trial showed that heroin was located in two different places in a vehicle that was driven by the defendant at the time of police contact. (RP 55, 73-74, 84-85). The vehicle appeared to be advertised for sale by the defendant and the defendant's friend testified that it was the defendant's vehicle. (RP 58, 93). There is no question that the defendant had dominion and control over the center console area of his own vehicle that he was driving at the time of arrest. Legally, there is no doubt regarding whether the defendant had constructive possession of the heroin found within the center console.

The only real question posed to the jury by the defense was



whether the defendant had knowledge of the drugs or whether the possession was unwitting. The defense attempted to bring evidence in through the testimony of Mr. Anischenko to show that the defendant did not know of the drugs in the vehicle. However, Mr. Anischenko's credibility was questionable at best. He admitted that he had previously committed several crimes of dishonesty including a theft that was related to the current charge against the defendant. (RP 97). Anischenko also admitted that in testifying on behalf of his friend and admitting that the drugs were his, he knew that he could not be charged with additional crimes. (RP 92-93). His testimony also conflicted with the testimony of the store manager who testified that he chased Anischenko out of the store and towards the defendant's car. (RP 41-42, 101). Mr. Anischenko's testimony was also dubious on account of his version of events including the fact that he entered the AT&T store with multiple needles, spoons, two bindles of heroin, and a pipe, and then stuffed four stolen cell phones into his already loaded pockets before then running from the store with everything in his pockets. (RP 100-01). The jury was able to see the defense witness testify and weighed his credibility and the credibility of his story regarding the drugs found in the defendant's vehicle. The jury, who was instructed to give the defendant the benefit of doubt, found the defendant guilty beyond a reasonable doubt.

The evidence and the reasonable inferences that arise from that evidence establish that the defendant had constructive possession of heroin and that he is guilty.

#### **IV. CONCLUSION**

There was sufficient evidence for the jury to find the defendant guilty beyond a reasonable doubt. Accordingly, the conviction of the defendant for Unlawful Possession of a Controlled Substance should be affirmed.

**RESPECTFULLY SUBMITTED** this 27th day of August 2013.

**ANDY MILLER**

Prosecutor



**BRENDAN M. SIEFKEN**, Deputy

Prosecuting Attorney

Bar No. 41219

OFC ID NO. 91004

**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

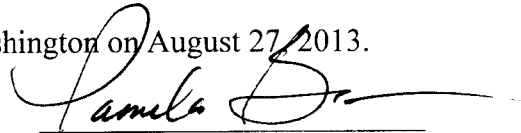
Janet G. Gemberling  
Jill Shumaker Reuter  
Janet Gemberling PS  
P.O. Box 9166  
Spokane, WA 99209-9166

E-mail service by agreement  
was made to the following  
parties:  
admin@gemberlaw.com

Petr V. Rudnitskyy  
447 SE 111<sup>th</sup> Avenue  
Portland, OR 97216

U.S. Regular Mail, Postage  
Prepaid

Signed at Kennewick, Washington on August 27, 2013.



Pamela Bradshaw  
Legal Assistant