

No. 33700-6-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

FILED
Jul 13, 2016
Court of Appeals
Division III
State of Washington

THE STATE OF WASHINGTON,

Respondent

v.

TIMOTHY GARLAND KENDALL,

Appellant

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR BENTON COUNTY

NO. 14-1-01265-2

BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

- A. Was there sufficient evidence to convict the defendant of Delivery of a Controlled Substance?
1. What is the standard on review on challenges to the sufficiency of the evidence?
 2. Viewing Ms. Inman's testimony, the defendant's admissions, and the toxicology report in the light most favorable to the State, could a rational jury find the defendant delivered methamphetamine to Ms. Inman?
 3. Are there reasonable explanations why the drug looked different from the methamphetamine Ms. Inman was used to?

II. COUNTER STATEMENT OF FACTS

A. Background of Alena Inman as methamphetamine user.

Alena Inman graduated from high school in 2011. RP¹ at 18. She had done well in high school, participating as a leadership student in special education and being a teacher's assistant. RP at 19. However, roughly two years later, she became involved with methamphetamine. RP at 19. By the time of the offense herein, November 5, 2014, she was using methamphetamine daily. RP at 36.

Ms. Inman (DOB: 08/20/1992) was 22 years old when the relevant events occurred. RP at 18.

B. The defendant gives Ms. Inman methamphetamine to and from a trip to Seattle.

Ms. Inman was couch surfing around November 5, 2014. RP at 21. On the early morning of November 5, 2014, she landed at the residence of Julie Trent. RP at 20, 22. The defendant happened to be there. RP at 20. On the spur of the moment, she and the defendant began talking about taking a trip to Seattle; at about 5:00 a.m., they were on the road to Seattle. RP at 22.

The defendant gave Ms. Inman methamphetamine throughout the trip to and from Seattle. RP at 24. Ms. Inman described how the defendant would frequently stop on the trip to Seattle for them to smoke methamphetamine. RP at 22. Around Bellevue, they again smoked methamphetamine in an alley. RP at 23.

Ms. Inman slept for about 13 hours in a motel in downtown Seattle. RP at 26. Although Ms. Inman has found that methamphetamine keeps her awake, a user will eventually become very tired and may sleep for a very long period of time. RP at 37, 92.

¹ Unless otherwise indicated, "RP" refers to the verbatim report of proceedings of jury trial testimony on 07/21-22/2015.

After Ms. Inman woke up, the defendant drove her back to the Tri Cities area, again supplying her with methamphetamine. RP at 28.

The defendant supplied all of the methamphetamine Ms. Inman used on the trip; she estimates the total he gave her was around a quarter of an ounce. RP at 47-48.

C. The defendant admits using methamphetamine and smoking it with Ms. Inman.

The defendant was not initially truthful with the police about his methamphetamine use. RP at 154. However, he eventually admitted to Detective Murstig to using methamphetamine and smoking it with Ms. Inman in Seattle or on the way back to the Tri Cities. RP at 72-73, 124. When testifying, he stated that he smoked methamphetamine with Ms. Inman on the way to Seattle and in the motel room. RP at 125-26. He claimed that Ms. Inman was the one who supplied the methamphetamine. RP at 124.

D. Toxicology evidence confirms Ms. Inman used methamphetamine.

On November 7, 2011, Ms. Inman went to Kadlec Medical Center, stating that the defendant had non-consensual sex with her. RP at 31, 34. Methamphetamine and amphetamine were detected in Ms. Inman's urine. RP at 86. Methamphetamine is the drug consumed; amphetamine is the metabolite produced from the methamphetamine. RP at 89.

Methamphetamine could stay in a chronic user's urine for one to four days. RP at 86.

The jury found the defendant guilty of Delivery of a Controlled Substance. CP 11.

III. ARGUMENT

A. Standard on Review

Evidence is sufficient to support a conviction when, viewed in the light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. The defendant admits the truth of the State's evidence and all inferences that reasonably can be drawn from that evidence. *State v. Colquitt*, 133 Wn. App. 789, 137 P.3d 892 (2006).

B. **In the light most favorable to the State, Ms. Inman testified unambiguously that the defendant supplied her with methamphetamine, the defendant made very damaging admissions about his using methamphetamine with Ms. Inman, and the toxicology report confirmed Ms. Inman's testimony.**

Ms. Inman's testimony: Ms. Inman repeatedly stated that the defendant gave her methamphetamine. "We smoked methamphetamine [on the trip to Seattle] and took the back way to Seattle. We took Steven's Pass and every five to ten minutes he would pull over, two, three hours with no cell phone reception and we would sit and talk and smoke meth." RP at 22.

We arrived and went and visited his son and from his son's house we went to my cousin John David in Kent and smoked weed and then I got a hold of my best friend, Olympia, and met up with her. We got in the car. We drove to—it was Bellevue and drove to a little alleyway and we went and got a pipe to smoke methamphetamine and an incense burner.

...

And we smoked a couple bowls and I had to go to the bathroom so we went to McDonald's

RP at 23. On the way back from Seattle, "I read the sign and we were at Crystal Springs and I have no idea where that is located and stopped and smoked a bowl of methamphetamine." RP at 27-28. She and the defendant talked about the substance being methamphetamine. RP at 25.

The defendant's admissions: The defendant admitted that he uses methamphetamine, that he used methamphetamine with Ms. Inman on the way to Seattle and in the motel room in Seattle, and that he was not honest with the police on these points. RP at 124-25, 154.

Toxicologist's testimony: Forensic Scientist Dawn Skerlov found methamphetamine in Ms. Inman's urine sample:

The basic drug screening was performed on the urine and there was amphetamine [and] methamphetamine detected and then that went onto further confirmation forensically . . . to get . . . a check and balance So, we did amphetamine and methamphetamine testing and this also came back positive for methamphetamine in the urine.

RP at 82, 86.

Reasonable inferences: First, the methamphetamine had to come from either Ms. Inman or the defendant. Ms. Inman was a 22-year-old without a residence, car, or income. RP at 18, 21, 48. The defendant at least had a residence, a vehicle, receives disability, and does some side work. RP at 147-48. He was able to pay for the motel room in Seattle and gas for the trip. *Id.* It is reasonable to infer that, since the defendant had some financial assets while Ms. Inman had none, he purchased the methamphetamine.

Second, the defendant and Ms. Inman both agree there was sexual intercourse between them. RP at 31, 127. But, Ms. Inman testified the defendant raped her; the defendant claims it was consensual. *Id.* The jury found the defendant not guilty of the rape charge. CP 10. It is a reasonable inference that the defendant, a 60-year-old grandfather, would give Ms. Inman, a 22-year-old, methamphetamine hoping to have sex with her. RP at 65, 125. The jury could have easily concluded that the defendant and Ms. Inman had a consensual exchange: methamphetamine for sex.

Even without these inferences, based on the direct testimony it was reasonable for the jury to conclude beyond a reasonable doubt that the defendant gave Ms. Inman methamphetamine. Ms. Inman directly testified that he did so, the toxicologist confirmed Ms. Inman had

methamphetamine in her system, and the defendant's denials were not credible.

Case law supports the conviction: A chemical test "is not vital to uphold a conviction for possession of a controlled substance." *Colquitt*, 133 Wn. App. at 796. Circumstantial evidence and lay testimony may be sufficient to establish the identity of a drug in a criminal case. *Id.* In *Colquitt*, the only evidence was that a police officer stated that the substance "appeared" to be cocaine. *Id.* at 792. Although the police officer field-tested the substance, there was no laboratory test and no admissions by the defendant. *Id.* at 792-93. The Court reversed the conviction. *Id.* at 802. Contrast that with the evidence herein: direct testimony identifying the substance as methamphetamine from a user, confirmation from a toxicologist, and an admission from the defendant that he and the witness were using methamphetamine.

C. The reason the substance did not look like the methamphetamine Ms. Inman was used to is easily explained.

The defendant points out that the substance the defendant gave to Ms. Inman looked different to her. She was used to methamphetamine in a crystal form, not powder. RP at 24. But, she was sure that the defendant had added some substance to the methamphetamine.

Q: Do you have any reason to believe Mr. Kendall gave you anything besides methamphetamine, something in addition to methamphetamine?

A: I knew.

Q: What do you think it was?

A: To be honest I'm not sure. I never fell asleep on methamphetamine before. It was real powdery. I've had memory problems since I smoked that.

RP at 40.

The defendant added something to the methamphetamine he gave Ms. Inman. That explains why she thought it looked different and why it affected her differently. But, they both knew they were using methamphetamine. Ms. Inman: RP at 22-23, 25, 28, 47; Defendant: RP at 72-73, 124-25.

Further, while Ms. Inman may not be familiar with methamphetamine in powder form, it is commonly smoked as a powder.

See NATIONAL INSTITUTE ON DRUG ABUSE, DRUG FACTS:

METHAMPHETAMINE (January 2014) *available at*

<https://www.drugabuse.gov/publications/drugfacts/methamphetamine>.

Also, methamphetamine is a drug with two phases: In the first phase, the user is alert. RP at 92. In the second phase, the user can sleep for long periods of time. *Id.* Ms. Inman's reaction to the methamphetamine and her crashing in the downtown Seattle motel seem consistent with the second phase.

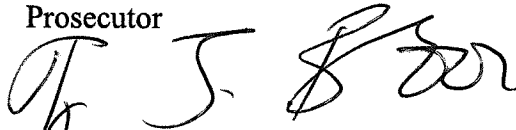
The defendant also attaches some significance to the difference between amphetamine and methamphetamine. However, both the first and second toxicology tests found methamphetamine in Ms. Inman's urine. In any event, they are associated drugs. Methamphetamine is the drug consumed and amphetamine is the metabolite produced by the body.

IV. CONCLUSION

Based on the aforementioned rationale, the defendant's conviction should be affirmed.

RESPECTFULLY SUBMITTED this 13th day of July, 2016.

ANDY MILLER
Prosecutor

A handwritten signature in black ink, appearing to read 'Terry J. Bloor', is written over a horizontal line.

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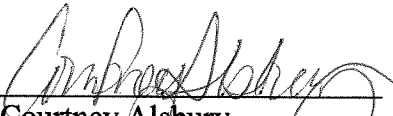
CERTIFICATE OF SERVICE

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:

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Signed at Kennewick, Washington on July 13, 2016.


Courtney Alsbury
Appellate Secretary