

62547-1  
No. 62547-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

TERRIONTE BUTCHER-SIMS,

Appellant.

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

The Honorable Richard D. Eadie

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BRIEF OF APPELLANT

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**A. ASSIGNMENT OF ERROR**

The trial court erred by allowing the State to publish physical evidence to the jury during closing argument, although no witness opened the sealed evidence envelope during testimony or identified the physical evidence as the cocaine obtained from Mr. Butcher-Sims.

**B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR**

Before a physical object connected with a crime may properly be admitted into evidence it must be properly identified and shown to be in substantially the same condition as when the crime was committed. Here, the State's witnesses identified the envelope, which allegedly contained the cocaine obtained from Mr. Butcher-Sims when he was arrested, but none of the witnesses identified the actual cocaine inside the envelope before the prosecutor displayed the cocaine for the jury during closing argument. Did the State fail to lay adequate foundation for the cocaine to be admitted and published to the jury?

**C. STATEMENT OF THE CASE**

Terrionte Butcher-Sims was charged with Second Degree Robbery and Possession of Cocaine with Intent to Distribute for

allegedly attempting to force Jonathan Hernandez to buy cocaine and then stealing money from him. CP 6-7; 9/16/08RP 150-62.

Jonathan Hernandez testified that Mr. Butcher-Sims approached him outside of a Jack in the Box restaurant and asked him if he wanted to buy drugs. 9/16/08RP 150-60. Mr. Hernandez testified that after he declined and tried to enter the restaurant, Mr. Butcher-Sims blocked his way and demanded that he hand over his phone, or he would "knock him out." 9/16/08RP 161. Mr. Hernandez testified that he then removed \$210 from his pockets, and Mr. Butcher-Sims took it. 9/16/08RP 162.

Mr. Butcher-Sims testified that he went with friends to eat at Jack in the Box. 9/16/08RP 269. When he approached Mr. Hernandez to order his food, he noticed that Mr. Hernandez's eyes looked as though he used marijuana, so asked Mr. Hernandez if he had any marijuana. 9/16/08RP 270-72. Mr. Hernandez replied that he had cocaine instead and told Mr. Butcher-Sims to wait in the bathroom. 9/16/08RP 272. Mr. Butcher-Sims went into the bathroom, and then went to look for Mr. Hernandez. 9/16/08RP 273-74. Mr. Butcher-Sims walked out of the restaurant as Mr. Hernandez walked in, and Mr. Hernandez handed him a bag of cocaine while giving him a handshake. 9/16/08RP 276. Mr.

Butcher-Sims then went into the bathroom, and put \$150 under the liner of the garbage can. 9/16/08RP 277. When Mr. Hernandez asked about the money, Mr. Butcher-Sims said it was in the garbage can, and tried to explain that Hernandez would need to take the liner out of the garbage can. 9/16/08RP 278. Mr. Butcher-Sims testified that he and Mr. Hernandez got into an argument because Mr. Hernandez could not find the money, and Mr. Butcher-Sims did not want to leave until Mr. Hernandez found it. 9/16/08RP 281.

Mr. Butcher-Sims testified that he did not tell the police about the drug deal because he still had the cocaine and did not want them to confiscate it. 9/16/08RP 293-94.

A corrections officer recovered a bag of suspected cocaine during the pre-booking search of Mr. Butcher-Sims, and gave the bag to Officer Joshua Gedney. 9/16/08RP 236-37, 241. Officer Gedney tested the substance, verified it contained cocaine, and submitted it for evidence. 9/16/08RP 241. Officer Gedney testified that he put the cocaine into the envelope marked as Exhibit 1. 9/16/09RP 241. Eric Finney, a forensic scientist with the Washington State Patrol Crime Lab, testified that he received the envelope marked as Exhibit 1 from the evidence vault in the crime

lab, removed the substance inside, verified it contained cocaine through two tests, returned it to the envelope, and sealed the envelope. 9/16/08RP 248-50. None of these witnesses removed the contents of the envelope during their testimony. 9/16/08RP 234-54. The court admitted exhibit 1. 9/16/08RP 255-56.

During closing argument, against defense objection, the prosecutor opened the evidence envelope, displayed the bag of cocaine to the jury, and said, "This is what four grams of cocaine looks like." 9/17/08RP 348.

The jury acquitted Mr. Butcher-Sims of Second Degree Robbery and convicted him of Possession of Cocaine. CP 46, 68. He was sentenced to six months, with 172 days served. CP 72.

#### D. ARGUMENT

THE STATE FAILED TO LAY ADEQUATE  
FOUNDATION TO DISPLAY THE COCAINE TO THE  
JURY BECAUSE NO WITNESS IDENTIFIED THE  
CONTENTS OF THE EVIDENCE ENVELOPE  
DURING TESTIMONY

Under ER 901, "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Before a physical object connected with a crime may properly be admitted into evidence it must be

properly identified and shown to be in substantially the same condition as when the crime was committed. State v. Picard, 90 Wn. App. 890, 897, 954 P.2d 336 (1998).

A trial court's decision to admit evidence is reviewed for abuse of discretion. State v. Cambell, 103 Wn.2d 1, 21, 691 P.2d 929 (1984). A trial court abuses its discretion if its decision is manifestly unreasonable or based upon untenable grounds. State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997).

When the trial court abuses its discretion, reversal is required if the error was prejudicial to the defendant. State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). An error is prejudicial if, "within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected." State v. Neal, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001) (quoting State v. Smith, 106 Wn.2d 772, 780, 725 P.2d 951 (1986)).

In this case, no witness opened the evidence envelope during testimony in order to identify the cocaine as the same cocaine obtained from Mr. Butcher-Sims. However, the prosecutor opened the envelope during closing argument, displayed the bag of cocaine to the jury, and said, "This is what four grams of cocaine looks like." 9/17/08RP 348. Defense counsel objected before and

during closing argument. 9/17/08RP 322, 348. The court ruled that the prosecutor could open the envelope during closing, reasoning that the chain of custody had not been impeached, the defendant admitted that he had cocaine, and the jury is usually allowed to open exhibits in the jury room. 9/17/08RP 337-38.

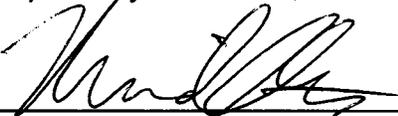
The trial court abused its discretion because the State failed to adequately lay foundation for the cocaine inside the envelope. Because the State failed to prove that the cocaine was the same cocaine obtained from Mr. Butcher-Sims, it failed to prove the crime beyond a reasonable doubt. Therefore, the error prejudiced Mr. Butcher-Sims and is not harmless.

E. CONCLUSION

For the above reasons, Mr. Butcher-Sims respectfully requests this Court reverse his conviction for possession of cocaine.

DATED this 9th day of October 2009.

Respectfully submitted,



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