COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY
DEPUTY

NO. 38251-2-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JEFFREY LLOYD FLOWERS, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable James R. Orlando

No. 07-1-02831-7

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Did the trial court properly exercise its discretion under ER 404(b) when it admitted into evidence a note found on defendant at the time of his arrest containing a price for OxyContin and a quantity for the pills, where the note was probative regarding defendant's intent to deliver controlled substances?

2. Was there sufficient evidence to convict defendant of unlawful possession of a controlled substance with intent to deliver, where defendant possessed a deliverable amount of methamphetamine and several drug paraphernalia items consistent with what a drug deal would possess?

3. Was there sufficient evidence to convict defendant of bail jumping, where defendant failed to appear for a pre-trial conference, thus violating the conditions of release and a scheduling order he personally signed?

B. STATEMENT OF THE CASE.

1. Procedure

On May 29, 2007, the Pierce County Prosecutor's Office filed an information in Cause No. 07-1-02831-7, charging JEFFREY LLOYD FLOWERS, hereinafter "defendant," with: Count I, unlawful possession

of a controlled substance with intent to deliver; Count II, unlawful use of drug paraphernalia; Count III, driving while in suspended or revoked status in the third degree. CP 1-3. On December 4, 2007, the State filed an amended information, adding two counts of bail jumping to the original charges as Counts IV and V. CP 4-6. On May 29, 2008, the State filed a second amended information, dismissing Counts III and IV, and adding Count VI, bail jumping, alleged to have occurred on January 8, 2008. RP 1-2, CP 7-9.

The matter proceeded to trial before the Honorable James R. Orlando on May 29, 2008. RP 1. Defense counsel made several motions in limine prior to voir dire. RP 3-5. One of the motions defense counsel made was to exclude evidence of a note that was found on defendant at the time of his arrest. RP 4. The note listed the price of ten OxyContin pills as $20 and had a phone number next to the listing. RP 4.

The court ruled that the note was admissible:

> ... I would allow the testimony regarding the paper with the OxyContin and the lab report regarding white residue. Certainly if there are other items of potential evidence that connect you to drug lifestyle or potential delivery of drugs, that's highly relevant to what's in question. I think that's fair game when someone has these things on them when they are arrested. I don't think that's overly prejudicial. Certainly does go to the element the State has to prove that there was possession with the intent to deliver.

RP 8.

After trial, the jury convicted defendant on all charges. RP 462-64; CP 49, 51-53. On September 5, 2008, the trial court sentenced defendant to 72 months on the unlawful possession of a controlled substance charge and 60 months each on the bail jumping charges, to be served concurrently in the Department of Corrections, and nine to 12 months of community custody. RP 481-82, CP 57-71. The trial court also sentenced defendant to 90 days suspended sentence on the unlawful use of drug paraphernalia charge, to be served concurrently with defendant's felony convictions. RP 482, CP 72-76. Defendant filed a timely notice of appeal on September 5, 2008. RP 483, CP (Notice of Appeal).

2. Facts

a. Unlawful Possession of a Controlled Substance with Intent to Deliver and Unlawful Use of Drug Paraphernalia

At about ten minutes before 1:00 a.m. on May 27, 2007, Officer Robert Tjossem was headed northbound on 211th Avenue East when a black, four-door Cadillac backed out in front of him. RP 150-52, 154-55. Officer Tjossem noticed that the Cadillac was missing the year tab on the license plate. RP 152. He ran the Cadillac's license plate number through the mobile dispatch computer in his vehicle. RP 153. The registration check revealed that the Cadillac's registration had been expired since

1999. RP 153. Almost immediately, the Cadillac pulled into a cul-de-sac, at which point Officer Tjossem performed a traffic stop. RP 152, 154.

Officer Tjossem approached the Cadillac and recognized defendant, who was in the driver's seat, although he did not remember defendant's name at that moment. RP 154. Defendant told Officer Tjossem that his license was suspended and he did not have either vehicle registration or insurance. RP 154. Officer Tjossem told defendant to shut off the car, which defendant did by turning a screwdriver that had been stuck in the ignition. RP 154-55. Officer Tjossem asked defendant to get out of the car. RP 154. Defendant initially refused, but eventually acquiesced and got out of the car. RP 154-56. Officer Tjossem then handcuffed and detained defendant, confirmed through LESA records that defendant's license was suspended, and placed defendant under arrest for driving with a suspended license. RP 156.

Deputy Andrew O'Neil arrived at the scene to assist while Officer Tjossem was handcuffing and detaining defendant. RP 156, 212-13. Officer Tjossem returned to the Cadillac and searched the car incident to arrest. RP 156. He found a glass pipe used for smoking methamphetamine on the driver's side floorboard. RP 156-57. The pipe contained both white and black residue. RP 156. Defendant told Officer Tjossem that the pipe was not his, but that he knew it was used for smoking drugs. RP 158.

After Officer Tjossem searched the Cadillac, Deputy O'Neil searched defendant while Officer Tjossem watched. RP 158-62, 214. Deputy O'Neil found a small, black nylon pouch in defendant's pants pocket containing three baggies with methamphetamine inside, one baggie with a large crystal of methamphetamine and two baggies with methamphetamine residue. RP 159-62, 191, 214-15. The pouch also contained five unused baggies. RP 214.

Officer Tjossem testified that the baggie with the large crystal "was probably for sale or hadn't been consumed yet," while the methamphetamine residue in the other two baggies indicated that the larger amount of methamphetamine that had been in those baggies had already been consumed. RP 161. Deputy O'Neil also found a collapsible baton in defendant's left pants pocket. RP 148, 214, 216-17. Defendant stated that he knew the baggie with the large crystal contained methamphetamine. RP 162, 191, 218-19. Defendant also claimed that if he had known the drugs were in his pocket, he would have smoked them. RP 162, 192, 219.

After more searching of defendant, Deputy O'Neil found a piece of paper in defendant's right jacket pocket with notations for ten pills of OxyContin, $20, and a phone number. RP 171, 191, 217-18. Officer Tjossem interpreted these notations to mean, "Someone is walking around with $200 worth of OxyContin." RP 172. Officer Tjossem also testified that the number of pills indicated that defendant was dealing drugs,

because the price of individual OxyContin pills would usually limit a user to obtaining one or two at a time. RP 173. Defendant also had a digital gram scale in his right, knee-high pants pocket. RP 174-75, 190, 216. There was white residue consistent with methamphetamine around the edges. RP 174, 196. Officer Tjossem testified that digital gram scales are usually carried by drug dealers, who use the device to divide up drugs and package them. RP 175.

Forensic scientist Jane Boysen of the Washington State Crime Laboratory weighed the crystal and tested the substances that were in each of the three baggies. RP 224-25, 227-33, 245. The crystal in the one baggie weighed .1 grams, and the residue in the other baggies was estimated to weigh less than .1 grams each. RP 229-30. The substance in each baggie tested positive for methamphetamine. RP 227, 229-31, 233, 245.

b. Bail Jumping

Defendant was arraigned on May 29, 2007, and conditions of release were set imposing bail in the amount of $30,000. RP 265-68, CP (Exhibit 10). Defendant received additional orders establishing conditions pending trial on September 12, 2007 and September 20, 2007, with the September 12 order increasing bail from $30,000 to $50,000. RP 269, 272, 274-76; CP (Exhibit 12); CP (Exhibit 14); CP (Exhibit 15). On September 20, 2007, a scheduling order was also entered, which bore

defendant's signature, in part directing defendant to appear on October 2, 2007 at 1:00 p.m. for a pretrial conference. RP 274-75, CP (Exhibit 14). Paragraph 3 of the order directed defendant to be present at the hearing and to report to the courtroom indicated. RP 274-75, CP (Exhibit 14).

Defendant failed to appear for the October 2, 2007, pretrial conference. RP 279, 284. Jesse Williams, the deputy prosecutor on the record in CDPJ, the courtroom to which defendant was ordered to appear, polled the gallery at 3:45 p.m., two hours and 45 minutes after defendant was supposed to report. RP 279. Williams looked around the courtroom and in the gallery for defendant. RP 279. Defendant was not present, and as a result a bench warrant was issued. RP 278-79, 283-84; CP (Exhibits 16-17).

On December 18, 2007, the trial court entered a scheduling order setting a continuance hearing date for January 8, 2008 at 8:30 a.m. RP 332-34, CP (Exhibit 20). As with the previous order, this order directed defendant to be present and report to the courtroom. RP 332-34, CP (Exhibit 20). The order bore defendant's signature. RP 332-34, CP (Exhibit 20). Defendant failed to appear for the January 8, 2008 continuance hearing. RP 335-36. Neil Horibe, the deputy prosecuting attorney assigned to CDPJ, polled the courtroom twice, at 8:55 a.m. and at 10:55 a.m. RP 335-36, CP (Exhibit 21). Defendant was not present, and as a result a bench warrant was issued. RP 335-38, CP (Exhibits 21-22).

C. ARGUMENT.

1. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION UNDER ER 404(b) IN ADMITTING THE NOTE FOUND ON DEFENDANT CONTAINING A PRICE FOR OXYCONTIN AND A QUANTITY FOR THE PILLS BECAUSE THE NOTE WAS PROBATIVE REGARDING DEFENDANT'S INTENT TO DELIVER CONTROLLED SUBSTANCES.

Admission of evidence is reviewed under the abuse of discretion standard. ***State v. Tharp***, 27 Wn. App. 198, 205-06, 616 P.2d 693 (1980). A trial court abuses its discretion if its decision is manifestly unreasonable or is based on untenable grounds. ***State v. Gonzalez-Hernandez***, 122 Wn. App. 53, 57, 92 P.3d 789 (2004).

Evidence is relevant if it has "any tendency to make the existence of a fact of consequence to the determination of the action more or less probable than it would be without the evidence." ER 401.

Generally, under ER 404(b) evidence of others crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith but may be admissible for other purposes such as proof of motive or intent. ER 404(b). A trial court's ruling on the admissibility of evidence under ER 404(b) is reviewed for abuse of discretion. ***State v. Lough***, 125 Wn.2d 847, 853, 889 P.2d 487 (1995). A court must determine on the record whether the danger of undue prejudice substantially outweighs the probative value of such evidence prior to

admitting evidence under ER 404(b). ***State v. Powell***, 126 Wn.2d 244, 264, 893 P.2d 615 (1995).

Here, the crib notes were not evidence of prior bad acts, but rather circumstantial evidence of defendant's intent. ***State v. Thomas***, 68 Wn. App. 268, 843 P.2d 540 (1992), is instructive. Police were performing surveillance on a restaurant in Seattle when they observed Thomas "engaging in activities that resembled drug transactions." ***Thomas***, 68 Wn. App. at 270. Thomas participated in three apparent drug buys. After that, Thomas went into the restaurant and the officers followed. Eventually, after the officers took Thomas back outside, they searched Thomas and found a pill bottle containing 95 "hits" of rock cocaine and a baggie containing $400 worth of cocaine, as well as $400 in cash and a pager. ***Thomas***, 68 Wn. App. at 271.

On appeal, the court affirmed the trial court's admission of the officers' testimony regarding Thomas's activities prior to his arrest. ***Thomas***, 68 Wn. App. at 273-74. The court held that the evidence of Thomas's prior drug sales "logically relates directly to the material issue of what Thomas intended to do with the cocaine he possessed when he was arrested." ***Thomas***, 68 Wn. App. at 273 (*citing* ***State v. Hubbard***, 27 Wn. App. 61, 64, 615 P.2d 1325 (1980)). The court held that, while the testimony was prejudicial to Thomas, its probative value outweighed its prejudicial effect.

In the present case, the trial court found that the note that detailed the number of OxyContin pills and their price, and had a phone number next to this information, went to defendant's intent to deliver controlled substances. Defense counsel argued that the note should be excluded under ER 404(b) because, "...[T]he only possible admissibility would be... to try and paint [defendant] as a general drug user, connected to drugs, which aren't relevant to the particular drug he's charged with." RP 4.

In denying defendant's motion, the trial court followed a line of reasoning similar to the ***Thomas*** court, articulating the connection between the note and what defendant intended to do with the methamphetamine. "Certainly if there are other items of potential evidence that connect you to drug lifestyle or potential delivery of drugs, that's highly relevant to what's in question. I think that's fair game when someone has these things on them when they are arrested." RP 8. In ***Thomas***, the court focused on Thomas's involvement in drug buys that occurred in close proximity to his arrest; the testimony was "highly probative" because it went directly to the issue of what Thomas intended to do with the cocaine. ***Thomas***, 68 Wn. App. at 274. In the present case, the Court focused on evidence found on defendant at the time of his arrest that indicated he was actively dealing drugs, thus helping establish that it was likely he intended to deliver the methamphetamine he was possessing. RP 8.

Here, defendant's argument that the note was evidence of propensity relies on inapposite case law regarding past conduct. For example, ***State v. Wade***, 98 Wn. App. 328, 989 P.2d 576 (1999), which defendant cites, is distinguishable from the present case for precisely this reason. This Court reversed Wade's conviction because the trial court admitted into evidence Wade's *past convictions* for dealing drugs. This Court held, "Using Wade's prior bad acts to prove current criminal intent... is tantamount to inviting the following inference: Because Wade had the same intent to distribute drugs previously, he must therefore possess the same intent now." ***Wade***, 98 Wn. App. at 336.

In the present case, the note was not admitted into evidence to show that because defendant had committed previous bad acts he had demonstrated a general propensity to deal drugs. RP 8. Instead, the trial court admitted the note into evidence because it was probative toward proving defendant's intent. The note indicated that defendant was participating in an ongoing "drug lifestyle or the potential delivery of drugs," as opposed to past criminal conduct. RP 8. The trial court also focused on the fact that the note was found on defendant at the time of his arrest. RP 8. The contemporary nature of the evidence in the present case distinguishes the note from the past convictions in ***Wade***. Accordingly, the trial court did not abuse its discretion in admitting the note.

However, even if this court were to hold that the trial court abused its discretion in admitting the note, the error was harmless. An error is

harmless "when, considering the untainted evidence, the appellate court concludes the result would have been the same even if the trial court had not admitted the evidence." ***State v. Carleton***, 82 Wn. App. 680, 686, 919 P.2d 128 (1996) (*citing* ***State v. Jackson***, 102 Wn.2d 689, 696, 689 P.2d 76 (1984); ***State v. Thamert***, 45 Wn. App. 143, 151-52, 723 P.2d 1204, *review denied*, 107 Wn.2d 1014 (1986)). The note was just one of many items defendant possessed that related to drug dealing. In addition to the note, the State presented evidence that defendant possessed one baggie with a crystal of methamphetamine, two baggies with methamphetamine residue, five unused baggies, a digital scale with residue consistent with methamphetamine, and a collapsible baton. RP 148, 159-62, 174-75, 191-92, 196, 214-17. Without the note, the State still presented sufficient independent evidence that defendant was a drug dealer and intended to deliver the methamphetamine in his possession.

2. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT DEFENDANT'S CONVICTIONS OF UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER AND BAIL JUMPING.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. ***State v. McCullum***, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); *see also* ***Seattle v. Gellein***, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); ***State v. Mabry***, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). The applicable standard of review

is, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. ***State v. Joy***, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); ***State v. Green***, 94 Wn.2d 216, 221-22, 616 P.2d 628 (1980). Also, a challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. ***State v. Barrington***, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), *review denied*, 111 Wn.2d 1033 (1988)(*citing* ***State v. Holbrook***, 66 Wn.2d 278, 401 P.2d 971 (1965)). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. ***State v. Anderson***, 72 Wn. App. 453, 458, 864 P.2d 1001, *review denied*, 124 Wn.2d 1013 (1994).

Circumstantial and direct evidence are considered equally reliable. ***State v. Delmarter***, 94 Wn.3d 634, 638, 618 P.2d 99 (1980). In considering this evidence, "[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal." ***State v. Camarillo***, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)(*citing* ***State v. Casbeer***, 48 Wn. App. 539, 542, 740 P.2d 335, *review denied*, 109 Wn.2d 1008 (1987)). This is because the written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. The differences in the testimony of witnesses create the need for such credibility determinations. The trier of fact, who is best able to observe the witnesses and evaluate

their testimony, should make these determinations. On this issue, the Supreme Court of Washington said:

> great deference . . . is to be given the trial courts factual findings. ***In re Sego***, 82 Wn.2d 736, 513 P.2d 831 (1973); ***Nissen v. Obde***, 55 Wn.2d 527, 348 P.2d 421 (1960). It, alone, has had the opportunity to view the witness' demeanor and to judge his veracity.

State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985).

Therefore, when the State has produced evidence of all elements of a crime, the decision of the trier of fact should be upheld.

a. There was sufficient evidence to convict defendant of unlawful possession of a controlled substance with intent to deliver.

A person is guilty of unlawful possession of a controlled substance with intent to deliver when he "possess[es] with intent to... deliver, a controlled substance." RCW 69.50.401(1). Defendant does not challenge the sufficiency of the evidence regarding his possession of methamphetamine. Instead, he only challenges the sufficiency of the evidence supporting the "intent to deliver" aspect of the charge. Br. of Appellant at 8. Specifically, defendant argues the amount of drugs here was insufficient to support a conviction for intent to deliver. Br. of Appellant at 8.

In order for there to be sufficient evidence of unlawful possession of a controlled substance with intent to deliver, there must be possession suggestive of sale plus at least one additional factor. ***State v. Goodman***,

150 Wn.2d 774, 782-83, 83 P.3d 410 (2004); ***State v. Todd***, 101 Wn. App. 945, 953, 6 P.3d 86 (2000). While evidence of possession of methamphetamine residue alone is "insufficient for purposes of delivery," an amount of methamphetamine that is more consistent with personal use may nonetheless be sufficient to support an intent to deliver conviction as long as the amount is marketable. ***State v. McPherson***, 111 Wn. App. 747, 759-60, 46 P.3d 284 (2002). Moreover, a jury may look at all of the evidence in order to determine whether or not a defendant intended to sell the controlled substance in his possession. ***State v. Zunker***, 112 Wn. App. 130, 137-38, 48 P.3d 344 (2002).

Defendant does not cite to any cases supporting his assertion that .1 grams of methamphetamine is insufficient to support his intent to deliver. Instead, defendant cites two cases, ***Goodman*** and ***State v. Hagler***, 74 Wn. App. 232, 872 P.2d 85 (1994), in which the defendants' convictions for unlawful possession with intent to deliver were affirmed. Br. of Appellant at 9-10. Neither of these cases sets a minimum standard for how much methamphetamine a defendant must possess in order to support an intent to deliver. The Court rejected Goodman's argument that the amount of drugs must be sizeable in order to support an intent to deliver conviction: "[I]t has never been suggested by any court that a large amount of a controlled substance is required to convict a person of intent to deliver." ***Goodman***, 150 Wn.2d at 782-83 (*citing* ***Zunker***, 112 Wn. App. at 136). Goodman was in possession of six baggies that

weighed a total of 2.8 grams, three of which tested positive for methamphetamine. ***Goodman***, 150 Wn.2d at 783. In ***Hagler***, the court references Hagler's possession of 24 rocks of cocaine as one factor it considered in affirming the conviction, but does not state that had Hagler possessed a smaller amount his conviction would have been reversed. ***Hagler***, 74 Wn. App. at 236-37. Moreover, as indicated above, Officer Tjossem expressly stated that defendant possessed a deliverable quantity of methamphetamine. RP 161.

In the present case, Officer Tjossem testified that the methamphetamine crystal in one of the baggies was a common amount for sale and "was probably for sale or hadn't been consumed yet." RP 161. Accordingly, defendant possessed a sufficient amount of methamphetamine to deliver. Defendant, however, mischaracterizes Officer Tjossem's testimony regarding whether defendant could have sold the crystal of methamphetamine in his possession. Br. of Appellant at 10-11. Defendant states that Officer Tjossem testified that ".1 gram of methamphetamine is not a saleable amount of the drug." Br. of Appellant at 10. To support his proposition, however, defendant cites Officer Tjossem's testimony during cross-examination that methamphetamine users most typically pay for $20 worth of methamphetamine more than any other amount. Br. of Appellant at 10-11 (*citing* RP 181).

Officer Tjossem never testified that defendant possessed an amount that was not deliverable; in fact, he testified that the opposite was

true. RP 161. Defendant even concedes in the footnote on page 11 of his brief that Officer Tjossem was only testifying during cross-examination about the *most typical* amount of methamphetamine, as opposed to whether the crystal defendant possessed that was deliverable. Br. of Appellant at 11, Footnote 2 (*citing* RP 181).

Regarding the issue of the totality of the evidence of defendant's intent, two cases, ***Zunker*** and ***Goodman***, are instructive. At Zunker's trial, a detective testified that the amount of methamphetamine on Zunker was potentially enough for one or two buys. ***Zunker***, 112 Wn. App. at 136. The court affirmed Zunker's conviction. ***Zunker***, 112 Wn. App. at 141. The court identified the issue before it as, "[W]hether, when other factors indicate sales activity, some minimum quantity of drugs is necessary to support a finding of intent to deliver." ***Zunker***, 112 Wn. App. at 136. The court held that, as long as there is enough of the drug that it can be delivered, then the amount of the drug will not preclude a finding of intent to deliver. ***Zunker***, 112 Wn. App. at 136, 138. The court noted that it had previously held in ***Todd*** that the residue found in that case was too small to deliver, thus it did not support an intent to deliver conviction. ***Zunker***, 112 Wn. App. at 136 (*citing* ***Todd***, 101 Wn. App. at 954). The court stated, "[T]he fact that the amount of drugs is small should... not invalidate a jury verdict, provided corroborating circumstances are present." ***Zunker***, 112 Wn. App. at 138. Those corroborating circumstances in ***Zunker*** included scales with

methamphetamine residue, a cell phone battery, ingredients to produce methamphetamine, as well as a key to the trunk where the officers found the anhydrous ammonia tank. ***Zunker***, 112 Wn. App. at 136. The court also included notebooks with names and credit card numbers found on Zunker, which are similar to the crib note containing OxyContin price and quantity information as well as a name found on defendant in the present case. RP 171, 191, 217-18.

In ***Goodman***, the Court held that possession of a controlled substance combined with at least one additional factor was sufficient to establish an inference of intent to deliver. ***Goodman***, 150 Wn.2d at 783 (*citing* ***State v. Darden***, 145 Wn.2d 612, 624, 41 P.3d 1189 (2002); ***State v. Brown***, 68 Wn. App. 480, 483, 843 P.2d 1098 (1993); ***Zunker***, 112 Wn. App. at 136). In addition to possessing 2.8 grams of methamphetamine, Goodman also possessed several paraphernalia items that indicated he was selling drugs and other items that connected him to a drug buy. ***Goodman***, 150 Wn.2d at 783. The Court affirmed Goodman's conviction. ***Goodman***, 150 Wn.2d at 783. In Goodman's case, the Court relied on several additional factors plus Goodman's methamphetamine possession to affirm his conviction. ***Goodman***, 150 Wn.2d at 783.

In the present case, there were multiple additional factors indicating that he intended to deliver that methamphetamine. RP 148, 159-62, 174-75, 191-92, 196, 214-17. Defendant also possessed two additional baggies with residue in them, *five unused baggies*, a digital

scale with residue consistent with methamphetamine on it, a crib note with quantity and price information for OxyContin, and a collapsible baton that defendant stated was "for his protection," at the time of his arrest. RP 148, 159-62, 171-75, 191-92, 196, 214-18. Defendant's possession of a deliverable amount of methamphetamine, combined with the corroborating circumstances of his possession of the aforementioned paraphernalia, was sufficient evidence for a reasonable jury to conclude that defendant was a drug dealer and intended to deliver the crystal of methamphetamine.

Defendant possessed a sufficient amount of methamphetamine to deliver the drug. In addition, defendant possessed several other items of drug paraphernalia. Viewed in the light most favorable to the State, this evidence was sufficient to support the inference that defendant intended to deliver the methamphetamine in his possession.

b. There was sufficient evidence to convict defendant of bail jumping.

A person is guilty of bail jumping when, "[H]aving been released by court order or admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state... fails to appear." RCW 9A.76.170(1). Defendant challenges the sufficiency of the evidence regarding the bail jumping charge in Count V stemming from his failure to appear for a pre-trial conference on October 2, 2007. Br. of

Appellant at 7. Defendant does not challenge his bail jumping conviction in Count VI for the January 8, 2008 incident date.

In order to provide sufficient evidence to convict a defendant of bail jumping, the State must show, and need only show, that the defendant "(1) was held for, charged with, or convicted of a particular crime; (2) had knowledge of the requirement of a subsequent personal appearance; and (3) failed to appear as required." ***State v. Downing***, 122 Wn. App. 185, 192, 93 P.3d 900 (2004).

Defendant's signature on a scheduling order is sufficient to establish his knowledge of the requirement that he appear at a particular date and time. ***State v. Ball***, 97 Wn. App. 534, 536, 987 P.2d 632 (1999). In the present case, the trial court notified defendant on September 20, 2007, that he "shall be present" for a pre-trial conference, set for October 2, 2007 at 1:00 p.m. RP 274-75, CP (Exhibit 14). The trial court also notified defendant that "[f]ailure to appear will result in a warrant being issued for your arrest." RP 275, CP (Exhibit 14). The scheduling order stated that defendant "shall be present at these hearings and report to the courtroom indicated." RP 274-75, CP (Exhibit 14). Defendant signed the scheduling order that contained these notifications. RP 274-75, CP (Exhibit 15).

When deputy prosecutor Jesse Williams polled the courtroom and looked around the courtroom for defendant at 3:45 p.m., defendant was not there. RP 279. Defendant was not present for his pre-trial conference,

in direct violation of the trial court's instructions. Moreover, there is also no evidence to suggest that defendant was ever present. The order explicitly states that defendant "shall be present" for his pre-trial conference. CP (Exhibit 14). He was not. RP 278-79, 283-84, CP (Exhibit 16-17). Where defendant was not present when the deputy prosecutor polled the courtroom at 3:45 p.m., there was sufficient evidence to convict defendant of bail jumping on October 2, 2007.

D. CONCLUSION.

The trial court properly admitted the note containing quantity and price information pertaining to OxyContin as evidence of intent to deliver a controlled substance. There was also sufficient evidence for a jury to

convict defendant of unlawful possession of a controlled substance with intent to deliver and bail jumping. Therefore, defendant's conviction and sentence should be affirmed.

DATED: MAY 12, 2009

GERALD A. HORNE
Pierce County
Prosecuting Attorney

STEPHEN TRINEN
Deputy Prosecuting Attorney
WSB # 30925

Steven P. Johnson, Jr.
Rule 9

Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

5/13/09 S Johnson
Date Signature

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