

NO. 48387-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

EDWARD LAWRENCE BABINE, JR.,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 15-1-00935-2

BRIEF OF RESPONDENT

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SERVICE	Catherine E. Glinski Po Box 761 Manchester, Wa 98353 Email: cathyglinski@wavcable.com	This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications. <i>or, if an email address appears to the left, electronically.</i> I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED June 1, 2016, Port Orchard, WA  Original e-filed at the Court of Appeals; Copy to counsel listed at left. Office ID #91103 kcpa@co.kitsap.wa.us
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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the territorial jurisdiction of the trial court was shown by circumstantial evidence?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Edward Lawrence Babine, Jr. was charged by information filed in Kitsap County Superior Court with two counts of delivery of methamphetamine and one count of unlawful possession of methamphetamine. CP 1. The statement of probable cause supporting the information alleged that all acts occurred in Bremerton, Washington, including the arrest leading to the charge of unlawful possession of methamphetamine, which happened at “1729 6th Street in Bremerton, WA.” CP 5. A first amended information was later filed that added school-zone special allegations for both delivery charges. CP 6.

The jury found Babine not guilty on the two delivery charges and guilty of the possession charges. CP 70. Babine received a standard range sentence. CP 73. Post judgment, Babine moved to arrest the judgment claiming a failure of proof that the possession charge occurred in the State of Washington. CP 84. That motion was withdrawn by the defense before

the trial court ruled. 2RP 286.¹ A timely notice of appeal was filed. CP 85.

B. FACTS

Witness Paul Andrews, a Kitsap County employee, testified as to a map he had created. 1RP. The map detailed streets in downtown Bremerton, pinpointing the residence in question. 1RP 39. Andrews used software to generate a 1000 foot circle around the residence. Id.

Andrews' map set the scene for the activity of Bremerton Police Detective Steven Forbragd. Detective Forbragd was conducting a narcotics investigation that included the use of a confidential informant (CI) making a drug deal with a drug dealer. 1RP 47. The dealer "lived across the street from the 7-Eleven in Downtown Bremerton." 1RP 57. The defendant, Edward Babine, Jr., was identified as the drug dealer. 1RP 58. Detective Forbragd referred to downtown Bremerton locations from the map provided by witness Andrews when describing the first CI transaction. 1RP 63. The detective described well-known downtown Bremerton streets in describing the movements of the CI. 1RP 65-66. The drugs purchased were taken to "our police department at 1025

¹ The transcription of the post-verdict proceedings seems to mislabel, mixing the names of the parties speaking. At p. 286, the withdrawal of the motion is under the name Ms. Carlson, the prosecutor, but it seems clear that it is defense counsel, Mr. Drury, who withdraws the motion.

Burwell Street.” 1RP 71.

Some days later, a second CI transaction was orchestrated with Babine as the target. 1RP 73. This transaction was at the same location as the first. 1RP 73-74. Once again, the purchased drugs were taken to “our facility,” meaning the Bremerton Police Department. 1RP 76. A third CI purchase was not done because of problems with the CI. 1RP 77-78.

Babine was later arrested by Detective Forbragd. 1RP 80. Babine had been seen by other officers and was arrested on probable cause of the two CI deliveries. *Id.* Detective Forbragd referred to the place of arrest as “a location.” *Id.* Babine had a baggy of drugs on his person when arrested. *Id.*

The CI, Robert Anderson, testified that he was working for the Bremerton Special Operations Group (SOG). 1RP 113. He discussed the locus of the drug transactions in Bremerton. 1RP 120-122.

Bremerton police detective Michael Nelson testified that he worked with Bremerton SOG. 1RP 137. He also referred to the map of downtown Bremerton while recalling his observations of the CI transactions. 1RP 139-40.

Head of Bremerton SOG, Bremerton police detective Billy Renfro testified to the location of the CI transactions in Bremerton, Washington. 2RP 165.

Thomas Greenler was called by the defense. 2RP 192. He testified that he lives at “1103 National Avenue South in Bremerton, Navy Yard City.” Id. Testimony established that Babine moved into a mobile home at that address when he vacated the apartment in downtown Bremerton.

III. ARGUMENT

A. CIRCUMSTANTIAL EVIDENCE WAS SUFFICIENT TO ESTABLISHED A PRIMA FACIE SHOWING OF THE TERRITORIAL JURISDICTION OF THE TRIAL COURT.

Babine argues that there was insufficient proof that his crime of unlawful possession of methamphetamine was committed in the State of Washington. This claim is without merit because circumstantial evidence left no doubt that the offense took place in Bremerton, Washington.

Questions of jurisdiction are reviewed de novo. *State v. Daniels*, 104 Wn.App. 271, 274, 16 P.3d 650 (2001). “The state always has the burden of establishing jurisdiction beyond a reasonable doubt. But merely by alleging that the crime took place in Washington, the state met this burden.” *State v. Boyd*, 109 Wn.App. 244, 251, 34 P.3d 912 (2001). To “allege” is “to state, recite, assert, or charge; to make an allegation.” In turn, an “allegation” is “the assertion, claim, declaration, or statement of a

party to an action, made in a pleading, setting out what he intends to prove.” Regarding territorial jurisdiction, the state need make a prima facie showing only unless the defense points to “some evidence” that raises a question as to the trial court’s jurisdiction. *State v. L.J.M.*, 129 Wn.2d 386, 394, 918 P.2d 898 (1996). Then, if the trial court has some doubt as a matter of law, the issue is for the trier of fact to be proven beyond a reasonable doubt. *Boyd*, 109 Wn.App at 251.

In *State v. Brown*, 29 Wn.App. 11, 627 P.2d 132 (1981), defendant was charged with 10 counts of forgery. The “to convict” instructions required that the state prove beyond a reasonable doubt that the crimes occurred in “King County, Washington.” Factually, the Court of Appeals was able to find evidence in the record that some or all of the forgery behavior on each count of Brown was in fact done in King County. *Id.* at 15. Brown asserted that whether called jurisdiction or venue the situs of the crimes must be proven beyond a reasonable doubt. *Id.* The Court of Appeals assumed that this is correct but answered that assertion was essentially a challenge to the sufficiency of the evidence. *Id.* Thus the well-known standard applied: “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.” *Id.* Similarly, in the present case, Babine challenges the sufficiency of proof of territorial jurisdiction and the same sufficiency

standard should apply. *See also, State v. Martin*, 182 Vt. 377, 384, 944 A.2d 867 (2007) (applying light most favorable to the state rule to challenge of territorial jurisdiction on appeal).

Further, the jury was instructed that circumstantial evidence is as probative as direct evidence. CP 22 (instruction #4). Thus the jury in the present case could properly find jurisdiction based on circumstantial evidence. *See Martin, supra* (jurisdiction may be proven by circumstantial evidence.). Taking in all the above, then, the question is whether the state made a prima facie allegation of jurisdiction and whether circumstantial evidence taken in a light most favorable to the state allowed a reasonable inference that the crime in question occurred in the state of Washington.

Here, the state argued that the crime of possession occurred in the State of Washington. 2RP 252. The police were either identified as Bremerton officers or affiliated with Bremerton SOG. Substantial evidence on the delivery counts established that all the actions of the parties on those occasion occurred in Bremerton. Further, testimony established that when Babine moved from the site of the deliveries, it was to a mobile home that was situated in Bremerton, Washington. Taken in a light most favorable to the state, these circumstances bottom a reasonable inference that the arrest of Babine and his possession of methamphetamine at that time occurred in the state of Washington. The state has established a prima facie case of territorial jurisdiction and absent some evidence to

the contrary, Babine's claim fails.

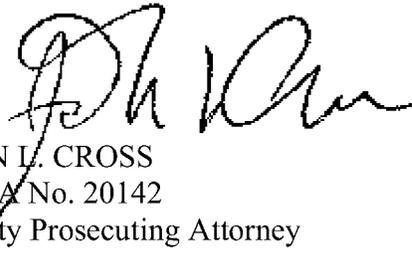
IV. CONCLUSION

For the foregoing reasons, Babine's conviction and sentence should be affirmed.

DATED June 1, 2016.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read "John L. Cross", is written over the typed name and title of the Deputy Prosecuting Attorney.

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June 01, 2016 - 1:20 PM

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