

No. 49067-6-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Appellant,

vs.

FELICIA BARNES,

Respondent.

Appeal from the Superior Court of Washington for Lewis County
Case No. 14-1-00509-6

Appellant's Opening Brief

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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it weighed the evidence presented at trial when it considered Barnes' motion to arrest judgment pursuant to CrR 7.4(a)(3).
2. The trial court erred when it failed to consider the evidence presented at trial in the light most favorable to the State, with all reasonable inferences drawn in favor of the State, when it considered Barnes' motion to arrest judgment pursuant to CrR 7.4(a)(3).
3. The trial court erred when it granted Barnes' motion for arrest of judgment of the jury's verdict for Possession of Methamphetamine with Intent to Manufacture or Deliver.
4. The trial court erred with it entered judgment for the lesser included offense of Possession of Methamphetamine.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

- A. In a CrR 7.4(a)(3) motion for arrest of judgment based upon the insufficiency of proof of a material element, the trial court may not weigh the evidence. Did the trial court err when it improperly weighed the evidence when it determined Barnes' motion for arrest of judgment?
- B. In a CrR 7.4(a)(3) motion for arrest of judgment based upon the insufficiency of proof of a material element, the trial court must view the evidence in the light most favorable to the State. Did the trial court err when it failed to view the evidence in the light most favorable to the State when it determined Barnes' motion for arrest of judgment?

III. STATEMENT OF THE CASE

On July 5, 2014, around 3:30 p.m., Centralia Police Officer Haggerty was in an unmarked police car on Pear Street and Washington in Centralia, Washington. RP 19-21. Officer Haggerty

observed a vehicle, heading north on Washington, with a cracked windshield and a very loud, obviously altered, exhaust. RP 22. Officer Haggerty initiated a traffic stop on the vehicle, which pulled into a driveway on the west side of the road. RP 22.

The driver was identified as James Mueller. RP 23. Officer Haggerty had information regarding Mr. Mueller dealing methamphetamine and commonly having warrants for his arrest. RP 23. Mr. Mueller informed Officer Haggerty that he probably had a Department of Corrections felony warrant. RP 23. Officer Haggerty detained Mr. Mueller pending confirmation of the warrant. RP 23.

Felecia Barnes was also in the vehicle with Mr. Mueller. RP 23-24. Barnes identified herself to Officer Haggerty because she claimed to have a valid license to remove the vehicle from the road if it was needed. RP 24. Officer Haggerty requested permission from Barnes to search her purse. RP 24. Barnes said yes. RP 24.

In Barnes' purse Officer Haggerty found "A meth pipe, a glass pipe with white residue, and what I call a plethora of baggies, empty, clean and unused baggies." RP 25. Officer Haggerty also found \$201. RP 25. The numerous smaller baggies were marked with green alien heads. RP 26.

Officer Haggerty next received permission from Mr. Mueller to search the vehicle. RP 28-29. Officer Haggerty “found a Western Family peanut butter jar and a black smaller toolkit under the hood of the car upon the passenger’s side” in the engine compartment. RP 29. Inside the toolkit there was at least one larger bag or more of methamphetamines. RP 29. The toolkit contained 10.2 grams of methamphetamine. RP 29-30, 50-51. The amount of methamphetamine in the toolkit was not one in which a person would normally have for personal use. RP 31.

Similarly, the peanut butter jar did not contain peanut butter. RP 32. Officer Haggerty found a trap compartment in the peanut butter jar. RP 32. “It had been modified on the interior of the jar itself to appear at face value to be peanut butter. On the inside once you open it up there’s a little compartment you can hide or stash things there.” RP 32. Inside the trap compartment Officer Haggerty located more methamphetamine, a digital scale, and more baggies. RP 32. The amount of methamphetamine in the peanut butter jar, 6.7 grams, was more than a person would commonly have for personal use. RP 33-34, 52. There were some clean, unused baggies in the peanut butter jar, which also had green alien heads on them, the same baggies as were in Barnes’ purse. RP 35.

The State charged Barnes with one count of Possession of Methamphetamine with the Intent to Manufacture or Deliver. CP 1-3. Barnes and Mr. Mueller were charged as co-defendant's. CP 1. Barnes elected to have her case tried by a jury. See RP.

Officer Haggerty explained to the jury the significance of all the clean, unused baggies found were that they are indicative of drugs not just being used, but being distributed. RP 26. Officer Haggerty also explained how having all the items, the larger quantity of methamphetamine, the scales, which are used to weigh out the drugs into smaller quantities, and the unused baggies, for which dealers package the drugs, all point to someone selling methamphetamine. RP 32-34. There was also testimony to support that the location of the traffic stop was within 1000 feet of a school bus stop. RP 58-62.

Barnes testified on her own behalf. RP 69-75. Barnes said she had known Mr. Mueller for approximately three years. RP 69. Barnes and Mr. Mueller had sporadic contact over those three years, mostly at their mutual friend, Dave's, house. RP 69-70. On July 5, 2014 Barnes was at Dave's house when Mr. Mueller came over. RP 70. Barnes eventually left with Mr. Mueller, he was going to transport her to a babysitting job. RP 71. Barnes explained she saw the little

baggies on the floor and thought they were cute so she had picked them up and put them in her purse. RP 72-73. Barnes said she did not know about the items in the engine compartment and this had been her first time riding in that car. RP 73. Barnes did admit the methamphetamine pipe in her purse belonged to her. RP 74. Barnes said she had not seen or spoken to Mr. Mueller since July 2014. RP 74-75.

The State recalled Officer Haggerty. RP 77. Officer Haggerty contradicted Barnes testimony regarding when she had last seen Mr. Mueller. RP 77. According to Officer Haggerty, Barnes was last with Mr. Mueller in October 2014. RP 77.

Barnes was found guilty as charged. CP 26. The jury also returned a special verdict, finding Barnes possessed methamphetamine with the intent to deliver it within a 1,000 feet of a school bus route stop. CP 27. Barnes' trial counsel filed a motion for arrest of judgment. CP 29-31. On February 18, 2015 Barnes failed to appear for a hearing to set her sentencing hearing and a bench warrant was ordered. CP 32-33.

On March 30, 2016 the motion for arrest of judgment was heard by the trial court. RP 118. The trial court granted the motion and entered a verdict for Possession of Methamphetamine. RP 125-

26. Findings of Fact and Conclusion of Law were entered. CP 34-37. Barnes was sentenced to nine months in jail. CP 40. The State filed a timely notice of appeal. CP 49-50.

The State will further supplement the facts in the argument section below.

IV. ARGUMENT

A. THE TRIAL COURT IMPROPERLY WEIGHED THE EVIDENCE AND DID NOT VIEW THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE WHEN RULING ON BARNES' MOTION FOR ARREST OF JUDGMENT.

The trial court improperly weighed the evidence and did not view all the evidence in the light most favorable to the State when it ruled on Barnes' Motion for Arrest of Judgment. The trial court's decision to grant Barnes' motion was therefore improper and this Court should reverse the trial court, vacate the Possession of Methamphetamine conviction, and remand the case with instructions to the trial court to reinstate the jury's verdict and sentence Barnes.

1. Standard Of Review.

This Court reviews a trial court's decision to grant or deny a motion for arrest of judgment by engaging in the same inquiry as the trial court when deciding the motion. *State v. Longshore*, 141 Wn.2d 414, 420, 5 P.3d 1256 (2000).

2. The Trial Court Erred When It Weighed The Evidence And Failed To Consider The Evidence In The Light Most Favorable To The State When Deciding Barnes' Motion For Arrest Of Judgment.

The Criminal Rules allow for the defendant to file a motion to arrest judgment under certain circumstances. CrR 7.4(a).

Judgment may be arrested on the motion of the defendant for the following causes: (1) Lack of jurisdiction of the person or offense; (2) the indictment or information does not charge a crime; or (3) insufficiency of the proof of a material element of the crime.

CrR 7.4(a). The motion must be filed and served within 10 days of the decision or verdict. CrR 7.4(b).

“When reviewing an order arresting judgment pursuant to CrR 7.4(a)(3), an appellate court’s function is to determine whether the evidence is legally sufficient to support the jury’s finding.” *State v. Robbins*, 68 Wn. App. 873, 875, 846 P.2d 585 (1993) (internal quotations and citations omitted). The query is, whether there is sufficient evidence for a rational trier of fact to justify the finding of guilt beyond a reasonable doubt. *State v. Coleman*, 54 Wn. App. 742, 746, 775 P.2d 986 (1989).

It is not the trial court’s job to weigh the evidence when a defendant brings a motion to arrest judgment to determine whether the necessary quantum of evidence has been produced by the State

to establish some proof of an element of the crime charged. *State v. Randecker*, 79 Wn.2d 512, 517, 487 P.2d 1295 (1971). The trial court may only determine the sufficiency of the evidence, “the presence or absence of the required quantum.” *Randecker*, 79 Wn.2d at 517.

In determining whether the necessary quantum exists, the trial court must assume the truth of the state’s evidence and view it most strongly against the defendant in the light most favorable to the state. It must draw all inferences that reasonably can be drawn therefrom in favor of the state’s position.

Id. The trial court’s sole job is to determine if there is sufficient evidence to justify a rational trier of fact to find guilty beyond a reasonable doubt of the elements of the crime charged, it is for the jury to sort out circumstances that give alternative reasonable hypotheses other than the defendant’s guilt. *Id.*

The fact that a trial or appellate court may conclude the evidence is not convincing, or may find the evidence hard to reconcile in some of its aspects, or may think some evidence appears to refute or negative guilt, or to cast doubt thereon, does not justify the court’s setting aside a jury’s verdict.

Id. at 517-18.

Barnes invited the trial court to arrest judgment and enter a verdict for Possession of Methamphetamine. RP 118-20; CP 29-31. Barnes’ motion was in part predicated on the belief that the jury considered evidence that was objected to and sustained regarding

Barnes' alleged romantic relationship with Mr. Mueller. RP 119-20; CP 30. Barnes also argued the evidence did not add up to Possession with the Intent to Manufacture or Deliver. RP 118-20; CP 30-31.

After hearing argument from the parties, the trial court made the following ruling:

I'm going to grant the motion to arrest judgment.

I agree that even if you take all the evidence in the light most favorable to the State, there's not enough here. The fact that she knew Mr. Mueller is not enough. The vehicle didn't belong to her. The controlled substances were not in the passenger compartment.

The money, as I noted before, is not a very significant amount and the denominations that somehow is consistent with what a drug dealer would have is also consistent with the money that anyone would have. So really what we have are the empty baggies that match and that's really it. That's simply not enough.

So I am going to grant that motion and vacate the conviction for the possession with intent to deliver. And as Mr. Brown has invited, the lesser of the straight possession is the only charge that can stand here as a result of this.

RP 125-26.

The problem with the trial court's ruling is twofold: one, it improperly weighs the evidence, and two, and perhaps more problematic, it does not view the evidence in the light most favorable to the State. While the State acknowledges the trial court states it is

viewing the evidence in the light most favorable to the State, when one actually uses the standards set forth by the case law of this state, it is clear the trial court really did not view all of the evidence most favorable for the State, with all reasonable inferences drawn in favor of the State, and leaving credibility determinations to the jury.

First, the trial court improperly weighed the evidence. The trial court in its ruling discussed how it found the State's evidence regarding the money in Barnes' purse unpersuasive. RP 125. The trial court stated "The money, as I noted before, is not a very significant amount and the denominations that is somehow consistent with what a drug dealer would have is also consistent with the money that anyone would have." RP 125. The following exchange occurred between Officer Haggerty and the State when discussing the money found in Barnes' purse:

Q. Now, you also said you found some money in her wallet. Do you recall the amount?

A. I believe it was \$201.

Q. Now, what were the denominations if you can recall?

A. They were smaller amounts, twenties, tens, fives, and at least one one-dollar bill.

Q. Is that significant in any way to the dealing with drugs? At times when they were commingled, yes.

Q. And how is that so?

A. When you have smaller amounts of drugs being sold, smaller amounts of money are being exchanged for them. And again, if you marry them up with narcotics and paraphernalia, it's a good sign there's drugs being sold in the mix.

Q. Okay. So all of this was found in the search of Ms. Barnes' purse?

A. Correct.

RP 28. The trial court in its decision was weighing the testimony, and deciding it did not choose to put much stock into Officer Haggerty's testimony regarding the significance of the money found in Barnes' purse. The trial court is only to determine if there is sufficient evidence by the presence or absence of the required quantum, it may not weigh the evidence that is presented, as that is a function for the jury. *Randecker*, 79 Wn.2d at 517. The weighing of evidence was improper in considering Barnes' motion for arrest of judgment pursuant to CrR 7.4(a)(3).

Second, the trial court did not consider all the evidence presented in the light most favorable to the State, assuming the truth of the State's evidence against Barnes, and viewing the evidence most strongly against Barnes. *Id.* The trial court also did not draw all reasonable inferences in favor of the State. *Id.* The trial court in making its decision to arrest judgment did not consider the long term

relationship between Barnes and Mr. Mueller, even if it was just a casual relationship. RP 69. The trial court did not consider the persuasive power of Barnes having the exact same clean, unused baggies in her purse as was found in the hidden compartment of the peanut butter can, hidden in the engine compartment. RP 25-28, 32. Barnes had drugs in her purse for personal use, a methamphetamine pipe. RP 25. Barnes had money in her purse, for which there was testimony from the officer that the amounts were consistent with dealing small amounts of methamphetamine. RP 25-28. Barnes was impeached with crimes of dishonesty. RP 75. Also, Barnes was dishonest in her testimony about when she had last had contact with Mr. Mueller. RP 74-75, 77. The drugs found in the engine compartment of the vehicle were not an amount commonly associated with personal use. RP 27, 29, 32, 50, 52. There were more baggies, which are used to package the methamphetamine for sale. RP 32. There was also scales discovered which are used to weigh out the methamphetamine for packaging into smaller amounts for sale. RP 32-34.

Viewing all of the evidence in the light most favorable to the State, with all reasonable inferences drawn in favor of the State, and not engaging in credibility determinations, there was sufficient

evidence to support the jury's finding of guilty beyond a reasonable doubt for the charged crime of Possession with the Intent to Manufacture or Deliver. The trial court simply stating it viewed the evidence in the light most favorable to the State does not make it so. It appears that the trial court in this case simply concluded that the evidence was not convincing. Such a belief does not justify the trial court's ruling arresting judgment, setting aside the jury's verdict for Possession with Intent to Manufacture or Deliver and entering judgment for Possession of Methamphetamine. *Randecker*, 79 Wn.2d at 517-18. This Court should reverse the trial court, vacate the Possession of Methamphetamine judgment and order the reinstatement of the jury's verdict and sentencing.

V. CONCLUSION

The trial court improperly weighed the evidence and did not view the evidence in the light most favorable to the State when considering Barnes' motion to arrest judgment. Therefore, this Court should reverse the trial court's ruling granting the motion, vacate the Possession of Methamphetamine judgment entered by the court and reinstate the jury's verdict and remand for sentencing.

RESPECTFULLY submitted this 18th day of October, 2016.

JONATHAN L. MEYER
Lewis County Prosecuting Attorney



by: _____
SARA I. BEIGH, WSBA 35564
Attorney for Plaintiff

Appendix A

Findings of Fact and Conclusion of Law

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IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR LEWIS COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

FELICIA RENEE BARNES,

Defendant.

No. 14-1-00509-6

SCANNED

Findings of Fact, Conclusions of Law, and
Order Re: Defendant's Motion to Arrest
Judgment Pursuant to CrR 7.4.

On February 3, 2015, a jury returned a verdict against Ms. Barnes, finding her guilty of Possession of a Controlled Substance with Intent to Deliver. On February 9, 2015, Ms. Barnes' attorney filed a motion to arrest judgment pursuant to CrR 7.4. On March 30, 2016, the motion to arrest judgment was held in this Court before the Honorable James Lawler. The Defendant was present with her attorney of record, David Brown. The State was represented by Deputy Prosecuting Attorney Paul Masiello. The Court considered the evidence presented at trial on February 3, 2015 and the arguments of counsel. The Court made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Officer Haggerty has extensive training and experience in narcotics and narcotics detection. Officer Haggerty has made many arrests involving narcotics.
2. On July 5, 2014, Officer Haggerty stopped a vehicle for having a loud exhaust and a cracked windshield.

Page 1 of 4

Findings of Fact, Conclusions of Law, and Order
Re: Defendant's Motion to Arrest Judgment
Pursuant to CrR 7.4.

LEWIS COUNTY
PROSECUTING ATTORNEY
345 W. Main Street, 2nd Floor
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- 1 3. Upon contacting the vehicle, Officer Haggerty learned that the driver was
2 James Mueller.
- 3 4. Officer Haggerty knew Mr. Mueller to have a history of selling narcotics.
- 4 5. After checking with dispatch, Mr. Mueller was placed under arrest for an
5 active warrant.
- 6 6. The passenger in the vehicle, identified as Felicia Renee Barnes, indicated
7 that she had a valid license and could drive the vehicle.
- 8 7. Mr. Mueller was placed in the back of Officer Haggerty's vehicle, where Mr.
9 Mueller granted Officer Haggerty permission to search his vehicle.
- 10 8. Officer Haggerty informed Ms. Barnes that he was going to search the
11 vehicle, and asked her if she had any narcotics in the vehicle.
- 12 9. Ms. Barnes informed Officer Haggerty that she did not have any narcotics in
13 the vehicle, and granted him permission to search her purse that was by her
14 feet.
- 15 10. After searching the purse, Officer Haggerty located a pipe commonly used for
16 ingesting methamphetamine that had white residue on it. This white residue
17 was determined to be methamphetamine. Officer Haggerty also discovered
18 \$201 in various, smaller denominations of U.S. currency (twenties, tens, fives,
19 and ones), and clear/unused plastic baggies that had green alien heads on
20 them.
- 21 11. Officer Haggerty testified that clear/unused plastic baggies are often
22 associated with dealing in narcotics as a way to distribute the drugs to
23 customers.
- 24 12. Officer Haggerty also testified that the amount of money found in Ms. Barnes'
25 purse and the types of bills that it contained was typical of someone who was
26 selling smaller quantities of narcotics.
- 27
- 28
- 29
- 30

- 1 13. When Officer Haggerty searched the engine compartment of Mr. Mueller's
2 vehicle, he located a black toolkit and a peanut butter jar.
3
4 14. Inside the tool kit was a baggie containing what was determined to be 10.2
5 grams of methamphetamine.
6
7 15. Inside the peanut butter jar was a digital scale, an additional baggie
8 containing what was determined to be 6.7 grams of methamphetamine, and
9 more clear/unused plastic baggies with green alien heads.
10
11 16. Officer Haggerty testified that significant amounts of methamphetamine like
12 the quantity located under the hood of the vehicle indicate intent to sale, since
13 typical user amounts are .25 grams.
14
15 17. Officer Haggerty also testified that digital scales are associated with the
16 selling narcotics because scales are used to measure out appropriate
17 amounts of narcotics that a person is selling.
18
19 18. Officer Haggerty also testified that the clear plastic baggies found inside the
20 peanut butter jar were the same type of baggies that were discovered earlier
21 in Ms. Barnes' purse.
22
23 19. Exhibit 1 admitted into evidence contained the baggies that came from Ms.
24 Barnes' purse. Exhibit 3 admitted into evidence contained the baggies that
25 came from inside the peanut butter jar under the hood of Mr. Mueller's
26 vehicle.
27
28 20. Ms. Barnes elected to testify and stated that she had known Mr. Mueller for
29 three years, had only seen him about 20 times during those three years, and
30 denied being in a dating relationship with him.
21. Ms. Barnes testified that the last time she had been with Mr. Mueller was the
day after she had bonded out of jail.
22. Ms. Barnes was impeached by prior convictions for Identity Theft and
Forgery.

1 23. In rebuttal, Officer Haggerty testified that he had observed Ms. Barnes at a
2 residence associated with Mr. Mueller when Officer Haggerty attempted to
3 arrest Mr. Mueller on his warrant in October. It was reported that Mr. Mueller
4 had just left the residence prior to Officer Haggerty's arrival.

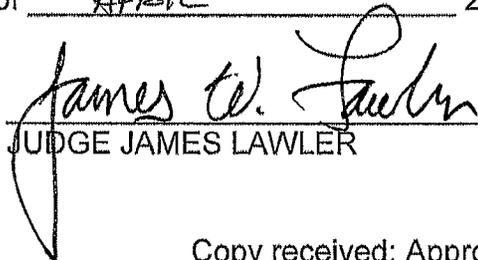
5 **CONCLUSIONS OF LAW**

6 If all the evidence is viewed in the light most favorable to the state, there is not
7 enough here. The fact that Ms. Barnes knew Mr. Mueller is not enough. The vehicle
8 did not belong to her, the controlled substances were not in the passenger
9 compartment. The money is not a very significant amount, and the denominations that
10 are consistent with what a drug dealer would have are also consistent with the money
11 that anyone would have. What we have are the empty baggies that match and that's it.
12 That is simply not enough.

13 **ORDER**

14 The judgment of the jury finding Ms. Barnes guilty of Possession of a Controlled
15 Substance with Intent to Deliver is vacated. A finding of guilt on the lesser included
16 offense of Possession of a Controlled Substance is entered.

17
18 DATED this 6 day of April 2016.

19
20 
21 JUDGE JAMES LAWLER

22
23 Presented by:
24 JONATHAN L. MEYER
25 Lewis County Prosecuting Attorney

Copy received; Approved as to form
Notice of Presentation waived:

26
27 
28 Paul Masiello, WSBA# 33039
Deputy Prosecuting Attorney

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David Brown, WSBA# 20379
Attorney for Defendant

LEWIS COUNTY PROSECUTOR

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