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Court of Appeals
Division II
State of Washington
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No. 50739-1-II

**Court of Appeals, Div. II,
of the State of Washington**

State of Washington,

Respondent,

v.

William Best,

Appellant.

Reply Brief of Appellant

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1. Introduction

There was insufficient evidence at trial to prove possession beyond a reasonable doubt. The State's response brief recognizes that the evidence must be sufficient to convince a rational trier of fact that the elements of the crime have been proven **beyond a reasonable doubt**, but then fails to apply that standard to the evidence in this case. At best, the evidence here might arguably be enough to satisfy a civil, more-likely-than-not standard of proof. It is nowhere near enough to remove reasonable doubt as to whether Best ever actually or constructively possessed the drugs at issue. This Court should reverse the conviction and dismiss the charge.

2. Reply Argument

2.1 The State's evidence was insufficient to prove possession beyond a reasonable doubt.

Best's opening brief argued that the State bears the burden of presenting enough evidence to prove each element of the crime beyond a reasonable doubt. Br. of App. at 4-5 (citing *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016)). Although the court may draw inferences favorable to the State, those inferences must be reasonable, and cannot be based on speculation. Br. of App. at 5; *Rich*, 184 Wn.2d at 903. To affirm

the conviction, the court must find that a rational trier of fact could have found the essential elements of the crime **beyond a reasonable doubt**. Br. of App. at 5; *Rich*, 184 Wn.2d at 903; *State v. Vasquez*, 178 Wn.2d 1, 6, 209 P.3d 318 (2013).

Best argued that the State had failed to present sufficient evidence for a rational trier of fact to find the element of possession **beyond a reasonable doubt**. Br. of App. at 6-7. There was no direct evidence that Best actually possessed the bag of methamphetamine at any time. Br. of App. at 6-7. Any inference that he actually possessed the bag is pure speculation. Br. of App. at 7. Similarly, there was no evidence that Best ever had dominion and control over the bag. Br. of App. at 7. Mere proximity to drugs is insufficient to prove constructive possession. Br. of App. at 6; *State v. George*, 146 Wn. App. 906, 920, 193 P.3d 693 (2008).

The State believes that there is evidence that Best had actual possession “at the time he was throwing the meth out of the van” and that he was in constructive possession thereafter. Br. of Resp. at 4. The State is mistaken.

The evidence reveals very little about who, if anyone, possessed the drugs. We know that Best threw something out of the van. Nobody saw what it was, its path through the air, or where it landed. No video evidence of the throw exists. Officers found a bag of meth in the branches of a nearby shrub. It looked

like the bag was recently placed there. There were probably cigarette butts on the ground as well. No fingerprint or DNA evidence links the bag to any person.

From this scant evidence, the State wants this court to believe that a rational juror could find **beyond a reasonable doubt** that Best possessed the drugs. There is simply no way to eliminate all reasonable doubts without more evidence. On a good day, the little evidence we have might be enough to satisfy a civil, more-likely-than-not standard. But it is far from enough to prove the matter **beyond a reasonable doubt**.

The State believes that a rational juror could conclude beyond a reasonable doubt that Best threw the drugs, not a cigarette butt as he testified. But nobody saw what Best threw. Nobody saw it travel through the air. Nobody saw it hit the ground (or the shrub). There were probably cigarette butts on the ground, too. There is no rational connection that can be made **beyond a reasonable doubt** between the throwing motion and the bag of drugs. It is nothing more than speculation.

Even if Best threw the drugs beyond a reasonable doubt, that does not prove possession. Possession requires **actual control**, not merely a momentary handling. *George*, 146 Wn. App. at 920. There is no evidence that Best controlled the bag of drugs at all, let alone anything more than a momentary handling. Even if he threw the drugs, any inference that he had

actual control other than at the moment of throwing is pure speculation. It is just as likely that Best's girlfriend had control of the drugs up until she handed the bag to Best to throw away. In that case, Best's throw would be only a momentary handling, not sufficient to convict him of possession. There is no rational basis in the evidence to find that Best had the **actual control** required to prove possession **beyond a reasonable doubt**.

Without sufficient evidence to prove actual possession, the State is left to try to prove constructive possession. But the State's only theory of constructive possession requires first that Best had actual possession before he threw it. *See* Br. of Resp. at 4-5 ("When the meth was on the ground outside the van, Best had the ability to return it to his actual possession by picking it up"). The State's theory must fail because the State failed to prove that Best ever had actual possession.

Certainly, Best did not have dominion and control over the Wal-Mart parking lot. Where the evidence is insufficient to establish control of the premises, evidence of momentary handling is also not enough to support a finding of constructive possession. *George*, 146 Wn. App. at 920.

As shown above, there is no evidence of anything more than a momentary handling, if even that. There is no rational basis in the evidence to conclude that Best had ever actually possessed the drugs **beyond a reasonable doubt**. If Best never

had control of the drugs before throwing something out of the van, he could not have had control of the drugs as they sat in the bush outside the van.

3. Conclusion

A conviction must be based on evidence that is sufficient to convince a rational trier of fact that the elements have been proven beyond a reasonable doubt. The evidence here fails to meet that standard. The State failed to prove that Best actually or constructively possessed the drugs at issue. This Court should reverse the conviction and dismiss the charge.

Respectfully submitted this 4th day of April, 2018.

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I certify, under penalty of perjury under the laws of the State of Washington, that on April 4, 2018, I caused the foregoing document to be filed with the Court and served on Counsel listed below by way of the Washington State Appellate Courts' Portal.

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