

**FILED  
Court of Appeals  
Division II  
State of Washington  
3/6/2018 10:26 AM**

**NO. 50737-1-II**

**IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON,**

**DIVISION II**

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**STATE OF WASHINGTON,**

**Respondent,**

**vs.**

**WILLIAM BEST,**

**Appellant.**

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**RESPONDENT'S BRIEF**

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## **I. RESPONSE TO ASSIGNMENTS OF ERROR**

The State produced sufficient evidence to support Best's conviction for possession of methamphetamine.

## **II. STATEMENT OF THE CASE**

April 15, 2016, Detective Benjamin Mortensen and Sergeant Marc Langlois were working in their capacity as officers with the Longview Police Department Street Crimes Unit. At approximately 7:30 pm, the officer noticed a minivan parked in the Wal-Mart parking lot in Longview. The minivan had been in the same spot the day before, so the officers decided to do a welfare check on the van. RP 31, 45. The van was parked farther away from the store, at the end of a parking row and next to a landscaped median with shrubs and beauty bark. RP 32. The bark dust was brand new; it appeared that it had just been laid that day. RP 48. There were no other vehicles immediately around the van.

The officers approached the van from the passenger side. As they did so, they observed the driver's side sliding door open and then close again. RP 33. When it was opened, Sergeant Langlois saw a hand make a motion like it was tossing something out of the van. RP 46. It took Sergeant Langlois five to ten second to get around the van to the driver's side. No one was outside the van when officers walked up, but the

defendant, Best, exited the van through the driver's side sliding door that had just been opened not 10 seconds previously. As they were speaking with Best, officers noticed a piece of plastic shopping bag that was wadded up and stuck in a shrub. The plastic was less than a couple of feet from the door of the van, and it was not covered in dust. RP 58. It did not appear that it had been outside for a long period of time. When picked up and opened, the plastic contained a white crystal substance that appeared to be methamphetamine. RP 34, 47. There was no other trash or items on the median. RP 48.

The crystal substance was tested at the WSP Crime Laboratory and determined to contain methamphetamine. RP 68. Best was charged with possession of a controlled substance and his case ultimately proceeded to trial on March 21, 2017. He testified that he opened the van's door to throw out a cigarette and when he did so, a man ran over to the front of the van, picked something up off the ground, ran back and asked Best if he knew what it was. Best said no, and the man said it was meth and that he was under arrest. RP 87. Best further testified that he stayed inside the van until officers asked him to get out. RP 97. He was found guilty of possession of a controlled substance and bail jumping on March 22, 2017. RP March 22, 2017, at 3–4.

### III. ARGUMENT

#### 1. There is sufficient evidence to convict the defendant of possession of methamphetamine.

The standard of review for a claim of insufficient evidence is, after viewing the evidence in the light most favorable to the State, whether “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Smith*, 104 Wn.2d 497, 509, 707 P.2d 1306 (1985). A claim of insufficient evidence admits the truth of the State’s evidence and all inferences that can be reasonably drawn therefrom. *State v. Salinas*, 119 Wn.2d 192, 202, 829 P.2d 1068 (1992). The reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Price*, 127 Wn. App. 193, 202, 110 P.3d 1171 (Div. II 2005); *State v. Camarilla*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (appellate court will not review credibility determinations). Finally, circumstantial evidence is considered no less reliable than direct evidence. *State v. Stearns*, 61 Wn. App. 224, 228, 810 P.2d 41 (1991). In this case, in order for the jury to have reached a verdict of guilty, they had to find that the State proved that the defendant was in possession of methamphetamine.

Possession can either actual or constructive. *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1962 (2002). A person is in actual possession

when he has physical custody of the item; constructive possession occurs when the person has dominion and control over the item. *Id.* Having dominion and control means that the item may be brought into actual possession immediately. *Id.* When reviewing whether constructive possession had been established, the court must look at the totality of the situation to determine whether the jury could reasonably infer from the evidence that the defendant had dominion and control over the item. *State v. Porter*, 58 Wn. App. 57, 60, 791 P.2d 905 (1990).

Here, Best did not have actual possession of the methamphetamine when the officers found it either on the ground or in the shrub, but the evidence shows that he did have actual possession at the time that he was throwing the meth out of the van and was in constructive possession even after throwing it. The evidence showed that the driver's side van door opened and a hand extended, throwing an item out. Within five to ten seconds, officers were at the driver's side of the van and Best was stepping out to speak with them, indicating that he was the person nearest the door. There was another person in the van, but she was on the passenger side. Her arm would not have been able to reach across to the driver's side to be the hand that threw out the drugs, and the officers did not see any movement inside the van as they were approaching. The bundle of meth was located directly outside the van door, either on the ground or in a

shrub. The median had been freshly landscaped, and the bindle was not dusty. 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.

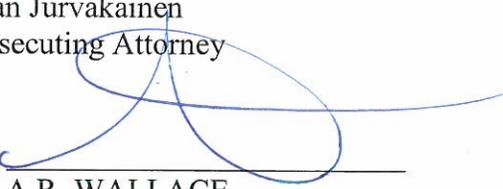
Additionally, Best himself testified that he threw something out of the van door – a cigarette. The jury made a credibility determination when they found that the item thrown from the van was a bindle of methamphetamine and not a cigarette. A reviewing court must defer to the jury on credibility issues. Taking all the evidence in the light most favorable to the State, there was sufficient evidence for the jury to find the defendant was in possession of methamphetamine.

#### IV. CONCLUSION

The defendant's conviction for possession of methamphetamine should be affirmed as there was sufficient evidence to support the conviction.

Respectfully submitted this 5th day of March, 2018.

Ryan Jurvakainen  
Prosecuting Attorney

By:   
\_\_\_\_\_  
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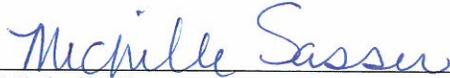
**CERTIFICATE OF SERVICE**

Michelle Sasser, certifies that opposing counsel was served electronically via the Division II portal:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on March 6<sup>th</sup>, 2018.

  
\_\_\_\_\_  
Michelle Sasser

**COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE**

**March 06, 2018 - 10:26 AM**

**Transmittal Information**

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