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Division II
State of Washington
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NO. 50813-3-II

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

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

DAVID LOISELLE,

Appellant.

RESPONDENT'S BRIEF

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I. RESPONSE TO ASSIGNMENTS OF ERROR

The State produced sufficient evidence to support Loiselles's conviction for possession of heroin.

II. STATEMENT OF THE CASE

On March 8, 2017, Department of Corrections (DOC) officers went to 312 Olson Road in Longview, Washington, to attempt to locate Stephanie Suttles, who was supervised by DOC and on warrant status at the time. RP 62. Suttles' mother, Tammy, opened the door and allowed the DOC officers to enter the residence and search for Suttles. RP 62–3. In the master bedroom and bathroom, DOC Officer Camacho saw several hypodermic needles that appeared to have suspected heroin in them. RP 63. These syringes were located on the tub, the bathroom counters, and in a separate area where the toilet was. Tammy and David Loiselles were the primary users of the master bedroom and bathroom, though Suttles came in and out occasionally. *Id.* Both male and female clothing and items were mixed in with the drug paraphernalia. RP 93.

Deputy Landen Jones arrived and observed syringes, cotton swabs, and other items commonly used to inject heroin in the master bedroom and bathroom. RP 81. Specifically, there was a spoon full of a dark, sticky substance that appeared to be heroin on the bathroom counter top. RP 82–

3. Some of the items were collected and sent to the Washington State Patrol Crime lab, where they were tested and found to contain heroin. RP 85–7, RP 114.

While officers were at the residence, Mr. Loiselle yelled out that “everything you found in there is mine.” Officer Camacho testified that he kept repeating that same sentiment in different variations. RP 65. Deputy Jones testified that he spoke to Loiselle, who reiterated multiple times that the drugs and drug paraphernalia was his. RP 88, RP 107. Loiselle also told Deputy Jones that his drug of choice was heroin and he had last used that morning. *Id.* Deputy Jones also spoke to Mrs. Loiselle, who told him that the drugs and paraphernalia must have been her husband’s because she knew it wasn’t hers. RP 104.

Mr. Loiselle was convicted of possession of heroin. RP 189. He timely appeals.

III. ARGUMENT

1. Sufficient evidence was presented at trial to convict Loiselle of possession of heroin.

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 Loiselles was in possession of heroin.

Possession can be 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.* When reviewing whether constructive possession has 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). Often, this involves establishing dominion and control over

the premises where the item was located, though it could also be shown that the defendant has dominion and control over the item itself. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969).

Here, Loisselle did not have actual possession of the heroin found in his bedroom and bathroom. However, the evidence was sufficient to show constructive possession. First, Loisselle himself claimed dominion and control over the heroin when he stated multiple times that the drugs were his. This claim was bolstered by his statement to law enforcement that heroin was his drug of choice and he used that morning. It is important to note that a claim of insufficient evidence admits the truth of the State's evidence and all inferences that can be drawn from it. Therefore, Loisselle's claim that the drugs were his must be accepted as true, as must his statement that he had used heroin that morning.

Additionally, the evidence showed that the bedroom and bathroom were Mr. and Mrs. Loisselle's main living area, though Suttles had access to the room. The testimony was that both men's and women's items were mixed up together with the drug paraphernalia, and that there were drugs and drug paraphernalia on multiple surfaces in both the bedroom and the bathroom. Exclusive control of a room is not needed in order to establish constructive possession. *Porter*, 58 Wn. App. at 62.

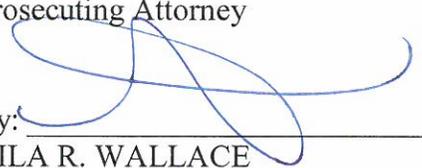
Taking all the evidence in the light most favorable to the State, there was sufficient evidence for the jury to find the defendant was in possession of heroin.

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 27 day of March, 2018.

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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 28, 2018.



Michelle Sasser

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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