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Division II
State of Washington
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No. 51299-8-II

THE COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAMES E. OVERSTAKE,

Appellant.

BRIEF OF RESPONDENT

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By: 

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I. RESPONSE TO PETITIONER'S ASSIGNMENTS OF ERROR

1. There was sufficient evidence to support the conviction.

II. RESPONSE TO APPELLANT'S ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Viewed in the light most favorable to the State, there was sufficient evidence produced at trial for the jury to conclude that Overstake possessed a controlled substance. The jury rejected Overstake's unwitting possession assertion. Thus, they determined he knowing possessed the controlled substance.

III. STATEMENT OF THE CASE

On September 2, 2017, Raymond Police Officer Eric Fuller was on duty when he encountered James Overstake and arrested him. VRP (12/6/17) 24-26. Officer Fuller searched Overstake incident to arrest and located a small tin copper container in the coin pocket of Overstake's jeans that contained a white crystalline residue inside which was sent to the Washington State Patrol Crime Laboratory where it was analyzed by a forensic scientist and determined to be methamphetamine, a controlled substance. VRP (12/6/18) 26-27, 29, 36-37, 39-40, 43. While the substance was less than .1 gram, there was sufficient quantity of methamphetamine to permit scraping out two samples for testing and leaving half of the material behind to be retested if necessary. VRP (12/6/18) 45-46.

In asserting an unwitting possession defense, Overstake claimed he had never seen the item which contained methamphetamine before the officer recovered it from the coin pocket of Overstake's skin-tight britches which his girlfriend had purchased for him at a second-hand store some time ago. VRP (12/6/18) 53, 55.

The jury rejected Overstake's unwitting possession defense and instead convicted him of possession of a controlled substance. Overstake timely appeals.

I. ARGUMENT

1. SUFFICIENCY OF THE EVIDENCE

Appellant asserts there is insufficient evidence to support his conviction for possession of a controlled substance because he had no "ability to exercise dominion and control over such a small amount of drugs."¹ In rejecting Overstake's unwitting possession claim, it is clear the jury disagreed and found that he possessed methamphetamine.

A. Standard of Review

A claim that the evidence was insufficient admits the truth of the State's evidence and all reasonable inferences drawn from that

¹ Brief of Appellant at 1, 4

evidence. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Evidence is sufficient to support a conviction if “after viewing the evidence and all reasonable inferences from it in a light most favorable to the State, a rational trier of fact could find each element of the crime proved beyond a reasonable doubt.” *State v. Homan*, 172 Wn.App. 488, 490–91, 290 P.3d 1041 (2012), *review granted*, 177 Wn.2d 1022, 303 P.3d 1064 (2013). Circumstantial and direct evidence are equally reliable, and appellate courts defer to the trier of fact on conflicting testimony, witness credibility, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874–75, 83 P.3d 970 (2004). Unchallenged findings are verities on appeal. *State v. Bonds*, 174 Wn.App. 553, 299 P.3d 663 (2013), RAP 10.3(g).

B. Sufficient Evidence Supported the Jury’s Verdict Regarding Overstake’s Possession of a Controlled Substance.

Overstake alleges substantial evidence does not support his conviction for possession of a small quantity of methamphetamine. Overstake possessed sufficient quantity of methamphetamine to permit testing two samples and leaving sufficient quantity behind for further testing. VRP (12/6/18) 45-46.

It is well settled that RCW 69.50.4013 does not require that a

defendant possess a minimum amount of a controlled substance in order to sustain a conviction. *State v. Higgs*, 177 Wn.App. 414, 311 P.3d 1266 (2013)(rejecting a similar argument and finding residue supports a conviction for possessing a controlled substance), citing *State v. Larkins*, 79 Wn.2d 392, 394, 486 P.2d 95 (1971)(possession of approximately one-fifth of the amount of Demerol normally found in one tablet of Demerol was sufficient to sustain conviction); *State v. Rowell*, 138 Wn.App. 780, 786, 158 P.3d 1248 (2007)(residue found in small glass smoking device was sufficient amount of methamphetamine to support conviction); *State v. Malone*, 72 Wn.App. 429, 439, 864 P.2d 990 (1994)(possession of trace amounts of cocaine was sufficient for conviction); *State v. Williams*, 62 Wn.App. 748, 751, 815 P.2d 825 (1991)(possession of cocaine in a pipe was sufficient for conviction and did not violate equal protection). Instead, RCW 69.50.4013(1) provides it “is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.” RCW 69.50.4013 does not contain a “measurable amount” element. Quoting *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d

792 (2003), the *Higgs* Court noted a court, “cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language.” Accordingly, in the absence of a “measurable amount” element in RCW 69.50.4013, it was unlawful for any person to possess any amount of methamphetamine, including residue.

Overstake asserts that once the majority of the substance is used, the remainder as “a very small amount of a controlled substance in it, there would be no legal ‘possession’ because there would be no ability to exercise dominion and control over the substance.”² Overstake compares possession of a small amount of methamphetamine to possession where one has ingested the substance, indicating one no longer has dominion and control over the substance once ingested.³ However, unlike ingestions cases, Overstake had an item with some amount of methamphetamine in the item which he maintained in his pocket. Because the legislature places no requirement of a measurable amount as an element in RCW 69.50.4013, possession of any amount of methamphetamine, including residue, is prohibited and the jury’s verdict is supported by

² Brief of Appellant at 8

³ Brief of Appellant at 6-7.

the evidence admitted at trial. The quantity of methamphetamine was sufficient to permit several tests of the drug and, thus, Overstake possessed a controlled substance. Finding his unwitting possession defense unpersuasive, this Court should not reverse the jury's decision.

V. CONCLUSION

Based on the foregoing there was sufficient evidence to support the jury's verdicts for unlawful possession of a controlled substance. Consequently, the verdict should be affirmed.

RESPECTFULLY submitted this 23rd day of May, 2018.

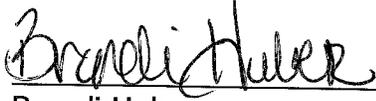


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DECLARATION OF SERVICE

The undersigned declares that I personally e-filed and delivered an electronic version of the Brief of Respondent to John A. Hays, Attorney for Appellant, using the email address: jahayslaw@comcast.net

Dated this 25th day of May 2018, at South Bend, Washington.

A handwritten signature in cursive script that reads "Brandi Huber". The signature is written in black ink and is positioned above a horizontal line.

Brandi Huber
Paralegal

PACIFIC COUNTY PROSECUTING ATTORNEY

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