

FILED  
Court of Appeals  
Division II  
State of Washington  
7/30/2018 2:51 PM

No. 51344-7-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

---

**STATE OF WASHINGTON,**

Respondent,

vs.

**RICHARD J.D. BAGLEY,**

Appellant.

---

Appeal from the Superior Court of Washington for Lewis County

---

**Respondent's Brief**

---

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney



By:

SARA I. BEIGH, WSBA No. 35564  
Senior Deputy Prosecuting Attorney

Lewis County Prosecutor's Office  
345 W. Main Street, 2nd Floor  
Chehalis, WA 98532-1900  
(360) 740-1240

**TABLE OF CONTENTS**

TABLE OF AUTHORITES ..... ii

I. ISSUE .....1

II. STATEMENT OF THE CASE .....1

III. ARGUMENT .....4

A. THE STATE PRESENTED SUFFICIENT EVIDENCE  
TO SUSTAIN THE JURY’S VERDICT, FINDING THAT  
BAGLEY POSSESSED METHAMPHETAMINE .....4

1. Standard Of Review .....4

2. The State Presented Sufficient Evidence To  
Sustain Bagley’s Conviction For Possession of  
Methamphetamine.....5

IV. CONCLUSION.....10

**TABLE OF AUTHORITIES**

**Washington Cases**

*State v. Bradshaw*, 152 Wn.2d 528, 98 P.3d 1190 (2004) .....6

*State v. Camarillo*, 115 Wn.2d 60, 794 P.2d 850 (1990).....6

*State v. Colquitt*, 133 Wn. App. 789, 137 P.3d 893 (2006) .....5

*State v. Delmarter*, 94 Wn.2d 634, 618 P.2d 99 (1980) .....5

*State v. Goodman*, 150 Wn.2d 774, 83 P.2d 410 (2004) .....5

*State v. Green*, 94 Wn.2d 216, 616 P.2d 628 (1980).....5

*State v. Lively*, 130 Wn.2d 1, 921 P.2d 1035 (1996).....5

*State v. Myers*, 133 Wn.2d 26, 941 P.2d 1102 (1997) .....6

*State v. Olinger*, 130 Wn. App. 22, 121 P.3d 724 (2005) .....6, 9

**Federal Cases**

*In re Winship*, 397 U.S. 358, 90 S. Ct 1068, 25 L.Ed.2d 368  
(1970) .....5

**Washington Statutes**

RCW 69.50.4013 .....6

**Constitutional Provisions**

U.S. Constitution, Amendment XIV § 1 .....5

**Other Rules or Authorities**

WPIC 50.01 .....6

WPIC 50.02 .....6

WPIC 52.01 .....6

**I. ISSUE**

- A. Did the State sufficiently prove beyond a reasonable doubt all of the elements of Possession of Methamphetamine?

**II. STATEMENT OF THE CASE**

Richard Bagley became a client of American Behavioral Health Systems, ABHS, in January, 2017, due to his conviction for Possession of Stolen Property in King County, for which Bagley received an alternative sentence, a Residential DOSA, that required him to enter inpatient treatment. RP 101-02. Bagley was allowed a furlough during his treatment to attend a medical appointment in Tacoma. RP 105. Bagley met his mother, Susan Bagley, at the appointment.<sup>1</sup> The appointment occurred around the last week of January. RP 80.

Bagley had previously been in a serious automobile accident and as a result had brain surgery, a frontal lobotomy. RP 76. Due to some difficulties stemming from the surgery and Bagley's mental illness, Susan is his caregiver, acting as his representative payee and making sure Bagley takes his medications. RP 76. Bagley lived with Susan prior to entering into treatment. RP 79, 105, 111. Bagley's

---

<sup>1</sup> The State will refer to Susan Bagley by her first name to avoid confusion, no disrespect intended.

drug of choice was methamphetamine and prior to going to ABHS he had been using drugs. RP 110-11.

After Bagley's medical appointment, Susan drove Bagley to their home so Bagley could pick up some clothing and retrieve a wallet. RP 79, 105-06. Bagley wanted the wallet because there were vending machines he could use at ABHS. RP 79, 106.

On February 11, 2017, Bagley was allowed to visit with Susan and an ex-girlfriend at ABHS. RP 107. Visits at ABHS are monitored. RP 46-47. There are rules regarding what a visitor may bring in, only their keys, no other personal effects. RP 80-81. Visitors are not allowed to give anything to clients, they must pass any items to a care team member, who would then determine if the client would be able to have the item. RP 48. Visitors and clients may have limited contact, a brief hug and then holding hands. RP 48, 80. Clients are searched after they return from a visit. RP 47.

After Bagley finished his visits on February 11, 2017 he was searched by ABHS staff member, Jake Sanchez. RP 49-50. Mr. Sanchez had Bagley take off his shoes, place his hands out to the side, and then patted Bagley down. RP 49. Mr. Sanchez checked Bagley's socks and clothing. RP 49. Mr. Sanchez next checked Bagley's wallet. RP 49. While looking in Bagley's wallet, tucked down

in the corner, in the billfold area where money is kept, was a small baggie that contained methamphetamine. RP 49-50, 71.

The State charged Bagley with one count of VUCSA: Possession of a Controlled Substance – Methamphetamine. CP 1-2. Bagley exercised his right to a jury trial. See RP. Bagley presented four witnesses on his behalf, Susan, Kay Sweeney, Ann Spong, and himself. RP 76, 85, 93, 100. Ms. Spong, a forensic scientist, tested a DNA swab collected of potential touch DNA from the baggie located in Bagley's wallet. RP 85-89; 96, 98-99. Ms. Spong was able to get a DNA profile from the swab from the baggie, a mixture of DNA with three or more female contributors. RP 89-90. Ms. Spong also ran a swab of Bagley's DNA, which was excluded as a contributor to the DNA found on the baggie. RP 87, 89, 98-99. Ms. Spong did concede this did not mean Bagley did not touch the item. RP 92.

Bagley explained he did not know the methamphetamine was in the wallet, that he only saw gift cards and some other random things in the wallet when he retrieved it from his home. RP 106, 108. According to Bagley, he did not intend to possess drugs, methamphetamine or any other drugs, while at ABHS. RP 108.

The jury found Bagley guilty as charged. CP 37. The trial court sentenced Bagley to 18 months in prison CP 42-52. Bagley timely appeals his conviction. CP 58-71.

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

### **III. ARGUMENT**

#### **A. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUSTAIN THE JURY'S VERDICT, FINDING THAT BAGLEY POSSESSED METHAMPHETAMINE.**

Bagley argues the State did not present sufficient evidence to sustain jury's finding of guilt. Brief of Appellant. Bagley asserts his testimony put forth a successful unwitting possession defense to the charge of Possession of Methamphetamine and therefore the State did not meet its burden. The State presented sufficient evidence to sustain the jury's guilty verdict.

##### **1. Standard Of Review.**

The appropriate standard of review for cases where a defendant is required to prove an affirmative defense by a preponderance of the evidence "is whether, considering the evidence in the light most favorable to the State, a rational trier of fact could have found that the defendant failed to prove the defense

by a preponderance of the evidence.” *State v. Lively*, 130 Wn.2d 1, 22, 921 P.2d 1035 (1996).

**2. The State Presented Sufficient Evidence To Sustain Bagley’s Conviction For Possession of Methamphetamine.**

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 893 (2006). An appellant challenging the sufficiency of evidence presented at a trial “admits the truth of the State’s evidence” and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

The role of the reviewing court does not include substituting its judgment for the jury’s by reweighing the credibility or importance of the evidence. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). The determination of the credibility of a witness or evidence is solely within the scope of the jury and not subject to review. *State*

*v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). “The fact finder[...]is in the best position to evaluate conflicting evidence, witness credibility, and the weight to be assigned to the evidence.” *State v. Olinger*, 130 Wn. App. 22, 26, 121 P.3d 724 (2005) (citations omitted).

To convict a person with possession of a controlled substance the State must prove that the person, in this case Bagley, possessed a controlled substance, and specify what the substance is. RCW 69.50.4013; WPIC 50.01; WPIC 50.02. Knowledge is not an element of the crime of possession of a controlled substance. *State v. Bradshaw*, 152 Wn.2d 528, 537-38, 98 P.3d 1190 (2004).

A defendant may raise an unwitting possession defense, which requires the defendant to show, by a preponderance of the evidence, he or she did knowingly possess the controlled substance. *Bradshaw*, 152 Wn.2d at 538; WPIC 52.01. The finder of fact (jury or judge) must evaluate the defendant’s unwitting possession claim considering all of the evidence presented, regardless to who offered the evidence. *Olinger*, 130 Wn. App. at 26. The ability to raise an unwitting possession defense lessens the harshness of the strict liability crime. *Bradshaw*, 152 Wn.2d at 538.

Bagley asserts he successfully presented his affirmative defense of unwitting possession. Bagley argues the baggie was tucked so far into his wallet he did not know it was there. Bagley asserts his DNA was not on the baggie but rather female DNA was present. Finally, Bagley also argues he passes his urinalysis tests, which Bagley also falsely asserts Mr. Sanchez verified. Brief of Appellant 8. Bagley's arguments fail, because Bagley does not address the evidence in the light most favorable to the State.

Bagley absolutely established his touch DNA was not on the baggie and a mixture of at least three female's DNA was found on the baggie containing the methamphetamine. RP 85-90, 98-99. Trevor Chowen, the State's forensic scientist, testified there were a lot of variables regarding why there may not be touch DNA found on an object, including the type of surface, the object being wiped off, whether the person is a slougher, and other environmental factors. RP 126-31.

The baggie did not have anyone's fingerprints on it. RP 98. Officer Fithen testified he did not ask to have the bindle fingerprinted "[b]ecause of the number of people that had handled it before I had. And it's standard practice by myself. I've never actually done fingerprints on a bindle such as that before." RP 30.

There is no dispute that the baggie was located inside Bagley's wallet. RP 49-50, 107-08. The same wallet Bagley retrieved from his home while out on furlough from ABHS. RP 105-06. A wallet that contained, tucked in the corner, out of easy sight for a casual observer, Bagley's drug of choice, methamphetamine. RP 49, 110. Bagley stored this wallet with his belongings in his locker. RP 106-07.

Bagley incorrectly asserts, "Sanchez also corroborated that urinalysis tests were given randomly approximately every 10 days and each UA was negative." Brief of Appellant 8. Perhaps this is just unartful drafting, Mr. Sanchez nevertheless did state urinalysis were given randomly approximately every 10 days, but Mr. Sanchez did not know how Bagley was doing in treatment nor did he know how many urinalysis tests Bagley had been given. RP 55-56.

Bagley also contradicted his own testimony about his drug usage. On direct examination, Bagley stated he had not used drugs since January 2016, a year prior to entering into ABHS. RP 101-02. Yet, Bagley also stated prior to going to ABHS he was living at his mother's house and using drugs. RP 111.

Therefore, in the light most favorable to the State, a rational jury could not have found that Bagley proved his unwitting

possession defense by a preponderance of the evidence. First, it is possible the jury found Bagley, a man who was at ABHS serving a prison alternative sentence for his possession of stolen property charge, not completely credible. RP 101-02. This Court defers to the finder of fact on the matter of credibility. *Olinger*, 130 Wn. App. at 26. Bagley's drug of choice, methamphetamine, was conveniently found in Bagley's wallet, on Bagley's person. A wallet Bagley had sought out and brought into the ABHS after being allowed to leave on a furlough for medical treatment. While Bagley's prints and DNA were not found on the wallet, the surface of the baggie did not lend itself to fingerprints and there were many possible reasons why Bagley's DNA may not have been found on the baggie, one of which was that he did not put it in the wallet.

This is a matter where Bagley retrieved the wallet, the methamphetamine, tucked it into the corner of the wallet so it would be unseen, and proceeded back to ABHS. It worked, until a later time when a care team member more carefully searched Bagley's wallet and found the baggie of methamphetamine. Bagley did not prove his affirmative defense by a preponderance of the evidence. The State presented sufficient evidence to sustain Bagley's conviction for Possession of Methamphetamine, and this Court should affirm.

**IV. CONCLUSION**

The State sufficiently proved all the elements of Possession of Methamphetamine beyond a reasonable doubt. This Court should affirm Bagley's conviction.

RESPECTFULLY submitted this 30<sup>th</sup> day of July, 2018.

JONATHAN L. MEYER  
Lewis County Prosecuting Attorney

A handwritten signature in blue ink, appearing to be 'SIB', written over a horizontal line.

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

**LEWIS COUNTY PROSECUTING ATTORNEY'S OFFICE**

**July 30, 2018 - 2:51 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51344-7  
**Appellate Court Case Title:** State of Washington, Respondent v. Richard J. D. Bagley, Appellant  
**Superior Court Case Number:** 17-1-00090-1

**The following documents have been uploaded:**

- 513447\_Briefs\_20180730145106D2226558\_8438.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Bagley.ric Response 51344-7.pdf*

**A copy of the uploaded files will be sent to:**

- Liseellnerlaw@comcast.net
- appeals@lewiscountywa.gov
- erin@legalwellspring.com
- valerie.liseellner@gmail.com

**Comments:**

---

Sender Name: Teri Bryant - Email: teri.bryant@lewiscountywa.gov

**Filing on Behalf of:** Sara I Beigh - Email: sara.beigh@lewiscountywa.gov (Alternate Email: teri.bryant@lewiscountywa.gov)

Address:  
345 W. Main Street  
2nd Floor  
Chehalis, WA, 98532  
Phone: (360) 740-1240

**Note: The Filing Id is 20180730145106D2226558**