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Court of Appeals  
Division II  
State of Washington  
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No. 52205-5-II

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

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STATE OF WASHINGTON,

Respondent,

v.

ANTHONY NGUYEN,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR CLARK COUNTY

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REPLY BRIEF

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A. ARGUMENT

1. As the court recognized, there was scant evidence the controlled substance belonged to Mr. Nguyen, rather than to “one of these multiple ne’er-do-wells who showed up and trashed his place.”

In a claim of insufficiency, the reviewing court presumes the truth of the State's evidence as well as all inferences that can be reasonably drawn therefrom. State v. Green, 94 Wn. 2d 216, 221, 616 P.2d 628, 632 (1980). The finder of fact must entertain a reasonable doubt, however, when an innocent explanation is equally as valid as one upon which the inference of guilt may be made. United States v. Lopez, 74 F.3d 575, 577 (5<sup>th</sup> Cir. 1996). Under these circumstances, the interpretation consistent with innocence must prevail. United States v. Bautista-Avila, 6 F.3d 1360, 1363 (9<sup>th</sup> Cir. 1993).

The State suggests Mr. Nguyen admitted to knowledge of the suspected methamphetamine in his conversation with Sergeant Harris. Brief of Respondent at 4 (“In a glass bowl?”). This conversation between Mr. Nguyen and the officer assumes Mr. Nguyen is qualified to identify a controlled substance, and no evidence suggested he was. No testimony or evidence suggested Nguyen was a substance user or seller, or that he possessed any knowledge of methamphetamine. RP

133-35 (testimony that Mr. Nguyen had numerous graduate degrees, worked in storm water management, and was a homeowner). Even the officer who recovered the substance needed to conduct a field test to be sure it was a controlled substance, and he has years of training in identifying dangerous drugs. As the court stated, it was far more likely that “one of these multiple ne’er-do-wells who showed up and trashed his place left that stuff there.” RP 179.

The State argues that because Mr. Nguyen made efforts to “kick people out” when he returned from a week of hospitalization in a psychiatric facility, this act of desperation gave Nguyen sufficiently renewed control of his home to establish constructive possession of all items in the shared bathroom. Resp. Brief at 9 (citing RP 143). This argument misstates the record, which reveals that even after Mr. Nguyen made efforts to empty his home of the “ne’er-do-wells,” his original tenants remained, many of whom were gang-involved (according to law enforcement witnesses), and all of whom had access to that shared bathroom. RP 109-10. Police officers told Mr. Nguyen that his tenants were gang members and that he should have them “trespassed” from what remained of his property. RP 114-16, 154-55. After the police arrested Mr. Nguyen, officers assisted Mr. Nguyen in

securing his property from gang members who, as officers stated, were “frequenting” or “crashing” at his home. RP 109-111, 114-16, 154-55. The State’s argument is not well taken.

In addition, the State relies on a case, State v. Chakos, which does not support its constructive possession argument. 74 Wn.2d 154, 160, 443 P.2d 815 (1968). Chakos, decided the year this Court was established, affirmed a defendant’s conviction where “marijuana in one form or another was present in virtually every room; and that marijuana plants were growing in the basement.” Id. at 158. The facts in Mr. Nguyen’s case are entirely distinguishable from Chakos, where one small bag was recovered from a distinct location to which several gang-members had access. RP 109-10, 114-16, 154-55.

2. Because the State failed to prove constructive possession, this Court should reverse and remand.

The other individuals with access to the upstairs “community bathroom” were distinguishable to the police from Mr. Nguyen, who had no criminal record and no history with law enforcement whatsoever, other than as a victim in need of the police department’s protection. RP 6, 114-16, 139. In fact, the task force treated Mr. Nguyen like a crime victim and he cooperated with law enforcement,

identifying photographs of gang members and signing a trespass affidavit. RP 154-55.

In the week before the search, every individual in the home had access to the bowl in that bathroom, other than Mr. Nguyen. The hospital discharge paperwork seized by police corroborated Mr. Nguyen's testimony that he was receiving treatment, first at PeaceHealth Hospital, and then at TeleCare, up until April 21<sup>st</sup>. RP 103-05, 142-44. When Mr. Nguyen returned home, he was dismayed to find his home in a complete state of "disarray. I was burglarized." RP 143. Mr. Nguyen attempted to remove between eight to nine people, in order to bring the number of occupants down to his usual four tenants. RP 144. This reflects that at the time Mr. Nguyen returned from the hospital, there were as many as 13 people at his home.

The trial court found Mr. Nguyen guilty of possession of the substance in his bathroom – finding that Mr. Nguyen "apparently was aware that there was some crystal substance in this bowl," as acknowledged by his statement to the officer. RP 179 (emphasis added). The court acknowledged that "[i]t may be that ... one of these multiple ne'er-do-wells who showed up and trashed his place left that

stuff there.” RP 179. This is not sufficient evidence to prove Mr. Nguyen possessed a controlled substance.

Because of Mr. Nguyen’s lack of access to his home for approximately one week before the search, combined with his gang-involved tenants – and their many guests’ – continual access at all times, there was insufficient evidence presented that Mr. Nguyen exercised dominion and control over the methamphetamine seized from the communal upstairs bathroom.

This Court should reverse and remand for further proceedings. State v. McKee, 193 Wn.2d 271, 279, 438 P.3d 528 (2019).

B. CONCLUSION

The State did not prove Mr. Nguyen possessed the methamphetamine, and therefore, for the reasons discussed in the opening brief, Mr. Nguyen’s conviction should be reversed and the charge dismissed with prejudice, or in the alternative, the matter remanded for further proceedings.

Respectfully submitted this 21st day of August, 2019.

s/ Jan Trasen

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## Transmittal Information

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