

FILED
Court of Appeals
Division II
State of Washington
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No. 53091-1-II

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

LOUIS THIBODEAUX,

Appellant.

RESPONDENT'S BRIEF

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TABLE OF CONTENTS

	Page
I. ISSUES.....	1
II. SHORT ANSWERS.....	1
III. FACTS	1
IV. ARGUMENT.....	1
1. The State Presented Sufficient Evidence To The Trier Of Fact That The Appellant Delivered A Controlled Substance	1
2. The Trial Court Improperly Imposed A Discretionary LFO Without Inquiring Into The Appellant's Ability To Pay	4
V. CONCLUSION	5

TABLE OF AUTHORITIES

Page

Cases

State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980) 2

State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) 2

State v. Jones, 63 Wn. App. 703, 707-08, 821 P.2d 543 (1992), *review denied*, 118 Wn.2d 1028, 828 P.2d 563 (1992)..... 2

State v. Joy, 121 Wn.2d 333, 338-39, 851 P.2d 654 (1993) 2

State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992)..... 2

I. ISSUES

1. Did the State present sufficient evidence to support the Appellant's conviction for delivery of a controlled substance?
2. Did the trial court err when imposing the community custody supervision fee upon the Appellant?

II. SHORT ANSWERS

1. Yes, the State presented sufficient evidence to the trier of fact to support the Appellant's conviction for delivery of a controlled substance.
2. Yes. The community custody supervision fee is a discretionary LFO and the trial court failed to inquire into the Appellant's ability to pay.

III. FACTS

The State generally agrees with the Appellant's recitation of the procedural facts and trial testimony. Where appropriate, the State will address specific portions of the record.

IV. ARGUMENT

1. **The State Presented Sufficient Evidence To The Trier Of Fact That The Appellant Delivered A Controlled Substance.**

The standard of review for sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the necessary facts to be proven beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d

628 (1980). Circumstantial and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). For purposes of a challenge to the sufficiency of the evidence, the appellant admits the truth of the State's evidence. *State v. Jones*, 63 Wn. App. 703, 707-08, 821 P.2d 543 (1992), *review denied*, 118 Wn.2d 1028, 828 P.2d 563 (1992). All reasonable inferences must be drawn in the State's favor and interpreted most strongly against the defendant. *State v. Joy*, 121 Wn.2d 333, 338-39, 851 P.2d 654 (1993). A reviewing court need not itself be convinced beyond a reasonable doubt, *Jones*, 63 Wn. App. at 708, and must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992).

The State presented sufficient evidence to support the Appellant's conviction for delivery of a controlled substance. The confidential informant testified that she had contacted the Appellant and arranged to purchase methamphetamine from him. RP at 277-278. The confidential informant testified that she met directly with the Appellant after entering the residence located at 361 ½ Oregon Way, Longview, WA. Upon contact, the confidential informant testified that she provided the Appellant with the money that had been given to her by Det. Mortensen and the Appellant

personally handed her a small baggie that contained methamphetamine. RP at 281.

Det. Mortensen testified that he was in contact with the confidential informant prior to and after the controlled buy occurred. During the first interactions, Det. Mortensen searched the confidential informant and did not locate any controlled substances, money, or contraband. RP at 424. Det. Mortensen also testified that he observed the communication between the confidential informant and the Appellant that set up the drug transaction. RP at 425. During the second contact, the confidential informant provided the bag of methamphetamine that she had received from the Appellant. RP at 430. During a search of the confidential informant's person, Det. Mortensen did not locate any controlled substances, money, or contraband. RP at 433. Det. Mortensen testified that the confidential informant was under constant surveillance as she traveled to and from the residence. This testimony was corroborated by Det. Ripp, Det. Libbey and Det. Sanders. RP at 307-313, 354-363, 377-380.

The crux of the Appellant's argument requires this court to question, doubt, or dismiss the confidential informant's testimony. This is contrary to the established legal authority when an Appellant challenges the sufficiency of the evidence. The Appellant must admit the truth of the State's evidence. The State presented direct eyewitness testimony from an individual who

testified that she had a face-to-face interaction with the Appellant and that he directly provided her with methamphetamine in exchange for money. When taking this evidence in a light most favorable to the State, the evidence shows that the Appellant delivered a controlled substance to the confidential informant. The conviction should be affirmed.

2. The Trial Court Improperly Imposed A Discretionary LFO Without Inquiring Into The Appellant's Ability To Pay.

The State agrees that the trial court's imposition of the community custody supervision fee without inquiring into the Appellant's ability to pay was improper. Upon remand, the State will enter an order to strike this fee.

V. CONCLUSION

The State presented sufficient evidence to support the Appellant's conviction for delivering a controlled substance. The imposition of a discretionary LFO was improper. The conviction should be affirmed and the State will enter an order to strike the community custody supervision fee.

Respectfully submitted this 20 day of September, 2019.

RYAN P. JURVAKAINEN
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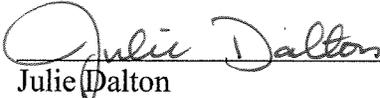
CERTIFICATE OF SERVICE

Julie Dalton 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 September 20, 2019.


Julie Dalton

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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