

FILED

JUL 20, 2012

Court of Appeals
Division III
State of Washington

30210-5-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

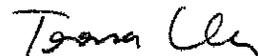
JEVON UZIMA BRINKLEY,

Appellant.

DIRECT APPEAL
FROM THE SUPERIOR COURT
OF WALLA WALLA COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:



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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the trial and conviction of the Appellant.

III. ISSUES

Was the evidence sufficient to support a conviction for possession of a controlled substance where the Defendant Brinkley possessed MDMA and had prior experience and knowledge of the illegal drug?

IV. STATEMENT OF THE CASE

The Defendant Jevon Uzima Brinkley spent two weeks in Walla Walla around Thanksgiving of 2009. RP 150-51. Prior to leaving for Walla Walla, he completely emptied two pill bottles and filled them with approximately 100 pills from his own medications. RP 165. These pills included methadone, oxycodone, and various others. RP 164.

That evening, Officer Fortin of the College Place Police Department ran Mr. Brinkley's plates, discovered Mr. Brinkley had a suspended driver's

license, and attempted to pull up behind Mr. Brinkley on the highway leading into Walla Walla. RP 32. Although Officer Fortin had not yet turned on his lights, Mr. Brinkley pulled off of the highway, mounted the curb and sidewalk at the intersection of Plaza Way and Highway 125, and drove along the grass. RP 32-33. Officer Fortin then stopped Mr. Brinkley, placed him under arrest, and searched him. RP 30, 35. Officer Fortin found marijuana and both bottles of pills on Mr. Brinkley and, while investigating the contents of the bottles, found a red pill. RP 40. That red pill was found to contain 3, 4-methylenedioxy-methamphetamine (MDMA). RP 73. Mr. Brinkley had prior experience and knowledge of MDMA. RP 170. Officer Fortin also discovered a scale Mr. Brinkley had on his person as well. RP 162.

Mr. Brinkley was found guilty by a jury of violating the Uniform Controlled Substance Act for possession of MDMA and driving while license suspended in the third degree. RP 211.

V. ARGUMENT

A. The Evidence was Sufficient to Convict Mr. Brinkley for Possession of a Controlled Substance.

Where a defendant challenges the sufficiency of evidence for a criminal conviction, the test on review is “whether there was sufficient

evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt.” *State v. Green*, 94 Wn.2d 216, 220, 616 P.2d 628 (1980) (citing *Jackson v. Virginia*, 443 U.S. 307, 99 S. Ct. 2781, 61 L.Ed.2d 560 (1979)) (emphasis in original). Courts view evidence “in the light most favorable to the prosecution.” *State v. Green*, 94 Wn.2d at 221 (quoting *Jackson*, 443 U.S. at 319) (internal quotation marks omitted). The court draws all reasonable inferences in favor of the verdict and interprets the evidence most strongly against the defendant. *State v. George*, 146 Wn. App. 906, 919, 193 P.3d 693 (2008) (citing *State v. Gentry*, 125 Wn.2d 570, 597, 888 P.2d 1105 (1995)). However, a jury’s credibility determination is not reviewable. *State v. Raleigh*, 157 Wn. App. 728, 736-37, 238 P.3d 1211 (2010), *review denied*, 170 Wn.2d 1029 (2011).

Generally, it is “unlawful for any person to possess a controlled substance.” RCW 69.50.4013(1). MDMA is a controlled substance. RCW 69.50.204(c)(11). The State must prove two elements beyond a reasonable doubt for unlawful possession of a controlled substance: “the nature of the substance and the fact of the possession.” *State v. Bradshaw*, 152 Wn.2d 528, 538, 98 P.3d 1190 (2004); see RCW 69.50.4013(1). The State must also prove the defendant did not have a prescription or another form of

authorization for the possession of the controlled substance. RCW 69.50.4013(1).

Here, the pill bottle with the MDMA was found on Mr. Brinkley's person, satisfying the requirement that he have control over the drug. He admitted to having emptied the bottle prior to filling it with his own medications. He also testified that he alone filled the bottles and had access to them. Therefore, a reasonable jury could have found beyond a reasonable doubt that Mr. Brinkley possessed the MDMA. The jury also weighed Mr. Brinkley's credibility as a witness and apparently did not find him credible. The nature of the substance—that it was a controlled substance—was also proven beyond a reasonable doubt by lab analysis, satisfying the second half of the test. *State v. Bradshaw*, 152 Wn.2d at 538. Finally, Mr. Brinkley has not provided any evidence that he received a prescription or other authorization for private possession of MDMA. Thus, none of the exceptions under RCW 69.50.4013 apply. The State has satisfied its burden of proving beyond a reasonable doubt that Mr. Brinkley possessed a controlled substance in contravention of RCW 69.50.4013.

B. There is Sufficient Evidence Rebutting the Defense of Unwitting Possession.

Mr. Brinkley's argument that he was unaware of his possession of the MDMA fails as well. The State need not prove "knowledge or intent to possess, nor knowledge as to the nature of the substance." *City of Kennewick v. Day*, 142 Wn.2d 1, 9, 11 P.3d 304 (2000) (quoting *State v. Stanley*, 123 Wn.2d 794, 799, 872 P.2d 502 (1994)). A defendant may have an affirmative defense in unwitting possession. *State v. George*, 146 Wn. App. at 915 (citing *State v. Bradshaw*, 152 Wn.2d at 538). However, a defendant must prove unwitting possession by a preponderance of the evidence. *State v. George*, 146 Wn. App. at 915, 193 P.3d 693 (citing *State v. Balzer*, 91 Wn. App. 44, 67, 954 P.2d 931 (1998)). The burden of evidence rests on the defendant because there is a presumption that the defendant would be in the best position to demonstrate his own knowledge. *State v. Knapp*, 54 Wn. App. at 321. For the defense of unwitting possession, the defendant must prove either he did not know he possessed the controlled substance, or "he did not know the nature of the substance he possessed." *City of Kennewick v. Day*, 142 Wn.2d at 11.

The State may rebut the affirmative defense by presenting evidence that the defendant has prior experience with that controlled substance. *City of*

Kennewick v. Day, 142 Wn.2d at 11; see *State v. Wells*, 17 Wn. App. 146, 561 P.2d 697 (1997); cf. *State v. Hall*, 41 Wn.2d 446, 249 P.2d 769 (1952). Mr. Brinkley relies heavily on *City of Kennewick v. Day* for support. However, while the opinion's reasoning is helpful, it only serves to bolster Mr. Brinkley's conviction. In *Day*, the defendant wished to introduce evidence of his reputation to counter the charge that he intentionally possessed marijuana. The court of appeals reversed the defendant's conviction and remanded, determining that "a jury could conclude that a person who does not use drugs (by reputation at least) is less likely to use a marijuana pipe to smoke marijuana." *City of Kennewick v. Day*, 124 Wn.2d at 8. Thus, ignorance of the appearance or use of a drug or drug paraphernalia may be sufficient to demonstrate unwitting possession. Conversely, if a defendant has personal experience with a specific drug, then the defense may not stand. See *City of Kennewick v. Day*, 142 Wn.2d at 11.

Here, Mr. Brinkley testified that he had previously had contact with MDMA, indicating that he had knowledge of what it was. RP 170 ("Q: You've actually seen MDM [sic] before that night, right? A: I have. Yes, I have."). He further testified that he knew what it was, but was only ignorant as to the scientific name—3, 4 Methylenedioxy-methamphetamine. RP 170.

Thus, he knew “the nature of the substance he possessed.” *City of Kennewick v. Day*, 142 Wn.2d at 11. Had it been on his counter when he placed his medications in his empty bottles, he should have recognized it, particularly given his ability to recognize each of his medications on sight and without labels. See RP 164 (“Q: [C]an you describe the white pills that you are seeing? A: Yes. That small square looking one is my Methadone medicine. The round one is my Oxycodone medicine . . .”). The jury could reasonably have found that he knew he had the MDMA and only claimed it was planted when he was caught. Therefore, Mr. Brinkley’s argument that he was unfamiliar with MDMA fails, and the unwitting possession defense thus does not apply.

VI. CONCLUSION

For the foregoing reasons, the State respectfully submits that sufficient evidence was presented to the jury for this Court to uphold Mr. Brinkley's conviction.

DATED: July 19, 2012.

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