

**FILED**

***May 02, 2016***

Court of Appeals  
Division III  
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHI

DIVISION III

No. 33041-9-III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

RUVIM DEZHNYUK,

Defendant/Appellant

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Respondent's Brief

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A. RESPONSE TO ASSIGNMENTS OF ERROR

- a. There is sufficient evidence to sustain a possession of a controlled substance heroin when the defendant is driving a car where the heroin was located and the passenger told the police it belonged to the defendant.

B. ISSUES PRESENTED

- a. Is there sufficient evidence to sustain a possession of a controlled substance heroin conviction when a defendant is driving a car where the heroin was located and the passenger told the police it belonged to the defendant?

C. STATEMENT OF THE CASE

Ruvim Dezhnyuk was charged via INFORMATION with one count Possession of a Controlled Substance, TO WIT: Heroin on May 14, 2014. (CP at 2). He was appointed an attorney, Dave Linn, to represent him during the case (CP at 13). The case proceeded to trial, beginning December 16, 2014. (CP at 56). The trial lasted two days (CP at 78). The defendant was found guilty as charged (CP at 78). Defendant was sentenced on January 9, 2015 (CP at 96).

Trooper Charles Ferrell with the Washington State Patrol testified the he has had fifteen years of experience as a Washington

State Patrol Trooper and had extensive training regarding illegal substances, specifically because of training as a “Drug Recognition Expert” or “DRE.” (RP at 147, 149). He testified that he’s had experience identifying heroin and being around people who are impaired by heroin (RP at 150 – 51). Trooper Woodside testified that he also extensive training and had worked as a state trooper for seventeen years. (RP at 173 – 74). Specifically he indicated he had extensive training on narcotics related to his duty as a K-9 handler (RP at 174). Both State Patrol Troopers who testified testified that based on their training and experience, heroin has a very distinct odor (RP at 159, 175).

Trooper Ferrell testified that on September 18, 2013 at about 9:00 p.m. he was working patrol with Trooper Woodside and they were parked in the median of Interstate 82 facing north<sup>1</sup> (RP at 152 – 53). Using his calibrated SMD, he obtained a speed reading of 81 mph on a car in the right-hand lane; the posted speed limit is 70 (RP at 153 – 54). He conveyed the speed to Trooper Woodside who was parked in a different patrol vehicle next to Trooper Ferrell and saw Trooper Woodside conduct a stop on the car that was speeding (RP at 154, 180).

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<sup>1</sup> As noted in testimony by Trooper Ferrell, Interstate 82 is classified as an east-west highway, but primarily runs north-south, particularly at this part of the road (RP at 153).

Trooper Woodside contacted the defendant who was the driver of the vehicle and inquired about the speed (RP at 180). The passenger indicated the car belonged to her (RP at 182). The passenger appeared overly nervous, that her chest was pounding heavily and it was note-worthy to him because generally passengers are not this nervous when he contact them (RP at 182 – 83). She did give the Trooper consent to search her car (RP at 186 -87).

Trooper Woodside found a plastic tube, like the barrel of a pen, and a clear plastic baggie shoved down near the driver's seat, between the seat and the hump itself. (RP at 187). The baggy and the tube both had black residue inside of them. (RP at 187, 189). Trooper Woodside testified that when people inject drugs, they have to burn it and then ingest it, so they can use a pipe, or tube to inhale the smoke; as the smoke is drawn up into the tube, it leaves the residue behind (RP at 188).

The defendant got out of the car and Trooper Woodside noticed that the tip of his fingers had burn marks on them, consistent with someone who smokes drugs (RP at 185).

Trooper Ferrell assisted in the stop by speaking to the passenger in the car, Jessica Robinson-Willers<sup>2</sup> (RP at 155). Ms. Robinson-Willers told Trooper Ferrell that the defendant was her “baby’s daddy’s friend” and that they were going to an unknown location in Yakima to visit a friend, although she did not know the friend’s name (RP at 157). She told Trooper Ferrell she had been driving her car, but that when she picked up the defendant, he drove her car; which was the car they were still in (RP at 158).

When the Troopers searched the car, Trooper Ferrell testified that he could smell the very distinct odor of heroin near the rear passenger seat where there was an empty child restraint seat (RP at 160). Inside the car seat, between the padding and the frame, Trooper Ferrell found a digital scale that had what appeared to be a substantial amount of heroin residue on it (RP at 161, 170). Trooper Ferrell testified that to get to the area where the scale was under the seat cover, you would have to lift the cover and slide the scale into the area and that it was not visible from just looking at the child seat. (RP at 163). Trooper Ferrell didn’t have any direct contact with the defendant (RP at 166).

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<sup>2</sup> Ms. Robinson-Willers was also charged with VUCSA related to this incident. The two defendants were joined for trial and at the beginning of the trial, the case proceeded against both defendants, although the state ultimately dismissed the case against Ms. Robinson-Willers prior to the jury verdict (RP at 276 – 77, 281).

Trooper Woodside sent the pen tube to the Washington State Patrol Crime lab for analysis after it initially preliminarily tested positive for heroin (RP at 195 – 96). Devon Hause who is a qualified drug chemist for the Washington State Patrol Crime lab indicated that she tested a plastic tube with brown residue inside in this case with two different tests and determined that the residue was heroin (RP at 197 – 99, 204, 205, 207, 208).

The defendant testified that he and the passenger in the car are acquainted because he is friends with the father of her child (RP at 239). He testified that she agreed to give him a ride on September 18, 2013, but that he drove her car because his car wasn't working (RP at 240). He testified that he's also seen her boyfriend, Pablo Bendez drive her car (RP at 241). He said they were driving through Ellensburg from Auburn and that while in the car, he did not smell anything unusual (RP at 242). He testified that he did not see any heroin in the car.

Ms. Robinson-Willers testified that she was the only person who had used her vehicle in the week prior to this stop, but on September 18, 2013 she agreed to drive the defendant to pick up his friend in Yakima (RP at 251). She let him drive her car (RP at 252). They left at 6:30 p.m. and stopped for about fifteen minutes

in North Bend (RP at 252). She said he put his belongings in the car, including setting his camera in the car seat in the back. (RP at 257).

Ms. Robinson-Willers testified twice in the trial (RP at 251, 266).<sup>3</sup> In her first testimony, she said that when the police officer started to pull them over, the defendant emptied out his pockets, gave her \$800.00 that she put in her purse and that she didn't know there was any drug paraphernalia in the car and could not smell anything unusual (RP at 253 – 54). When she testified the second time, she admitted that because of her fear of the defendant she hadn't told the jury all of the details during her prior testimony (RP at 267). Ms. Robinson-Willers said that when they were pulled over by the police on September 18, 2013 the defendant emptied out his pockets, put his belongings between the seat and the console, and then reached back and put the scale underneath her daughter's car seat cover on the child restraint in the back seat (RP at 267). Specifically she said she saw him put a "straw" and a cigarette cellophane pack down between the driver's seat and the console (RP at 268).

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<sup>3</sup> Her first testimony was at the end of the first day (RP at 250). The jury took an evening break, and then at the beginning of the second day, Ms. Robinson-Willers testified again (RP at 266).

Ms. Robinson-Willers testified that prior to the trial, the defendant contacted her multiple times and asked her to go along with the story he had; asked her to lie about what happened and she was afraid of him if she didn't lie (RP at 268). The defendant testified a second time and said he did give Ms. Robinson-Willers money, but that he did not remove anything from his pockets, put anything down the crack between the driver's seat and the console or put anything in the car seat. (RP at 286 – 87). He also testified he never threatened her (RP at 285).

#### D. ARGUMENT

- a. THERE IS SUFFICIENT EVIDENCE TO SUPPORT THE DEFENDANT'S CONVICTIONS FOR POSSESSION OF A CONTROLLED SUBSTANCE, HEROIN.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits a rational juror to find the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781 (1979)); accord, e.g., State v. Aver, 109 Wn.2d 303, 310-11, 745 P.2d 479 (1987); State v. Guloy, 104 Wn.2d 412, 417, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020

(1986); State v. McPherson, 186 Wn. App. 114, 117, 344 P.3d 1283, review denied, 183 Wn.2d 1012 (2015). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that a juror can draw from that evidence. State v. Notaro, 161 Wn. App. 654, 671, 255 P.3d 774 (2011). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted strongly against the defendant. State v. Wilson, 141 Wn. App. 597, 608, 171 P.3d 501 (2007). Circumstantial evidence is no less reliable than direct evidence. Id. The court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Thomas, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

The only dispute the defendant has in this case is that the jury should have believed him and not the passenger in the car. She testified that he put the paraphernalia between the driver's seat of the car and the console; that he put the scale in the backseat in the child restraint; and that he handed her the money. He testified differently, that he did not see any heroin in the car.

Clearly the jury believed the passenger. Issues of credibility are to be decided by the jury. In looking to the reasonable inferences of the case, there is direct testimony that the defendant was the owner and or possessor of the heroin in this case. The jury believed that evidence.

E. CONCLUSION

For the reasons stated, the defendant's conviction should be affirmed.

\_\_\_\_\_  
/s/

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