

FILED
Court of Appeals
Division III
State of Washington
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NO. 37191-3-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,
RESPONDENT

V.

THOMAS JACKSON BARTON
APPELLANT

RESPONDENT'S BRIEF

APPEAL FROM THE SUPERIOR COURT OF OKANOGAN
COUNTY THE HONORABLE CHRISTOPHER E. CULP
Okanogan County Case Number: 19-1-00208-24

By:

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FACTS OF CASE

After a jury trial on the merits, Mr. Thomas Jackson Barton was convicted of Possession of a Controlled Substance-methamphetamine, and possession of drug paraphernalia. CP 73-74, CP 28, RP 158. On or about July 3, 2019, Officer McKenzie Shaffer was on duty working uniform patrol with the Colville Police Department. RP 62. Officer Shaffer was informed by dispatch that Thomas Jackson Barton had an active warrant for arrest. RP 62. Officer Shaffer confirmed the warrant and arrested Mr. Jackson placing him in the patrol car. RP 62-63. Once Mr. Barton was processed through the booking, law enforcement discovered a glass pipe in Mr. Barton's coat pocket incident to arrest. RP 66. Along with the pipe in the same pocket was also a piece of foil folded around a folded piece of paper. RP 66, 68-69. Based upon Officer Shaffer's training, knowledge, and experience, Officer Shaffer concluded that the substance inside the folded paper was suspected methamphetamine; the Washington State forensic analyst later concluded that the substance's chemical composition was methamphetamine. RP 67-69-8, 69, RP 109, 110, 111, State's Exhibit 4. After chemical laboratory testing, Dr. Stensel

opined the suspected substance was methamphetamine hydrochloride. CP 27, RP 109, State's Exhibit 4 pg. 111. Officer Shaffer also testified based upon his training knowledge and experience, and making over ten arrests for methamphetamine violations, that a common method of using crystal methamphetamine is a smoking device or pipe. RP 70. Officer Shaffer also testified in describing the pipe that it was used, had burnt residue, blue, and glass. RP 70, 73.

ARGUMENT

A. The Evidence was Sufficient to Sustain Conviction

When reviewing a challenge to the sufficiency of the evidence, courts must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). All reasonable inferences are drawn in favor of the verdict and interpreted most strongly against the defendant. *State v. Gentry*, 125 Wn.2d 570, 597, 888 P.2d 1105 (1995). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In a criminal

prosecution, the State must prove each element of the charged crime beyond a reasonable doubt. *In re Winship*, 397 US 358, 364, 90 S. Ct. 1068, 25 L.Ed.2d. 368 (1970). A person is guilty of use of drug paraphernalia pursuant to RCW 69.50.412, if he or she knowingly to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance other than marijuana. RCW 69.50.412(1).

In this case, the evidence was more than enough to convict Mr. Barton of both Counts 1 and 2 beyond reasonable doubt. Mr. Barton was lawfully arrested due to a warrant. RP 62-63. Mr. Barton was taken for processing and in the process of inventorying his property, law enforcement recovered a blue glass smoking device and suspected methamphetamine located in the same jacket pocket. RP 64, 66, 70, 73, 90-91. The recovered suspected narcotics were tested by a doctor of chemistry and determined to be methamphetamine hydrochloride. RP 109.

Officer Shaffer also testified that the based upon his training knowledge and experience, persons often ingest methamphetamine by inhaling it into the body through a smoking device. RP 70. Shaffer

also testified that the pipe appeared to be used. RP 70. This testimony coupled with the fact that Mr. Barton was in possession of methamphetamine and the pipe was located in the same exact pocket as the methamphetamine, a juror could easily conclude beyond any reasonable doubt that the pipe was Mr. Barton's smoking pipe used to smoke methamphetamine. CP 73-74. Based upon the totality of circumstances, a reasonable fact finder could conclude beyond reasonable doubt that Mr. Barton possessed a controlled substance and used drug paraphernalia in the form of a pipe.

CONCLUSION

Mr. Barton's conviction and sentence should be affirmed and upheld. Mr. Barton's appeal should be denied because his Constitutional Rights were not violated.

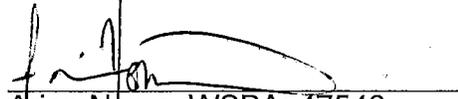
WHEREFORE, the State prays that this Honorable Court shall:

1. Deny Mr. Barton's appeal;
2. Affirm Mr. Barton's convictions and uphold his sentence;
3. Deny Mr. Barton's request for remand and retrial;

4. Mr. Barton should bear appellate costs if appropriate; and
5. Grant any other relief that this Honorable Court deems just and appropriate.

DATED this 26th day of May, 2020.

ARIAN NOMA
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Prosecuting Attorney

COURT OF APPEALS
DIVISION III
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STATE OF WASHINGTON

Plaintiff/Respondent,

v.

THOMAS JACKSON BARTON,

Defendant/Appellant.

COA No. 371913

CERTIFICATE OF
SERVICE

I, Christa Teagan Levine, do hereby certify under penalty of perjury that on the 29th day of May, 2020, I caused the original Respondent's Brief to be filed in the Court of Appeals Division III and a true copy of the same to be served on the following in the manner indicated below:

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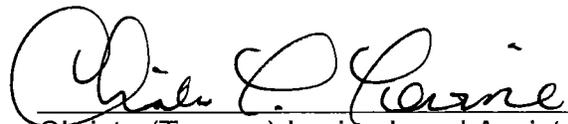
U.S. Mail

Hand Delivery

E-Service via Portal

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Signed in Okanogan, Washington this 29th day of May, 2020.



Christa (Teagan) Levine, Legal Assistant

OKANOGAN COUNTY PROSECUTING ATTORNEY'S OFFICE

May 29, 2020 - 3:31 PM

Transmittal Information

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