

62547-1

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NO. 62547-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

TERRIONTE BUTCHER-SIMS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE RICHARD D. EADIE

**BRIEF OF RESPONDENT**

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**A. ISSUE PRESENTED**

Did the trial court err in permitting the prosecutor to open the envelope containing cocaine in front of the jury during closing argument?

**B. STATEMENT OF THE CASE**

**1. FACTS.**

Respondent agrees with the Appellant's Statement of the Case as supplemented by the following additional facts:

Mark Divina, a Corrections Officer for the King County Jail, testified that he processed the Appellant into the jail on April 6, 2008. Report of Proceedings, hereinafter cited as RP, 236. During the intake process, Officer Divina found a clear plastic bag inside Appellant's mouth on top of his tongue. RP 236. Officer Divina handed the plastic bag to Shoreline Police Officer Joshua Gedney, who sealed the plastic bag inside an evidence envelope and submitted the sealed envelope, State's Exhibit #1, into evidence. RP 241.

Eric Finney, a forensic scientist with the Washington State Patrol Crime Laboratory, opened the sealed envelope submitted by Officer Gedney, State's Exhibit #1, and performed an analysis of the contents of the envelope, and then sealed the envelope back up. RP 248. Mr. Finney's analysis of the contents included two instrumental techniques, an infrared spectroscopy and a gas chromatography/mass spectroscopy. RP 249. Mr. Finney weighed the substance and found that its weight was 4 grams. RP 249. His analysis took approximately one to two hours, RP 249, and his opinion was the substance inside State's Exhibit #1 contained cocaine. RP 250.

When the State offered State's Exhibit #1, defense counsel objected because the envelope contained a white label stating the substance weighed eight grams. RP 255. The trial court sustained the objection, ordered the white label to be redacted, and admitted State's Exhibit #1 into evidence when the redaction was completed. RP 256.

Appellate took the stand in his own defense. Appellate testified he purchased the cocaine from Jonathon Hernandez. RP

277. The cocaine cost him \$150. RP 280. The amount of cocaine in the plastic bag filled an area the size of a fifty cent piece. RP

281. Appellate admitted he hid the cocaine in his mouth when the police arrived, he knew it was cocaine, and he knew it was against the law to possess cocaine. RP 296.

**C. ARGUMENT**

**1. IT WAS NOT ERROR TO DISPLAY THE COCAINE, PREVIOUSLY ADMITTED AS STATE'S EXHIBIT #1, TO THE JURY DURING CLOSING ARGUMENT.**

Appellate contends the State failed to lay an adequate foundation before displaying the cocaine to the jury. Specifically, he maintains that before an exhibit may be properly admitted into evidence, it must be properly identified and shown to be in substantially the same condition as when the crime was committed. He contends that the display of the cocaine to the jury prejudiced him and he now seeks a reversal of his conviction. The State disagrees with Appellant's argument.

To begin with, Appellate never made this specific objection to the trial court when State's Exhibit #1 was offered into evidence.

Defense counsel objected to the admission of State's Exhibit #1 solely because of the white label on the exterior of the sealed envelope indicating the cocaine weighed 8 grams. The trial judge ordered the white label redacted from the sealed envelope and then admitted the exhibit into evidence. RP 255-56. A party must specifically object to evidence presented at trial to preserve the matter for appellate review. State v. Stein, 140 Wn. App. 43, 68, 165 P.3d 16 (2007). Because Appellant did not raise this objection at trial, he has waived review of this issue on appeal.

Secondly, there was no question that the cocaine seized from Appellate was taken from his mouth and placed into the evidence envelope which was then sealed. RP 236-41. The forensic chemist removed the cocaine from the sealed envelope, analyzed it, placed it back into the sealed envelope, and resealed it. RP 248-50. At trial, the envelope still bore the seals of the officer who placed it into evidence and the chemist who analyzed the substance and found it to be cocaine. RP 241, 248.

This testimony was sufficient to establish Appellant's guilt on the possession charge without the necessity of displaying the drugs

to the jury. The introduction of drugs in a drug possession case is not necessary when there is circumstantial evidence sufficient to identify the drug to the trier of fact. State v. Hernandez, 85 Wn. App. 672, 675-76, 935 P.2d 623 (1997). No prejudice occurred to Appellant in the instant case when the drugs were displayed to the jury because the offense had been already been conclusively proven through the testimony of the two officers and the forensic scientist.

Finally, Appellant's possession of the cocaine was not even an issue at trial. Appellant admitted committing the offense before the trier of fact. The issue at trial was whether or not he committed the robbery. If there was error in displaying the cocaine to the jury during closing argument, the error was harmless.

An error is harmless when it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained. State v. Jennings, 111 Wn. App. 54, 64, 44 P.3d 1 (2002). In other words, where the average juror would not have found the prosecutor's case significantly less persuasive had the error not occurred, the error is not prejudicial. State v. DuPont, 14 Wn. App. 22, 24, 538 P.2d 823 (1975).

D. **CONCLUSION**

For the foregoing reasons, this Court should affirm  
Appellant's conviction for possession of cocaine.

DATED this 4<sup>th</sup> day of December, 2009.

Respectfully submitted,

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