

FILED

MAR 16 2018

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

FILED
MAR 28 2018
WASHINGTON STATE
SUPREME COURT

95645-1

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF SPOKANE

1. State of Washington No. 161018352 Case # 348369

2. PLAINTIFF (S)

3. VS.

MOTION: for review

4. Sam T Banks

5. DEFENDANT (S)

6.
7. I Sam T Banks would like to
8. motion for a review. for cause #
9. 161018352. because the chain of
10. evidence was broken and evidence
11. was still allowed because 2 of
12. my jurors were threatened as
13. my lawyer Jocelyn Cook Spokane
14. county public defenders office
15. will testify to and motion for
16. dismissal was shot down in lieu
17. of failing to prove possession.
18. please consider that I am being
19. forced to file this prose and
20. please look into this matter
21.

[Signature]
1 Washington Court Rule GR 14, <2012>

DECLARATION OF SERVICE AND FILING BY AN INMATE
CONFINED IN THE SPOKANE COUNTY JAIL
W 1100 MALLON
SPOKANE, WASHINGTON, 99260

I, Sean Banks, declare that on 3-13-2018
I deposited the foregoing document(s), or a copy thereof, in the internal mail
system of the SPOKANE COUNTY JAIL and made arrangements for postage,
addressed to:

Name & Address of Court or Other Place of Filing:

Superior court

Documents:

review

Name & Address of Parties or Attorneys to be served:

Brian Clayton obrien

prob officer 1100 w mallon
spokane wa 99260

Joseph cook

public def office
1100 w mallon spokane wa

I declare under penalty of perjury under the laws of the State of Washington that
the foregoing is true and correct.

Dated At Spokane, Washington on this 3 day of 13, 2018

[Signature]

Signature¹

[Signature]

¹ Washington Court Rule GR 3.1 2012.

(Copy Receipt)

(Clerk's Date Stamp)

SUPERIOR COURT OF WASHINGTON, COUNTY OF SPOKANE

STATE OF WASHINGTON, Plaintiff,

vs. Sam T Banks

Defendant IN-CUSTODY - DOB 2-10-88

CASE No. 348369
CRIMINAL MOTION CALENDAR
NOTE FOR HEARING-ISSUE OF LAW
(NTMIDK)

TO THE CLERK OF THE COURT AND TO: Brian Clayton O'Brien

The undersigned has scheduled a motion for: Review
a copy of which is attached.

The hearing is scheduled for 3-29-18 at 9:00 a.m.

to be heard at: SPOKANE COUNTY SUPERIOR COURT
CRIMINAL PRESIDING DEPARTMENT
1116 WEST BROADWAY
SPOKANE, WA 99260-0350

- TRANSPORT REQUIRED
- WITNESS TESTIMONY REQUIRED

LENGTH OF HEARING: 15 min

NOTICE: Motions must be confirmed no later than 12:00 noon the Tuesday before the hearing by calling the Criminal Presiding Department. See LCrR 4.5. Working copies must be provided to the Criminal Presiding Department at time of filing.

Signed [Signature]
 Name Sam Banks
 (print/type)
 Address 1100 W Main
 City, State, Zip Spokane WA
 Bar No. _____ Phone _____
 E-Mail: _____

Date 3-11-18
 Opposing Counsel Name Bretchon Everhoof
 Address 1100 W Main
 City, State, Zip Spokane WA 99260-0270
 Bar No. _____ Phone _____
 E-Mail: _____

AUTHORITIES

Cite those authorities which form primary basis for your legal position. Where case authority is cited, provide reference to specific page of opinion which is controlling. Likewise reference applicable sections or subsection of statutes or court rules. This does not substitute for required Memorandum of Authorities.

Applicable Court Rule: _____
 Applicable Statute: _____
 Applicable Case Law: _____

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



March 1, 2018

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

FILED

MAR 16 2018

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Susan Marie Gasch
Gasch Law Office
PO Box 30339
Spokane, WA 99223-3005
gaschlaw@msn.com

CASE # 348369
State of Washington v. Samuel Teacher Banks
SPOKANE COUNTY SUPERIOR COURT No. 161018352

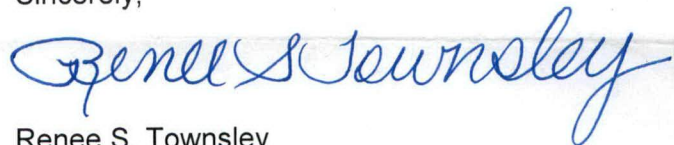
Counsel:

Pursuant to the "Motion to Withdraw as Appointed Counsel," the following notation ruling is entered:

The Motion to Withdraw as Appointed Counsel is granted.

Mr. Banks is now considered as a pro se appellant. He is reminded that a Petition for Review, if any, remains due March 22, 2018.

Sincerely,



Renee S. Townsley
Clerk/Administrator

RST:jcs

c: Samuel Teacher Banks
c/o Spokane County Jail
1100 West Mallon Avenue
Spokane, WA 99260-0320

c: Brian Clayton O'Brien
Gretchen Eileen Verhoef
Spokane County Prosecutors Office
1100 W Mallon Ave
Spokane, WA 99260-0270
E-Mail

FILED
FEBRUARY 20, 2018
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

| | | |
|----------------------|---|---------------------|
| STATE OF WASHINGTON, |) | No. 34836-9-III |
| |) | |
| Respondent, |) | |
| |) | |
| v. |) | UNPUBLISHED OPINION |
| |) | |
| SAMUEL T. BANKS, |) | |
| |) | |
| Appellant. |) | |

LAWRENCE-BERREY, J. — Samuel Banks appeals his conviction for possession of a controlled substance—methamphetamine. He challenges the sufficiency of the evidence. We affirm.

FACTS

Officers Brandon Rankin and Andres Valencia were on patrol in Spokane, Washington. Shortly after midnight, they drove near Mr. Banks, who was riding a bicycle along a street without a headlight or taillight. Officer Rankin activated his emergency lights to initiate a traffic stop. Mr. Banks did not stop. Officer Rankin drove next to Mr. Banks, rolled down the patrol car window, and commanded Mr. Banks to stop. Mr. Banks instead veered off the street, pedaled through a yard, and turned into an alleyway.

Officer Rankin left Officer Valencia in the patrol car and pursued Mr. Banks on foot. Mr. Banks did not obey repeated commands to stop. Mr. Banks lost control of his bicycle and went over the handlebars. He landed in the middle of a poorly lit alley. The middle of the alley was bare dirt, but one side was covered with tall weeds. After landing, Mr. Banks deliberately rolled toward and into the tall weeds.

Officer Valencia searched Mr. Banks and did not find any weapons or controlled substances. However, Officer Rankin searched the weeds Mr. Banks had deliberately rolled into and found a neatly folded wad of cash and a plastic “baggie” containing what later tested positive for methamphetamine.

Law enforcement photographed the scene, including the undisturbed cash and methamphetamine. The photographs show a neatly folded stack of bills and bag of methamphetamine, without any accumulation of moisture or dirt, in good condition. Several weeks later Jacqueline Guerin, a criminal defense investigator, also photographed the crime scene. Those pictures generally show the state of the alley, including the weeds and the presence of weathered and decaying debris and garbage.

The State charged Mr. Banks with possession of a controlled substance—methamphetamine. The matter proceeded to a jury trial. After the State presented its case, Mr. Banks moved to dismiss on the basis of evidentiary insufficiency. The trial

No. 34836-9-III
State v. Banks

court denied the motion and later instructed the jury on actual and constructive possession. The jury returned a guilty verdict. Mr. Banks appealed.

ANALYSIS

SUFFICIENCY OF THE EVIDENCE

Mr. Banks contends that the State's evidence was insufficient to convict him of possession of methamphetamine. He claims the evidence was insufficient for a trier of fact to find, beyond a reasonable doubt, that he actually or constructively possessed the methamphetamine. We disagree.

In a criminal case, the State must provide sufficient evidence to prove each element of the charged offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 316, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). In evaluating the sufficiency of the evidence, the court must determine whether, when viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Pirtle*, 127 Wn.2d 628, 643, 904 P.2d 245 (1995). A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences from that evidence. *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010). Reviewing courts also 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,

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State v. Banks

874-75, 83 P.3d 970 (2004). This court does not reweigh the evidence and substitute its judgment for that of the jury. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). For sufficiency of evidence claims, circumstantial and direct evidence carry equal weight. *State v. Varga*, 151 Wn.2d 179, 201, 86 P.3d 139 (2004).

To prove unlawful possession of a controlled substance, the State must prove only “the nature of the substance and the fact of possession.” *State v. Bradshaw*, 152 Wn.2d 528, 538, 98 P.3d 1190 (2004); *see* RCW 69.50.4013. Possession can be actual or constructive. *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002). Actual possession occurs when a defendant has physical custody of the item, and constructive possession occurs if the defendant has dominion and control over the item. *Id.*

Mr. Banks’s theory is that actual possession does not apply because the methamphetamine was not on his person when he was arrested. He also asserts that he could not have been in constructive possession because he had no dominion or control over the methamphetamine in the alley.

In response, the State contends that *State v. Hathaway*, 161 Wn. App. 634, 251 P.3d 253 (2011) is the most analogous case. There, Division Two of this court held that a jury could reasonably infer actual possession even if the arresting officer did not find the contraband on the defendant’s person. We agree.

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State v. Banks

In *Hathaway*, law enforcement stopped Jennifer Hathaway's car and subsequently arrested her for driving with a suspended license. *Id.* at 640. During the search incident to arrest, the arresting officer heard a "tink" sound similar to something hitting the ground. *Id.* The officer looked down and saw a small vial on the road six inches from Ms. Hathaway's foot. *Id.* The vial contained a substance that later tested positive for methamphetamine. *Id.* The State charged her with unlawful possession of a controlled substance—methamphetamine. *Id.* At trial, the officer testified that the vial was where his patrol car would have run over it had it been there when he stopped Ms. Hathaway's car. *Id.* A jury found Ms. Hathaway guilty of the charged offense. *Id.* at 641. On appeal, she challenged the sufficiency of the evidence. *Id.* at 645. In denying her challenge, the appellate court concluded that the evidence was sufficient to allow the jury to infer that Ms. Hathaway had actual possession of the vial and dropped it while she was being frisked. *Id.* at 646.

Mr. Banks's case is similar. Here, Officer Rankin attempted to stop Mr. Banks for a traffic infraction. Mr. Banks immediately fled from the officer. "[F]light is an instinctive or impulsive reaction to a consciousness of guilt or is a deliberate attempt to avoid arrest and prosecution." *State v. Bruton*, 66 Wn.2d 111, 112, 401 P.2d 340 (1965). After a short pursuit, Mr. Banks crashed his bike and flew over the handlebars. After

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State v. Banks

landing, Mr. Banks deliberately rolled into some tall weeds on the side of the alley. Officers searched the area Mr. Banks had deliberately rolled into and found a neatly folded stack of cash and a small plastic baggie filled with methamphetamine. Both items were clean and dry, in contrast to the dirty alley. Based on this evidence, a jury could reasonably infer that Mr. Banks had dropped both items in the weeds just prior to his arrest. Under the deferential standard of our review, sufficient evidence supports Mr. Banks's conviction.

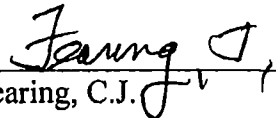
APPELLATE COSTS

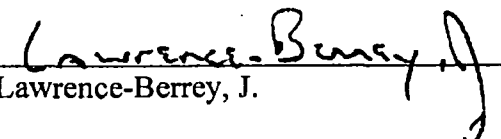
Mr. Banks asks this court to not award appellate costs in the event the State substantially prevails. The State has substantially prevailed. In accordance with RAP 14.2, we defer the question of appellate costs to our commissioner.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

WE CONCUR:


Fearing, C.J.


Lawrence-Berrey, J.


Korsmo, J.

Renee S. Townsley
Clerk/Administrator

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**The Court of Appeals
of the
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February 20, 2018

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CASE # 348369
State of Washington v. Samuel Teacher Banks
SPOKANE COUNTY SUPERIOR COURT No. 161018352

Counsel:

Enclosed please find a copy of the opinion filed by the Court today. A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion (unless filed electronically). If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:pb
Enc.

c: **E-mail** Hon. James Triplet
c: Samuel Teacher Banks
#315480
Washington State Penitentiary
1313 North 13th Ave
Walla Walla, WA 993622

DO NOT CITE. SEE GR 14.1(a).

Court of Appeals Division III
State of Washington

Opinion Information Sheet

Docket Number: 34836-9

Title of Case: State of Washington v. Samuel Teacher Banks

File Date: 02/20/2018

SOURCE OF APPEAL

Appeal from Spokane Superior Court

Docket No: 16-1-01835-2

Judgment or order under review

Date filed: 10/06/2016

Judge signing: Honorable James M. Triplet

JUDGES

Authored by Robert Lawrence-Berrey

Concurring: George Fearing

Kevin Korsmo

COUNSEL OF RECORD

Counsel for Appellant(s)

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Gasch Law Office

Po Box 30339

Spokane, WA, 99223-3005

Counsel for Respondent(s)

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1100 W Mallon Ave
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OPINION FACT SHEET

Case Name: State v. Banks
Case Number: 348369

1. TRIAL COURT INFORMATION:

A. SUPERIOR COURT: Spokane
 Judgment; James Triplet;
 Filed 10/6/16

2. COURT OF APPEALS INFORMATION:

Disposition:

- Affirmed
 - Affirmed as Modified
 - Affirmed in Part/Remanded**
 - Affirmed/Reversed-in part and Remanded**
 - Affirmed/Vacated in part
 - Affirmed/Reversed in part
 - Denied (PRP, Motions, Petitions)
 - Dismissed
 - Granted/Denied in part
 - Granted (PRP, Motions, Petitions)
 - Other
 - Reversed and Dismissed
 - Remanded**
 - Remanded with Instructions**
 - Reversed in part
 - Reversed and Remanded**
 - Reversed
 - Reversed, Vacated and Remanded**
 - Vacated and Remanded**
- * These categories are established by the Supreme Court
** If remanded, is jurisdiction being retained by the Court of Appeals? YES
 NO

3. **SUPERIOR COURT INFORMATION:**
(IF THIS IS A CRIMINAL CASE, CHECK ONE)

Is further action required by the superior court?

- YES
- NO

RLB
_____ **Authoring Judge's Initials**