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FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 JUN 25 PM 3:06

NO. 69145-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,
Respondent,
v.
ABDIRAZIK MOHAMED,
Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE MARY I. YU

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

1. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. To prove delivery of cocaine, the State must show that the defendant was the person who delivered cocaine. The State presented evidence that Mohamed sold cocaine to an undercover officer and the transaction was observed by another officer. Additionally, Mohamed fled when police approached him and threw the pre-recorded "buy money" on the ground; after being arrested the undercover officer and the officer who observed the drug sale both confirmed that the police had arrested the correct person. Is this sufficient evidence to demonstrate that Mohamed delivered cocaine?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Abdirazik Mohamed was charged by Information with Violation of the Uniform Controlled Substances Act- delivery of cocaine. CP 1. The offense was alleged to have occurred on July 28, 2011. CP 1.

Mohamed was found guilty as charged by a jury in a trial presided over by the Honorable Mary I. Yu. CP 39. The court imposed a standard range sentence of 12 months and one day of incarceration. CP 40, 42.

2. SUBSTANTIVE FACTS.

On July 28, 2011, Seattle Police officers arrested Mohamed as part of a narcotics "buy-bust" operation in downtown Seattle. 2RP¹ 25, 27. Six officers worked together as part of the operation: two pairs of uniformed police officers on bicycles were assigned as arrest officers, an undercover officer posed as a drug purchaser, and an observation officer in plainclothes watched the undercover officer while sending radio broadcasts to the arrest officers. 2RP 20-21, 26, 106, 109; 3RP 8-9.

At approximately noon, undercover officer Juan Tovar walked by Mohamed and asked him: "You got it?"² 2RP 43; 3RP 13. Mohamed responded, "yes." 3RP 13. Tovar and Mohamed started to walk together. 3RP 14. Tovar told Mohamed

¹ There are 5 volumes of verbatim report of proceedings. They will be referred to as follows: 1RP (June 26, 2012); 2RP (June 27, 2012); 3RP (June 28, 2012); 4RP (June 29, 2012); and 5RP (August 3, 2012).

² Officer Tovar testified that "you got it?" is a common phrase used by individuals trying to purchase narcotics "on the street." 3RP 13.

that he needed "sixty," meaning he wanted to purchase sixty dollars worth of cocaine. 3RP 14. Mohamed confirmed that Tovar wanted to purchase sixty dollars worth and told Tovar that they needed to leave the area because police officers on bicycles were in the area. 3RP 14.

Observation officer Terry Bailey saw Mohamed and Officer Tovar walk together; he radioed a description of Mohamed to the arrest officers and continued to provide radio updates of his observations. 2RP 109, 113. Mohamed and Tovar stopped near the sidewalk of an open-air parking lot around the corner from where they first made contact. 3RP 16.

Mohamed poured several rocks of cocaine out of a film canister and gave the cocaine to Tovar; Tovar handed Mohamed sixty dollars of "buy money." 3RP 17. The "buy money" had previously been photocopied at the police precinct and copies of the money had been distributed to the arrest officers. 2RP 21; 3RP 17.

As the transaction occurred, observation officer Bailey observed Mohamed and Tovar exchange items. 2RP 112. Bailey then saw Tovar give a signal to indicate he had purchased

narcotics. 2RP 112. Bailey relayed this information to the arrest officers via radio. 2RP 28, 112-13.

After completing the sale, Mohamed walked away from Tovar and around a corner. 3RP 18. As Mohamed was approached by two police officers on bicycles, he fled down an alley running away from the officers. 2RP 58, 114. The alley led to the same parking lot where the delivery of cocaine had taken place. 2RP 80-81, 116. As the two officers came out of the alleyway behind Mohamed, the other two arrest officers had already stopped Mohamed. 2RP 81. As police officers contacted Mohamed, he threw a ball of money onto the ground. 2RP 60. Officer Etoh picked up the money and discovered that it was \$60. 2RP 60, 63. Etoh compared the recovered money to the photocopy of the "buy money"; the serial numbers matched. 2RP 60.

After Mohamed was stopped by the arrest officers, undercover officer Tovar confirmed that the officers had arrested the person who had just sold him cocaine. 3RP 20. Observation officer Bailey saw the officers arrest Mohamed and confirmed that Mohamed was the same person that he had observed exchange items with Tovar. 2RP 117. The entire contact with Mohamed up

until his arrest occurred within several minutes and took place on the same block. 2RP 118; 3RP 24-29.

C. ARGUMENT

1. SUFFICIENT EVIDENCE SUPPORTS MOHAMED'S DELIVERY OF COCAINE CONVICTION.

Mohamed challenges the sufficiency of the evidence claiming that the State failed to prove beyond a reasonable doubt that Mohamed was the individual who sold cocaine. This argument fails because the State produced substantial evidence for a rational trier of fact to find that Mohamed committed the offense.

The State must prove each element of the charged crime beyond a reasonable doubt. State v. Alvarez, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). Evidence is sufficient to support a conviction if, viewed in a light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. Id. Circumstantial and direct evidence carry equal

weight when reviewed by an appellate court. Id. A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. State v. Fiser, 99 Wn. App. 714, 719, 995 P.2d 107, review denied, 141 Wn.2d 1023 (2000). The reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that there is substantial evidence in the record to support the conviction. Id. at 718.

A person is guilty of delivery of cocaine if he delivers cocaine to another with knowledge that the cocaine was a controlled substance. RCW 69.50.401. The identity of the criminal defendant is an element that must be proved. State v. Thomson, 70 Wn. App. 200, 211, 852 P.2d 1104 (1993).

The evidence shows that Officer Tovar identified Mohamed as the person who sold him cocaine. 3RP 12. Officer Bailey also identified Mohamed as the individual he saw engaged in a transaction with Tovar when Tovar signaled that he had just purchased narcotics. 2RP 110, 112. After Tovar gave Mohamed \$60 of previously-photocopied "buy money," Tovar watched Mohamed walk around a corner and then flee down an alley away from approaching police officers. 3RP 17-19.

Mohamed was "immediately" contacted by officers who arrested him. 3RP 19. Officer Etoh saw Mohamed throw money onto the ground and confirmed that Mohamed had thrown the \$60 he had just received from Tovar. 2RP 60, 63. Officers Tovar and Bailey both independently observed Mohamed detained by the arrest officers and confirmed that the officers had the correct person. 2RP 116-17; 3RP 20.

Viewing the record in the light most favorable to the State, the evidence was sufficient for a rational trier of fact to conclude beyond a reasonable doubt that Mohamed was the individual who delivered cocaine to Officer Tovar.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Mohamed's conviction and sentence.

DATED this 25 day of June, 2013.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jan Trasen, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the BRIEF OF RESPONDENT, in STATE V. ABDIRAZIK MOHAMED, Cause No. 69145-7 -I, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 25th day of June, 2013



Name

Done in Seattle, Washington