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Cowlitz Co. Cause NO. 06-1-01172-1

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

Respondent,

v.

**JEFF L. HARP,**

Appellant.

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**BRIEF OF RESPONDENT**

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## **I. INTRODUCTION**

The Appellant was charged by information with two counts. Count I charged Violation of a Protection Order under RCW 26.50.110. The State further alleged this crime was a felony under RCW 26.50.110(5), based on two predicate convictions for violating specified types of orders. Count II charged Violation of the Uniform Controlled Substance Act: Possession of Methamphetamine.

On November 13, 2006, the Appellant proceeded to a jury trial on both counts. The jury returned verdicts of guilty on both counts, and a special verdict finding that the Appellant had previously been convicted twice of violating protection or no-contact orders. The Appellant was sentenced with the standard range, and the instant appeal timely followed.

On appeal, the Appellant argues there was insufficient evidence admitted at trial to establish the types of orders he had previously been convicted of, and that his conviction for Count I should therefore be a gross misdemeanor. As to Count II, the Appellant argues the chain-of-custody was not established for the methamphetamine admitted at trial. However, the trial record does not support these claims, and the Court should affirm both convictions.

## II. STATEMENT OF THE CASE

The State agrees, for the most part, with the factual and procedural history as set forth by the Appellant. However, Appellant's statement omits certain key facts related to the chain-of-custody for the methamphetamine admitted into evidence at trial.

Officer Ralph Webb testified that he seized a duffel bag that the Appellant had been carrying. RP 36-37. When Officer Webb searched this duffel bag, he found a small black pouch that contained drug paraphernalia and a crystalline substance he believed to be methamphetamine. RP 37. The paraphernalia was admitted as exhibit 7. RP 39.

Additionally, Officer Webb testified that he placed the suspected methamphetamine into an envelope marked as exhibit 8, and that he then sealed this envelope with tape and placed his initials on it. Officer Webb further stated he placed the suspect methamphetamine into a ziplock bag that he put inside exhibit 8. *Id.* When shown the ziplock bag containing the methamphetamine, Officer Webb testified that it was the same bag he found in the pouch in September. RP 40.

During cross-examination, defense counsel, with considerable skill, led Officer Webb into more equivocal statements regarding the bag of methamphetamine. RP 56-58. However, upon redirect, Officer Webb testified that he photographed the bag of methamphetamine at the police

station. This photograph was admitted as exhibit 9. Officer Webb testified that the bag in this photograph was the same bag contained in exhibit 8. RP 59.

### **III. ISSUES PRESENTED**

- 1. Was the Judgment and Sentence Admitted at Trial Relevant, and Was There Substantial Evidence Proving the Appellant Had Previously Been Twice Convicted of Violating a Court Order Specified in RCW 26.50.110?**
- 2. Did the Trial Court Abuse its Discretion by Finding the Chain-of-Custody Was Sufficiently Established for the Methamphetamine Admitted at Trial?**

### **IV. SHORT ANSWERS**

1. Yes.
2. No.

### **V. ARGUMENT**

#### **I. The Judgment and Sentence Admitted as Exhibits 4 and 4a Was Relevant, and Was Sufficient Evidence That the Appellant Had Previously Been Twice Convicted of Violating a Court Order Specified in RCW 26.50.110.**

The Appellant argues the State failed to submit sufficient evidence to establish he had previously been twice convicted of violating one of the types of orders specified in RCW 26.50.110(1). The Appellant also argues this judgment and sentence was irrelevant.<sup>1</sup> However, the judgment and

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<sup>1</sup> As the issues of relevancy and sufficiency of the evidence are intertwined, the State has addressed one argument to both these questions.

sentence admitted at trial was relevant and was sufficient to establish the nature of the two prior convictions. Thus, the Appellant's argument must fail.

When the sufficiency of the evidence is challenged, the test is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the defendant was guilty beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-222, 616 P.2d 628 (1980). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Partin, 88 Wn.2d 899, 906-907, 567 P.2d 1136 (1977). Also, 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).

The State agrees with the Appellant that the violation of a protection order charged in this case is only a felony if there is sufficient evidence to prove the Appellant had previously been convicted twice of violating one of several types of orders. See RCW 26.50.110(5). Indeed, the judgment and sentence admitted into evidence as exhibit 4 proves exactly what is required.

As discussed above, exhibit 4 is a certified copy of a judgment and sentence entered in State of Washington v. Jeffrey Leroy Harp, Cowlitz

County Superior Court Cause No. 04-1-00931-6. This judgment and sentence states the Appellant was found guilty on December 14, 2004 of counts IV and VIII. These counts are denominated as “VIOLATION OF A PROTECTION ORDER DOMESTIC VIOLENCE (GROSS MISDO).” The judgment and sentence further cites to RCW 26.50.110(4) and 10.99.020(1). Thus, this document was highly relevant to prove the nature of the predicate convictions, as required by RCW 26.50.110(5).

This description clearly indicates that the Appellant was convicted of two counts of violation of a domestic violence protection order. The citation to RCW 26.50 further shows the nature of the order he was convicted of violating. RCW 26.50 is entitled “Domestic Violence Prevention.” The section the judgment and sentence cites to in RCW 26.50 is .110, which criminalizes the violation of orders issued under 26.50, 7.90, 10.99, 26.09, 26.10, and 74.34. By this citation, the judgment and sentence indicates the defendant was convicted of violating one of these types of orders. This very same list of order types is included in RCW 26.50.110(5), the section that elevates a violation to a felony where the violator has two prior convictions for violating these types of orders.

The citation to RCW 26.50.110 on the judgment and sentence indicates that the defendant was convicted under that statute. In order to have been convicted of violating this statute, the defendant must

necessarily have violated one of the types of orders listed in RCW 26.50.110(1). A conviction for violating an order under RCW 26.50.110(1) would necessarily qualify as a predicate conviction under RCW 26.50.110(5), as the list of qualifying orders is the same in both subsections.

Given this, it strains credulity to argue the judgment and sentence admitted at trial does not indicate that the defendant had been convicted of twice violating an order issued under RCW 26.50, 7.90, 10.99, 26.09, 26.10, and 74.34. The only reasonable inference to be drawn is that the defendant had been twice convicted of violating qualifying orders, and that any subsequent violation of a qualifying order would be a felony. See Partin, 88 Wn.2d at 906-907 (all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant).

In an attempt to evade the plain meaning and import of the judgment and sentence, the Appellant appears to claim that the findings and orders memorialized in the judgment and sentence are not the court's decree, but that of the prosecutor's clerical staff. Unsurprisingly, the Appellant provides no authority for this novel claim. Instead, when the judgment and sentence admitted into evidence is viewed in the light most favorable to the State, it is clear that there was sufficient evidence from

which the jury could find the defendant had previously been convicted of two counts of violating a order specified in RCW 26.50.110(5). This Court should find there was sufficient evidence to establish the Appellant's violation of a protection order was a felony, and uphold the conviction and special verdict for Count I.

**II. The Trial Court Did Not Abuse Its Discretion by Admitting the Methamphetamine, as the Chain-of-Custody Was Established.**

Appellant argues the trial court improperly admitted physical evidence, specifically a bag of methamphetamine. Appellant contends the chain-of-custody for this item was not established because Officer Webb allegedly failed to identify the bag introduced at trial as being the same bag he recovered from the defendant's possession. However, Officer Webb did in fact identify the bag of methamphetamine in exhibit 8 as being the one he found on the date of the crime.

In order for physical evidence to be admitted "it must be satisfactorily identified and shown to be in substantially the same condition as when the crime was committed." State v. Campbell, 103 Wn.2d 1, 21 691 P.2d 929 (1984). Moreover, the proponent of such evidence "need not identify the evidence with absolute certainty and eliminate every possibility of alteration or substitution." Campbell, 103 Wn.2d at 21. Evidence is not inadmissible merely because a perfect

chain- of-custody cannot be shown, so long as the exhibit is identified as being “the same object and in the same condition as it was when it was initially acquired by the party.” State v. Picard, 90 Wn.App. 890, 954 P.2d 336 (1998); quoting State v. DeCuir, 19 Wn.App. 130, 135, 574 P.2d 397 (1978).

Additionally, minor discrepancies or uncertainty affect “only the weight of evidence, not its admissibility.” Id.; State v. Tollet, 12 Wn.App. 134, 528 P.2d 497 (1974). On appeal, a trial court’s decision to admit physical evidence will be overturned only for abuse of discretion. Id.; State v. Roy, 126 Wn.App. 124, 107 P.3d 750 (2005).

Here, Officer Webb testified on direct that the bag of methamphetamine in exhibit 8 was the same bag he had found at the scene. RP 40. In addition, Officer Webb had taken a photograph of the bag he found in the defendant’s property, and stated this photograph was a picture of the bag contained in exhibit 8. RP 59. Finally, Officer Webb testified he placed the bag of methamphetamine in an envelope and placed various marking on it. He further testified that the enveloped produced at trial was in fact the same envelope he had placed the methamphetamine into. RP 39.

This showing is sufficient to satisfy Campbell. As the trial court recognized, Officer Webb’s equivocation went to the weight of the

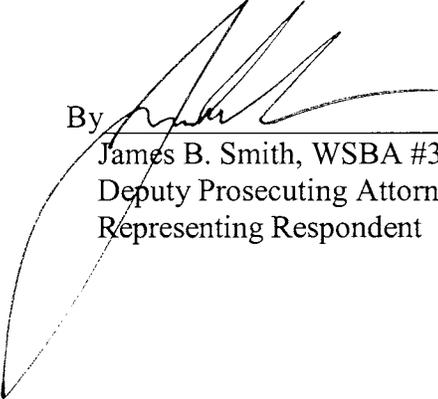
evidence, and was a question for the jury that did not negate the chain-of-custody. RP 66-67. This decision is in conformity with Campbell's holding that minor discrepancies go the weight, not the admissibility, of physical evidence. As such, the trial court did not abuse its discretion by admitting the bag. See Tollett, 12 Wn.App. at 136-137 (Officer's inability to identify a set of initials on a bag containing bullet fragments did not render evidence inadmissible). This Court should find that the bag of methamphetamine was properly admitted, and uphold the Appellant's conviction for Count II.

## **VI. CONCLUSION**

Based on the preceding argument, the State respectfully requests the Court deny the Appellant's appeal and uphold his convictions on both counts. The judgment and sentence admitted at trial was sufficient evidence to establish the Appellant had two qualifying predicate convictions under RCW 26.50.110. Furthermore, the trial court did not err by admitting the bag of methamphetamine, as the chain-of-custody was satisfied for this item. As there was no error, the Appellant's convictions should stand.

Respectfully submitted this 2<sup>nd</sup> day of August, 2007.

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