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 (A) FEASEL DROVE IN AN ERRATIC MANNER;

 (B) TROOPER WOOD SAW FEASEL REACH INTO THE
 FRONT PASSENGER AREA OF HIS CAR WHILE
 FEASEL WAS TRYING TO ESCAPE;

 (C) FEASEL’S SPEECH AND DEMEANOR TO TROOPER
 WOOD, A CERTIFIED DRUG RECOGNITION
 EXPERT (DRE) INDICATED THAT FEASEL WAS
 UNDER THE INFLUENCE OF A STIMULANT AND
 HAD A BURN MARK ON HIS LIP; AND

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in allowing Feasel to be convicted of unlawful possession of a controlled substance on evidence that should have been suppressed where the evidence was unconstitutionally obtained from a search incident to an arrest in violation of Arizona v. Gant.
2. The trial court erred in entering CrR 3.6 Findings of Fact Nos. 14, 15, 16, 17, 18; Conclusions of Law Nos. 2, 3, 4 following the suppression hearing. [CP 27-32].
3. The trial court erred in failing to find insufficient evidence to convict Feasel beyond a reasonable doubt of unlawful possession of a controlled substance where the evidence in support of this conviction should have been suppressed.
4. The trial court erred in entering CrR 6.1 Findings of Fact Nos. 14, 15, 16, 17, 18 Conclusions of Law Nos. 2 and 3 following the bench trial. [CP 22-26].

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was Trooper Wood's warrantless search of Feasel's car after his arrest impermissible under Arizona v. Gant¹ when:
 - (a) Feasel drove in an erratic manner;
 - (b) Trooper Wood saw Feasel reach into the front passenger area of his car while Feasel was trying to escape;
 - (c) Feasel's speech and demeanor to Trooper Wood, a certified drug recognition expert (DRE) indicated that Feasel was under the influence of a stimulant and had a burn mark on his lip; and
 - (d) Following a search with Dilly, a narcotics canine, methamphetamine and a glass smoking device were found underneath the passenger seat?
2. Because the trial court did not err under Gant and improperly admit the methamphetamine and glass smoking device, was the

¹ Arizona v. Gant, 556 U.S.---, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009).

evidence sufficient to convict Feasel of possession of methamphetamine?

C. EVIDENCE RELIED UPON

The official Report of Proceedings will be referred to as “RP.” The Clerk’s Papers shall be referred to as “CP.”

D. STATEMENT OF THE CASE

1 & 2. Procedural History & Statement of Facts. Pursuant to RAP 10.3(b), the State accepts Feasel’s recitation of the procedural history and facts and adds the following:

When Trooper Wood stopped and contacted Feasel, he asked him “if he was the owner of the car.” RP 25: 11-14. Feasel said that he was. RP 25: 14. Trooper Wood then “placed Feasel into handcuffs and advised him that he was under arrest for driving while license suspended in the third degree.” RP 25: 18-20. While chasing Feasel prior to the stop, Trooper Wood observed Feasel “reaching into the front passenger area of the car.” RP 27: 5-6. At the time, Trooper Wood did not know why Feasel made that motion. RP 27: 7-10.

While talking with Feasel after he had arrested him, Trooper Wood noticed that Feasel’s “speech was rapid,” that his “pupils were dilated and

bloodshot,” and that he “had an apparent burn mark on his top lip.” RP 29: 3-5. Feasel also admitted to Trooper Wood that he has smoked methamphetamine, but at the time of this incident, it had been “a long time ago.” RP 29: 5-7. In addition to his standard training as a State Trooper and as a certified Drug Recognition Expert (DRE), Trooper Wood suspected that Feasel was, at that time, “under the influence of methamphetamine or a stimulant.” RP 13: 2; 29: 7-10. During a search incident to arrest with Dilly, Trooper Wood’s narcotics canine, “a bag of white crystal substance” and “a glass smoking device” with “white crystal residue” were found. RP 28: 10-11; 30: 23-25; 31: 1-3, 9-13. The white crystal powder and residue were tested and found to be methamphetamine. CP 23.

3. Summary of Argument

The trial court did not err under Gant by admitting the evidence that Trooper Wood obtained following his search of Feasel’s car because he had good cause to believe that Feasel had been smoking and was under the influence of methamphetamine. When Trooper Wood searched Feasel’s car, methamphetamine and a glass smoking pipe were found in the area where Trooper Wood saw Feasel reach during the chase. Error did not occur, and the State respectfully requests the Court to affirm.

E. ARGUMENT

1. TROOPER WOOD'S WARRANTLESS SEARCH OF FEASEL'S CAR AFTER HIS ARREST WAS NOT IMPERMISSIBLE UNDER ARIZONA V. GANT BECAUSE:
 - (A) FEASEL DROVE IN AN ERRATIC MANNER;
 - (B) TROOPER WOOD SAW FEASEL REACH INTO THE FRONT PASSENGER AREA OF HIS CAR WHILE FEASEL WAS TRYING TO ESCAPE;
 - (C) FEASEL'S SPEECH AND DEMEANOR TO TROOPER WOOD, A CERTIFIED DRUG RECOGNITION EXPERT (DRE) INDICATED THAT FEASEL WAS UNDER THE INFLUENCE OF A STIMULANT AND HAD A BURN MARK ON HIS LIP; AND
 - (D) FOLLOWING A SEARCH WITH DILLY A NARCOTICS CANINE, METHAMPHETAMINE AND A GLASS SMOKING DEVICE WERE FOUND UNDERNEATH THE PASSENGER SEAT.

“Police may search a vehicle incident to a recent occupant’s arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.” Arizona v. Gant, 129 S.Ct. at 1723; see State v. Wright, ---P.3d ---, 2010 WL 1531484 ¶ 15. Where these justifications are absent, “a search of an arrestee’s vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.” Gant, 129 S.Ct. at 1723-1724.

The trial court did not err under Gant by admitting the evidence that Trooper Wood obtained following his search of Feasel’s car

because he had good cause to believe that Feasel had been smoking and was under the influence of methamphetamine. That Feasel, “had an apparent burn mark on his top lip” is significant, because when Trooper Wood searched Feasel’s car, methamphetamine and the glass smoking pipe were found in the area where Trooper Wood saw Feasel reach during the chase. RP 29: 3-5. Put another way, Trooper Wood had probable cause to believe that Feasel had been smoking methamphetamine, and that he would find that substance in a routine search of Feasel’s vehicle, which he did.

2. BECAUSE THE TRIAL COURT DID NOT ERR BY ADMITTING THE METHAMPHETAMINE AND GLASS PIPE THE TRIAL COURT HAD SUFFICIENT EVIDENCE TO CONVICT FEASEL.

Evidence is sufficient if, viewed in the light most favorable to the State, it permits any rational trier of fact to find all of the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In a criminal case, the State must prove each element of the alleged offense beyond a reasonable doubt. State v. Alvarez, 128 Wash.2d 1, 13, 904 P.2d 754 (1995).

A claim of insufficiency admits the truth of the State’s evidence and requires that all reasonable inferences be drawn in favor of the State and interpreted most strongly against the defendant. Salinas, 119 Wn.2d

at 201. Direct evidence is not required to uphold a jury's verdict; circumstantial evidence can be sufficient. State v. O'Neal, 159 Wash.2d 500, 506, 150 P.3d 1121 (2007).

Circumstantial evidence is accorded equal weight with direct evidence. State v. Delmarter, 94 Wash.2d 634, 638, 618 P.2d 99 (1980). In reviewing the evidence, deference is given to the trier of fact, who resolves conflicting testimony, evaluates the credibility of witnesses, and generally weighs the persuasiveness of the evidence. State v. Walton, 64 Wash.App. 410, 415-16, 824 P.2d 533 (1992).

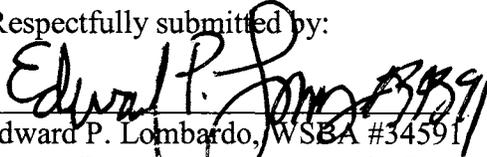
Because the methamphetamine and glass smoking device were properly admitted, the trial court had sufficient evidence with which to convict Feasel as charged.

F. CONCLUSION

The State respectfully requests the Court to affirm the judgment and sentence.

Dated this 11TH day of JUNE, 2010

Respectfully submitted by:


Edward P. Lombardo, WSBA #34591
Deputy Prosecuting Attorney for Respondent
Gary P. Burleson, Prosecuting Attorney
Mason County, Washington

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

STATE OF WASHINGTON,)
)
Respondent,) No. 39940-7-II
)
vs.) DECLARATION OF
) FILING/MAILING
) PROOF OF SERVICE
NATHAN C. FEASEL,)
)
Appellant,)
_____)

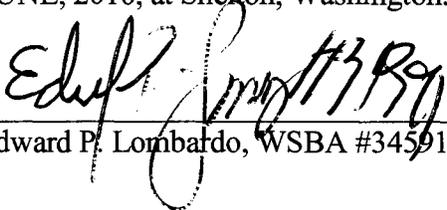
I, EDWARD P. LOMBARDO, declare and state as follows:

On FRIDAY, JUNE 11, 2010, I deposited in the U.S. Mail, postage properly prepaid, the documents related to the above cause number and to which this declaration is attached, BRIEF OF RESPONDENT, to:

Patricia A. Pethick
PO Box 7269
Tacoma, WA 98417

I, EDWARD P. LOMBARDO, declare under penalty of perjury of the laws of the State of Washington that the foregoing information is true and correct.

Dated this 11TH day of JUNE, 2010, at Shelton, Washington.


Edward P. Lombardo, WSBA #34591

FILED
COURT OF APPEALS
10 JUN 14 AM 11:51
STATE OF WASHINGTON
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