

ORIGINAL

NO. 66194-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

OSCAR SANCHEZ,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE THERESA DOYLE

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**BRIEF OF RESPONDENT**

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A. ISSUES PRESENTED

1. 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. To deliver cocaine, a defendant must deliver to another a substance that he knows to be cocaine. To possess cocaine with intent to deliver, a defendant must either have possession and there must be corroboration of intent. Here, Sanchez conducted a hand-to-hand transaction with an undercover police officer, wherein he handed over cocaine in exchange for cash, walked away, dropped an object that turned out to be cocaine, and was arrested with hundreds of dollars in cash on him, as well as the money used by the undercover officer. Is there substantial evidence in the record to support Sanchez's conviction?

B. STATEMENT OF FACTS

1. PROCEDURAL FACTS

Oscar Sanchez was charged with one count of Violation of the Uniform Controlled Substances Act: Delivery of Cocaine and one count of Violation of the Uniform Controlled Substances Act: Possession with Intent to Deliver Cocaine. CP 8-9. Sanchez was

convicted by a jury as charged. CP 40-41. The court sentenced Sanchez to the Drug Offender Sentencing Alternative, with a sentence of 45 months in prison and 45 months community custody. CP 73-83.

## 2. SUBSTANTIVE FACTS

On January 22, 2010, Seattle Police Officer R. Vaca was working an undercover buy bust operation purchasing street level narcotics. 2RP 13.<sup>1</sup> Officer Vaca is fluent in Spanish. Id. Additionally, Vaca completed undercover training. Id. Vaca was given buy money for the operation and a photocopy of the money that matched the pre-recorded buy money in his possession was made. 2RP 22.

Officer Vaca conducted the buy bust operation near Virginia and 1<sup>st</sup> Avenue. 2RP 13. Vaca observed the Defendant engaging a hand-to-hand exchange with another person. 2RP 15. Officer Vaca approached the Defendant and asked if he had any "piedra" which is Spanish for "rock." 2RP 16-17. *Piedra* (rock) is a common

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<sup>1</sup> Respondent is using the same numbering system as found in Appellant's brief: 1RP refers to the verbatim report of proceeding for September 13, 2010; 2RP September 14, 2010.

Spanish street term used to identify rock cocaine. Id. Sanchez replied "yes" in Spanish and asked Vaca how much he wanted. Id. Officer Vaca responded that he wanted "50" in Spanish. 2RP 17. They walked a bit and stopped near a doorway, where Sanchez opened a brown napkin in his hand and revealed a small piece of clear plastic baggie inside. Id. Inside the baggie Officer Vaca noticed many white wafer thin rocks which he recognized to be crack cocaine. Id. Officer Vaca handed Sanchez \$50 of pre-recorded buy money. 2RP 17, 23. Officer Vaca received the cocaine from the Defendant and gave other officers a good buy signal confirming he had purchased narcotics. 2RP 19.

During the operation, Officer Jason Diamond trailed Officer Vaca, also in an undercover capacity. 2RP 78. Officer Diamond saw Vaca meet with the Defendant, conduct a hand-to-hand exchange, and then break contact. 2RP 80. Officer Diamond called in the arrest teams and followed the Defendant until he was placed under arrest, ensuring that the person he had seen conduct an exchange with Vaca was actually the person arrested. 2RP 80-82. When the arrest teams moved in, Defendant was seen dropping a brown napkin near the base of a tree. 2RP 49-52.

Inside the napkin, a plastic baggie was recovered containing 4.6 grams of cocaine. 2RP 72-74, 107.

Defendant was arrested and found to have a wad of brown napkins and \$731. 2RP 30, 58-59.

C. ARGUMENT

1. THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT DEFENDANT'S CONVICTION FOR DELIVERY OF COCAINE AND POSSESSION OF COCAINE WITH INTENT TO DELIVER.

Defendant asserts that the State did not prove that he delivered cocaine or that he possessed the cocaine in the brown napkin with the intent to deliver. This argument should be rejected because there was sufficient evidence from which a rational jury could find that Defendant did deliver the cocaine and did possess the cocaine with intent to deliver when he directly engaged in a drug transaction with an undercover police officer, was seen throwing hundreds of dollars worth of cocaine to the ground, and was found in possession of a significant amount of cash.

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. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

"A claim of insufficiency admits the truth of the State's evidence and all reasonable inferences that reasonably can be drawn therefrom." Id. at 201. Circumstantial and direct evidence are equally reliable. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000). A reviewing court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. Id. at 719. 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 a controlled substance if he delivers a controlled substance and knows that the delivered substance is controlled. RCW 69.50.401. Cocaine is a controlled substance. RCW 69.50.206(4). Delivery means the actual or constructive transfer of a controlled substance from one person to another. RCW 69.50.101(f). Officer Vaca testified that the Defendant delivered cocaine to him, and that he gave the

Defendant \$50 in exchange for 0.5 grams of crack cocaine.

2RP 17, 23. Pre-recorded buy money was handed over by Officer Vaca and was recovered by the arrest teams. 2RP 25-26. Based on this testimony, a rational trier of fact could, and did, find the Defendant guilty of delivery of cocaine.

A person is guilty of possession with intent to deliver a controlled substance if he possesses a controlled substance with the intent to deliver a controlled substance. RCW 69.50.401(1), (2)(a). Cocaine is a controlled substance. RCW 69.50.206(4). Possession means having a substance in one's custody or control; it may be either actual or constructive. State v. Echeverria, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997). Though neither "actual" nor "constructive" possession is defined in the act, both are defined by case law. Actual possession means that "the goods are in the personal custody of the person charged with possession; whereas constructive possession means that the goods are not in actual, physical possession, but that the person charged with possession has dominion and control over the goods." State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969).

Mere possession is not enough to support an inference of intent to deliver. State v. Huynh, 107 Wn. App. 68, 71, 77, 26 P.3d

290 (2001). There must be corroborating evidence to establish intent. State v. Brown, 68 Wn. App. 480, 485, 843 P.2d 1098 (1993). Corroborating evidence can include individual packaging of narcotics, scales, sales ledgers, weapons, large amounts of cash, pagers, and cell phones. State v. McPherson, 111 Wn. App. 747, 760, 46 P.3d 284 (2002); State v. Campos, 100 Wn. App. 218, 220, 222, 998 P.2d 893, review denied, 142 Wn.2d 1006 (2000); State v. Miller, 91 Wn. App. 181, 186, 955 P.2d 810, 961 P.2d 973, review denied, 136 Wn.2d 1016 (1998); State v. Taylor, 74 Wn. App. 111, 123, 872 P.2d 53, review denied, 124 Wn.2d 1029 (1994). Conduct consistent with drug sales, such as trading small packages for money and engaging in drug transactions, is also sufficient to establish corroborating evidence. State v. Thomas, 68 Wn. App. 268, 270-71, 843 P.2d 540 (1992), review denied, 123 Wn.2d 1028 (1994). A defendant's intent "must logically follow as a matter of probability from the evidence." Campos, 100 Wn. App. at 222, 998 P.2d 893 (citing State v. Davis, 79 Wn. App. 591, 594, 904 P.2d 306 (1995)).

Defendant's conduct in this case clearly amounts to more than mere possession. Defendant was seen by Officer Vaca engaging in a hand-to-hand transaction on the street. 2RP 15. Officer Vaca and the other officers also identified the Defendant as the individual who sold Vaca 0.5 grams (\$50 worth) of cocaine. 2RP 19, 80-82. Officers saw Defendant throw to the ground 4.6 grams of cocaine, and upon arrest found over \$700 in his possession. 2RP 30, 58-59, 72-74, 107. Each of these facts would be corroborating evidence of an intent to deliver, and combined they leave no question that there was substantial evidence in the record to allow a rational trier of fact to find that Defendant possessed cocaine with the intent to deliver: he was observed engaging in hand-to-hand transactions, he delivered narcotics to an undercover officer, he had enough narcotics left over to engage in numerous additional transactions, and he had a large amount of cash on him.

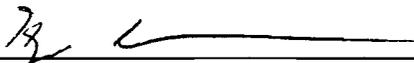
D. CONCLUSION

For the above reasons, the State respectfully requests that this court affirm Defendant's VUCSA convictions.

DATED this 24 day of May, 2011.

Respectfully submitted,

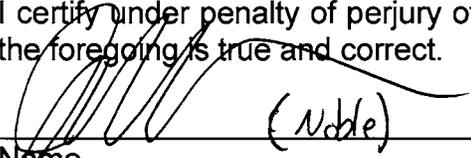
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Eric Nielsen, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. OSCAR SANCHEZ, Cause No. 66194-9-1, 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.

  
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Name  
Done in Seattle, Washington

5.25.11  
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Date