

FILED
JULY 28, 2016
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,)	
)	
Respondent,)	No. 33041-9-III
)	
v.)	
)	
RUVIM DEZHNYUK,)	UNPUBLISHED OPINION
)	
Appellant.)	

SIDDOWAY, J. — Ruvim Dezhnyuk was convicted by a Kittitas County jury of possession of a controlled substance: heroin. He contends the evidence is insufficient to prove the identity of the narcotic because the drug was not actually presented at trial. We conclude that circumstantial evidence here is more than sufficient to prove beyond a reasonable doubt that he possessed heroin. Accordingly, we affirm his conviction.

FACTS

In September 2013, two Washington State Patrol troopers stopped a car on Interstate 82 for speeding. Mr. Dezhnyuk was the driver, and the owner of the car—Jessica Robinson-Willers—was in the passenger seat. One of the troopers smelled what he thought was heroin when he contacted the car’s occupants.

Ms. Robinson-Willers gave the troopers permission to search the car. They found a digital scale with black, sticky residue hidden under the padding of a child's car seat in the back seat, where the smell of heroin seemed to originate. The residue appeared to the troopers to be heroin. The troopers also found the barrel of a pen and a clear plastic baggie shoved down between Mr. Dezhnyuk's seat and the console. One of the troopers later testified that the tube contained black residue and that such tubes were used to inhale smoke from burning narcotics. The residue in the pen barrel field tested positive for heroin; later, the Washington State Patrol Crime Lab verified the identity of the substance. Although the pen barrel was not admitted into evidence, a drug chemist from the crime lab testified that she did the drug test and concluded that the tube contained heroin.

To convict Mr. Dezhnyuk of possessing heroin, the jury had to find beyond a reasonable doubt from the evidence that on September 18, 2013, he possessed a controlled substance (heroin) and that this act occurred in Washington. *See* Jury Instruction 9, Clerk's Papers at 74; RCW 69.50.4013(1). The jury returned a verdict of guilty.

ANALYSIS

Mr. Dezhnyuk contends the evidence does not support the drug identity element of possessing heroin because neither the actual pen barrel containing the heroin residue nor

the residue itself was admitted at trial. He asserts that the failure to present this direct evidence is the equivalent of having evidence suppressed by the court, requiring dismissal. He fails to give credit to other direct and circumstantial evidence that supports the elements of his offense.

Due process requires the State to prove beyond a reasonable doubt each element of an offense. *State v. Colquitt*, 133 Wn. App. 789, 796, 137 P.3d 892 (2006). Evidence is sufficient if, when viewed in the light most favorable to the State, it allows a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). A defendant who claims insufficiency of the evidence necessarily admits the truth of the State's evidence and all inferences that arise from that evidence. *Id.*

Here, the State presented evidence that established beyond a reasonable doubt the identity of the residue in the pen barrel. The troopers testified that they had extensive experience with heroin and recognized it on sight and by smell. Their field test of the residue in the pen barrel was reinforced by the test of the material by the crime lab. And the lab employee who conducted the chemical analysis testified as to her qualifications and her conclusion that the residue was heroin. Finally, Ms. Robinson-Willers testified that after officers initiated their traffic stop of her car, Mr. Dezhnyuk emptied out his pockets, placed contents between the seats, reached back and placed a scale underneath

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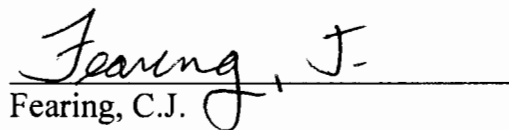
the child car seat cover, and handed her \$800 in cash to hold for him. This evidence is sufficient for a rational juror to find beyond a reasonable doubt that Mr. Dezhnyuk possessed heroin.

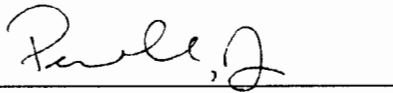
Affirmed.

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.


Siddoway, J.

WE CONCUR:


Fearing, C.J.


Pennell, J.