

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,
Respondent,

v.

M.J.,¹
Appellant.

No. 40419-2-II

UNPUBLISHED OPINION

Armstrong, J. — A juvenile court adjudicated M.J. guilty of possessing a controlled substance in violation of RCW 69.50.4013(1). On appeal, M.J. argues that the evidence is insufficient to support his adjudication. We disagree and affirm.

FACTS

On May 23, 2009, sheriff's officers stopped a vehicle in which M.J. was riding. The officers arrested M.J. for being a minor in a public place displaying the effects of alcohol. During a search incident to arrest, the officers found one-half of a white methadone pill in M.J.'s pocket. M.J. told the officer the pill was aspirin that a friend had given him to treat a headache. He also

¹ Because the defendant is a juvenile, we find that some anonymity is appropriate. Accordingly, we use initials to identify him.

told the officer he had taken half the pill earlier and put the other half in his pocket.

The State charged M.J. with possession of a controlled substance.² At trial, M.J. argued that he did not knowingly possess the methadone. He first testified that he thought it was aspirin, but then stated several times that he knew it was not aspirin but did not know it was methadone or a “drug.” Report of Proceedings (RP) at 63-64, 66-68. He also testified, “I actually forgot [the pill] was even there [in my pocket] or else I would have got rid of it if I knew it was there before the cops”³ RP at 64. The juvenile court found that M.J. did not know the pill was methadone but did know it was a controlled substance of some kind. The court then adjudicated M.J. guilty of possessing a controlled substance.

ANALYSIS

It is undisputed that M.J. possessed a controlled substance, methadone, in violation of RCW 69.50.4013(1). *See also* RCW 69.50.206(c)(15). M.J. argues, however, that the evidence establishes that he possessed the methadone unwittingly. Unwitting possession is an affirmative defense to a charge of possessing a controlled substance. *State v. Staley*, 123 Wn.2d 794, 799, 872 P.2d 502 (1994). M.J. had the burden of proving the defense by a preponderance of the evidence. *See State v. Riker*, 123 Wn.2d 351, 368-69, 869 P.2d 43 (1994); *State v. Nunez-Martinez*, 90 Wn. App. 250, 254, 951 P.2d 823 (1998) (requiring the defendant to prove he did not know the substance was a controlled substance, not merely that he did not know the

² The State also charged M.J. with one count of being a minor in a public place displaying the effects of alcohol, of which he was acquitted, and one count of escape, to which he pleaded guilty.

³ M.J.’s attorney asked another question before M.J. finished this sentence.

substance's exact chemical or street name).

M.J. testified that he “knew it wasn’t aspirin but . . . didn’t know it was a drug.” RP at 66. But the trier of fact decides all credibility issues and was not obligated to accept M.J.’s testimony. *See State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). Here, the juvenile court found that although M.J. did not know the pill was methadone, he failed to prove that he did not know the pill was a controlled substance—a decision that lies beyond the scope of our review. *Thomas*, 150 Wn.2d at 874.

Nonetheless, M.J. argues that the juvenile court misconstrued his defense because the court stated:

Unwitting possession does not apply to possession of something that you know is a controlled substance, but you don’t know exactly what controlled substance it is. *And that’s the defense that [counsel] is putting forward.*

RP at 74 (emphasis added). M.J. reasons that this statement demonstrates the court mistakenly believed he had conceded knowing the pill was a controlled substance but not that it was methadone. Even if we accept M.J.’s reasoning, the outcome would be the same. The State was not required to prove, and the juvenile court was not required to find, that M.J. knowingly possessed the controlled substance. *See Staley*, 123 Wn.2d at 799. The juvenile court found that M.J. possessed the pill and that it was a controlled substance, the only two elements of the charge. RCW 69.50.4013; *Staley*, 123 Wn.2d at 798. And the juvenile court rejected M.J.’s unwitting possession defense. Accordingly, the evidence supports M.J.’s adjudication of possessing a controlled substance.

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We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Worswick, A.C.J.