IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. CLAYTON CHAPIN, Appellant.	No. 41826-6-II UNPUBLISHED OPINION

Armstrong, P.J. — Clayton Chapin appeals his conviction for unlawful use of a building for drug purposes, arguing that the State failed to present sufficient evidence to convict him. The State concedes he is correct. We reverse and remand to the trial court to dismiss that conviction. Chapin also appeals from the imposition of a $450 jury demand fee, arguing that the amount exceeded that permitted by statute. We agree and remand for correction of the amount of jury demand fee.[1]

Within an hour after police used a confidential informant to make a controlled buy of heroin from Chapin, they executed a search warrant at a one-bedroom apartment. In the bedroom, they found methamphetamine, heroin, materials associated with delivery of heroin, and records indicating that Chapin resided in the apartment.

The State charged Chapin with unlawful delivery of heroin within 1,000 feet of a school bus route stop (count I), unlawful possession of heroin with intent to deliver (count II), unlawful possession of methamphetamine (count III), and unlawful use of a building for drug purposes

[1] A commissioner of this court initially considered Chapin's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

(count IV). A jury found him guilty as charged. As part of his judgment and sentence, the trial court ordered Chapin to pay a jury demand fee of $450.

Chapin does not appeal from his convictions on counts I, II or III. He argues that substantial evidence does not support his conviction on count IV, for unlawful use of a building for drug purposes. Evidence is sufficient to support a conviction if, when viewed in the 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).

To convict a defendant of unlawful use of a building for drug purposes, the State must prove beyond a reasonable doubt that "as an owner, lessee, agent, employee, or mortgagee" of a building, room, space, or enclosure, the defendant knowingly rented, leased, or made available for use the building, room, space, or enclosure for drug purposes. RCW 69.53.010(1). Chapin argues that because the State did not present evidence that he was an "owner, lessee, agent, employee, or mortgagee" of the apartment, it did not present sufficient evidence to find him guilty under RCW 69.53.010(1). The State concedes that while it did present evidence that Chapin resided in the apartment, it did not present any evidence that he was an "owner, lessee, agent, employee, or mortgagee" of the apartment. We accept the State's concession and reverse and remand to the trial court to dismiss Chapin's conviction for unlawful use of a building for drug purposes.

Chapin also argues that the trial court erred in imposing a $450 jury demand fee because RCW 36.18.016(3)(b) limits that fee to $250 for a 12-person jury. The State responds that Chapin should not be allowed to raise this issue for the first time on appeal, RAP 2.5(a), but

agrees that the jury demand fee should have been $250. We elect to allow Chapin to raise this issue for the first time on appeal, in the interests of justice. RAP 1.2(c); *State v. Hathaway*, 161 Wn. App. 634, 651-52, 251 P.3d 253, *review denied*, 172 Wn.2d 1021 (2011). We agree that the $450 jury demand fee exceeds the limit imposed by RCW 36.18.016(3)(b) and remand for correction of that fee. *Hathaway*, 161 Wn. App. at 652-53.[2]

We reverse and remand to the trial court to dismiss Chapin's conviction for unlawful use of a building for drug purposes. We remand Chapin's judgment and sentence for correction of the jury demand fee.

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 in accordance with RCW 2.06.040, it is so ordered.

Armstrong, P.J.

We concur:

Quinn-Brintnall, J.

Johanson, J.

[2] Because we remand for correction of the jury demand fee, we need not address Chapin's argument that his trial counsel's failure to object to the amount of that fee was ineffective assistance of counsel.