# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

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| STATE OF WASHINGTON,<br>Respondent,<br><br>v.<br><br>RONALD KINSWA,<br>Appellant. | No. 42063-5-II<br><br>UNPUBLISHED OPINION |

Armstrong, J. — A jury found Ronald Kinswa guilty of possession of a controlled substance in violation of RCW 69.50.4013(1). Kinswa appeals, arguing that the evidence is insufficient to support his conviction. We disagree and affirm.

FACTS

On June 6, 2010, Deputy Sheriff Matt Schlecht stopped Kinswa after Kinswa left his house after a fight with his girlfriend. He was stopped because of a broken windshield and a dirty license plate on the truck he was driving. Kinswa provided the deputy with a Washington State identification card, and told him he was not sure if his license was valid. The deputy determined that Kinswa's license had been suspended and he placed Kinswa under arrest for driving with a suspended license.

Deputy Schlecht searched Kinswa incident to the arrest and found folded cash in Kinswa's left front pocket. As the deputy was unfolding the bills he found a small plastic zip lock baggie containing white crystal residue, later determined to be methamphetamine.

Kinswa testified that he had given his girlfriend a $100 bill so she could go to the liquor store. Upon her return he asked for the change from the bill so he could put gas in his truck. She

gave him the money and he put it in his pocket without looking at it further. He then left the house and got a ride with a friend to the pick-up truck he was driving when stopped by Deputy Schlecht.

Kinswa testified that he told Deputy Schlecht the drugs were not his and he had not seen the baggie and did not know it was in the money folded in his pocket. He stated the reason for the end of his relationship with his girlfriend was because of her methamphetamine use, and he had not seen her since August 2010.

At trial, Kinswa argued the affirmative defense of unwitting possession, claiming he did not know he possessed a controlled substance. The jury found Kinswa guilty of possession of a controlled substance.

ANALYSIS

Kinswa argues insufficient evidence supports his conviction. Evidence is sufficient to support a conviction if, viewed in the light most favorable to the State, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). An insufficiency claim admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. *Salinas*, 119 Wn.2d at 201.

To establish Kinswa's guilt, the State had to prove beyond a reasonable doubt that he possessed a controlled substance. RCW 69.50.4013(1). Kinswa argues, however, that he possessed the methamphetamine unwittingly. To establish this defense, Kinswa had to prove by a preponderance of the evidence that the possession of the unlawful substance is unwitting. *State v Wiley*, 70 Wn. App. 852, 860, 602 P.2d 1304 (1979). This defense is supported by showing either the defendant did not know he possessed the controlled substance or that the defendant did

not know the nature of the substance he possessed. *State v. Staley*, 123 Wn.2d 794, 799, 872 P.2d 502 (1994). Kinswa conceded that he knew the baggie contained methamphetamine but maintains he did not know he possessed the baggie containing the methamphetamine. Kinswa's defense rested on his testimony that he had no knowledge the folded money contained the baggie of methamphetamine. But we defer to the trier of fact—in this case, the jury—on issues of witness credibility and the persuasiveness of evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004). In this case, the jury observed Kinswa's testimony, assessed his demeanor, measured his credibility, and found his defense of unwitting possession unconvincing in light of the evidence against him. We will not disturb this determination on appeal.

Viewed in the light most favorable to the State, the evidence supports the jury's conclusion that Kinswa constructively possessed a controlled substance in violation of RCW 69.50.4013(1).

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, P.J.

We concur:

Van Deren, J.

Johanson, J.