

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

LUCAS LEE WOODS,

Appellant.

No. 38655-1-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury found Lucas Lee Woods guilty of unlawful possession of a controlled substance, methamphetamine, RCW 69.50.4013(1), and unlawful use of drug paraphernalia, RCW 69.50.412(1). Woods appeals the trial court's denial of his motion to suppress the evidence, arguing that Morton police officer Perry Royle lacked probable cause to arrest him and his companion and that the evidence presented is insufficient to support the jury's verdict, finding that he, rather than his companion, possessed the items. We disagree and affirm.

Facts

At 1:44 am on June 14, 2008, Officer Royle was patrolling Morton's Main Avenue. When Royle looked through the glass entry doors of the apartments near Haps Tavern, he saw the backs of two men who were bending over a wooden ledge in the building's lighted foyer. Royle parked his patrol car and returned to the apartments; the two men were still bent over the wooden

bench. Royle opened the door and asked the men what they were doing. Although Woods told Royle that they were exchanging telephone numbers, from his position at the entryway doors, Royle saw that Woods's companion held a rolled \$20 bill in his hand and that there was a line of white powder and a bindle emblazoned with "Stay High" in red letters on the ledge. Report of Proceedings (RP) (Sept. 26, 2008) at 24. Royle arrested Woods and his companion, Ryan Osborne, and seized the bindle and the line of powder from the bench over which both men had been bending. Both the field and crime lab tests established that the powder in the bindle and the line was methamphetamine. Royle also seized a plastic baggie containing psilocin mushrooms from Woods's front pants pocket.

The Lewis County prosecutor's office charged Woods with one count of unlawful possession of a controlled substance, methamphetamine (count I) and one count of unlawful use of drug paraphernalia (count II). Woods moved to suppress the drug evidence on the ground that Officer Royle had effectively seized the two men when he opened the apartment's glass entry doors without probable cause. After a CrR 3.6 hearing at which the trial court found that the entryway was open to the public and the line of methamphetamine and the "stay high" bindle had been in plain view, the trial court denied the motion to suppress.

At trial, Officer Royle and Sharon Herbelin, a forensic scientist with the Washington State Crime Lab, testified as set out above. Royle also testified that "snorting" the crystalline powder through a tube (rolled \$20 bill) is a common method for ingesting methamphetamine, and that it is common for people to take turns snorting lines. The jury found Woods guilty as charged. In this timely appeal, Woods challenges the trial court's denial of his suppression motion and the sufficiency of the evidence.

Discussion

Citing *State v. Chavez*, 138 Wn. App. 29, 34, 156 P.3d 246 (2007), Woods contends that because Officer Royle did not see Woods ingesting methamphetamine or holding the rolled bill, that he lacked probable cause to arrest Woods and that under Washington Constitution, article I, section 7, the evidence seized in the search incident to Woods's arrest must be suppressed. But Woods's reliance on *Chavez* is misplaced. Royle did not seize the line and the bindle incident to Woods's and Osborne's arrest. He initially saw the contraband from the front glass door in the open foyer and then arrested the two men he had seen bending over the items for several minutes. In *Chavez*, Division Three of this court held that the search of Chavez's wallet violated the Fourth Amendment because officers lacked probable cause to believe he was engaged in criminal conduct. *Chavez*, 138 Wn. App. at 36. Here, the methamphetamine line and bindle were lying on a wooden ledge in the lighted lobby of an apartment building which was open to the street. Royle immediately recognized the items as contraband and, because they were lying in a place in plain view of the officer who was standing in a place he had the right to be, their seizure was lawful. *State v. Hill*, 123 Wn.2d 641, 644, 647, 870 P.2d 313 (1994) (unchallenged findings of fact are verities on appeal); *State v. Seagull*, 95 Wn.2d 898, 902, 632 P.2d 44 (1981) (evidence of a crime easily seen by an officer from a public access way not unlawful).

Woods assigns error to finding of fact number 1.7 and contends that he and Osborne were seized the minute Officer Royle stood at the apartment's entry and asked the two men what they were doing.<sup>1</sup> We disagree. There is no evidence that Woods lived in the apartment complex.

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<sup>1</sup> "Seizure of the defendant occurred only after Royle noticed the presence of what appeared to be a controlled substance." Clerk's Papers at 22.

The lighted lobby of the apartment was open to the street and was visible to anyone looking from the street through the glass door into the lobby.

Woods and Osborne were arrested after Officer Royle saw the two men, one of whom was holding a “straw” made from a rolled \$20 bill, in a lobby open to the public and visible from the street, bending over a line and a bindle of methamphetamine for several minutes. Neither Woods’s arrest nor the seizure of the drugs violated article I, section 7 of the Washington State Constitution and the trial court properly denied Woods’s motion to suppress the methamphetamine.

Next Woods challenges the sufficiency of the evidence that he possessed the methamphetamine, a controlled substance. A criminal defendant may challenge the sufficiency of evidence used to convict him for the first time on appeal. *State v. Colquitt*, 133 Wn. App. 789, 795-96, 137 P.3d 892 (2006). Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004); *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980), *overruled on other grounds by Schulp v. Delo*, 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995). A claim of insufficiency admits the truth of the State’s evidence and all inferences this court reasonably can draw from that evidence. *Thomas*, 150 Wn.2d at 874 (quoting *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)). Circumstantial and direct evidence are equally reliable. *Thomas*, 150 Wn.2d at 874. Whether Woods “possessed” the methamphetamine was a question for the jury. *See State v. Staley*, 123 Wn.2d 794, 802, 872 P.2d 502 (1994). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. *Thomas*, 150

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Wn.2d at 874-75.

A person commits unlawful possession of a controlled substance if he or she (1) possesses (2) a controlled substance (3) without a valid prescription. RCW 69.50.4013(1). Methamphetamine is a controlled substance and there was no evidence that a doctor prescribed methamphetamine. RCW 69.50.401(2)(b). Thus, the only question was whether Woods possessed the methamphetamine. Possession need not be exclusive. *State v. Summers*, 107 Wn. App. 373, 384, 28 P.3d 780 (2001), *remanded*, 145 Wn.2d 1015 (2002).

To prove that Woods possessed methamphetamine beyond a reasonable doubt, the State must have established that he actually or constructively possessed the line of methamphetamine and/or the “stay high” bindle on the wood ledge. *Staley*, 123 Wn.2d at 798 (citing *State v. Walcott*, 72 Wn.2d 959, 968, 435 P.2d 994 (1967), *cert. denied*, 393 U.S. 890 (1968)); *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). “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.” *Callahan*, 77 Wn.2d at 29. Woods was not in actual possession of the methamphetamine when police arrested him. The question is, thus, whether the State’s evidence is sufficient to establish that Woods had dominion and control over the line of methamphetamine and the bindle over which he had been seen bending for several minutes.

Proximity to the controlled substance or the ability to reduce the substance to immediate possession does not prove, by itself, dominion and control beyond a reasonable doubt. *State v. Hagen*, 55 Wn. App. 494, 499, 781 P.2d 892 (1989); *State v. Mathews*, 4 Wn. App. 653, 656,

484 P.2d 942 (1971). Establishing constructive possession is a fact-specific inquiry that requires examining the totality of the situation to determine whether the jury could have reasonably inferred that Woods had dominion and control over the methamphetamine. *State v. Cote*, 123 Wn. App. 546, 549, 96 P.3d 410 (2004) (citing *State v. Partin*, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977)). Clearly Osborne had dominion and control over the substance, but dominion and control over the substance need not be exclusive. *Cote*, 123 Wn. App. at 549.

Various factors determine dominion and control and the cumulative effect of a number of factors is a strong indication of constructive possession. *State v. Ibarra-Raya*, 145 Wn. App. 516, 525, 187 P.3d 301 (2008) (citing *Partin*, 88 Wn.2d at 906), *review granted*, 165 Wn.2d 1036 (2009). As a practical matter, control over the premises raises a rebuttable inference that the defendant possessed the drugs. 13A Seth A. Fine & Douglas J. Ende, *Washington Practice: Criminal Law* § 906, at 174 (2d ed. 1998); *see also Callahan*, 77 Wn.2d at 30.

Here, the evidence showed that (1) Woods and Osborne were bending over a wooden ledge in the lobby of an apartment building for several minutes; (2) a line of white crystalline powder and a bindle emblazoned “Stay High” in red letters was on the ledge between the two men, RP (Sept. 26, 2008) at 24; (3) Osborne was holding a rolled \$20 bill easily recognized as an instrument used for “snorting” (ingesting powdered substances); (4) it is not uncommon for drug users to take turns “snorting lines” of drugs, RP (Sept. 26, 2008) at 36; and (5) Woods had psilocybin mushrooms in a baggie in his pocket.<sup>2</sup>

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<sup>2</sup> Along with evidence showing that Woods was intoxicated at the time of the arrest, had \$320 in his pocket, and was known to Officer Royle, the trial court initially excluded evidence of the mushrooms. But when Woods’s counsel asked a series of questions designed to lead the jury to believe that only Osborne had possession of any drugs or paraphernalia, the trial court changed its ruling on the admissibility of the evidence that Woods had psilocin mushrooms in a baggie in the front pocket of his pants.

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Viewing this evidence and reasonable inferences from it in the light most favorable to the jury's verdict, as we must, the evidence is sufficient as a matter of law to support the jury's finding that Woods (and Osborne) possessed methamphetamine and drug paraphernalia. Accordingly, 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.

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QUINN-BRINTNALL, J.

We concur:

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ARMSTRONG, J.

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VAN DEREN, C.J.