

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	DIVISION ONE
Respondent,)	
)	No. 66237-6-I
v.)	
)	UNPUBLISHED OPINION
NOEL B. McLANE,)	
)	
Appellant.)	FILED: March 12, 2012
_____)	

Dwyer, C.J. — Noel McLane was convicted of two counts of vehicular assault, one count of unlawful use of drug paraphernalia, and one count of possession of a controlled substance arising from an incident in which McLane drove his vehicle into an oncoming lane of traffic and caused a head-on collision. Although McLane’s blood tested positive for methamphetamine and a glass pipe containing residue and burn marks was found at the scene of the collision, McLane asserts that the evidence adduced at trial was insufficient for the jury to have convicted him of unlawful use of drug paraphernalia. Finding McLane’s contention to be without merit, we affirm.

I

On the morning of September 21, 2009, McLane was driving a Toyota 4-Runner eastbound on State Route 522. Debbie Moore was a passenger in the Toyota. At approximately 6:00 a.m., McLane drove across the centerline, causing a head-on collision with a Land Rover that was traveling in the opposite

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direction.

Officers of the Monroe Police Department responded to the collision scene. Deputy Chief Cherie Harris located a green jacket near the Toyota amidst debris from the collision. In the pocket of the jacket, Deputy Chief Harris discovered a man's watch and a glass pipe. The glass pipe had burn marks and white residue on it. Another officer at the scene, Detective Spencer Robinson, recognized the glass pipe as an item commonly used to smoke methamphetamine or crack cocaine. The glass pipe was photographed and collected as evidence.

McLane, Moore, and the driver of the Land Rover were transported to Harborview Medical Center. McLane's blood was drawn and tested for drug content by a forensic toxicologist. McLane's blood tested positive for methamphetamine, morphine, and valium.

In December 2009, McLane was questioned by Detective Robinson about the collision. McLane denied that he had used methamphetamine. When confronted with the results of the drug test, McLane told Detective Robinson, "I guess somebody must have drugged my pop." Report of Proceedings (Sept. 22, 2010) at 28.

McLane was thereafter charged with two counts of vehicular assault, one count of unlawful use of drug paraphernalia, and one count of possession of a controlled substance.¹ At the jury trial that followed, a photo of the glass pipe

¹ Prior to trial, McLane pleaded guilty to the count of possession of a controlled

was admitted into evidence. The pipe was identified by a drug recognition expert as drug paraphernalia. The State also introduced evidence of McLane's blood toxicology results. Jeff Dickinson, a fire fighter who responded to the collision scene, testified that the fire department does not carry or administer methamphetamine. Dr. Lisa Taitsman, the orthopedic surgeon who treated McLane at Harborview Medical Center, testified that methamphetamine is not used therapeutically in the emergency room. Debbie Moore, McLane's passenger at the time of the collision, testified that she had not consumed methamphetamine on the day of the incident and did not recognize the green coat or the glass pipe.

The jury convicted McLane of two counts of vehicular assault and one count of unlawful use of drug paraphernalia. He appeals.

II

McLane contends that the evidence adduced at trial is insufficient to sustain his conviction for unlawful use of drug paraphernalia because there is no direct evidence that he utilized the glass pipe to introduce methamphetamine into his body. We disagree.

Evidence is sufficient to support a conviction where, “after viewing the evidence in the light most favorable to the prosecution, *any rational trier of fact* could have found the essential elements of the crime *beyond a reasonable doubt.*” State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980) (quoting

substance involving his possession of a small quantity of marijuana.

Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)).

“When the sufficiency of the evidence is challenged in a criminal case, all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Evidentiary inferences favoring the defendant are not considered in a sufficiency of the evidence analysis. State v. Jackson, 62 Wn. App. 53, 58 n.2, 813 P.2d 156 (1991). Nor do we review a jury’s credibility determinations on appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Circumstantial evidence may be used to support a conviction. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). “In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence.” State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). “Circumstantial evidence can be used where the inferences drawn by the jury are reasonable and the evidence supporting the jury’s verdict is substantial.” State v. Bingham, 105 Wn.2d 820, 824, 719 P.2d 109 (1986).

Circumstantial evidence may be used to prove any element of a crime. State v. Garcia, 20 Wn. App. 401, 405, 579 P.2d 1034 (1978).

To convict a person of unlawful use of drug paraphernalia, the State must prove beyond a reasonable doubt that the person has used “drug paraphernalia to . . . inject, ingest, inhale, or otherwise introduce into the human body a

controlled substance.” RCW 69.50.412(1); State v. LaPlant, 157 Wn. App. 685, 687, 239 P.3d 366 (2010); State v. Williams, 62 Wn. App. 748, 752-53, 815 P.2d 825 (1991). Here, the trial court properly instructed the jury that:

To convict the defendant of the crime of use of drug paraphernalia, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 21st day of September, 2009, the defendant used drug paraphernalia to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance Methamphetamine; and

(2) That this act occurred in the State of Washington.

Clerk’s Papers at 70 (Instruction 14). McLane does not contest that the act occurred in the State of Washington or that the act took place on or about September 21, 2009. Accordingly, we must determine whether there was sufficient evidence—either direct or circumstantial—for any reasonable jury to determine that the State had proved (1) that the glass pipe was drug paraphernalia,² (2) that methamphetamine was introduced into McLane’s body, and (3) that the glass pipe had been used by McLane for this purpose. We have no difficulty concluding that sufficient evidence was adduced for the jury to so find.

As an initial matter, the evidence was clearly sufficient to demonstrate that the glass pipe found at the accident scene was drug paraphernalia.

² Drug paraphernalia is defined by statute to mean “all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance.” RCW 69.50.102(a).

Although McLane asserts that the State's failure to test the white residue on the pipe precludes a finding that the pipe had been used to ingest a controlled substance, expert testimony concerning the use of an object may be considered in determining whether an object meets the definition of drug paraphernalia. RCW 69.50.102(b)(14). Here, Detective Robinson—a drug recognition expert with the Washington State Patrol—identified the glass pipe as equipment commonly used to smoke methamphetamine or crack cocaine. He further testified that the presence of white and black residue on the surface of the pipe indicated that it had been used for this purpose. This testimony was clearly sufficient to support a finding that the pipe was drug paraphernalia. Similarly, it is also clear that the evidence was sufficient to support the jury's determination that a controlled substance had been introduced into McLane's body. Indeed, the undisputed evidence indicating the presence of methamphetamine in McLane's blood left no room for the jury to rationally reach any other conclusion.

Nevertheless, McLane asserts that because the State failed to lift latent fingerprints from the glass pipe, no jury could reasonably have determined that McLane had used the pipe to ingest or inhale a controlled substance on the day of the incident. However, there was ample circumstantial evidence for the jury to find that the pipe had been used by McLane for this purpose. Given the location and circumstances of the pipe's discovery, the jury could reasonably infer that the pipe was in McLane's possession prior to the collision. The glass pipe was

found in a jacket amidst the debris from the vehicle that McLane was driving. From this evidence, the jury could reasonably have inferred that the pipe had been in the possession of a person in the Toyota. Furthermore, the green jacket contained a man's watch, from which the jury could have inferred that the jacket—and the pipe within it—belonged to a man and not to a woman. When coupled with Moore's testimony that the pipe and jacket did not, in fact, belong to her, and her testimony that she had not ingested methamphetamine on the day in question, the jury could reasonably have determined that the pipe belonged to McLane and not to Moore.³

When the jury considered this circumstantial evidence of McLane's possession of the pipe in combination with the direct evidence of the pipe's prior use and the presence of methamphetamine in McLane's blood, the jury could reasonably have determined that McLane had used the glass pipe to introduce methamphetamine into his body prior to the collision.⁴ See State v. O'Meara, 143 Wn. App. 638, 643, 180 P.3d 196 (2008) (possession of pipe that appeared to contain marijuana residue sufficient to support defendant's conviction for use of drug paraphernalia). Accordingly, the evidence adduced at McLane's trial is sufficient to support his conviction of unlawful use of drug

³ McLane's own testimony that the green coat and the glass pipe did not belong to him does not, of course, affect our analysis. The jury was entitled to believe or disbelieve McLane's testimony. State v. Koss, 158 Wn. App. 8, 16, 241 P.3d 415 (2010). We do not review such determinations on appeal. Camarillo, 115 Wn.2d at 71.

⁴ The evidence also indicates that the methamphetamine was not introduced through some other mechanism. This substance was not administered at the scene of the collision. Nor was the methamphetamine administered to McLane at Harborview Medical Center.

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paraphernalia.

Affirmed.

Dupe, C. S.

We concur:

Leach, A. C. J.

Becker, J.