IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. PAUL MICHAEL CONROY, Appellant.	No. 39799-4-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury found Paul M. Conroy guilty of second degree unlawful possession of a firearm in violation of former RCW 9.41.040(2)(a) (2005), as charged. The trial court imposed a standard range sentence of four months in confinement. Conroy appeals, arguing that insufficient evidence supports his conviction. We disagree and affirm.

DISCUSSION

Standard of Review

Sufficiency of the evidence is a question of constitutional magnitude that a defendant may raise for the first time on appeal. *State v. Alvarez*, 128 Wn.2d 1, 13, 904 P.2d 754 (1995). The test for determining the sufficiency of the evidence is whether after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential

elements of a crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We do not have to be convinced of the defendant's guilt beyond a reasonable doubt, only that substantial evidence supports the State's case. *State v. Fiser*, 99 Wn. App 714, 718, 995 P.2d 107, *review denied*, 141 Wn.2d 1023 (2000).

"A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn" from it. *Salinas*, 119 Wn.2d at 201. All reasonable inferences from the evidence must be drawn in favor of the verdict and interpreted strongly against the defendant. *Salinas*, 119 Wn.2d at 201. Circumstantial evidence and direct evidence is equally reliable for purposes of drawing inferences. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). The trier of fact is the sole and exclusive judge of the evidence. *State v. Bencivenga*, 137 Wn.2d 703, 709, 974 P.2d 832 (1999). Our role as the reviewing court is not to reweigh the evidence and substitute our judgment for that of the jury. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). Instead, we defer to the trier of fact's resolution of conflicting testimony, evaluation of witness credibility, and decisions regarding the persuasiveness of evidence. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533, *review denied*, 119 Wn.2d 1011 (1992). In other words, credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Elements of the Crime

The State charged Conroy with second degree unlawful possession of a firearm. A person commits this offense if he or she (1) *knowingly* owns, possesses, or controls any firearm; and (2) the person has previously been convicted of any felony. Former RCW 9.41.040; *State v.*

Anderson, 141 Wn.2d 357, 366-67, 5 P.3d 1247 (2000) (holding that knowledge of possession is a required element of second degree unlawful possession of a firearm, even though former RCW 9.41.040(1) does not include a mens rea element). Consistent with this standard, the trial court instructed Conroy's jury that "to convict" Conroy, it had to find that the State had proved beyond a reasonable doubt

> (1) [t]hat on or about December 4, 2008, the defendant knowingly had a firearm in his possession or control;
> (2) That the defendant had previously been convicted of a *felony*; and
> (3) That the possession or control of the firearm occurred in the State of Washington.

Clerk's Papers at 21. Conroy only challenges whether sufficient evidence proves his "knowledge" of the rifle's presence in his truck. A person acts knowingly or with knowledge when

> (i) he is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or
> (ii) he has information which would lead a reasonable man in the same situation to believe that facts exist which facts are described by a statute defining an offense.

Former RCW 9A.08.010(b) (1975). The trial court instructed Conroy's jury consistent with this statutory knowledge definition.

Evidence of Record

During the State's case-in-chief, City of Lacy Police Officer Jonathan Mason testified that he stopped Conroy on suspicion of driving with a suspended license on December 4, 2008.[1] Mason confirmed his suspicion after talking to Conroy. But prior to arresting Conroy, Mason asked him whether he had any weapons in his truck. Conroy replied that he had a rifle behind his

[1] On cross-examination, defense counsel pointed out that Officer Mason incorrectly testified that he stopped Conroy on December 8, 2008. Mason admitted that he misspoke as to the date of the arrest and corrected the record to reflect the date listed in his report.

seat. Shortly thereafter, Mason arrested Conroy, placed him in the back seat of his patrol car, and then searched Conroy's truck where he discovered a rifle. Mason's property report (Exhibit 7) listed the rifle as a Ruger M77. Mason testified the rifle admitted into evidence (Exhibit 5) was a Remington model 77 which he removed from Conroy's truck. Later in the trial, Mason acknowledged he mistakenly stated the rifle was a Remington and testified the rifle was a Ruger and his initial property report (Exhibit 7) was correct.[2]

Conroy's testimony conflicts with Officer Mason's testimony with respect to Conroy's knowledge of the rifle. Conroy denied telling Mason that he had a rifle in his truck and testified that he first learned of the rifle's presence when Mason removed it from his truck. After Mason showed Conroy the rifle, he recognized it as the rifle his father had given to him. Conroy then explained that he had given this rifle to his uncle after his prior felony conviction because he could no longer possess guns.

Conroy's uncle, Duane Conroy,[3] then testified that he had borrowed Conroy's truck to move some goods from Montana to Washington prior to Conroy's arrest, sometime in late October or early November of 2008. During the move, he had transported three guns, including the rifle that Officer Mason discovered in Conroy's truck. Duane intended to put the rifle in storage but forgot to remove it from the truck when he returned the truck to Conroy. Although Duane knew that Conroy could not possess firearms, he forgot to tell Conroy about the rifle. "I forgot it in his truck. That's all that happened." Report of Proceedings (Aug. 17, 2009) at 90.

[2] Officer Mason's testimony was consistent regarding the model and serial numbers of the rifle.

[3] For clarity, we refer to Duane Conroy by his first name. We intend no disrespect.

Sufficiency of the Evidence

Here, when viewing the evidence in the light most favorable to the State, sufficient evidence supports the jury's finding that Conroy knowingly possessed the rifle that Mason found in his truck. Mason testified that when he asked Conroy whether he had any weapons in his truck, Conroy replied that he had a rifle behind his seat. This testimony is sufficient for any rational juror to find beyond a reasonable doubt that Conroy knowingly possessed the rifle found in his truck. *Salinas*, 119 Wn.2d at 201.

Conroy claims error, however, by arguing that Officer Mason's testimony was unreliable. This argument fails as it is merely an attack on Mason's credibility. Specifically, Conroy argues that Mason's testimony is "suspect given the fact that he could not even recall the correct date upon which these events occurred . . . coupled with the fact that his reports are inconsistent as to whether the rifle recovered was a Remington or a Ruger." Br. of Appellant at 7. Essentially, he is asking us to reweigh Mason's credibility on appeal. But as a reviewing court, we defer to the jury's credibility determinations and its decisions regarding the persuasiveness of evidence. *Walton*, 64 Wn. App. at 415-16. Therefore, we will not reweigh the evidence and substitute our judgment for that of the jury. *Camarillo*, 115 Wn.2d at 71; *Green*, 94 Wn.2d at 221. Mason clarified the discrepancies between his testimony and his reports with respect to both the date of Conroy's arrest and the make of the rifle. The jury considered these clarifications and apparently found Mason's explanations credible.

On this record, Conroy's challenge to the sufficiency of the evidence fails and 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.

QUINN-BRINTNALL, J.

We concur:

ARMSTRONG, J.

WORSWICK, A.C.J.