

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Plaintiff/Respondent,

v.

CHARLES WILLIAM WYNN,

Defendant/Appellant.

No. 41804-5-II

UNPUBLISHED OPINION

Worswick, A.C.J. — Charles Wynn appeals his conviction for unlawful possession of methamphetamine. He contends that the evidence was insufficient to disprove his claim of unwitting possession. We affirm.¹

FACTS

On May 18, 2010, Department of Corrections officers, Eric Morgan and Tracy Peters, went to Wynn’s apartment to conduct a home visit. Wynn had been released from prison in March and Morgan was his supervising officer. When the corrections officers arrived, they found a woman standing in the apartment’s doorway. Asked her name, she responded, “Every time you guys run my name I get arrested.” Report of Proceedings (RP) at 81. She eventually told the officers her name was Jane Carlson and soon thereafter left the apartment building.

As the officers walked in, Morgan saw Wynn quickly get up from the bed where he was sitting and walk into the bathroom. The two made eye contact. Wynn remained in the bathroom for less than 10 seconds. When Morgan asked what Wynn was doing, he replied, “Oh, I was just

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

getting up to put away some deodorant.” RP at 37.

Noticing that Wynn was acting strangely, Morgan had Wynn accompany him back to the bathroom to ensure there were no people hiding there. Wynn appeared to be acting nervous: rocking back and forth, speaking quickly and rambling, and breathing heavily. Morgan noted that Wynn acted differently than he had at past home visits. Typically, Wynn would rush the officers to complete their visit, would never sit down and would be more assertive.

Morgan then walked into the bathroom again. He noticed that, under the sink where the wall met the floor, two plastic bags and a syringe had been placed where there was a missing tile. The bags contained a white crystalline substance that appeared to Morgan to be methamphetamine. The substance later tested positive for methamphetamine.

Also present in the apartment was Wynn’s roommate, Alex DeWolf. The officers detained both DeWolf and Wynn. Morgan contacted the Longview Police Department to assist in an arrest. Longview Police Officer Eric Hendrickson responded. Officer Hendrickson asked Wynn about the methamphetamine. Wynn told him that the drugs were not his roommate’s. Officer Hendrickson asked DeWolf if the drugs were his, to which DeWolf responded by shaking his head that they were not. When Morgan questioned Wynn on the way to jail, Wynn admitted having used methamphetamine with a syringe the previous night.

The State charged Wynn with possession of methamphetamine. At trial, Officer Hendrickson, Peters, and Morgan testified as described above. DeWolf and Wynn testified that Carlson had spent forty-five minutes to an hour in the bathroom prior to the officers’ arrival. Both men stated that they did not permit drugs in the apartment. DeWolf testified that he had never observed anyone using drugs at the apartment. Wynn testified that he did not know about

the drugs. Wynn accused the corrections officers of planting the drugs in his bathroom. He also denied telling Morgan that he had used methamphetamine the previous night. The jury found Wynn guilty as charged.

ANALYSIS

Wynn argues that he proved his possession of the methamphetamine was unwitting, such that the State failed to prove that he was guilty of unlawful possession. Unwitting possession is a judicially created affirmative defense that may excuse a defendant's behavior, notwithstanding the fact that the defendant has violated the letter of the statute. *State v. Balzer*, 91 Wn. App. 44, 67, 954 P.2d 931 (1998). In order to successfully assert the affirmative defense of unwitting possession, Wynn had to prove by a preponderance of the evidence that he was unaware of his possession or did not know the nature of the substance. *Balzer*, 91 Wn. App. at 67. If the defendant presents adequate evidence, the existence of the defense becomes a question for the trier of fact. *State v. Mathews*, 4 Wn. App. 653, 658, 484 P.2d 942 (1971).

Wynn argues that his agreement with DeWolf that the apartment would be drug-free, the fact that DeWolf had never seen Wynn use drugs, and Carlson's hour-long trip to the bathroom proved by a preponderance of the evidence that he did not know the methamphetamine was in the bathroom, making his possession unwitting. But the jury had before it evidence that Wynn acted nervously during the visit, that he darted to the bathroom upon seeing the corrections officers arrive, that he gave a curious reason for darting to the bathroom, that he admitted that he had used methamphetamine with a syringe the previous evening, and that he claimed the corrections officers had planted the methamphetamine and syringe in the bathroom. That evidence is sufficient for the jury to find that Wynn had not satisfied his burden of proving unwitting

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possession. The jury apparently found Wynn not to be credible. We do not review a jury's credibility determinations. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We affirm Wynn's conviction for unlawful possession of methamphetamine.

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.

Worswick, A.C.J.

We concur:

Quinn-Brintnall, J.

Van Deren, J.