

FILED

FEB 05, 2013

**In the Office of the Clerk of Court
WA State Court of Appeals, Division III**

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

No. 30210-5-III

Respondent,

v.

UNPUBLISHED OPINION

JEVON UZIMA BRINKLEY,

Appellant.

Sweeney, J. — We must pass on whether the State has produced sufficient evidence to support the elements of a crime. We must pass on whether a defendant has produced sufficient evidence to support a defense to a crime. We will not, however, pass on how persuasive any of this evidence was. Here, a jury found the defendant guilty of possession of a controlled substance. The State presented ample evidence to support that finding and the defendant was permitted to present evidence of unwitting possession. We then conclude there was no error and we affirm the conviction.

FACTS

Jevon Brinkley drove with a suspended license. Police stopped him and arrested him for doing so. The officer searched Mr. Brinkley incident to the arrest and found pill bottles containing multiple pills, marijuana, and a small scale. One of the bottles contained methylenedioxymethamphetamine (MDMA). The State charged Mr. Brinkley with unlawful possession of a controlled substance, MDMA. The case proceeded to a jury trial. Mr. Brinkley testified that he is medically required to take monthly urinalysis tests to assure that he is taking his prescribed pain medications, not using non-prescription drugs, and not selling his prescribed medications. Mr. Brinkley testified that he did not recognize a photograph of the MDMA pill found in his pill bottle. He explained that before going to his brother's house for dinner, he had emptied his prescription medications into pill bottles, but did not include an MDMA pill. He testified that he was familiar with MDMA and had previously seen MDMA pills. The jury found Mr. Brinkley guilty of unlawful possession of a controlled substance.

DISCUSSION

Mr. Brinkley contends the evidence was insufficient to support his conviction of unlawful possession of a controlled substance.

The question is whether there was the substantial evidence necessary to support the conviction. *State v. Dolan*, 118 Wn. App. 323, 331, 73 P.3d 1011 (2003). The

standard is modest: “[t]he standard of review is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the essential elements of the charged crime beyond a reasonable doubt.” *State v. Rempel*, 114 Wn.2d 77, 82, 785 P.2d 1134 (1990). Mr. Brinkley admits the truth of the State’s evidence and all inferences that reasonably can be drawn from it. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Our concern here is whether the State has produced enough evidence to support the elements of possession; we are not concerned with how persuasive that evidence was. *State v. Henjum*, 136 Wn. App. 807, 810-11, 150 P.3d 1170 (2007). Here, the State had to prove that Mr. Brinkley possessed a controlled substance and, specifically, what the substance was. RCW 69.50.4013(1).¹

Mr. Brinkley argues the State failed to prove possession. The State showed that his pill bottle contained the MDMA and the pill bottle was in his coat. And Mr. Brinkley testified that he alone filled the pill bottles. The State showed then that he had the actual possession. *State v. Chavez*, 138 Wn. App. 29, 34, 156 P.3d 246 (2007).

Mr. Brinkley claimed he did not place the MDMA pill into the pill bottle. Apparently, the jury did not believe him and that was its prerogative. *State v. Camarillo*,

¹ RCW 69.50.4013(1) provides that: “It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.”

115 Wn.2d 60, 71, 794 P.2d 850 (1990). For our part, the evidence and inferences from that evidence were certainly sufficient to support the necessary element of possession, here actual possession.

Mr. Brinkley also contends that his possession was unwitting because he did not know he had the MDMA pill. Unwitting possession is an affirmative defense to the charge of possession of a controlled substance. *State v. Cleppe*, 96 Wn.2d 373, 381, 635 P.2d 435 (1981). And there are a couple of ways to prove it. He could show that (1) he did not know he was in possession of the controlled substance or (2) he did not know the nature of the substance he possessed. *State v. Staley*, 123 Wn.2d 794, 799, 872 P.2d 502 (1994).

Here, Mr. Brinkley argues that his physician's strict oversight of his drug use supported the inference that he was unaware of the presence of the MDMA. Specifically, he argues that his monthly urinalysis tests show that "he is not a user of illicit substances and therefore, [is] less likely to possess any non-prescribed drugs." Appellant's Br. at 9.

He relies on *City of Kennewick v. Day* here on appeal. *City of Kennewick v. Day*, 142 Wn.2d 1, 11-12, 11 P.3d 304 (2000); *State v. Wells*, 17 Wn. App. 146, 561 P.2d 697 (1977). There, the defendant asserted unwitting possession, and claimed he was unaware that marijuana and a marijuana pipe were inside his vehicle. *Kennewick*, 142 Wn.2d at

12. The defendant there offered to show his reputation for sobriety to counter the charge that he possessed marijuana. The appellate court held that the evidence was relevant and that the trial court improperly excluded the evidence: “[a] person who does not use drugs (by reputation) is less likely to possess drugs.” *Id.* Here, the judge did not prohibit Mr. Brinkley from explaining to the jury his reasons why his possession was unwitting. The jury simply rejected his theory. He also testified that he was familiar with MDMA and had seen it before.

The State produced sufficient evidence to support the elements of unlawful possession of a controlled substance, MDMA. Mr. Brinkley produced sufficient evidence to support his defense of unwitting possession. A properly instructed jury accepted the State’s version of things and rejected Mr. Brinkley’s. Again, the jury was privileged to do just that.

We affirm the conviction.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Sweeney, J.

WE CONCUR:

No. 30210-5-III
State v. Brinkley

Kormo, C.J.

Kulik, J.