

RECEIVED BY CLERK
SUPREME COURT
FEB 05 2014

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

The State of North Dakota,)
)
 Respondent/Appellee,)
)
 vs.)
)
 John Jeffrey Thrasher, Jr.,)
)
 Petitioner/Appellant.)

BRIEF OF THE APPELLEE

Appeal from Judgment and Sentence
Dated September 11, 2013
Morton County District Court
Honorable Gail Hagerty Presiding

Supreme Court No. 20130285
District Court No. 30-2013-CR-152

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Issue

Whether there was sufficient evidence to sustain the jury verdict of guilty.

Statement of the Case

The defendant was charged with one count of Possession of Drug Paraphernalia, a Class A Misdemeanor. The matter was tried to jury on September 11, 2013. The Jury found the defendant guilty, and Judgment was entered. The defendant appeals from that conviction.

Facts

The defendant was charged with one count of possession of drug paraphernalia pursuant to Section 19-03.4-03 of the North Dakota Century Code. The District Court instructed the Jury on the essential elements of Possession of Drug Paraphernalia. Specifically, The Court instructed that the elements were: 1. Specific date and jurisdiction; 2. Identity of the defendant; 3. Culpability of willfully; 4. Possessed drug paraphernalia for use with a controlled substance, namely marijuana; 5. And had used or had the intent to use the drug paraphernalia. A. 16. T.12, L. 19.

North Dakota State Highway Patrol Trooper Tarek Chase testified to date of occurrence as February 17, 2013, and jurisdiction as Morton County. A. 24 T.20 L.5. A.25 T.21. L.2. Trooper Chase testified that he detected an odor of marijuana smoke emanating from the vehicle. A. 25. T.21. L.25. Trooper Chase observed that the defendant's eyes were red and dilated. A.25. T.21. L.15. The defendant was also unusually relaxed. A. 25. T. 21. L. 20. The defendant also did not give a definite answer when asked if there was anything illegal in the car. A. 26. T.22. L.15.

Further observations of Trooper Chase included the defendant had a green tongue and flecks of plant material in his mouth. This is consistent with having smoked marijuana. A.28. T.24. L.1. Trooper Chase also noted that the defendant's eyes demonstrated a lack of convergence, which also contributed to Trooper Chase's opinion of marijuana use. A.28. T.24. L.5.

The defendant admitted to Trooper Chase that he had smoked marijuana earlier in the day. A.28. T.24. L.16.

There was a passenger in the car named Austin Germain. Trooper Chase did not see any indicia of marijuana use in this check of Mr. Germain. A.29. T.25. L.16.

During his search of the vehicle Trooper Chase found a glass smoking device with burnt residue. He determined this was paraphernalia. A.29. T.25. L.23., A.30 T.26. L.25. Trooper Chase found this smoking device under the front passenger seat. A.31. T.27. L.17. The defendant immediately blamed the paraphernalia on the passenger Germain. A.32. T.28. L.10. However, he knew where the Trooper found the device. A.32. T.28. L.10. The defendant claimed he saw the passenger put it under the seat. A.32. T.28. L.22.

The smoking device was introduced into evidence at trial. A.30. T.26. L.11. Charlene Keller, a forensic scientist from the State Laboratory confirmed there was residue of burnt marijuana on the smoking device. A.47. T.43. L. 8.

The passenger, Austin Germain testified at the trial. Mr. Germain, in his testimony, denied smoking marijuana both on the day in question and the day prior. A.38. T.34. L.22. Mr. Germain had only been in the car for about 15 minutes at the time of the stop. A. 42. T.38. L.7. Germain denied knowing of the paraphernalia in the

vehicle, and when shown the exhibit denied that it was his. A.39. T.35. L.1. On cross examination Germain denied knowing the paraphernalia was under the seat, and denied attempting to manipulate the defendant into taking responsibility for Germain's benefit. A.40. T.36. L.11. A.40. T.36. L.16. A.41. T.37. L.10.

The Defense made a Rule 29 Motion for dismissal which was denied. A.53.T. 49. L.6. The jury convicted the Defendant of Possession of Drug Paraphernalia, and this appeal followed.

Argument

There was sufficient evidence to sustain the conviction.

This Court has repeatedly defined the standard for a sufficiency of the evidence issue. The rule requires that the Appellant show that when the evidence is viewed in the light most favorable to the verdict, no rational Trier of fact could have found the accused guilty.

The Appellant cites the following:

In reviewing challenges to the sufficiency of the evidence, we view the evidence and reasonable inferences in the light most favorable to the verdict. A conviction rests upon insufficient evidence only when no rational factfinder could have found the defendant guilty beyond a reasonable doubt after viewing the evidence in a light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor. In reviewing challenges to the sufficiency of the evidence, we do not reweigh conflicting evidence, nor judge the credibility of witnesses.

State v. Estrada, 2013 ND 79, 830 Nw2d 617; *State v. Huether*, 2010 ND 233, 790 N.W.2d 901. The State agrees that this is an accurate authority.

In the instant case the Trooper performed a traffic stop. Pursuant to that stop he detected the odor of burnt marijuana. He also detected indicia of marijuana usage in his observation of the defendant. The indicia included bloodshot eyes, a green tongue, and flecks of plant material in the defendant's mouth. The Trooper found a glass smoking device with burnt residue under the passenger seat. The defendant admitted smoking marijuana earlier in the day.

The trooper found no indicia of marijuana usage in regard to the passenger. The passenger made a complete denial at trial. The chemist confirmed that the smoking device was marijuana paraphernalia.

These facts establish the essential elements of the offense. The smoking device had residue of burnt marijuana. The defendant appeared to have used marijuana. The defendant had the ability to exercise control over the smoking device at the time of the stop. The defendant admitted using marijuana. The passenger did not appear to have been using marijuana, and denied the use of marijuana. Adding in the date and jurisdiction, the elements are met. There is a reasonable inference of guilt that could be found by a rational finder of fact. Therefore, there are sufficient grounds for the conviction.

The rule cited above indicates that there must be a showing that the evidence in the light most favorable to the verdict, cannot stand. In the instant case, the contrary is true. The Appellee has not shown that a rational factfinder could not find this defendant guilty.

Therefore, there is sufficient evidence to sustain the verdict of guilty and the conviction should be affirmed.

The Defense argument against sufficiency of the evidence is without merit.

The essence of the defense argument is that the most plausible interpretation of the facts is that the passenger was the guilty party. The State argues the defense argument is without merit.

First, the State argues that the Defense premise that the best interpretation of the facts is to blame the passenger is incorrect. The passenger had no indicia of marijuana usage that was observed by the Trooper. The defendant did. The passenger denied all culpability. The defendant admitted recent usage. Placing blame on the passenger is not the most plausible interpretation of the evidence.

Further, the defense interpretation does not defeat the proof of the elements as argued that prove the defendant's guilt. All of those elements are still in place, and the defense theory is merely an alternate interpretation. The State argues that is an alternate interpretation that would require this Court to weigh the evidence. Furthermore, the facts specified that indicate the proof of the elements showing the defendant's guilt are an equally reasonable interpretation. Then viewing the facts in the light most favorable to the verdict, the conviction has sufficient evidence.

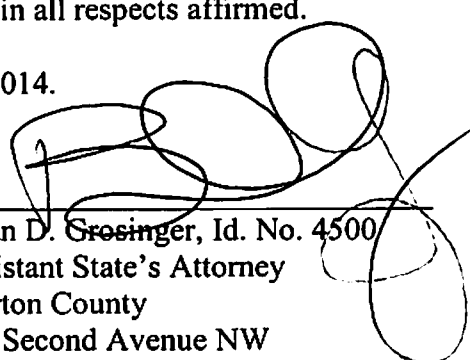
The defense argues that the State had to prove exclusive control on the part of the defendant. Exclusive control is not one of the elements, and the State does not have to be proved.

Finally, the State argues that when the facts of the instant case are viewed in the light most favorable to the verdict, there is sufficient evidence to maintain the conviction. On the basis the State requests the conviction be affirmed.

Conclusion

For the reasons stated above the State of North Dakota respectfully requests the conviction and judgment of the District Court be in all respects affirmed.

Dated this 5 day of February, 2014.



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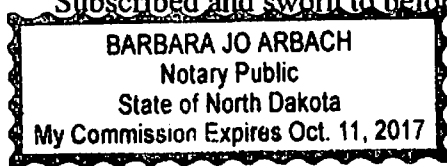
Karen A. Anderson, being first duly sworn, deposes and says that she is of legal age and on the 5th day of February, 2014, she served the attached **BRIEF OF APPELLEE** upon the following by placing a true and correct copy thereof in an envelope addressed as follows:

Russell J. Myhre
Attorney at Law
P.O. Box 475
Valley City, ND 58072-0475

To the best of my knowledge and belief, such address was the actual post office address of the party(ies) to be so served; that the documents were mailed in accordance with the provisions of the North Dakota Rules of Civil Procedure.


Karen A. Anderson

Subscribed and sworn to before me this 5th day of February, 2014.




Notary Public