

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 18-0338

CITY OF GREAT FALLS,

Plaintiff and Appellee,

v.

KENTON STEVEN MONROE,

Defendant and Appellant.

BRIEF OF APPELLEE

On Appeal from the Montana Eighth Judicial District Court,
Cascade County, The Honorable John A. Kutzman, Presiding

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STATEMENT OF THE ISSUE

Viewing the evidence in the light most favorable to the prosecution, could a rational trier of fact find there was sufficient evidence presented to support Monroe's conviction for criminal possession of drug paraphernalia?

STATEMENT OF THE CASE

On November 7, 2015, Appellant Kenton Steven Monroe (Monroe) was charged with criminal possession of drug paraphernalia in violation of Mont. Code Ann. § 45-10-103 (2015). (D.C. Doc. 28.) On May 27, 2016, a bench trial was held in Great Falls Municipal Court. At the conclusion of the bench trial, Monroe was convicted in absentia. (D.C. Docs. 1, 28.)

On June 2, 2016, Monroe appealed to the district court, alleging, among other issues, that there was insufficient evidence to convict him of criminal possession of drug paraphernalia. (D.C. Docs. 1, 22, 28.) On April 6, 2018, the district court issued a written order affirming Monroe's conviction after finding that there was sufficient evidence to sustain the conviction. (D.C. Doc. 28 attached to Appellant's Br. as App. A.)

STATEMENT OF THE FACTS

On November 7, 2015, at approximately 9:55 p.m., Sergeant Jeff Bragg (Sergeant Bragg) of the Great Falls Police Department was on duty and positioned

at Smelter Avenue in Great Falls. (Tr. at 08:55-09:15.) After observing a vehicle with equipment violations, Sergeant Bragg stopped the vehicle. (Tr. at 09:28-09:31.) The driver was identified as Brenda Valerio (Valerio) and Monroe was a passenger in the vehicle. Another unidentified male was seated in the rear passenger seat. (Tr. at 09:36-09:42.)

Sergeant Bragg testified that upon contact with Monroe he appeared to be acting jumpy, twitchy, and irritable. (Tr. at 09:52-09:56.) Sergeant Bragg also stated that Monroe was jittery and speaking rapidly. (Tr. at 10:32-10:37.) In Sergeant Bragg's experience, Monroe was not nervous because the police were present. (Tr. at 10:56-11:19.) Rather, he believed something "beyond that" was going on. (Tr. at 11:10-11:19.) Officer Caleb Larson (Officer Larson), a Great Falls police officer who arrived at the traffic stop to provide backup to Sergeant Bragg, also stated that Monroe was jumpy, could not focus, and had a hard time communicating with the officers. (Tr. at 25:15-25:34; 27:46-27:56.) Based on their training and experience, and their observations of Monroe, both believed he was under the influence of a narcotic. (Tr. at 16:35-16:42; 28:15-28:23.)

When questioned about his training and experience as a law enforcement officer, Sergeant Bragg testified that he had been a police officer for almost 14 years and a correction officer for one year prior. (Tr. at 05:52-06:00.) He attended and successfully completed the law enforcement academy where he

received training on narcotics, narcotics paraphernalia, and characteristics of narcotics users, including signs of impairment as a result of narcotic use. (Tr. at 06:08-06:48.) He also testified that he is certified as a K9 handler and completed advanced K9 handler training, which included instruction on narcotics recognition and interdiction. (Tr. at 07:12-07:24.) Further, Sergeant Bragg also attended multiple certified trainings on narcotics interdiction and advanced narcotics interdiction. (Tr. at 07:33-07:45.) When asked how often he employs his training and experience with narcotics and narcotic users, Sergeant Bragg stated that it is a “daily occurrence in our world.” (Tr. at 08:50-08:54.)

In terms of his experience and training, Officer Larson testified that he had been a police officer for almost one year at the time of the incident. (Tr. at 23:55-24:15.) Like Sergeant Bragg, Officer Larson attended and completed the law enforcement academy where he received training on narcotics and signs of impairment in people who are under the influence of narcotics. (Tr. at 24:20-25:13.)

While speaking with Sergeant Bragg, Monroe stated that he was having a panic attack and Valerio was taking him to the hospital. (Tr. at 09:56-10:01.) After confirming that Monroe wanted an ambulance, Sergeant Bragg requested medical assistance. (Tr. at 10:02-10:05.) However, after medical personnel arrived and assessed Monroe, Sergeant Bragg stated they medically cleared him and did not

take him to the emergency room because “they felt like he was not having a panic attack.” (Tr. at 10:10-10:20.)

During the traffic stop, the officers learned that Monroe had an active warrant for his arrest. (Tr. at 11:23-11:26.) Based upon this warrant, Sergeant Bragg placed Monroe under arrest. (Tr. at 11:40-11:44.) Officer Larson assisted in the arrest and searched Monroe incident to the arrest. (Tr. at 26:12-26:26.) After conducting a pat-down search, Officer Larson found a capped syringe in Monroe’s front right coat pocket. (Tr. at 27:01-27:03; 29:50-29:55.)

After Officer Larson found the syringe, he gave it to Sergeant Bragg. (Tr. at 27:16-27:20.) Sergeant Bragg asked Monroe if he had the syringe for any reason “because sometimes folks have that for medical reasons.” (Tr. at 16:05-16:11.) Monroe shrugged and said “no.” (Tr. at 16:11-16:14.) Sergeant Bragg testified that he inquired about a legitimate use for the syringe because:

Typically, anyone that I’ve dealt with that has a syringe has insulin somewhere nearby and there was no insulin. There was no[t] anything to use for it. His behavior, the way he was acting, indicated to me that he may have been under the influence of narcotics based on my prior experience [objection by defense counsel]. So, everything to me pointed that there was no medical reason [for the syringe]. I even gave him an opportunity to tell me if there was a medical reason and he did not provide any medical reason for having the syringe on his person.

(Tr. at 16:26-17:02.)

When questioned about his training and experience with syringes as a law enforcement officer, Sergeant Bragg testified that they are often used to inject narcotics into the human body. (Tr. at 17:10-17:20.) Sergeant Bragg testified that drug users will often melt down a narcotic, pull it into the syringe, and inject it into their bodies. (Tr. at 17:10-17:17.) Sergeant Bragg stated drug users will also crush pills and mix them with water or another liquid, pull the solution through another material like cotton to strain it, and then inject the solution into themselves. (Tr. at 17:17-17:29.)

When questioned about whether the syringe in question appeared to have been used, Sergeant Bragg stated he did not see any liquid in the syringe but did note an “orange speck” either inside the syringe or on the outside of it. (Tr. at 17:29-17:45.) Based upon Sergeant Bragg’s training and experience, he believed that the syringe found on Monroe “was used, or being used, or planned to be used, for the injection of narcotics.” (Tr. at 17:48-17:56.)

Officer Larson also testified that as a result of his training and experience as a law enforcement officer, syringes are commonly used to inject narcotics into the human body. (Tr. at 28:35-28:56.) Officer Larson further stated that syringes can also be used for medical reasons. (Tr. at 28:21-28:56; 31:50-33:05.) However, he was not aware of any use for syringes other than use with narcotics or medical reasons. (Tr. at 31:50-33:05.) Like Sergeant Bragg, Officer Larson also believed

that Monroe possessed the syringe to inject narcotics. (Tr. at 28:44-28:46.) He based this belief on his observations of Monroe and his training and experience with people who are found in possession of syringes. (Tr. at 28:35-28:56.)

SUMMARY OF THE ARGUMENT

The prosecution presented sufficient evidence at trial to allow a rational trier of fact to find that the syringe Monroe possessed was drug paraphernalia and he intended to use it. Specifically, this evidence included: (1) Monroe was found in possession of a syringe when he was arrested; (2) both Sergeant Bragg and Officer Larson testified that, based upon their training and experience as law enforcement officers, syringes are commonly used to inject dangerous drugs into the human body; (3) both officers testified that, as a result of their training as law enforcement officers and their experience with individuals under the influence of narcotics, Monroe appeared to be under the influence of a narcotic based upon his demeanor and speech patterns; (4) when questioned by Sergeant Bragg if he had the syringe for a specific reason, i.e., a medical reason, Monroe said “no”; (5) Monroe was not found with any insulin or other medical supplies; (6) both officers testified that, based upon their experience as law enforcement officers, individuals that use syringes for medical purposes are usually found with insulin or

other medical supplies; and (7) based upon their training and experience, the above evidence led the officers to believe that Monroe possessed the syringe with the intent to inject narcotics. This Court should affirm the district court's order affirming Monroe's conviction by the municipal court.

ARGUMENT

I. Standard of review

“District courts serve as intermediate appellate courts for cases tried in municipal courts.” *City of Helena v. Grove*, 2017 MT 111, ¶ 4, 387 Mont. 378, 394 P.3d 189. The Court examines “the record independently of the district court’s decision, applying the appropriate standards of review.” *City of Missoula v. Tye*, 2016 MT 153, ¶ 8, 384 Mont. 24, 372 P.3d 1286.

The Court reviews “questions on the sufficiency of the evidence in a criminal matter to determine whether, after reviewing 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.” *City of Helena v. Strobel*, 2017 MT 55, ¶ 8, 387 Mont. 17, 390 P.3d 921. “Whether sufficient evidence exists to convict a defendant is ultimately an application of the law to the facts and, as such, is properly reviewed de novo.” *Strobel*, ¶ 8. “It remains the

function of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony.” *Strobel*, ¶ 8.

II. Viewing the evidence in the light most favorable to the prosecution, the prosecution presented sufficient evidence to allow a rational trier of fact to find the essential elements of criminal possession of drug paraphernalia beyond a reasonable doubt.

Under Montana’s Model Drug Paraphernalia Act, “it is unlawful for a person to use or to possess with intent to use drug paraphernalia to . . . inject . . . or otherwise introduce into the human body a dangerous drug.” Mont. Code Ann. § 45-10-103. Simply put, “[s]ection 45-10-103, MCA, requires proof that the defendant (1) possessed the drug paraphernalia, and (2) intended to use it.” *State v. Arthun*, 906 P.2d 216, 222, 274 Mont. 82 (1995). Thus, this Court must only determine, after reviewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found that the syringe Monroe possessed was drug paraphernalia and that he intended to use it. As discussed below, the prosecution provided ample evidence at trial of both elements.

A. Monroe’s syringe was drug paraphernalia.

Under Montana law, drug paraphernalia is defined as “all equipment, products, and materials of any kind that are used, intended for use, or designed for use in . . . injecting . . . or otherwise introducing into the human body a dangerous

drug. Mont. Code Ann. § 45-10-101. The statute then goes on to list multiple items that could be considered drug paraphernalia. Mont. Code Ann. § 45-10-101(1)(a)-(k). A syringe or hypodermic needle is admittedly not listed in these subsections. However, the statute explicitly indicates that this list is non-exhaustive. Mont. Code Ann. § 45-10-101(1) (“It includes but is not limited to . . .”). Accordingly, the mere fact that a syringe is not listed under Mont. Code Ann. § 45-10-101(1)(a)-(k) in no way precludes a factfinder from concluding that the syringe Monroe possessed was drug paraphernalia. Further, because § 45-10-101 specifically describes paraphernalia as an instrument used to “inject[]” dangerous drugs in the body, common sense would question how one could inject something into their body without the use of a syringe or hypodermic needle.

To aid the Court in determining if an item constitutes drug paraphernalia, Mont. Code Ann. § 45-10-102 provides a list of factors that should be considered. Mont. Code Ann. § 45-10-102(1)-(14). These factors are “in addition to all other logically relevant factors” to be considered by the Court. Mont. Code Ann. § 45-10-102. Here, multiple factors, both logically relevant and enumerated, counsel in favor of a finding that the syringe was drug paraphernalia.

First, a relevant factor that must be considered was the testimony of Sergeant Bragg and Officer Larson. Both officers testified that, in their training and experience as police officers, they believed that Monroe was impaired by a

narcotic due to his mannerisms and speech patterns. Sergeant Bragg even testified that, in his experience, Monroe's symptoms were not due to nervousness and, instead, were induced by a narcotic. Because they believed he was impaired by a narcotic, both held the opinion that he either had used or would be using the syringe to inject narcotics.

Both officers also testified that, in their training and experience as law enforcement officers, syringes are commonly used by drug users to inject dangerous drugs into the human body. In particular, Sergeant Bragg went into great detail about how syringes are used to inject narcotics. This evidence, combined with the officers' opinions that Monroe was under the influence of a narcotic, would have allowed a rational trier of fact to conclude that the syringe in Monroe's possession was drug paraphernalia.

Monroe argues that the municipal court erred by finding that the syringe was drug paraphernalia "by definition" because syringes are not listed by name under Mont. Code Ann. § 45-10-101. (Opening Br. at 9-10.) However, Monroe's argument not only reads the municipal court's findings of fact too narrowly, it ignores the applicable standard of review.

Specifically, Monroe's argument disregards the municipal court's findings of fact that explicitly mention that it considered Mont. Code Ann. §§ 45-10-101 and -102 in determining that the syringe was drug paraphernalia. (Tr. at

46:50-47:05; D.C. Doc. 28 at 8.) Thus, the municipal court found that the syringe was drug paraphernalia “by definition” only after reviewing the applicable statutes that define drug paraphernalia and the factors that should be considered when determining if the item in question is drug paraphernalia. Further, the municipal court expressly recognized that syringes can be used for legitimate and legal reasons. (Tr. at 47:06-47:12; D.C. Doc. 28 at 8-9.) Thus, contrary to Monroe’s implied suggestion that the municipal court found that syringes are drug paraphernalia in all cases, the record before the Court is clearly otherwise.

Nevertheless, the question is not whether the municipal court erred by finding that the syringe was drug paraphernalia “by definition,” the question is whether any rational trier of fact, after reviewing the evidence in the light most favorable to the prosecution, could have found that the syringe was drug paraphernalia under Mont. Code Ann. §§ 45-10-101 and -102. As discussed at length in this brief, there was ample evidence presented to conclude that it was drug paraphernalia.

Monroe also contends that the municipal court failed to adequately weigh and consider the evidence presented at trial against the factors listed in Mont. Code Ann. § 45-10-102 for determining what constitutes drug paraphernalia under Montana law. (Opening Br. at 10-12.) Disregarding that this argument again erroneously focuses on the supposed errors of the municipal court and not the

applicable standard of review, Monroe's argument consists of listing a handful of factors that were not applicable to the evidence presented and ignoring the factors that were supported by the evidence. (Opening Br. at 10-12.)

For example, a factor that was supported by the evidence and should be considered by this Court in determining whether the syringe is drug paraphernalia is "the existence and scope of legitimate uses for the object in the community." Mont. Code Ann. § 45-10-102(13). At trial, evidence was presented that syringes can be used for legitimate medical reasons. However, although syringes may be used for medical purposes, both officers testified that, in their experiences as police officers, people who use syringes for medical reasons keep their medicine or insulin with or near to the syringes. Monroe's lack of insulin or other medicine on his person indicated to the officers that he had used or would be using the syringe to inject dangerous drugs. Further, it should also be noted that there was no evidence presented for alternative uses for syringes other than drug use or medical reasons. In fact, Officer Larson testified that he was only aware of two uses for syringes: medical use and use with narcotics.

Next, another factor that should be considered when evaluating whether an item is drug paraphernalia is "statements by an owner or by anyone in control of the object concerning its use." Mont. Code Ann. § 45-10-102(1). When Sergeant Bragg asked Monroe if he had the syringe for any particular reason, he just shrugged his

shoulders and said “no.” Monroe’s response suggests that he did not have the syringe for a medical purpose and supports the officers’ opinions that the syringe was drug paraphernalia.

Although Monroe accuses the municipal court of shifting the burden to the defendant to provide evidence that the syringe was possessed for lawful reasons, his choice to respond to the officers in the negative is evidence that should be considered by this Court in determining whether the syringe was drug paraphernalia. Put another way, it is not Monroe’s silence that should be held against him. Rather, it is his response to the question of whether he possessed the syringe for “any reason.” Thus, because he chose to respond and his response did not provide a medical reason for the syringe, it should be considered by the Court in determining whether the syringe was drug paraphernalia.

B. Sufficient evidence was presented to establish that Monroe had the requisite intent under Mont. Code Ann. § 45-10-103 to use the syringe to inject dangerous drugs.

As stated above, in order to support a conviction for drug paraphernalia, there must be evidence that Monroe possessed the syringe with the intent to use it. *Arthun*, 906 P.2d at 222. Because direct proof of intent is infrequently found in cases involving possession of drug paraphernalia, intent may “be inferred from the acts of the accused and the facts and circumstances of the offense.” *Id.*; Mont. Code Ann. § 45-2-103(3). “Where the evidence is capable of differing

interpretations, one supporting innocence and the other supporting guilt, the trier of fact determines which interpretation is the most reasonable.” *State v. Link*, 1999 MT 4, ¶ 35, 293 Mont. 23, 974 P.2d 1124.

Here, the evidence that supports a finding that the syringe was drug paraphernalia also supports the finding that Monroe possessed the syringe with the intent to inject a dangerous drug. Specifically, this evidence includes: (1) the officers’ opinions that Monroe was under the influence of a narcotic; (2) their opinion that Monroe had used or would have used the syringe to inject narcotics based upon their belief that he was under the influence of a narcotic; (3) their opinion that he did not possess the syringe for lawful purposes because, in their experience, insulin or other medical items would be found with a syringe that is used medically; and (4) the fact that he told the officers “no” and shrugged his shoulders when questioned if he had a reason for the syringe indicated that he possessed the syringe for unlawful purposes. This evidence, viewed in the light most favorable to the prosecution, is sufficient to allow a rational finder of fact to find that the intent element of Mont. Code Ann. § 45-10-103 was satisfied.

Monroe argues the intent element was not satisfied because, similar to his argument above, the lack of evidence suggesting a valid reason for the syringe improperly shifts the burden to him to prove his innocence. (Opening Br. at 12-13.) Monroe cites *Berkhardt v. Indiana*, 82 N.E.3d 313, ¶ 14 (Ind. App. 2017), in

support of his argument. However, unlike this case, in *Berkhardt*, there was no testimony from law enforcement that, in their training and experience, individuals that possess syringes for medical purposes will carry insulin or other medical items near their syringes. Further, unlike this case, there was no evidence presented that Berkhardt was under the influence of a narcotic or told law enforcement “no” when questioned whether he had the syringe for a particular purpose. Rather, in *Berkhardt*, the court simply rejected the State’s bare assertion that evidence of intent can simply be found in the absence of evidence that the syringe was used for medical purposes. This is not what the State is arguing in this case.

Additionally, Monroe argues that the municipal court erred in concluding that he was not experiencing a panic attack and the symptoms observed by law enforcement were due to narcotic use. (Opening Br. at 12-13.) This argument should be disregarded by the Court. The municipal court’s finding that Monroe was not having a panic attack goes to credibility of the witnesses and the weight to be given to their testimony, which is the exclusive province of the factfinder. *State v. Brogan*, 261 Mont. 79, 87, 862 P.2d 19 (1993). “Moreover, the credibility of witnesses and the weight to be given to their testimony are to be determined by the trier of fact, and disputed questions of fact and credibility will not be disturbed on appeal.” *State v. Ahmed*, 278 Mont. 200, 212, 924 P.2d 679 (1996).

Further, “[t]he trier of fact is not bound to blindly accept a defendant’s version of the facts,” and where “events are capable of different interpretations, the trier of fact determines which is most reasonable.” *Brogan*, 261 Mont. at 87; *see also State v. Sutton*, 2018 MT 143, ¶ 10, 391 Mont. 485, 419 P.3d 1201 (“We review a jury’s verdict to determine whether sufficient evidence exists to support the verdict, not whether the evidence could have supported a different result.”). Thus, as stated previously, the question is not whether the municipal court incorrectly weighed the evidence. The question is whether, based on the evidence presented at trial, a rational trier of fact could have found that Monroe intended to use the syringe for illegal purposes based on the officers’ opinions that he was under the influence of a narcotic.

Monroe also suggests that this Court’s prior decisions in *Arthun* and *City of Missoula v. Shumway*, 2019 MT 38, 394 Mont. 302, 434 P.3d 918, preclude the Court from concluding that the evidence in this case could have satisfied the intent requirement under Mont. Code Ann. § 45-10-103. (Opening Br. at 15-16.) Monroe is mistaken.

First, *Arthun* and *Shumway* are distinguishable from this case because they dealt with marijuana pipes and marijuana “roaches,” not syringes. Second, even though the prosecution in this case did not offer evidence that Monroe possessed any dangerous drugs with the syringe, or that the syringe contained drug residue, that does not preclude a factfinder from concluding that he had the requisite intent

to use the syringe to inject narcotics into his body. For one, if the Court would adopt such a holding, individuals that possess drug paraphernalia would only be convicted in cases where they were caught red handed with dangerous drugs or when drug residue was clearly visible on the paraphernalia in question. This erroneous line of reasoning would run counter to Mont. Code Ann. § 45-10-102, which gives factfinders great latitude in determining what items constitute drug paraphernalia and, correspondingly, what factors in a case support the element of intent. Accordingly, Montana's drug paraphernalia statutes are to be construed liberally and the Court should reject any argument that suggests a rigid interpretation.

Further, the other cases cited by Monroe are likewise distinguishable from this case. Specifically, none of the cases cited by Monroe where a court found that the evidence was insufficient to support a conviction for drug paraphernalia, i.e., *Brooks v. United States*, 130 A.3d 952 (D.C. App. 2016) and *Sluder v. Indiana*, 997 N.E.2d 1178 (Ind. App. 2013), saw evidence presented that the defendant in question was under the influence of a narcotic when found in possession of drug paraphernalia.

CONCLUSION

Sufficient evidence was presented to allow a rational trier of fact to find that the syringe Monroe possessed was drug paraphernalia and he intended to use it. This Court should affirm the district court's order affirming Monroe's conviction by the municipal court.

Respectfully submitted this 17th day of June, 2019.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4,047 words, excluding certificate of service and certificate of compliance.

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