

DA 18-0338

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 230N

CITY OF GREAT FALLS,

Plaintiff and Appellee,

v.

KENTON STEVEN MONROE,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighth Judicial District,
In and For the County of Cascade, Cause No. CDC-16-327
Honorable John A. Kutzman, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

William F. Hooks, Law Office of William F. Hooks, Helena, Montana

For Appellee:

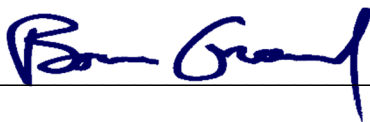
Timothy C. Fox, Montana Attorney General, Michael P. Dougherty,
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Neil Anthon, Great Falls City Attorney, Great Falls, Montana

Submitted on Briefs: July 31, 2019

Decided: September 24, 2019

Filed:



Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Kenton Steven Monroe appeals an order from the Eighth Judicial District Court, Cascade County, affirming his conviction for criminal possession of drug paraphernalia in the Great Falls Municipal Court. We affirm.

¶3 On November 7, 2015, Sergeant Jeff Bragg of the Great Falls Police Department pulled over a vehicle driven by Brenda Valerio. When Valerio explained to Bragg that she was taking her passenger, Monroe, to the hospital because he was suffering from a panic attack, Bragg requested medical assistance. After evaluating Monroe's condition, the paramedics determined he was not experiencing a panic attack and it was unnecessary to transport Monroe to the emergency room. Bragg testified that as he interacted with Monroe, Monroe appeared jumpy, twitchy, irritable, and was speaking rapidly. After Monroe was cleared by paramedics, Bragg confirmed Monroe's identity with dispatch and discovered Monroe had an outstanding arrest warrant. Monroe was placed under arrest, and following a search incident to arrest, officers found a capped syringe in Monroe's front coat pocket. Bragg asked Monroe if there was a reason Monroe had the syringe, but Monroe just shrugged and said "No."

¶4 Monroe was subsequently charged with criminal possession of drug paraphernalia in violation of § 45-10-103, MCA. On May 27, 2016, a bench trial was held in Great Falls Municipal Court and Monroe was convicted in absentia. On June 2, 2016, Monroe appealed to the District Court, alleging that the conviction was based on insufficient evidence. On April 6, 2018, the District Court denied Monroe’s appeal and affirmed his conviction. Monroe appeals.

¶5 “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. This Court reviews district court appellate decisions under the applicable standard of review as if the defendant originally appealed to this Court. *City of Missoula v. Shumway*, 2019 MT 38, ¶ 8, 394 Mont. 302, 434 P.3d 918.

¶6 We review questions concerning 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 is therefore subject to de novo review. *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.” *State v. Hudson*, 2005 MT 142, ¶ 22, 327 Mont. 286, 114 P.3d 210. When the evidence conflicts, the trier of fact determines which shall prevail. *State v. Bower*, 254 Mont. 1, 8, 833 P.2d 1106, 1111 (1992).

¶7 On appeal, Monroe maintains that the City failed to prove beyond a reasonable doubt that he “purposely or knowingly” possessed drug paraphernalia with the intent to use it to inject a dangerous drug, pursuant to § 45-10-103, MCA. Specifically, Monroe argues that: (1) the Municipal Court’s finding that the syringe was drug paraphernalia is not supported by the facts or the applicable statutes, §§ 45-10-101 and -102, MCA; and (2) the City failed to prove Monroe had the requisite intent to use the syringe to introduce a dangerous drug into his body.

¶8 Montana’s Model Drug Paraphernalia Act states, “[I]t 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.” Section 45-10-103, MCA. A violation of this section requires proof of two elements: (1) possession of paraphernalia; and (2) intent to use it. *State v. Arthun*, 274 Mont. 82, 90, 906 P.2d 216, 222 (1995).

¶9 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.” Section 45-10-101, MCA. The statute provides a list of items that could be considered drug paraphernalia. Section 45-10-101(1)(a)-(k), MCA. Although a syringe or hypodermic needle is not listed in these subsections, the statute expressly indicates that this list is nonexhaustive. Section 45-10-101(1), MCA. In addition, § 45-10-102, MCA, provides a list of factors that should be considered, along with “all other logically relevant factors,” in determining whether an item constitutes drug paraphernalia, including “statements by an owner or by anyone in control of the object concerning its use.” Section 45-10-102(1), MCA.

¶10 Here, when Bragg asked Monroe if he had the syringe for any particular reason, Monroe simply shrugged and said “No.” While Monroe was not required to respond, he chose to do so voluntarily; he could have provided a lawful response for its use, such as for medication, but he did not. Accordingly, it was proper for the court to consider Monroe’s response to Bragg’s questioning in determining whether the syringe constituted drug paraphernalia.

¶11 Monroe contends that the Municipal Court failed to consider and weigh additional pertinent factors set out in § 45-10-102, MCA, and therefore, erred in concluding the syringe was drug paraphernalia. However, which factors were deemed most probative in determining whether the syringe was drug paraphernalia was at the discretion of the Municipal Court. On appeal, this Court only considers 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 pursuant to §§ 45-10-101 and 102, MCA. We hold that a rational trier of fact could make such a conclusion.

¶12 In addition to possession, there must also be evidence that Monroe intended to use the syringe to introduce dangerous drugs into his body. *Arthun*, 274 Mont. at 90, 906 P.2d at 222; § 45-10-103, MCA. The court may reasonably infer intent from direct or circumstantial evidence. *Mont. State Univ.-Bozeman v. Mont. First Judicial Dist. Court*, 2018 MT 220, ¶ 25, 392 Mont. 458, 426 P.3d 541; § 45-2-103(3), MCA. Circumstantial evidence alone is sufficient to support a criminal conviction. *State v. Hall*, 1999 MT 297, ¶ 22, 297 Mont. 111, 991 P.2d 929. When circumstantial evidence is susceptible to two

interpretations, one supporting guilt and the other supporting innocence, the trier of fact determines which is most reasonable. *Hall*, ¶ 22.

¶13 Monroe argues that the evidence of possession of a syringe and Bragg's opinion that Monroe was under the influence of a narcotic were not sufficient to prove the element of intent. Monroe relies on persuasive authority in support of this argument, citing to *Berkhardt v. State*, 82 N.E.3d 313 (Ind. App. 2017), *Brooks v. United States*, 130 A.3d 952 (D.C. App. 2016), and *Sluder v. State*, 997 N.E.2d 1178 (Ind. App. 2013). However, these cases stand for the proposition that mere possession of an item associated with drug use, absent additional evidence, is not sufficient to support a finding of intent to use the item for drug-related purposes.

¶14 The case here is fundamentally different from the cases Monroe cites. Valerio stated that Monroe was having a panic attack; the paramedics ruled that out. Observing Monroe's erratic behavior, Bragg believed, based on his training and experience, that Monroe was under the influence of a narcotic. The syringe was discovered in Monroe's front coat pocket. Had Monroe possessed the syringe for a legitimate medical purpose, it was reasonable for the court to infer that insulin or other medical items would have been found alongside the syringe. Even without considering Monroe's response to Bragg's questioning, there was sufficient circumstantial evidence beyond mere possession for the court to determine that the intent element was satisfied.

¶15 The Municipal Court weighed the evidence, assessed the credibility of the witnesses and found that the City's version of the incident was more credible than Monroe's. The finding is supported by the evidence. The court could reasonably infer,

beyond a reasonable doubt, that the syringe constituted drug paraphernalia and Monroe intended to use it for injecting dangerous drugs.

¶16 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶17 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ LAURIE McKINNON
/S/ DIRK M. SANDEFUR
/S/ BETH BAKER
/S/ INGRID GUSTAFSON