MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Respondent

v.

FRANCIS HENRY KEMPKER

Appellant

DOCKET NUMBER WD82495

DATE: March 10, 2020

Appeal From:

Circuit Court of Cole County, MO
The Honorable Daniel Richard Green, Judge

Appellate Judges:

Division Three
Lisa White Hardwick, P.J., Thomas H. Newton, and Alok Ahuja, JJ.

Attorneys:

Daniel Hunt, Jefferson City, MO — Counsel for Appellant

Attorneys:

Kristen Johnson, Jefferson City, MO — Counsel for Respondent

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE OF MISSOURI, Respondent,
v.
FRANCIS HENRY KEMPKER, Appellant.

WD82495 **Cole County**

Before Division Three Judges: Hardwick, P.J., Newton, and Ahuja, JJ.

The Jefferson City SWAT team executed a search warrant at a residence in March 2017. Mr. Kempker was at the residence at the time and was charged with the following counts: (I) a class C felony of delivery of methamphetamine; (II) a class D felony possession of lorazepam; (III) a class A misdemeanor of unlawful possession of drug paraphernalia; and (IV) a class A misdemeanor of possession of marijuana. At trial, the State presented evidence of four bags of suspected controlled substances, two lorazepam tablets and marijuana found in the location where Mr. Kempker was arrested. The State did not, however, present the arresting officer, and the trial court sustained a hearsay objection to testimony from Cpl. Petty that a bag of suspected methamphetamine with a MOPAR sticker was found on Mr. Kempker's person. The lorazepam tablets and the other three bags of suspected controlled substances were not entered as evidence at trial. A picture of the bag of suspected methamphetamine with the MOPAR sticker next to an evidence bag that reads "found in Mr. Kempker's front left pocket," was admitted as exhibit 17. Defense counsel affirmatively stated that he had "[n]o objection' to Exhibit 17. The trial court found Mr. Kempker guilty of a lesser-included offense to count I, a class D felony of possession of methamphetamine, and guilty of count II, possession of lorazepam. The trial court acquitted Mr. Kempker of counts III and IV, possession of drug paraphernalia and possession of marijuana. Mr. Kempker appealed.

AFFIRMED IN PART, REVERSED IN PART.

Division Three Holds:

The trial court did not err by finding Mr. Kempker guilty of count I, possession of the controlled substance methamphetamine, because the evidence was sufficient to show that the alleged substance found on his person was methamphetamine and that he actually possessed methamphetamine. We find the evidence insufficient, however, to convict Mr. Kempker of constructively possessing the lorazepam tablets.

Opinion by: Thomas H. Newton, Judge March 10, 2020

* * * * * * * * * * * * * * * * *

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.