

**NO. 45101-8-II**

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

SOPHIA FATIMA THOMAS, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Thomas Larkin

No. 12-1-00723-5

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**Brief of Respondent**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether, viewed in the light most favorable to the State, there was sufficient evidence to convict Defendant of unlawful possession of a controlled substance with intent to deliver where multiple controlled substances, firearms, and a large amount of cash were found in her home?

2. Whether, viewed in the light most favorable to the State, there was sufficient evidence to show Defendant was armed in the commission of unlawful possession of cocaine and hydrocodone where multiple firearms were found in her home and vehicle?

3. Whether, viewed in the light most favorable to the State, there was sufficient evidence to convict Defendant of money laundering where she deposited over \$19,000 cash in her bank account, all in small bills, over a three month period?

B. STATEMENT OF THE CASE.

1. Procedure

On March 1, 2012, the Pierce County Prosecuting Attorney (State), charged Sophia Thomas, hereinafter "Defendant," with one count of money laundering and four counts of unlawful possession of a controlled

substance with intent to deliver.<sup>1</sup> CP 1-3, 7-9. The State also alleged that Defendant or an accomplice was armed with a firearm during the commission of counts I-IV. CP 7-9.

Trial began on April 9, 2013, before the Honorable Thomas Larkin. 1RP 34.<sup>2</sup> After the State's case in chief, Defendant moved to dismiss all charges for failure to establish a prima facie case and for alleged discovery violations. 4RP 259, 264. The court denied these motions. 4RP 264; 12RP 657.

On April 22, 2013, the jury found Defendant guilty on count three, money laundering, and count five, unlawful possession with intent to deliver—hydrocodone. 10RP 630-31; CP 99, 102. The jury found Defendant not guilty on the other three charges, but guilty of the lesser included crimes of unlawful possession of a controlled substance. 10RP 630-31; CP 95-98, 100-01. The jury also found that Defendant was armed with a firearm during the commission of the crimes charged in counts one and five only. 10RP 631-32; CP 104-07.

The trial court imposed zero months for the substantive crimes, but sentenced Defendant to 18 months confinement for each firearm

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<sup>1</sup> The substances were cocaine, oxymorphone, oxycodone, and hydrocodone.

<sup>2</sup> The State will refer to the verbatim report of proceedings by the volume number followed by the page number.

enhancement, to run consecutively, a total of 36 months confinement.

12RP 673; CP 203-04.

On June 27, 2013, Defendant filed a timely notice of appeal. CP 195-96.

## 2. Facts

In late 2011 and early 2012, the Pierce County Sheriff's Department was investigating a suspected drug dealer named Kenneth Criswell. 2RP 125. Investigators had received information from a confidential informant that Criswell had been selling high amounts of oxycodone around the Pierce County area. 2RP 125. Between November of 2011 and January 2012, detectives conducted three separate controlled buys from Criswell, and were able to successfully purchase oxycodone and opana<sup>3</sup> from him. 2RP 127-28.

Criswell and Defendant had been dating since December of 2011. 4RP 422-23. Although Criswell owned a Dodge Intrepid, detectives observed several occasions where he would arrive at the controlled buys with cars registered to Defendant. 2RP 128-29. During the second controlled buy, Criswell drove a Mercedes that was registered to Defendant. 2RP 128. During the third buy, he arrived in an Acura that was also registered to Defendant. 2RP 129.



Shortly after the controlled buys occurred, detectives began a surveillance of Criswell's apartment, and placed a GPS tracking device on his vehicle. 2RP 131-32. Detectives observed that although Criswell had an apartment on Market Street in Tacoma, he spent a majority of the time at Defendant's house in University Place, Washington. 2RP 129, 133.

Between December of 2011 and January of 2012, Defendant's bank account at BECU was flagged for suspicious activity on three separate occasions after she made several large cash deposits. 3RP 210, 239-41. The first deposit Defendant made was for \$9,055, all in small bills. 3RP 239-40. Defendant then immediately withdrew the same amount in large bills. 3RP 240. Later that same month, Defendant deposited another \$9,000, all in small bills. 3RP 241. Defendant made a third deposit of \$1,250 in small bills the following month. 3RP 241. Defendant's account had never been flagged for suspicious activity prior to December of 2011. 3RP 241. At trial, detectives testified that Defendant's deposits and the denomination of bills deposited were consistent with proceeds of drug sales. 3RP 208.

On February 28, 2012, at approximately 6:30 a.m., Pierce County Sheriff's Deputies served a search warrant on Defendant's home. 2RP 38. Deputies entered the home, and found Defendant and Criswell asleep in the master bedroom. 2RP 101. As he placed Criswell under arrest, Pierce

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<sup>3</sup> Opana is a prescription drug used in the same way as oxycodone.

County Sheriff's Deputy Robert Tjossem noticed a holstered handgun hanging on the headboard of the bed. 2RP 104. Deputy Tjossem later discovered the handgun was loaded. 2RP 105.

During the search, Deputies found several different controlled substances throughout Defendant's house. In the kitchen, Deputies found a bottle containing oxycodone pills, three baggies of marijuana, and several plastic sandwich bags. 2RP 48, 51-52. Deputies also found oxymorphone pills concealed in a fake mayonnaise jar sitting on top of the fridge. 3RP 166.

Deputies also found a plastic bag containing 29 grams of cocaine concealed inside a Crown Royal bag sitting on top of the kitchen counter, next to a digital gram scale. 2RP 88-89, 92. Deputy Kory Shaffer testified that 29 grams of cocaine is not consistent with personal use. 2RP 92. Deputy Shaffer also noted that, given the way the cocaine was packaged, it suggested that this cocaine was purchased in a larger quantity for the purpose of being cut down into smaller quantities and individually sold. 2RP 92. Deputy Shaffer testified that the street value of the cocaine found in the residence, once broken down into smaller quantities, would be worth between \$2,320-\$2,900.<sup>4</sup> 2RP 93.

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<sup>4</sup> Deputy Shaffer testified that individual packets of cocaine range between \$80-\$100 per gram.

Deputies located Defendant's purse in the master bedroom. 2RP 107. Inside, Deputies discovered two bottles of hydrocodone pills. 2RP 107. Deputies also discovered a cigarette pack with pills concealed inside. 2RP 109. They also discovered a BECU deposit envelope with \$3,500 cash inside. 2RP 111. Written on the outside of the envelope were drug transaction "crib notes." 2RP 111. Deputy Tjossem testified that crib notes are a ledger of drug sales that contain the name, what was sold, and how much. 2RP 111. Deputy Tjossem suspected these were crib notes because they contained a name of a person, a monetary amount, and the word "vics," which is short for vicodin— an opiate based pill—written next to the names. 2RP 111. Deputies also found an electronic currency counter in Defendant's closet and another \$3,000 cash on top of a desk in the master bedroom. 2RP 52, 113.

Deputies found several firearms inside defendant's home. In addition to the handgun that was hanging over the headboard of the bed in the master bedroom, Deputies found a rifle behind the drapes in the living room and a handgun on top of the passenger's seat in Defendant's Mercedes, which was parked in the garage. 3RP 161, 191-92. Pierce County Sheriff's Detective Oliver Hickman testified that it was fairly common for drug dealers to keep firearms in their homes for protection. 2RP 135.

When questioned by detectives, Defendant stated that Criswell was her boyfriend and that he stayed with her most of the time, but that she

was unaware that Criswell sold drugs or kept drugs in the house. 2RP 42, 44-45. Defendant admitted that the marijuana in the kitchen belonged to her, but denied knowledge of the other drugs found in her home. 2RP 44-45. When asked about the envelope with cash in her purse and the crib notes written on it, Defendant replied that it was not her handwriting. 2RP 224. When detectives asked Defendant if Criswell sold drugs, Defendant responded that she did not know if he did or not. 2RP 72.

Criswell testified at trial, and admitted to dealing drugs. 4RP 338. He testified that Defendant did not know about his drug dealing because he never told her or did business in front of her. 4RP 358. Criswell further testified that he put the drugs and money in Defendant's purse the night before the arrest in an effort to keep the items concealed from her. 4RP 362. Criswell testified that Defendant had been busy shooting pool that evening, and Criswell did not believe that she would notice the items in her purse. 3RP 362. Criswell also testified to concealing the cocaine in the Crown Royal bag and placing it on the kitchen counter in Defendant's home the evening before the arrest. 4RP 364. Criswell stated that he planned to break the cocaine down into smaller quantities the following day, and that he did not believe Defendant would notice the cocaine because she would have left for work early the following morning. 4RP 379. Criswell also testified that he hid firearms in Defendant's home and car for protection, and that she was not aware of him doing so. 4RP 372-73.

Defendant testified at trial, and stated that Criswell had a key to her house and would spend the night 3-4 times per week. 6RP 511-13. She testified that she did not know that Criswell was dealing drugs, or that he kept drugs in her home. 4RP 400, 427. She further testified that the large amount of money deposited in her account and found in her home was money that her family had collected to pay for her uncle's funeral. 4RP 423-24. Defendant also testified that she owned a second home, which she rented to her sister for \$1,250 per month, and that her sister would often pay rent in cash. 4RP 285, 407. Defendant testified that she worked part time as a waitress and received tips, which is why her deposits consisted mostly of small denomination bills. 4RP 409, 417, 425.

Defendant also admitted that she and Criswell were still in a relationship, and that she was carrying his child. 6RP 508.

C. ARGUMENT.

1. WHEN VIEWING THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE STATE, THE EVIDENCE WAS SUFFICIENT TO CONVICT DEFENDANT OF UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO DELIVER WHERE MULTIPLE CONTROLLED SUBSTANCES, FIREARMS, AND A LARGE AMOUNT OF CASH WERE FOUND IN HER HOME.

The State bears the burden of proving each and every element of a criminal offense beyond a reasonable doubt. *State v. Bennett*, 161 Wn.2d 303, 307, 165 P.3d 1241 (2007). The applicable standard of review is

whether, after viewing 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. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the appellant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

In order to be convicted of a crime as an accomplice, the defendant need not be charged as an accomplice in the information. *State v. Bobenhouse*, 143 Wn. App. 315, 324, 177 P. 3d 209 (2008) (citing *State v. McDonald*, 138 Wn.2d 680, 688, 981 P.2d 443 (1999)). “It is constitutionally permissible to charge a person as a principal and convict him as an accomplice as long as the court instructs the jury on accomplice liability.” *State v. Bobenhouse*, 143 Wn. App. 315, 324, 177 P. 3d 209 (2008) (citing *State v. Davenport*, 100 Wn.2d 757, 765-65, 675 P.2d 1213 (1984)).

Accomplice liability is neither an element of the crime, nor an alternative means of committing the crime. *State v. Teal*, 152 Wn.2d 333, 338-339, 96 P.3d 974 (2004). Thus, the rule that all elements of a crime be listed in a single instruction is not violated when accomplice liability is described in a separate instruction. *Id.* at 339.

The jury need not reach unanimity on whether a defendant acted as a principal or an accomplice. *Id.* So long as the jury is convinced that the crimes were committed and that the defendant participated in each of them, the jury need not be agreed as to whether the defendant acted as a principal or accomplice. *Id.*

Possession may be actual or constructive. *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002). A defendant actually possesses an item if he has physical custody of it; he constructively possesses the item if she has dominion and control over it. *Id.* at 333.

Here, the jury was instructed that they could find Defendant guilty if they found she acted as an accomplice to Criswell. CP 63. The court gave the jury the following instruction regarding accomplice liability:

...A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, her or she either:

- 1) solicits, commands, encourages, or requests another person to commit the crime; or
- 2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person is an accomplice. A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

CP 63; Appendix A. The court also instructed the jury on constructive possession, stating that:

...In deciding whether the defendant had dominion and control over a substance, you are to consider all of the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant had the immediate ability to take actual possession of the substance, whether the defendant had the capacity to exclude others from possession of the substance, and whether the defendant had dominion and control over the premises where the substance was located. No single one of these factors necessarily controls your decision.

CP 79; Appendix B.

Here, the evidence was sufficient show that Defendant acted as an accomplice to Criswell in possessing the hydrocodone with the intent to deliver.

In *State v. McPherson*, the defendant was a passenger in a vehicle when she was arrested. 111 Wn. App. 747, 751, 46 P.3d 284 (2002). The driver in the vehicle was carrying methamphetamine on his person and had several bottles of pseudoephedrine in his vehicle. *Id.* at 751-52. McPherson, who was sitting next to the driver of the vehicle, had a



notebook containing credit card numbers and a small scale with methamphetamine residue in her purse. *Id.* at 752. The Court of Appeals held that McPherson had attempted to facilitate the driver's possession with intent to deliver by her presence and actions. *Id.* at 760. The Court further elaborated, stating "McPherson's possession of the scales in close proximity with [the driver], who was carrying a marketable quantity of meth, raises a permissible inference [McPherson] used the scales to help facilitate [the driver's] possession with intent to deliver." *Id.* at 760. The Court also held that the notebooks with names and credit card numbers found in McPherson's purse offered a permissive inference for the jury to resolve. *Id.*

Similarly, Defendant in this case aided and facilitated Criswell's possession of hydrocodone with intent to deliver. Defendant had two prescription bottles of hydrocodone in her purse, in addition to \$3,500 in cash in an envelope with "crib notes" on it. 2RP 107, 109; 4RP 257. In addition to the multiple other controlled substances found in her home, defendant also had an electronic cash counter and several firearms in her home and car. 2RP 52; 3RP 161, 191-92. Deputies testified that use of such items is consistent with conducting illicit drug transactions. 2RP 135. Defendant also made several large cash deposits consisting solely of small denomination bills during the months she and Criswell were dating. 3RP 129-41. Detectives testified that this activity was also consistent with proceeds from drug sales. 3RP 208. Finally, Criswell was seen on several

occasions conducting drug sales in cars registered to Defendant. 2RP 128-29. All these facts taken together raise a reasonable inference that Defendant aided and facilitated Criswell in the commission of unlawful possession with intent to deliver hydrocodone.

The evidence was also sufficient to establish that Defendant possessed the hydrocodone. Defendant had physical custody of the hydrocodone pills in her purse, and thus, she had actual possession of those pills.

Even had she not had actual possession of the hydrocodone, the evidence was sufficient to establish that Defendant constructively possessed the items because she had dominion and control over them.

A person has dominion and control of an item if he has immediate access to it. *State v. Jones*, 146 Wn.2d at 333. Thus, the court looks to the various indicia of dominion and control with an eye to the cumulative effect of a number of factors. *State v. Hagen*, 55 Wn. App. 494, 499, 781 P.2d 892 (1989). Factors the courts have previously recognized include dominion and control over the location or premises where the prohibited item is found; proximity; the ability to exclude others; and the ability to take immediate or actual possession. *State v. Echeverria*, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997) (affirming dominion and control over the premises as a factor); *State v. Shumaker*, 142 Wn. App. 330, 334, 174 P.3d 1214 (2007) (holding that dominion and control is one factor from which constructive possession may be inferred); *State v. Edwards*, 9 Wn.

App. 688, 690, 514 P.2d 192 (1973) (considering proximity as one factor and exclusion of others as another factor); *State v. Wilson*, 20 Wn. App. 592, 596, 581 P.2d 592 (1978) (recognizing ability to exclude as a factor); *State v. Hagen*, 55 Wn. App. at 499 (identifying both proximity and the ability to reduce an object to actual physical control as factors).

Mere proximity, however, is not enough to establish possession. *Id.* No single factor is dispositive in determining dominion and control. *State v. Collins*, 76 Wn. App. 496, 501, 886 P.2d 243, *review denied*, 126 Wn.2d 1016, 894 P.2d 565 (1995). The totality of the circumstances must be considered. *Id.* at 501.

Here, the pills were found in Defendant's purse, which was found in the master bedroom of her house. In other words, the pills were found in a place over which she had dominion and control. The Defendant had the ability to exclude others from accessing the pills, was in close proximity to the pills herself, and had the ability to take immediate possession of them.

Defendant relies on *State v. Amezola*, to argue that there was insufficient evidence to establish that Defendant aided Criswell in possessing the hydrocodone with intent to deliver. Brief of Appellant at 13-14; 49 Wn. App. 78, 741 P.2d 1024 (1987). In *Amezola*, the Court found that evidence was insufficient to establish accomplice liability where the defendant only cooked and cleaned the house of other household members who sold heroin. *Id.* at 89-90.

*Amezola* is distinguishable from the case at hand. Unlike the defendant in *Amezola*, Defendant in this case was found with actual possession of the hydrocodone and drug proceed money. 2RP 107-11. Furthermore, unlike in *Amezola*, Defendant allowed Criswell to use her vehicles in conducting his drug deals. 4RP 348. Finally, while the defendant in *Amezola* was just a roommate of the people dealing the heroin, Defendant in this case was the sole owner of the home in which the drugs and paraphernalia were found. *Id.* at 82-83; *compare with* 4RP 406-07.

When considering all of the evidence in a light most favorable to the State, there was sufficient evidence for the jury to find that Defendant aided Criswell in the unlawful possession of the hydrocodone with the intent to deliver. Defendant facilitated Criswell's possession with intent to deliver when she carried the hydrocodone, drug proceed money, and crib notes in her purse. The jury could also infer that she further aided Criswell by allowing him to use her car during his drug deals and by allowing him to keep drugs and other drug sale related paraphernalia at her home.

Therefore, this Court should affirm Defendant's conviction for unlawful possession with intent to deliver hydrocodone.

2. WHEN VIEWING THE EVIDENCE IN A LIGHT MOST FAVORABLE TO THE STATE, THE EVIDENCE WAS SUFFICIENT TO SHOW THAT DEFENDANT WAS ARMED IN THE COMMISSION OF UNLAWFUL POSSESSION OF COCAINE AND HYDROCODONE WHERE MULTIPLE FIREARMS WERE FOUND IN HER HOME AND VEHICLE.

The Sentencing Reform Act authorizes a sentence enhancement whenever a defendant or an accomplice is armed with a deadly weapon during the commission of a crime. RCW 9.94A.533; 9.94A.825. "A person is 'armed' if a weapon is easily accessible and readily available for use, either for offensive or defensive purposes." *State v. Valdobinos*, 122 Wn.2d 270, 282, 858 P.2d 199 (1993). Being armed is not confined to those defendants with a deadly weapon actually in hand or on their person. *State v. Gurske*, 155 Wn.2d 134, 138, 118 P.3d 333 (2005). "This is consistent with the legislature's obvious intent to punish those who are armed during the commission of a crime more severely than those who are unarmed because the risk of serious harm to others is greater." *Id.* at 138.

"The accessibility and availability requirement also means that the weapon must be easy to get to for use against another person...whether to facilitate the commission of the crime, escape from the scene of the crime, [or] protect contraband or the like...." *Id.* at 139. The legislature has expressly recognized that armed individuals engaged in criminal conduct

might use a deadly weapon for several key reasons, and for this reason our State Supreme Court has declined to state an absolute rule regarding the time when the defendant must be armed during the commission of the crime. *State v. Schelin*, 147 Wn.2d 562, 572-73, 55 P.3d 632 (2002).

"In the case of a possession offense, a weapon could be used to obtain drugs, to protect the drugs, or to prevent investigation or apprehension by the police at the time they discover the drugs or seek to execute a warrant." *State v. Gurske*, 155 Wn.2d at 139. "Whether the defendant is armed at the time a crime is committed cannot be answered in the same way in every case." *Id.*

"There must be a nexus between the weapon and the defendant and between the weapon and the crime." *State v. Schelin*, 147 Wn.2d at 568. The mere presence of a weapon at the scene of the crime may be insufficient to establish a nexus; rather, Courts examine the nature of the crime, the type of weapon, and the circumstances under which the weapon is found (e.g., whether in the open, in a locked or unlocked container, in a closet on a shelf, or in a drawer). *Id.* at 570.

In *State v. Schelin*, the defendant was being arrested in his home, when police officers noticed a loaded revolver stored in a holster hanging from a nail on the wall approximately 6-10 feet from where the defendant had been standing. *State v. Schelin*, 147 Wn.2d at 564. Police Officers also discovered a large amount of marijuana, scales, packaging materials and \$50,000 in cash in an adjacent room. *Id.* Our State Supreme Court

held that given Schelin's close proximity to an easily accessible and readily available deadly weapon, the jury was entitled to infer that he was using the weapon to protect his marijuana grow operation. *Id.* at 574-75. The court further noted that, given Schelin's position when the officers entered his home, "he could have easily exercised his apparent ability to protect the grow operation with a deadly weapon, to the detriment of the police." *Id.* at 574-75.

In cases where the Court has found that no nexus existed to support the firearm enhancement, the firearm was not in plain view and not easily accessible to the defendant. For example, in *State v. Valdobinos*, the Court determined that no nexus existed when an unloaded rifle was found underneath the defendant's bed. 122 Wn.2d at 274, 282.

Likewise, in *State v. Johnson*, the Court also concluded that no nexus existed when a firearm was found in a cabinet compartment of a coffee table in the defendant's home. 94 Wn. App. 882, 892, 897, 974 P.2d 855 (1999). The Court in *Johnson* concluded that because the defendant was handcuffed and had personally informed the police officers where the gun was located, there was no realistic possibility that he could access the gun and harm the officers. *Id.* at 894.

Here, the jury found Defendant was armed during the commission of the possession of the cocaine and hydrocodone. CP 104, 107; 10RP 631-32. Three separate firearms were found in Defendant's home: a loaded

handgun hanging over the headboard of the bed; a rifle behind the curtains in the living room; and a handgun on top of the passenger's seat in Defendant's vehicle. 2RP 105; 3RP 161, 191-92. All of the firearms were readily accessible and available for Defendant's use. They were all located in her home and personal vehicle, of which she had almost exclusive access. Two of the weapons were in plain view, and Defendant would have known of their presence.

Like in *Schelin*, the jury in this case could infer that Defendant's close proximity to the easily accessible deadly weapons was for protection of the multiple controlled substances found throughout her home, as well as for protection for the \$6,000 cash from drug proceeds Defendant kept in her home. 2RP 52, 111, 113. Also like in *Schelin*, the jury could infer that Defendant could have used the loaded handgun holstered over the bed to protect the drugs and cash, to the detriment of the arresting Deputies. Unlike *Valdobinos* and *Johnson*, two of the firearms in this case were in an area within immediate reach of Defendant, and not in a closed compartment.

The State adduced sufficient evidence to show a nexus between Defendant's possession of hydrocodone and cocaine and her possession of the three firearms throughout her house. The weapons were easily available and readily accessible to Defendant. As such, a jury could



reasonably infer that the firearms were used to protect the drugs or their proceeds. Accordingly, this Court should affirm Defendant's firearm sentence enhancements.

3. WHEN VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, THE EVIDENCE WAS SUFFICIENT TO CONVICT DEFENDANT OF MONEY LAUNDERING WHERE SHE DEPOSITED OVER \$19,000 CASH IN HER BANK ACCOUNT, ALL IN SMALL BILLS, OVER A THREE MONTH PERIOD.

"Money laundering occurs when a person manipulates the proceeds of some form of unlawful activity in order to conceal their criminal origin and make the proceeds appear legitimate." *State v. Aitken*, 79 Wn. App. 890, 900, 905 P.2d 1235 (1995); RCW 9A.83.020.

In *State v. Casey*, the defendant was convicted of money laundering after he defrauded elderly homeowners and used part of the proceeds to make cash payments on his truck. *State v. Casey*, 81 Wn. App. 524, 526, 915 P.2d 587 (1996). During their investigation, police discovered \$79,000 cash in a safety deposit box and over \$10,000 cash in a purse belonging to the defendant's wife. *Id.* at 532. The Court rejected the defendant's argument that the State failed to establish that all of the payments made on his truck came from the proceed of the thefts. *Id.* The Court held that as long as the State provided sufficient evidence to establish that at least some of the funds used for payment derived from

thefts, that such evidence was sufficient to support the conviction of money laundering. *Id.*

Here, Defendant made three separate cash deposits—\$9,055, \$9,000, \$1,250—all in small bills, over a three month period. 3RP 210, 239-41. Defendant began making the deposits shortly after she and Criswell began their relationship. 4RP 422-23. Defendant's bank records indicate that she had not made these types of deposits prior to beginning a relationship with Criswell. 3RP 241.

At trial, Defendant testified to several reasons why she had accumulated so much cash in small denomination bills. Defendant stated that she was collecting money for her uncle's funeral, that she worked part time as a waitress and received tips, that her sister rented a house from Defendant and paid Defendant in cash, and that she liked to keep cash on hand for smaller purchases and thus would not deposit her tip money regularly but accumulate it instead. 4RP 285, 407, 409, 417, 423-25; 6RP 519-22.

Defendant's argument—that the money she deposited was money she acquired from tips and the rent her sister paid— might have merit if Defendant's bank records indicated that these large deposits were more common, or had occurred before Defendant's relationship with Criswell began.

In addition to the multiple cash deposits, Deputies found an envelope with crib notes written on it that contained \$3,500 cash in Defendant's purse. 2RP 111. The money was located next to the two bottles of hydrocodone that were also found in her purse. 2RP 111.

Like in *Casey*, the State provided sufficient evidence for a reasonable juror to infer that at least a portion of the money deposited into Defendant's bank account between December of 2011 and January of 2012 was the proceeds of drug sales. Looking at the evidence in the light most favorable to the State, the jury could infer that Defendant deposited funds from drug sales into her checking account to conceal their origin and make the proceeds appear legitimate. Accordingly, this Court should affirm Defendant's conviction for money laundering.

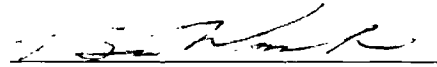
D. CONCLUSION.

The State adduced sufficient evidence to show that Defendant aided Criswell in the unlawful possession of hydrocodone with intent to deliver. The State also provided sufficient evidence to establish that Defendant was armed with a firearm in the commission of the unlawful possession of cocaine and hydrocodone. Finally, evidence was sufficient

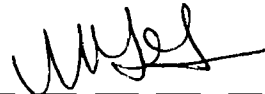
to establish that Defendant committed money laundering when she deposited the proceeds of drug sales into her bank account to make the funds appear legitimate. For the foregoing reasons, the State respectfully requests that this Court affirm Defendant's convictions and sentence.

DATED: March 21, 2014.

MARK LINDQUIST  
Pierce County  
Prosecuting Attorney



BRIAN WASANKARI  
Deputy Prosecuting Attorney  
WSB # 28945



Miryana Gerassimova  
Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

3-21-14 Thomas Sophia  
Date Signature

## **APPENDIX “A”**

INSTRUCTION NO. 4

A person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable. A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime.

A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, he or she either:

- (1) solicits, commands, encourages, or requests another person to commit the crime; or
- (2) aids or agrees to aid another person in planning or committing the crime.

The word "aid" means all assistance whether given by words, acts, encouragement, support, or presence. A person who is present at the scene and ready to assist by his or her presence is aiding in the commission of the crime. However, more than mere presence and knowledge of the criminal activity of another must be shown to establish that a person present is an accomplice.

A person who is an accomplice in the commission of a crime is guilty of that crime whether present at the scene or not.

## **APPENDIX “B”**

INSTRUCTION NO 20

Possession means having a substance in one's custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the substance.

Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.

In deciding whether the defendant had dominion and control over a substance, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant had the immediate ability to take actual possession of the substance, whether the defendant had the capacity to exclude others from possession of the substance, and whether the defendant had dominion and control over the premises where the substance was located. No single one of these factors necessarily controls your decision.



# PIERCE COUNTY PROSECUTOR

March 21, 2014 - 4:22 PM

## Transmittal Letter

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Court of Appeals Case Number: 45101-8

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Letter

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