

COURT OF APPEALS

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NO. 34336-3-II

STATE OF WASHINGTON

BY 20 JN

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON,

Respondent,

v.

MICHAEL DUANE ELMORE,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable John A. McCarthy, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. There was insufficient evidence of possession of pseudoephedrine with intent to manufacture methamphetamine.

2. There was insufficient independent evidence to establish the corpus delicti of the crime of possession of pseudoephedrine with intent to manufacture of methamphetamine.

3. Appellant was denied his constitutional right to jury unanimity.

Issues Presented on Appeal

2. Without appellant's and co-defendant's admissions, was the independent evidence sufficient to establish the corpus delicti of the crime of possession of pseudoephedrine with intent to manufacture of methamphetamine?

3. Was appellant denied his constitutional right to jury unanimity?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

On May 24, 2005, Michael Duane Elmore was charged with one

count of manufacturing methamphetamine in violation of RCW 69.50.401 and one count of possession of pseudoephedrine with intent to manufacture in violation of RCW 69.50.440(1). CP 4-5.1 The state moved and the court granted the motion to admit Mr. Elmore's custodial statements. CP 6-10; RP 32. 2 Mr. Elmore was tried by a jury the Honorable Judge McCarthy presiding. RP 1. After the state rested its case, Mr. Elmore moved for a directed verdict on the manufacturing charge. The motion was granted and that count was dismissed. RP 220, 241. Mr. Elmore was found guilty by the jury of possession of pseudoephedrine with intent to manufacture meth. RP 344. Mr. Elmore filed a motion for "*Obstante Veredicto*" or Judgment Notwithstanding the Verdict. The motion was denied. CP 46-49; 1RP 1, 6.3 This time<sup>1</sup> appeal follows. CP 66.

## 2. SUBSTANTIVE FACTS

Michael Elmore and Lana Martin were first observed at a Target Store in Tacoma at Union and 23<sup>rd</sup> at approximately 1:10PM on April 15, 2005. RP 50, 56. The Pierce County Sheriff's Department set up a store operation to look for people involved in purchasing cold medicine with pseudoephedrine which is known as a precursor for the manufacture of methamphetamine. RP

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1 CP refers to the clerk's papers designated from Pierce County Superior Court Cause number 05-1-01844-7.

2 RP refers to the verbatim report of the trial proceedings.

41-50. Detective Loeffelholz was stationed in the security office of the Target store monitoring the cold medicine aisle through a surveillance camera. RP 128, 130-31. Loeffelholz observed a woman buy two boxes of cold pills containing pseudoephedrine and was also able to observe her leave the store and enter a white Toyota pickup truck that contained two propane cylinders in the back. RP 132, 134, 136. Loeffelholz saw a white male in the truck and requested that the Target store personnel rewind their video tape to determine if a male had recently purchased cold medicine with pseudoephedrine. The tape indicated a white male purchasing 2 boxes of cold medicine. RP 137. Loeffelholz could see where the white male went after making his purchase and could not identify the male. RP 137, 139. Store receipts confirmed a purchase on April 15, 2005 at 1:13PM. RP 139. The store receipt identified Lana Martin as the woman who purchased two boxes of cold pills and entered the white Toyota pickup truck. 142.

Detective James Jones of the Pierce County Sheriff's office was also involved in the store stop on April 15, 2005. RP 49. He was in the Target parking lot and was advised by Loeffelholz to focus on Ms. Martin. RP 56. Jones followed the Toyota pickup. According to Jones, the truck made several stops by turning into business parking lots and driveways and

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<sup>3</sup> IRP refers to the verbatim report of the sentencing proceeding.

changing directions. RP 60. According to Jones, the driver, Elmore was trying to determine if he was being followed by police. RP 60. Jones observed the car stop at a Burger Barn. RP 59.

Detective Daryl Purviance was also involved in the store ops. RP 162. He observed Elmore enter the Burger Barn and re-enter the truck about 15 minutes later. Martin stayed in the truck. RP 164-165. Purviance saw Martin exit the truck and throw out a brown plastic bag. He also saw Elmore exit the truck and throw out a smaller white plastic trash bag. Purviance could not determine the contents of the bags from his vantage point. RP 165-66. After the truck left, Purviance retrieved what he believed to be the same white and brown plastic garbage bags. The white bag contained 10 empty boxes of cold medicine with 16 empty blister packs that once contained pills with pseudoephedrine. RP 167-171. The white bag contained food waste.

Lana Martin testified for the state after pleading guilty to reduced charges. RP 198. Martin's sentencing was to follow after she testified for the state in the instant case. RP Id. Martin testified to eating a burger in the truck with Elmore but insisted that she alone threw out a plastic bag and that Elmore did not exit the truck again after returning from the Burger Barn. RP 203-204.

After leaving the Burger Barn, Jones followed the truck to Walgreen's on 39<sup>th</sup> and Pacific. RP 63. Inside officer Kory Shaffer observed Elmore purchase one box of cold medicine with pseudoephedrine and a bottle of Isopropyl alcohol. RP 185-86. Ms. Martin did not enter Walgreen's. RP 187. Shaffer followed the truck to Fred Meyers where he observed both Martin and Elmore enter the store. RP 187. Deputies Messineo, Leach and Loeffelholz followed Martin and Elmore into the store. RP 65. Loeffelholz was not able to see the purchase but he saw Elmore leave the store with a bag that contained Red Devil lye and saw a store clerk give Elmore a box of pills. RP 143-44. A review of the store receipt confirmed that Elmore purchased dog food, pills containing pseudoephedrine and two cans of Red Devil lye. RP 144-45.

After the Fred Meyer purchase Jones informed the officers participating in the operation that they would be taking Martin and Elmore into custody. RP 66. Jones arrested Elmore, provided him with Miranda warnings and asked him several questions. At first, Elmore stated that he only went shopping at Safeway. After being told that he was followed he stated, "I'm already going down for this". Jones asked Elmore if he was a meth cook to which Elmore replied that he was not a meth cook. When asked

about the blister packs, Elmore replied that they were gone. RP 68-70. Elmore also stated that he had been a meth addict one and one half years earlier. RP 71.

Detective Shaffer arrested Martin and advised her of her Miranda rights. She stated that she was shopping for colored pencils to take on a plane trip to visit her mother. RP 189. She also stated that Elmore gave her money to buy the pseudoephedrine at a Safeway store because there was a discount available to Safeway card holders and she had a Safeway card. RP 189. Martin also stated that they were buying the pills to take to a friend in Gig Harbor who was going to make meth. Id . Martin testified that Elmore told the police “It’s all mine, she had nothing to do with it”. RP 199. Not a single officer remembers hearing this statement and none of them put this statement in a police report.

The police found items in the truck during the search incident to arrest and the search following the issuance of a search warrant of the truck. Jones found a Fred Meyer plastic bag containing a box of 10 pseudoephedrine caps plus two full containers of Red Devil lye and a receipt indicating an April 15, 2005 purchase date (Exhibit 2). RP 78. Jones testified that lye is used for making anhydrous ammonia for the final gassing out phase of the final meth

product. RP 79. Lye also has legitimate uses such as clearing up clogged drains. RP 80.

Manny Cruz is the housing manager for the Kitsap County Mental Health program in Bremerton. RP 271. He knows Elmore as a resident in one of the group houses for the past year. RP 271. Cruz testified that Elmore was a very good tenant who took care of his responsibilities and minded his own business. RP 275. Cruz testified that on one occasion, Elmore purchased a hand snake to clear a clogged toilet even though he was not responsible for this repair. RP 272. Cruz did not remember Elmore mentioning the use of lye, but lye is a product known to clear clogged drains. RP 80, 273.

Jones found one box of 20 pseudoephedrine pills, a Walgreen bag with Isopropyl alcohol, one box of 20 pseudoephedrine caps and a Fred Meyer bag with 2 boxes of pseudoephedrine caps (Exhibit 4). Jones testified that Isopropyl alcohol can be used in the extraction process when removing the binder from the cold medicine to isolate the pseudoephedrine which is used to manufacture methamphetamine. RP 43, 86. Isopropyl alcohol has other legitimate uses .

Jones also found a bag of 50 coffee filters in the truck (Exhibit 8). Jones testified that coffee filters can also be used to filter out the binder from

the cold pills. RP 87. Jones found an unopened box of reusable sandwich bags (Exhibit 7); 2 full boxes of pseudoephedrine wrapped in Little Nickle Ad paper (Exhibit 14, 15, 28) and many receipts dated April 15, 2005. The receipts and actual number of boxes of pills located in the truck totaled 6 but Martin and Elmore were only observed buying 4. 120-21, 123. Jones testified that it was possible to make meth for personal use from 6 boxes of pseudoephedrine RP RP 123. On April 15, 2005, the legal limit for the purchase of pseudoephedrine was 3 boxes per person so Martin and Elmore had not exceeded the legal limit. RP 120-21.

Elmore's part time employer and the owner of Sound Scuba in Bremerton, Jeff Penz testified that as a diver he used pseudoephedrine regularly as a decongestant prior to diving and often purchased two-three packs from Costco. RP 243, 247-48, 255-56. Penz has known Elmore for about two years and considers him to be a very hard working fellow whom he has invited into his home, given a motor home and entrusted to look after his real and personal property. RP 243, 246, 247, 251, 257. Penz never saw Elmore involved in any drug activity, but noted that he did drink coffee. RP 247-48. Elmore took a series of diving classes from Penz and dove 10-to 12 times on other occasions with Sound Scuba staff. RP 245.

Penz former landlord, Charles Bair observed Elmore working and decided to hire him and allow him to park the motor home on his property rent and utility free in exchange for Elmore looking after the property. RP 260-62, 270. Bair hired Elmore for odd jobs and at times had coffee or lunch with him. 260, 263 He observed that Elmore had a cup of coffee in his hand at most times. Bair allowed Elmore to work on cars in a 2500 square foot unheated building. Elmore used a propane heater to warm up the space. RP 261-62. Bair never saw any drug activity around Elmore and often saw Elmore daily or at least every few weeks when work was light. RP 261-63.

Jones found two propane cylinders (Exhibit 17) in the back of the pickup which he testified could be used for making or storing anhydrous ammonia. RP 102. The Sheriff's department tested the propane cylinders for anhydrous ammonia and the test results were negative. RP 103-104. Both Bair and Penz were deemed credible witnesses by the trial judge and both testified that Elmore used propane to heat the 2500 sq. ft. work space. RP 246, 261-62, 1RP 12.

#### C. ARGUMENT

1. THERE WAS INSUFFICIENT EVIDENCE OF POSSESSION OF PSEUDOEPHEDRINE WITH INTENT TO MANUFACTURE METHAMPHETAMINE.

The due process clause of the Fourteenth Amendment requires the state to prove beyond a reasonable doubt all of the facts necessary to constitute the crime charged. State v. DeVries, 149 Wn.2d 842, 849, 72 P.3d 748 (2003); State v. Hundley, 126 Wn.2d 418, 421, 895 P.2d 403 (1995). Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the State, it allows any rational trier of fact to find all of the elements of the crime charged beyond a reasonable doubt. DeVries, 149 Wn.2d at 849. “As the United States Supreme Court noted, it is critical that our criminal law not be diluted by a standard of proof that leaves the public to wonder whether innocent persons are being condemned.” DeVries, 149 Wn.2d at 849, quoting, In re Winship, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). In the instant case, the facts necessary to establish the crime charged were not proved beyond a reasonable doubt because no reasonable trier of fact could have reached a “subjective state of certitude on the facts at issue.” Hundley, 126 Wn.2d at 421-22.

Elmore was charged with and convicted of unlawful possession of pseudoephedrine with intent to manufacture methamphetamine. RCW 69.50.440(1) provides in relevant part:

It is unlawful for any person to possess [1] ephedrine or any of its salts or isomers or salts of isomers, [2] pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or [3] pressurized ammonia gas solution with [4] intent to manufacture methamphetamine, including its salts, isomers, and salts of isomers.

(Numeration added) “Manufacture means the production, or preparation, or compounding, or conversion, or processing, directly or indirectly, as well as the packaging or repackaging of any controlled substance.” RCW 69.50.101(p). In jury instruction 13, the jury was instructed that the following elements of the crime charged must be proved beyond a reasonable doubt to convict Elmore of possession with intent to manufacture a controlled substance: (1) That on or about the 15<sup>th</sup> day of April, 2005 Mr. Elmore or an accomplice (2) knowingly possessed (3) ephedrine or (4) pseudoephedrine (4) with intent to manufacture methamphetamine. CP 41..

In the instant case, the evidence at trial established that the police observed Elmore visit several stores, purchase a total of three boxes of cold pills with pseudoephedrine, 2 containers of Red Devil Lye and a small bottle of Isopropyl alcohol. His companion purchased two packages of cold pills and several food items. Elmore also purchased a large quantity of food and he

had a package of coffee filters and sandwich bags in his truck in a shopping bag. The police did not inventory the food, but Martin who testified for the state indicated that Elmore did a big food shop on the day of their arrest. Witnesses also testified that Elmore fixed a plugged toilet which could reasonably account for the need for lye and that he was a big coffee drinker which could account for the presence of coffee filters. He also worked on cars to supplement his earnings which could easily explain the need for the Isopropyl alcohol.

Penz a credible witness according to the trial judge testified that he owns a dive shop where that Elmore took lessons and that it is common for divers to take pseudophedrine to clear sinuses before diving. At the time of the arrest, it was not illegal to purchase three packages of pills containing pseudoephedrine. RCW 69.43.110.

There was no evidence of manufacture or intent to manufacture and there were reasonable explanations for all of the items retrieved from the truck. Viewing the evidence and the reasonable inferences arising from the evidence in the light most favorable to the State, there was insufficient evidence that Elmore intended to manufacture methamphetamine. Mr. Elmore's possession of three boxes of pseudoephedrine was not illegal, nor

was his possession of any of the items in the truck. See, State v. Whalen, 131 Wn. App. 58, 65, 126 P.3d 55 (2005). (attempting to shoplift seven boxes of pseudoephedrine was insufficient to establish intent to manufacture.) The evidence suggested that he was out shopping for food and medicine and other things for his Bremerton home and business. Because the state failed to prove beyond a reasonable doubt that Elmore possessed pseudoephedrine with intent to manufacture meth, his conviction should be reversed.

2. THE STATE FAILED TO PROVE THE  
CORPUS DELECTI OF THE CRIME OF  
POSSESSION OF PSEUDOEPHEDRINE  
WITH INTENT TO MANUFACTURE A  
CONTROLLED SUBSTANCE.

“The confession or admission of a defendant charged with a crime cannot be used to prove the defendant's guilt in the absence of independent evidence corroborating that confession or admission.” State v. Whalen, 131 Wn. App. 58, 62, 126 P.3d 55 (2005), citing, State v. Aten, 130 Wn.2d 640, 655-56, 927 P.2d 210 (1996). The corpus delecti rule requires that the State produce evidence, independent of the accused's statements, sufficient to support a finding that the charged crime was committed by someone. State v. Riley, 121 Wn.2d 22, 32, 846 P.2d 1365 (1993); State v. Bernal, 109 Wn. App. 150, 152, 33 P.3d 1106 (2001) review denied, 146 Wn.2d 1010, 52 P.3d

518 (2002), citing, City of Bremerton v. Corbett, 106 Wn.2d 569, 574-75, 723 P.2d 1135 (1986). The rule does not require the State to prove who committed the charged crime. Bernal, 109 Wn. App at 152-53, citing, Corbett, 106 Wn.2d at 574.

To be sufficient, independent corroborative evidence need not establish the *corpus delecti*, or "body of the crime," beyond a reasonable doubt, or even by a preponderance of the evidence. *Riley*, 121 Wn.2d at 32. Rather, independent corroborative evidence is sufficient if it *prima facie* establishes the *corpus delecti*. *State v. Smith*, 115 Wn.2d 775, 781, 801 P.2d 975 (1990). *Prima facie* in this context means evidence of sufficient circumstances supporting a logical and reasonable inference of criminal activity. *Aten*, 130 Wn.2d at 656; *State v. Vangerpen*, 125 Wn.2d 782, 796, 888 P.2d 1177 (1995). In determining whether the State has produced sufficient *prima facie* evidence, we must assume the truth of the State's evidence and all reasonable inferences drawn therefrom. *See Bremerton v. Corbett*, 106 Wn.2d 569, 571, 723 P.2d 1135 (1986); *State v. Pineda*, 99 Wn. App. 65, 77-78, 992 P.2d 525 (2000). **But the independent evidence must support a logical and reasonable inference of criminal activity only.** *Aten*, 130 Wn.2d at 659-60. If the independent evidence also supports logical and reasonable inferences of non-criminal activity, it is insufficient to establish the *corpus delecti*. *Aten*, 130 Wn.2d at 659-60.

(Emphasis added) Whalen, 131 Wn. App at 131.

In Whalen, the defendant stole seven packages of pseudoephedrine tablets from Target®. Whalen confessed to the security guard who detained him that he was taking the pills for a meth cook to satisfy a marijuana debt. He was charged with robbery in the second degree and possession of pseudoephedrine with intent to manufacture. The robbery charge was eventually dropped. Whalen, 131 Wn. App. at 60-62. The Court of Appeals reversed Whalen's conviction because absent his confession the evidence did not support a logical and reasonable inference of the charged criminal activity only. Whalen, 131 Wn. App. at 66. The independent evidence established that Whalen shoplifted cold medicine and violated RCW 69.43.110, which limits the amount of pseudoephedrine a person can purchase in a 24 hour period. This evidence was not however sufficient to establish intent to manufacture. Whalen, 131 Wn. App. at 63-64, 66.

State v. Cobelli, 56 Wn. App. 921, 924, 788 P.2d 1081 (1989) is another corpus delicti case with similar issues to both Whalen and the instant case. Therein, the Court of Appeals reversed a conviction for possession with intent to deliver. According to the state's evidence, Cobelli contacted a small group of people, spoke briefly, and then walked away. Cobelli, 56 Wn. App.

at 922. Although the police did not observe an actual exchange, they believed and testified that, "[t]he manner in which it was happening [was] real indicative of what I've seen before in the sales and purchase of drugs." Cobelli, 56 Wn. App. at 922. The police arrested Cobelli, and he produced from his pocket 1.4 grams of marijuana in baggies and cash and confessed to selling two baggies of marijuana for \$10 each. Cobelli, 56 Wn. App. at 923.

Cobelli was convicted of possession of marijuana with intent to deliver. Cobelli, 56 Wn. App. at 922. The Court of Appeals reversed Cobelli's conviction because the evidence independent of his confession did not support the element of delivery. The evidence indicated a man talking to others in close proximity with only the appearance or possibility of a delivery. Cobelli, 56 Wn. App. at 924-25

In Bernal, another case involving corpus delecti, the defendant was charged with among other things, controlled substances homicide. Bernal, 109 Wn. App. at 153. The evidence established that the victim died of an overdose, but did not establish with corroborating evidence that the accused delivered the heroin. The accused confessed to the delivery, but there was no other extrinsic evidence to suggest a delivery other than the accused's statement. There were also other plausible ways in which the victim could

have obtained the heroin, such as finding it or stealing it. Bernal, 109 Wn. App. at 154. For this reason, Division Two of the Court of Appeals reversed the conviction finding that the corpus delecti rule had not been satisfied. *Id.*

Whalen, Cobelli and Bernal provide authority for reversal in the instant case. In the instant case, the independent evidence established that Elmore an amateur diver, bought three boxes of cold pills with pseudophedrine. Elmore a coffee drinker also bought coffee filters. Elmore, who worked on cars and did odd jobs including unplugging toilets purchased a small bottle of Isopropyl alcohol and two bottles of lye. Elmore had two propane cylinders in his truck that tested negative for anhydrous ammonia and several witnesses testified that Elmore used to propane to heat his work space.

Elmore's statement that he was going down for this only indicates that he knew that he was going to be arrested. It does not suggest that he intended to manufacture meth. Although Martin's statement may be viewed as a confession it cannot be attributed to Elmore and even if it could, there is insufficient corroborative evidence to establish the crime of possession of pseudoephedrine with intent to manufacture meth. The instant case is very much like Whalen, Cobelli and Bernal, because the evidence presented

supports legal uses of all of the items located in the truck and does not support a logical and reasonable inference of illegal activity alone. It is therefore insufficient to prima facie establish the corpus delicti of possession of pseudoephedrine with intent to manufacture methamphetamine. Whalen, 131 Wn. 2d 131.

3. THE TRAIL COURT ERRED BY FAILING TO REQUIRE A UNANIMOUS VERDICT FOR UNLAWFUL POSSESSION OF PSEUDOEPHEDRINE WITH INTENT TO MANUFACTURE METHAPHETAMINE BY THE ALTERNATIVE MEANS OF POSSESSION OF EPHEDRINE OR POSSESSION OF PSEUDOEPHEDRINE WHEN THE EVIDENCE WAS INSUFFICIENT TO PROVE ONE OF THE ALTERNATIVE MEANS.

Criminal defendants in Washington have a right to an expressly unanimous jury verdict. State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980); Const. art. 1, § 21. In the instant case, the to convict jury instruction included the alternative means of possession of either pseudoephedrine or ephedrine. CP 41.

When a person is charged with committing this crime and the to-convict instruction describes alternate means for the commission of the crime, the court must provide a unanimity instruction unless there is

sufficient evidence of commission of the crime by each alternative means listed. State v. Boiko, 131 Wn. App. 595, 598, 128 P.3d 143 (2006), reconsideration denied (2006), citing, Ortega-Martinez, 124 Wn.2d at 707 (even though there was sufficient evidence of two alternate means in Ortega-Martinez, the Supreme Court nevertheless “strongly urge[d] counsel and trial courts to heed our notice that an instruction regarding jury unanimity on the alternative method is preferable.” Ortega-Martinez, 124 Wn.2d at 717, FN 2; quoting, State v. Whitney, 108 Wn.2d 506, 511, 739 P.2d 1150 (1987).

The right to a unanimous verdict is a fundamental constitutional right that may be raised for the first time on appeal. State v. Kiser, 87 Wn. App. 126, 129, 940 P.2d 308 (1977). In the instant case, Elmore was charged with unlawful possession of pseudoephedrine and/or ephedrine with intent to manufacture methamphetamine. CP 4-5. In jury instruction 13, the jury was instructed that the following elements of the crime charged must be proved beyond a reasonable doubt to convict Elmore of possession with intent to manufacture a controlled substance: (1) That on or about the 15<sup>th</sup> day of April, 2005 Mr. Elmore or an accomplice (2) knowingly possessed (3) ephedrine or pseudoephedrine (4) with intent to manufacture methamphetamine. CP 41. The jury was not instructed that it must be

unanimous as to the alternative means of “possession” to establish the crime charged.

The evidence presented did not establish the presence of ephedrine. The evidence established two persons, Elmore and Martin in possession of 6 boxes of pseudoephedrine, a bottle of Isopropyl alcohol, 2 propane cylinders that tested negative for anhydrous ammonia and two bottles of lye. Although the jury returned a verdict of guilty, the jury was instructed that it could find guilt for the crime based on a possession of pseudoephedrine or ephedrine, and the jury was not instructed that it must determine which of the two controlled substances Elmore possessed.

Elmore has a constitutional right to a unanimous verdict on the means by which he may have committed the crime. Ortega-Martinez, 124 Wn.2d at 707. Unanimity as to alternative means is required unless there is proof beyond a reasonable doubt as to each means of committing the crime. *Id.* Because it is impossible to determine on which controlled substance the jury relied to find guilt, Elmore’s conviction should be reversed.

#### D. CONCLUSION

In sum, the state failed to prove beyond a reasonable doubt the crime of possession of pseudoephedrine with intent to manufacture

methamphetamine. The state also failed to satisfy the corpus delecti rule requiring corroborating evidence of each element of a crime absent an accused's confession. Mr. Elmore was also denied his constitutional right to jury unanimity. For these reasons he respectfully requests this Court reverse his conviction for possession of pseudoephedrine with intent to manufacture of methamphetamine and dismiss the charge.

DATED this 26<sup>th</sup> day of June 2006.

Respectfully submitted,

  
\_\_\_\_\_  
LISE ELLNER  
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Attorney for Appellant

06 JUN 26 PM 12:47  
CORRECTIONS  
PIERCE COUNTY

I, Lise Ellner, a person over the age of 18 years of age, served the Pierce County prosecutor's office 930 Tacoma Ave. S, Rm. 946, Tacoma, WA 98402 and Michael D. DOC #708612 McNeil Island Corrections PO B0x 881000 Steilacoom, WA 98388 a true copy of the document to which this certificate is affixed, on June 26, 2006. Service was made by depositing in the mails of the United States of America, properly stamped and addressed.

\_\_\_\_\_  
Signature