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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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NO. 36203-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

MICHAEL FLETCHER KNAUS, Appellant.

APPELLANT'S BRIEF

Rebecca Wold Bouchey
WSBA #26081
Attorney for Appellant

P.O. Box 1401
Mercer Island, WA 98040
(206) 275-0551

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I. ASSIGNMENTS OF ERROR

1. The trial court erred when it denied the defense motion to dismiss the firearm enhancement for the conviction of unlawful possession of a controlled substance.
2. The trial court erred when it found that Mr. Knaus was “armed” with a firearm at the time of the commission of the crime of unlawful possession of a controlled substance.
3. The trial court erred when it imposed a firearm enhancement for the conviction of unlawful possession of a controlled substance.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err by finding Mr. Knaus was armed with a firearm at the time of the commission of the crime of unlawful possession of a controlled substance where the State failed to show a nexus between the gun and the crime?

III. SUMMARY OF THE CASE

This case arises from a residential break in. It is unusual in that the defendant, Michael Knaus, never denied that he had committed the burglary.

Knaus, just eighteen at the time of trial, had been raised in the foster care system after his mother abandoned him and he became addicted to drugs. RP 4/6/07 11, 14. On the night of the break-in, Knaus had been drinking and using drugs. Supp. CP, Exh. 40, p. 3.

Knaus waived his right to a jury trial and conceded his guilt of burglary, unlawful possession of a firearm, and unlawful possession of a controlled substance. RP 202-3. However, Knaus challenged the State's charge against him of first degree assault and the enhancement for the drug possession charge. In fact, the homeowner in this case tackled Knaus as he tried to leave their home. In the ensuing struggle, the homeowner's firearm went off twice, both times when the homeowner had grabbed for it. Fortunately, no one was hurt.

The only issue on appeal is whether the firearm was sufficiently connected to the crime of unlawful possession of a controlled substance to justify a firearm enhancement.

IV. STATEMENT OF THE CASE

On July 20, 2006, Michael Knaus broke into the home of Frances and Robert Blakely. RP 132. Mrs. Blakely saw Mr. Knaus in her room and woke her husband. RP 133. She then ran from the room to call 911. RP 134-35.

As Mr. Knaus tried to retreat from the room, Mr. Blakely launched himself at Mr. Knaus. RP 173, 179, 192. Mr. Blakely saw the Mr. Knaus had a gun in his hand, which he recognized as his own firearm. RP 173. As Mr. Blakely collided with Mr. Knaus, the gun went off. RP 181, 192. They rolled around on the ground struggling. RP 181. Mr. Blakely was a large man, weighing between 250 and 270 pounds, while Mr. Knaus weighed around 150 pounds. RP 54, 157. The two men struggled over possession of the gun, Mr. Blakely attempted to grab the gun, which then went off a second time. RP 182, 193. Mr. Blakely then managed to release the cylinder from the gun, unloading it. RP 182. Mr. Blakely believed that Mr. Knaus was attempting to re-load the gun, grabbed it, and tossed it into the living room. RP 185.

After the gun was tossed out, Mr. Knaus continued to resist Mr. Blakely, and pulled a knife from his pocket. RP 186. Mr. Blakely again disarmed Mr. Knaus, grabbed his throat, and told Mr. Knaus that if he did not stop resisting, he would kill him. RP 189. Mr. Knaus stopped

struggling, and the police arrived to find Mr. Blakely on top of a prone Mr. Knaus. RP 34. Fortunately, no one had been injured.

Mr. Knaus was arrested at the scene. In a statement to police, Mr. Knaus admitted to police that he had broken into the house, but he denied that he intended to assault the Blakelys. Supp. CP, Exh. 40, pp. 5-6. He said he had found the gun under the bed and was on his way to put it out of reach in a dresser when Mr. Blakely tackled him. Supp. CP, Exh. 40, p. 6, 13. His only intent was to put it where Mr. Blakely could not use it on him. Supp. CP, Exh. 40, p. 6, 14. He never aimed it at the Blakelys and did not intend to shoot anyone. Supp. CP, Exh. 40, p. 8.

At the time of arrest, a small quantity of methamphetamine was found in a pouch in Mr. Knaus' pants. RP 53, 164. He had been drinking and smoking marijuana prior to the incident. Supp. CP, Exh. 40, p. 3.

Mr. Knaus was charged with two counts of first degree assault, one count for each Blakely, one count of first degree burglary, one count of unlawful possession of a firearm, and one count of unlawful possession of a controlled substance. CP 1-3.

Mr. Knaus conceded his guilt for the burglary charge, as well as the firearm enhancement for that charge, as well as his guilt of unlawful possession of a firearm and unlawful possession of a controlled substance. RP 202-3. However, Mr. Knaus disputed his guilt of the two assault

charges, as well as the firearm enhancement for the unlawful possession of a controlled substance. RP 203. The judge dismissed the assault charge related to Mrs. Blakely for lack of evidence. RP 207.

Following a bench trial, Mr. Knaus was found guilty of first degree assault (Mr. Blakely)—with a firearm enhancement, first degree burglary—with a firearm enhancement, unlawful possession of a firearm, and unlawful possession of a controlled substance—with a firearm enhancement. CP 52. The judge found that none of the charges constituted the same criminal conduct. RP 8. The court further denied the defense’s motion to dismiss the firearm enhancement associated with the charge of unlawful possession of a controlled substance. CP 14.

Mr. Knaus was sentenced to 361 months real time, essentially 30 years.¹ RP 17.

IV. ARGUMENT

ISSUE 1: THE TRIAL COURT ERRED BY FINDING MR. KNAUS WAS ARMED WITH A FIREARM AT THE TIME OF THE COMMISSION OF THE CRIME OF UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE WHERE THE STATE FAILED TO SHOW A NEXUS BETWEEN THE GUN AND THE CRIME.

Mr. Knaus received three firearm enhancements for his possession of the gun he found in the Blakely household. CP 52. He did not

challenge the enhancements associated with the burglary and assault charges. He was sentenced to a sixty month enhancement for each of those convictions. CP 52. However, Mr. Knaus did argue that the enhancement proposed for the unlawful possession of methamphetamine charge was not supported by the evidence. RP 213. The court found Mr. Knaus was armed while committing the crime of unlawful possession of a controlled substance and imposed 12 additional months. CP 14, 52.

A person is potentially subject to a deadly weapons enhancement if armed while committing a crime. RCW 9.94A.533(3), (4), .602. The statutes relating to weapons enhancements do not define what it means to be armed. Therefore, the courts have held that “[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). But a person is not armed merely by virtue of owning or even possessing a weapon; there must be some nexus between the defendant, the weapon, and the crime. *State v. Barnes*, 153 Wn.2d 378, 383, 103 P.3d 1219 (2005). This connection is “a component of what the State must prove to establish that a particular defendant was armed

¹ Count I: 229 months plus 60 month enhancement; Count III: 102 months plus 60 month enhancement; Count IV: 54 months; Count V: 18 months, plus 12 month enhancement. RP 16-17.

while committing a particular crime.” *State v. Easterlin*, 159 Wn.2d 203, 206, 149 P.3d 366 (2006).

Whether a person is “armed” is a mixed question of law and fact. *State v. Schelin*, 147 Wn.2d 562, 565, 55 P.3d 632 (2002); *State v. Mills*, 80 Wn. App. 231, 234-35, 907 P.2d 316 (1995). The court must determine de novo whether the facts are sufficient as a matter of law. *Schelin*, 147 Wn.2d at 565.

Proving that a defendant is “armed” is an essential element of a firearm enhancement. Due process requires the State to prove all elements of a crime beyond a reasonable doubt. *State v. Aver*, 109 Wn.2d 303, 310, 745 P.2d 479 (1987). Evidence is insufficient to support a conviction when, viewed in the light most favorable to the prosecution, it would not permit a rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980).

In this case, there is no evidence that the weapon Mr. Knaus possessed bore any connection to his possession of methamphetamine. Mr. Knaus conceded the connection between this gun and the robbery, as well as the assault, and he was punished accordingly with 60 month enhancements on each. However, to further enhance a third crime, which

bore no connection to the possession of a firearm, is not supported by the evidence.

Mr. Knaus did not buy drugs at the scene of this crime, he merely carried them on his person at the time of the robbery. There is no evidence that he had any intent to use the firearm to defend the drugs. Mr. Knaus testified that his only intent in picking up the Blakelys' gun was to place it where it could not be used. Mr. Blakely's testimony, at best, only established an inference connecting the gun to the crimes of assault and robbery.

Mere possession of a firearm is not enough to establish a defendant was "armed" and the State has failed in this case to connect the firearm to the crime of possession of methamphetamine. Therefore, the firearm enhancement attached to the unlawful possession of a controlled substance conviction must be reversed.

V. CONCLUSION

Because the State failed to establish a connection between the gun Mr. Knaus found in the Blakelys' home and the crime of unlawful possession of a controlled substance, the State failed to show that Mr. Knaus was "armed" during the commission of that crime and the firearm enhancement must be reversed.

DATED: September 14, 2007

By: Rebecca W. Bouchey
Rebecca Wold Bouchey #26081
Attorney for Appellant

CERTIFICATE OF SERVICE 

I certify that on September 14, 2007, I caused a true and correct copy of this Appellant's Brief to be served on
the following via prepaid first class mail:

Counsel for the Respondent:
Kathleen Proctor
Office of Prosecuting Attorney
930 Tacoma Ave. S., Rm. 946
Tacoma, Washington 98402-2171

Appellant:
Michael F. Knaus
DOC #305268
Washington State Reformatory
P.O. Box 777
Monroe, WA 98272

Rebecca W. Bouchey

Rebecca Wold Bouchey
WSB# 26081
Attorney for Appellant