

NO. 37829-9-II

COURT OF APPEALS
DIVISION II

CD 112-3 BY 2-10

STATE OF WASHINGTON
BY

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

STATE OF WASHINGTON, RESPONDENT

v.

RYAN NYEGAARD, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Lisa Worswick

No. 07-1-02225-4

Brief of Respondent

GERALD A. HORNE
Prosecuting Attorney

By
Stephen Trinen
Deputy Prosecuting Attorney
WSB # 30925

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

 1. Whether there was sufficient evidence for the jury to find that Nyegaard or an accomplice possessed the methamphetamine with the intent to deliver it? 1

 2. Whether there was sufficient evidence for the jury to find that Nyegaard or an accomplice was armed with a firearm when the crime was committed? 1

B. STATEMENT OF THE CASE 1

 1. Procedure..... 1

 2. Facts 2

C. ARGUMENT..... 6

 1. SUFFICIENT EVIDENCE SUPPORTED THE CONVICTION OF POSSESSION WITH INTEN TO DELIVER A CONTROLLED SUBSTANCE..... 6

 2. THERE WAS SUFFICIENT EVIDENCE TO ESTABLISH THAT THE FIREARM WAS READILY AVAILABLE FOR OFFENSIVE OR DEFENSE PURPOSES..... 13

D. CONCLUSION. 15-16

Table of Authorities

State Cases

<i>Seattle v. Gellein</i> , 112 Wn.2d 58, 61, 768 P.2d 470 (1989).....	6
<i>State v. Barrington</i> , 52 Wn. App. 478, 484, 761 P.2d 632 (1987), review denied, 111 Wn.2d 1033 (1988)	7
<i>State v. Bobenhouse</i> , 143 Wn. App. 315, 324, 177 P. 3d 209 (2008)	8
<i>State v. Callahan</i> , 77 Wn.2d 27, 29, 459 P.2d 400 (1969)	9
<i>State v. Camarillo</i> , 115 Wn.2d 60, 71, 794 P.2d 850 (1990).....	7
<i>State v. Campos</i> , 100 Wn. App. 218, 998 P.2d 893 (2000) (review denied 142 Wn.2d 1006, 34 P.3d 1232 (2000)).....	11
<i>State v. Carlisle</i> , 73 Wn. App. 678, 680, 871 P.2d (1994).....	8
<i>State v. Carter</i> , 154 Wn.2d 71, 78, 109 P.3d 823 (2005).....	8
<i>State v. Casbeer</i> , 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987).....	7
<i>State v. Davenport</i> , 100 Wn.2d 757, 765-65, 675 P.2d 1213 (1984).....	8
<i>State v. Delmarter</i> , 94 Wn.2d 634, 638, 618 P.2d 99 (1980).....	7
<i>State v. Gallagher</i> , 112 Wn. App. 601, 608, 51 P.3d 100 (2002) (review denied <i>State v. Gallagher</i> , 148 Wn.2d 1023, 66 P.3d 638 (2003)).....	9
<i>State v. Goodman</i> , 150 Wn.2d 774, 782-83, 83 P.3d 410 (2004).....	12
<i>State v. Gurske</i> , 155 Wn.2d 134, 118 P.3d 333 (2005).....	14
<i>State v. Hagler</i> , 74 Wn. App. 232, 236, 872 P.2d (1994).....	12
<i>State v. Holbrook</i> , 66 Wn.2d 278, 401 P.2d 971 (1965).....	7
<i>State v. Hystad</i> , 36 Wn. App. 42, 671 P.2d 793 (1983)	10
<i>State v. Joy</i> , 121 Wn.2d 333, 338, 851 P.2d 654 (1993).....	6

<i>State v. Lane</i> , 56 Wn. App. 286, 786 P.2d 277 (1989)	12
<i>State v. Mabry</i> , 51 Wn. App. 24, 25, 751 P.2d 882 (1988).....	6
<i>State v. McCullum</i> , 98 Wn.2d 484, 488, 656 P.2d 1064 (1983).....	6
<i>State v. McDonald</i> , 138 Wn.2d 680, 688, 981 P.2d 443 (1999).....	8
<i>State v. McPherson</i> , 111 Wn. App. 747, 757 46 P.3d 284 (2002).....	8
<i>State v. Neff</i> , 163 Wn.2d 453, 456-57, 181 P.3d 819 (2008).....	14
<i>State v. O’Neal</i> , 15 Wn.2d 500 503-504, 150 P.3d 1121 (2007)	13
<i>State v. Paine</i> , 69 Wn. App. 873, 878, 850 P.2d 1369 (1993)	10
<i>State v. Salinas</i> , 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)	7
<i>State v. Teal</i> , 152 Wn.2d 333, 338-339, 96 P.3d 974 (2004).....	8, 9
<i>State v. Turner</i> , 29 Wn. App. 282, 290, 627 P.2d 1323 (1981).....	7
<i>State v. Walcott</i> , 72 Wn.2d 959, 435 P.2d 994 (1957).....	9

Statutes

RCW 9A.08.020	8
---------------------	---

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

1. Whether there was sufficient evidence for the jury to find that Nyegaard or an accomplice possessed the methamphetamine with the intent to deliver it?
2. Whether there was sufficient evidence for the jury to find that Nyegaard or an accomplice was armed with a firearm when the crime was committed?

B. STATEMENT OF THE CASE.

1. Procedure

On April 25, 2007, Ryan Nyegaard was charged with two counts: Count I, Unlawful Possession of a Controlled Substance with Intent to Deliver, Methamphetamine, with a firearm enhancement; and Count II Unlawful Possession of a Controlled Substance with Intent to Deliver, Cocaine, with a firearm enhancement. CP 1-2. The information was based on an incident that occurred on April 24, 2007. CP 1-2.

The case was assigned to the Honorable Lisa Worswick on April 24, 2008. CP 116. A jury was empanelled on May 3, 2008. CP 117-119. The jury returned a verdict of Guilty as to Count I. CP 78. The jury also found that the defendant or an accomplice was armed at the time of the commission of the crime. CP 80. The jury was unable to reach a verdict on Count II. CP 79.

The defendant was sentenced on June 13, 2008. CP 88-100. This appeal was filed timely on June 13, 2008. CP 82.

2. Facts

On April 24, 2007, at about 12:15 a.m. Lakewood Police Officer McClelland pulled a vehicle over for an illegal turn and for speeding. RP 139-142. There were three persons in the vehicle. RP 142, ln. 19-21. The driver was identified as Gregory Carter. RP 142, ln. 22 to p. 143, ln. 3. While officer McClelland spoke to Carter, Nyegaard was moving around a lot in his seat and having a difficult time keeping his hands in one place, putting his hands back in his lap or at his side instead of keeping them where the officers could see them. RP 204, ln. 13-18; RP 344, ln. 15 to p. 345, ln. 16. Nyegaard appeared to be very fidgety and scared and had an odor of alcohol on his breath and his speech was a little slurred. RP 344, ln. 18-20. Another passenger in the back seat was behaving much the same as Nyegaard. RP 345, ln. 24 to p. 346, ln. 2.

Officer McClelland returned to his patrol vehicle and determined that Carter had an expired license. RP 143, ln. 10-22. Officer McClelland then returned to the stopped vehicle to see if there was another licensed driver who could drive the vehicle. RP 143, ln. 23 to p. 144, ln. 2.

When officer McClelland returned to the vehicle, he noticed that the rear passenger was moving around quite a bit and was shifting his weight and moving his hands around quite a bit. RP 144, ln. 3-7. Officer Bell had arrived and was assisting by speaking with the front seat passenger. RP 144, ln. 8-19. Officer McClelland heard officer Bell tell the passenger in the front seat to get out of the vehicle. RP 144, ln. 20-23. The front seat passenger was identified as Ryan Nyegaard. RP 145, ln. 1-8. As Nyegaard got out of the vehicle, he reached down toward the floorboard at the left side of his seat and Officer Bell told him to get his hands up. RP 145, ln. 14-15; RP 347, ln. 16-24. When Nyegaard did that, there was a clanging sound that sounded like glass hitting a hard object or metal. RP 145, ln. 16-22. Officer Bell removed Nyegaard from the vehicle and retrieved a glass pipe with a bowl on the end that appeared to have some type of residue and burn marks on it. RP 145, ln. 25 to p. 146, ln. 3. It was the pipe that Nyegaard dropped and appeared to be a methamphetamine pipe. RP 146, ln. 11-17; RP 161, ln. 13-17; RP 245, ln. 14 to p. 247, ln. 7; RP 349, ln. 14-15. Nyegaard was arrested for unlawful use of drug paraphernalia. RP 146, ln. 18-21.

Because Nyegaard was under arrest, the officers were going to search the passenger compartment of the vehicle, and therefore removed the other occupants from the vehicle. RP 146, ln. 21 to p. 147, ln. 5. While the back seat passenger had been seen moving around in his lap

area, but at least one officer was at the vehicle at all times, and neither Officer ever saw the passenger in the back seat reach under the front seat. RP 252, ln. 20 to p. 523, ln. 17; RP 346,ln. 8-19.

Officer McClelland searched the vehicle. RP 147, ln. 10-11. Inside the vehicle, Officer McClelland found a paper lunch bag crammed into the area between the passenger seat, the floorboard and the center hump in the floor dividing the passenger and driver areas. RP 147, ln. 19-21; RP 148, ln. 5-13. The bag contained several baggies, three of which contained 5.1 grams, 25.7 grams, 22.7 grams of cocaine respectively, consisting variously of both crack and powder cocaine, and three baggies which each contained .2 grams, .2 grams and 3.8 grams of methamphetamine. RP 147, ln. 22 to p. 148, ln. 4; RP 162, ln. 5 to p. 163,ln. 10; RP 294, ln. 14 to p. 296, ln. 24. Exs. 19, 20, 21, 23, 25, 28. RP 405 to 408. (Another baggie of suspected cocaine was neither weighed nor tested). RP 409, ln. 7 to ln. 23. The lunch bag was less than a six inch arm movement from where Nyegaard was located. RP 150, ln. 6-10.

After he removed the bag, Officer McClelland looked down and saw what appeared to be a handgun sitting under the front portion of the passenger seat. RP 150, ln. 15-18. The bag was equally accessible to the passenger or driver, but the gun was more readily accessible to the passenger than the driver. RP 151, ln. 14 to p. 152, ln. 2. The gun

contained a magazine loaded with bullets that was seated in the gun, although there were no bullets in the chamber of the gun. RP 152, ln. 5-13.

Officer McClelland found three cell phones on the floorboard near that area. RP 152, ln. 20 to p. 153, ln. 3. He also found a second glass pipe that appeared to have residue in it and was consistent with a pipe used to smoke crack cocaine. RP 157, ln. 17 to p. 158, ln. 4.

Carter was later searched by Officer McClelland back at his patrol vehicle and he found a large some of money in Carter's pockets and some paperwork on Carter. RP 153, ln. 20 to p. 154, ln. 2. The right front pocket contained one large bundle of cash that was separated into seven smaller bundles, totaling about \$1986. RP 155, ln. 8-18. The left front pocket had another large bundle of cash that was separated into four smaller bundles and contained over \$375. RP 155, ln. 23 to p. 156, ln. 3. In the center area of the vehicle, Officer McClelland also found a loose \$100 bill. RP 156, ln. 4-7.

Carter claimed he didn't know the narcotics and the weapon were in the vehicle. RP 156, ln. 25. Carter claimed he borrowed the vehicle from another person so he could drive home and take a shower. RP 157, ln. 2-5. He claimed that as far as he knew there wasn't anything in the vehicle because he had done a quick search and didn't find anything that would have stopped him from driving it. RP 157, ln. 10-13.

Officer McClelland spoke briefly with Nyegaard who denied any knowledge that the gun and narcotics were there. RP 158, ln. 15-20.

The jury heard testimony that the evidence in this case was more consistent with possession with intent to deliver than personal use. RP 305, ln. 23 to p. 306, ln. 5. That was based upon the quantities of drugs involved, the multiple types of drugs, the multiple cell phones, the cash found, and the firearm. *See* RP 291-306.

The gun was a functioning firearm. RP 274, ln. 5-9.

C. ARGUMENT.

1. SUFFICIENT EVIDENCE SUPPORTED THE
CONVICTION OF POSSESSION WITH INTEN TO
DELIVER A CONTROLLED SUBSTANCE.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d 484, 488, 656 P.2d 1064 (1983); *see also Seattle v. Gellein*, 112 Wn.2d 58, 61, 768 P.2d 470 (1989); *State v. Mabry*, 51 Wn. App. 24, 25, 751 P.2d 882 (1988). 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). Also, a challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. *State v. Barrington*, 52 Wn. App. 478, 484, 761 P.2d

632 (1987), *review denied*, 111 Wn.2d 1033 (1988) (citing *State v. Holbrook*, 66 Wn.2d 278, 401 P.2d 971 (1965)); *State v. Turner*, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). 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) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, *review denied*, 109 Wn.2d 1008 (1987)).

The written record of a proceeding is an inadequate basis on which to decide issues based on witness credibility. The differences in the testimony of witnesses create the need for such credibility determinations; these should be made by the trier of fact, who is best able to observe the witnesses and evaluate their testimony as it is given. On this issue, the Supreme Court of Washington said:

[...]great deference [. . .] is to be given the trial court’s factual findings. It, alone, has had the opportunity to view the witness’ demeanor and to judge his veracity. [*State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (citations omitted).]

Therefore, when the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

RCW 9A.08.020 is the statutory basis for accomplice liability.

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.” *Bobenhouse*, 143 Wn. App. at 324 (citing *State v. Davenport*, 100 Wn.2d 757, 765-65, 675 P.2d 1213 (1984)). If convicted as an accomplice, an individual is considered to have actually committed the crime. *State v. Carter*, 154 Wn.2d 71, 78, 109 P.3d 823 (2005).

This is because 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). “A defendant is an accomplice when the defendant aids or agrees to aid another person in committing a crime by associating with that criminal undertaking and participating in the crime as something the defendant desires to accomplish.” *State v. McPherson*, 111 Wn. App. 747, 757 46 P.3d 284 (2002) (citing *State v. Carlisle*, 73 Wn. App. 678, 680, 871 P.2d (1994)).

The jury need not reach unanimity on whether a defendant acted as a principal or an accomplice. *Teal*, 152 Wn.2d at 339. So long as the jury is convinced that the crime(s) was 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. *Teal*, 152 Wn.2d at 339.

In order to establish accomplice liability, the State must show that the defendant knew he was aiding in the commission of the charged crime. *State v. Gallagher*, 112 Wn. App. 601, 608, 51 P.3d 100 (2002) (review denied *State v. Gallagher*, 148 Wn.2d 1023, 66 P.3d 638 (2003)).

- a. There Was Sufficient Evidence To Establish That Nyegarrd Or An Accomplice Possessed The Methamphetamine

Here, the appellant challenges the sufficiency of the evidence to support the jury's finding that he possessed the methamphetamine found in the vehicle.

Possession of property may be actual or constructive. Actual possession means that the goods are in the personal custody of the person charged with possession; whereas, constructive possession means that the goods are not in actual physical possession, but that the person charged with possession has dominion and control over the goods. [*State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969) (citing *State v. Walcott*, 72 Wn.2d 959, 435 P.2d 994 (1957)).]

While a showing of something more than mere proximity must be shown to establish dominion and control, it is not necessary to show exclusive control. *State v. Hystad*, 36 Wn. App. 42, 671 P.2d 793 (1983). When reviewing a challenge to constructive possession, courts must consider the totality of the situation and determine whether there is substantial evidence that tends to establish circumstances from which the jury could reasonably infer that the defendant had dominion and control of the drugs and was in constructive possession of them. *State v. Paine*, 69 Wn. App. 873, 878, 850 P.2d 1369 (1993).

Here there was sufficient evidence to show that Nyegaard or an accomplice possessed the methamphetamine.

Although the bag containing the cocaine and methamphetamine was accessible to both Carter and Nyegaard, they were closest to Nyegaard. RP 151, ln. 14 to p. 152, ln. 2. Nyegaard dropped the methamphetamine pipe into that same area where the drugs were found when he was removed from the vehicle. RP 145, ln. 14-15; RP 347, ln. 16-24; RP 145, ln. 16-22; RP 145, ln. 25 to p. 146, ln. 3. The gun was more readily accessible to the passenger than to the driver. RP 151, ln. 14 to p. 152, ln. 2.

The jury could clearly infer that Nyegaard had dominion and control over the narcotics, cell phones and gun, based upon their greater

proximity to him, his dropping the methamphetamine pipe in that area and the fact that the gun was more accessible to him than Carter. This is especially so where Carter claimed he had searched the vehicle before entering it and there was nothing in it to stop him from driving the vehicle. From that claim the jury could infer that Nyegaard brought the narcotics into the vehicle. All of this would permit the jury to infer that Nyegaard had dominion and control over the evidence found under the passenger seat.

The jury could also infer that Nyegaard and Carter were accomplices where Nyegaard possessed the drugs, cell phones and gun, and Carter was the driver and had the majority of the money, but not \$100 that the jury could have found was Nyegaard's share of the drug proceeds.

All of these facts support the jury's finding that Nyegaard possessed the controlled substances, either as a principal, or as an accomplice.

b. There Was Sufficient Evidence To Establish That Nyegaard Or An Accomplice Had The Intent To Deliver The Methamphetamine

Possession of a controlled substance without more is insufficient to establish an inference of intent to deliver. *State v. Campos*, 100 Wn. App. 218, 998 P.2d 893 (2000) (*review denied* 142 Wn.2d 1006, 34 P.3d 1232 (2000)). However, a large amount of a controlled substance is not

required to convict a person of possession with intent to deliver. *State v. Goodman*, 150 Wn.2d 774, 782-83, 83 P.3d 410 (2004). Generally at least one factor in addition to possession and suggestive of intent to deliver is required to establish an inference of a defendant's intent to deliver a controlled substance. *State v. Goodman*, 150 Wn.2d at 784; *State v. Hagler*, 74 Wn. App. 232, 236, 872 P.2d (1994). In *State v. Lane*, the court held that the possession of one ounce of cocaine worth about \$1,000, along with a scale and a large amount of cash, was sufficient to support a conviction for possession with intent to deliver. *State v. Lane*, 56 Wn. App. 286, 786 P.2d 277 (1989).

Here, there was sufficient evidence to show that Nyegaard or an accomplice had the intent to deliver the methamphetamine. There were multiple controlled substances present, including methamphetamine and two different forms of cocaine. They were packaged separately, with there being three separate baggies of methamphetamine. Some of the packages, including the package that contained 3.8 grams of methamphetamine, were more consistent with dealer quantities of drugs than user quantities. RP 147, ln. 22 to p. 148, ln. 4; RP 162, ln. 5 to p. 163, ln. 10; RP 294, ln. 14 to p. 296, ln. 24. RP 405 to 408; Exs. 19, 20, 21, 23, 25, 28.

There were multiple cell phones, also consistent with dealing. RP 300, ln. 17 to p. 301, ln. 9. There was a firearm, which is consistent with a dealer's need to protect the drugs rather than a mere user possessing the

drugs for personal use. RP 304, ln. 10 to p. 305, ln. 9. And Carter was in possession of large amounts of cash divided between two pockets and bundled up separately in a manner consistent with it having been received through drug transactions. RP 153, ln. 20 to p. 154, ln. 2; RP 155, ln. 8-18 to p. 156, ln. 3. RP 301, ln. 12 to p. 302, ln. 21.

The totality of the evidence provides strong support for the jury's inference that the methamphetamine was possessed with the intent that it be delivered.

2. THERE WAS SUFFICIENT EVIDENCE TO ESTABLISH THAT THE FIREARM WAS READILY AVAILABLE FOR OFFENSIVE OR DEFENSE PURPOSES.

A defendant (or an accomplice) is armed with a firearm where the defendant (or the accomplice) is within proximity of an easily and readily available firearm for offense or defense purposes, and where there is a nexus between the defendant, the firearm and the crime. *See State v. O'Neal*, 15 Wn.2d 500 503-504, 150 P.3d 1121 (2007). In *O'Neal*, the court held that there was sufficient evidence that the defendants were armed where a rifle leaning against a wall and a pistol under a mattress were easily accessibly and readily available to protect an ongoing drug production operation. *O'Neal*, 159 Wn.2d at 504-505.

In *State v. Gurske*, 155 Wn.2d 134, 118 P.3d 333 (2005), the defendant was arrested for driving on a suspended license. In a search incident to arrest, police found a back pack behind the driver's seat where Gurske had been sitting. *Gurske*, 155 Wn.2d at 136. Inside the zipped back pack police found a Coleman torch, a holstered handgun under the torch, and three grams of methamphetamine. *Gurske*, 155 Wn.2d at 136. The Supreme Court held that there was insufficient evidence to show that the firearm was easily accessible and readily available for use because in order to reach it, Gurske would have had to exit the vehicle or move over into the passenger seat. *Gurske*, 155 Wn.2d at 143. The Court further noted that the facts did not give rise to the inference that Gurske could access the weapon from the driver's seat. *Gurske*, 155 Wn.2d at 143.

In *State v. Neff*, at what turned out to be a methamphetamine manufacturing scene, officers found two loaded handguns in a locked safe under a desk in the garage, a loaded gun in a tool belt hanging from a garage rafter, and two surveillance cameras covering the yard and driveway. *State v. Neff*, 163 Wn.2d 453, 456-57, 181 P.3d 819 (2008). The plurality of the Court concluded that the "facts, together with all inferences favoring the State, [were] enough for a rational person to find beyond a reasonable doubt that Neff was armed." *Neff*, 163 Wn.2d at 464.

Here, the gun was loaded, containing a magazine with bullets in it. RP 152, ln. 5-13. It was also located in close proximity to the drugs and cell phones and right at Nyegaard's feet. RP 150, ln. 15-18. Moreover, it was most accessible to Nyegaard, although Carter could have also reached it. RP 151, ln. 14 to p. 152, ln. 2. There was also testimony that drug dealers need to protect the drugs and will often use a firearm to do so. RP 304, ln. 10 to p. 305, ln. 9.

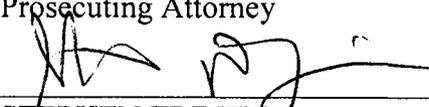
D. CONCLUSION

There was sufficient evidence to support the jury's finding that Nyegaard or an accomplice possessed the methamphetamine where the drugs were closest to Nyegaard, and he demonstrated dominion and control over the space where they were located when he attempted to hide his methamphetamine pipe in that area. There was sufficient evidence to support the jury's finding that Nyegaard or an accomplice possessed the methamphetamine with the intent to deliver it where the drugs were packaged in multiple baggies, once of which contained more than a typical user quantity of cocaine, there were multiple cell phones and a handgun proximate to the drugs, and where Carter had a large quantity of cash divided into smaller bundles, consistent with drug transactions. Finally, there was sufficient evidence to support the jury's finding that Nyegaard

or an accomplice were armed with a firearm when they possessed the methamphetamine with intent to deliver where the firearm was loaded, was found proximate to the drugs and cell phones, and was most readily accessible to Nyegaard.

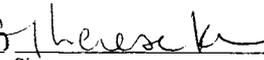
DATED: March 9, 2009

GERALD A. HORNE
Pierce County
Prosecuting Attorney


STEPHEN TRINEN
Deputy Prosecuting Attorney
WSB # 30925

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.

3.9.09 
Date Signature

COPIES OF THIS DOCUMENT
STATE OF WASHINGTON
BY 
03/11/09 PM 5:40