

FILED
COURT OF APPEALS

No. 40252-1-II

10 JUN 77 AM 11:55

STATE: _____
BY: _____

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

V.

LUKE T. GROVES

BRIEF OF APPELLANT

Thomas E. Weaver
WSBA #22488
Attorney for Appellant

The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton, WA 98337
(360) 792-9345

ORIGINAL

TABLE OF CONTENTS

A. Assignments of Error.....1

B. Statement of Facts.....2

C. Argument.....8

1. Mr. Groves did not receive effective assistance of counsel when his counsel failed to raise a meritorious motion to suppress the firearms.....8

2. Mr. Groves was misled into believing that he could lawfully possess a firearm after the completion of his probationary period....11

3. The trial court erred by suppressing evidence of his wife’s ownership of the firearms.....17

D. Conclusion.....20

TABLE OF AUTHORITIES

Cases

<u>Payton v. New York</u> , 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980).....	10
<u>State v. A.N.J.</u> , 168 Wn.2d 91, 111, 225 P.3d 956 (2010)	8
<u>State v. Breitung</u> , 155 Wn. App. 606, 230 P.3d 614 (2010).....	11
<u>State v. Brown</u> , 132 Wn.2d 529, 940 P.2d 546 (1997), <u>cert. denied</u> , 523 U.S. 1007 (1998) (citations omitted)	19
<u>State v. Chavez</u> , 38 Wn.App. 29, 156 P.3d 246 (2007).....	19
<u>State v. Contreras</u> , 92 Wn. App. 307; 966 P.2d 915 (1998)	9
<u>State v. Counts</u> , 99 Wn.2d 54, 64, 659 P.2d 1087 (1983)	10
<u>State v. Leavitt</u> , 107 Wn. App. 361, 27 P.3d 622 (2001)	11
<u>State v. Maupin</u> , 128 Wn.2d 918, 913 P.2d 808 (1996)	18
<u>State v. McFarland</u> , 127 Wn.2d 322; 899 P.2d 1251 (1995).....	8
<u>State v. Minor</u> , 162 Wn.2d 796, 174 P.3d 1162 (2008).....	11
<u>State v. Scamnzi</u> , 141 Wn. 367, 368, 251 P. 567 (1926).....	19
<u>State v. Smith</u> , 101 Wn. 2d 36, 677 P.2d 100 (1984).....	18
<u>Strickland v. Washington</u> , 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984).....	8
<u>Washington v. Texas</u> , 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967)	17, 18

A. Assignments of Error

Assignments of Error

1. Mr. Groves did not receive effective assistance of counsel when his counsel failed to raise a meritorious motion to suppress the firearms.

2. Mr. Groves was misled into believing that he could lawfully possess a firearm after the completion of his probationary period.

3. The trial court erred by suppressing evidence of his wife's ownership of the firearms.

Issues Pertaining to Assignments of Error

1. Did Mr. Groves receive ineffective assistance of counsel when his counsel failed to raise a meritorious motion to suppress the firearms due to a warrantless and nonconsensual entry into his home and seizure of the firearm?

2. Was Mr. Groves misled into believing that he could lawfully possess a firearm after the completion of his probationary period when the trial court did not advise him of the firearm restriction and the Department of Corrections advised him that the restriction only applied as long as he was on supervision?

3. Did the trial court err by suppressing evidence of his wife's ownership of the firearms?

B. Statement of Facts

Luke Groves was charged by amended information with one count of unlawful possession of a firearm in the first degree. CP, 49. Mr. Groves was convicted of two counts of second degree burglary in 1991. CP, 22. Prior to trial, he filed a motion to dismiss on due process grounds, which was denied. CP, 41, 52. There was also a CrR 3.5 hearing immediately prior to trial. RP, 27.

Prior to trial, Mr. Groves moved to have his court-appointed defense counsel replaced because he felt that she was not pursuing all available avenues of defense. RP, 5 (Aug. 17, 2009). Mr. Groves wanted a motion brought regarding his “Miranda rights,” but his defense counsel felt the motion was “irrelevant.” RP, 5 (Aug. 17, 2009). Defense counsel responded that she had done “quite a bit of research regarding Mr. Groves’ matter” and that she had “pursued all avenues and then some of what would be potentially a defense for him.” RP, 5 (Aug. 17, 2009). The trial court denied the motion for a new attorney, in part because, according to the probable cause statement, there was no “basis to assert that your Miranda rights were violated, because it appears you volunteered . . . the information that you checked and your guns were okay.” RP, 7 (Aug. 17, 2009).

The defense did not file a motion to suppress the firearms pursuant to CrR 3.6. The case proceeded to trial by jury, where Mr. Groves was convicted of both counts. CP, 100.

On November 28, 2008, Bremerton Police Officers Lawrence Green and Daniel Fatt were called out to a burglary call. RP, 59. Luke Groves was reporting that someone had burglarized his home and may still be inside. RP, 59. The officers inspected the house and looked for possible fingerprints. RP, 60. They noticed broken glass near the window to the door, which would have allowed someone to reach in and unlock the door. RP, 63. They asked Mr. Groves if there was any missing property, to which he said that it looked like he had interrupted them stealing his computer. RP, 60.

According to Officer Green, he asked if there was anything else and Mr. Groves said, "My baby. My guns." RP, 61. According to Officer Fatt, he said, "Wait. Let me check on the guns." RP, 74. Mr. Groves testified that he said, "Hold on. Maybe my wife's firearms." RP, 114. He did not say, "My baby." RP, 114.

Mr. Groves went into the bedroom he shared with his wife, reached in a dresser drawer, and pulled out a small box, possibly made of Tupperware, with a towel covering it. RP, 61, 65, 76. He said, "It's my gun." RP, 61. Officer Green instructed him to leave the gun where it was,

that he was just concerned about missing property. RP, 61. Officer Fatt picked up the box and observed a handgun and ammunition inside. RP, 75. Mr. Groves indicated that there was a rifle in the closet. RP, 61. Officer Fatt looked in the closet and confirmed the presence of a rifle. RP, 75. Neither officer seized the firearms. RP, 75, 85.

After completing the burglary investigation, the officers issued a case number and returned to their patrol vehicle. RP, 62. Officer Green ran Mr. Groves' name and learned that he was a convicted felon. RP, 62. The officers returned to the house and re-contacted Mr. Groves approximately 45 to 60 minutes after leaving. RP, 62, 70. At least one of the officers, and probably both, entered the house. RP, 77, 87. Mr. Groves was in the restroom. RP, 119. When he stepped out of the restroom, the officers were inside and asked him to step outside with them. RP, 119. Officer Green escorted Mr. Groves around the side of the house, and placed him in handcuffs. RP, 70. Officer Fatt entered the bedroom and seized the firearms. RP, 77. He conducted no further search other than retrieving and seizing the firearms. RP, 92. The firearms were booked into evidence. RP, 81. Officer Fatt did not have a warrant but was acting on the advise of Deputy Prosecutor Chris Casad, who was contacted, who advised him to recover the firearms and refer a report to the prosecutor's office. CP, 9.

The firearms were later inspected by Officer Russell Holt. RP, 104. Officer Holt retrieved the firearms on September 10, 2009, inspected them, and test fired them. RP, 105. Both firearms were operable. RP, 105-07. They were then returned to the evidence room. RP, 107.

A few more faces came out at the CrR 3.5 hearing. After Mr. Groves came out of the restroom, the officers asked him to come out so they could ask him a few more questions. RP, 40. When Mr. Groves got to the porch, they asked, “Did you know that your wife’s guns – did you know that you are a convicted felon? Did you know you can’t have those here?” RP, 40. Mr. Groves said, “Well, here. If we are going to talk about this, let me have a cigarette.” RP, 40. The officers said, “No. You need to stand right here. You can’t leave.” RP, 40. No one read Mr. Groves his Miranda rights. RP, 33. There was some additional discussion and then Mr. Groves was handcuffed and escorted to the patrol vehicle. RP, 42. The trial court found that Mr. Groves was subjected to custodial interrogation at that point and suppressed the discussion. RP, 51.

There were several discussions on the record whether Mr. Groves could testify that the firearms belonged to his wife. RP, 100. The State consistently argued that ownership was not an element it needed to prove, so testimony about ownership was irrelevant. RP, 12-13, 101. Mr. Groves argued that the ownership issue was part of the *res gestae* of the case and

something that “could [not] be separated from the facts in the case.” RP, 11-12. How firearms came to be at Mr. Groves’ house was part of all the facts in the case and the State should not have the ability to “pars[e] out what information should go to the jury.” RP, 12. The trial court suppressed any evidence of ownership, though it later amended its ruling to permit Mr. Groves to testify about what he said to the officers. RP, 52, 102. He was not permitted to testify about who actually owned the firearms or where they came from. RP, 102.

At the pre-trial motion to dismiss, the following facts came out. In 1991, when Mr. Groves was 18 years old, he was convicted in Mason County of two counts of second degree burglary. CP, 22. The court ordered 39 days of confinement and 24 months of community supervision. CP, 26. The community supervision conditions did not include any firearm restrictions and there is nothing on the Judgment and Sentence that says his right to possess a firearm is restricted. CP, 27.

Soon after sentencing, Mr. Groves was contacted by a probation officer, who told him that he could not own a firearm. RP, 5 (Dec. 2, 2009). Mr. Groves assumed this was for the period of his probation. RP, 5-6. Mr. Groves sold his firearms that he owned at the time. RP, 5. Mr. Groves signed a statement advising him he could not possess firearms, ammunition, or explosives. CP, 30. The Notice states, “I understand this

prohibition will continue after I am discharged from supervision if the offense for which I was convicted is a crime of violence, as defined by RCW 9.41.040.” CP, 30.

In 1995, Mr. Groves started working for the federal Bureau of Land Management. RP, 7. On the application, he disclosed that at the age of 18, he was convicted of two counts of second degree burglary. CP, 33, 35. He restated that in 1999. CP, 39. While working with the Bureau of Land Management, Mr. Groves worked as a range land firefighter, which required that he work with napalm, flame throwers, and other explosives. RP, 10. Mr. Groves testified he believed he was able to get the job because he was not convicted of a violent offense. RP, 11.

Mr. Groves argued that his charge should be dismissed because it violated the Due Process Clause and State v. Leavitt, infra. CP, 14. The State countered that actual notice of the firearm restriction was not required until 1994, three years after Mr. Groves’ conviction. RP, 20. The trial court’s main concern was whether the Firearm Notice misadvised Mr. Groves that he would have his firearm rights restored after he completed probation. RP, 29. But after the court learned that burglary was a crime of violence starting in 1983, the court denied the motion. RP, 36.

C. Argument

1. Mr. Groves did not receive effective assistance of counsel when his counsel failed to raise a meritorious motion to suppress the firearms.

A claim of ineffective assistance of counsel requires the appellant to prove two things: (1) that his counsel's performance fell below an objective reasonableness standard in light of all the circumstances; (2) that he was prejudiced by his counsel's mistake. Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). The Washington Supreme Court has recently held that "effective assistance of counsel includes assisting the defendant in making an informed decision as to whether to plead guilty or to proceed to trial." State v. A.N.J., 168 Wn.2d 91, 111, 225 P.3d 956 (2010). Mr. Groves' defense counsel failed to raise a meritorious suppression motion.

Generally, the failure to raise a CrR 3.6 motion is disfavored when raised for the first time on appeal. State v. McFarland, 127 Wn.2d 322; 899 P.2d 1251 (1995). Defendant bears the burden of proving prejudice when raising suppression for the first time on appeal. The McFarland rule has been interpreted as requiring sufficient facts in the record, not a ruling from the court, in order to review the suppression issue for the first time on appeal. State v. Contreras, 92 Wn. App. 307; 966 P.2d 915 (1998). In

Contreras, the case proceeded to trial, so the Court of Appeals had an adequate record to review the facts although the Court ultimately concluded that the search was legal.

The failure of defense counsel to raise a suppression motion is particularly glaring in this case, because the record clearly reflects that Mr. Groves intended to pursue all challenges to his convictions, including constitutional challenges. At the August 17, 2009 hearing, he asked the court to replace his court-appointed attorney because she was not pursuing constitutional challenges to his conviction. His counsel represented that she had done “quite a bit of research regarding Mr. Groves’ matter” and that she had “pursued all avenues and then some of what would be potentially a defense for him.” RP, 5 (Aug. 17, 2009). But in her research, defense counsel missed a significant and meritorious suppression issue.

Mr. Groves was prejudiced by his counsel’s failure to bring a suppression motion, because the motion would have been granted. There were two entries into Mr. Groves’ home on November 28, 2008. The first entry was clearly with the consent, in fact invitation, of Mr. Groves. He has been the victim of a residential burglary and he invited law enforcement to enter the home in order to conduct an investigation. During that investigation, the police asked Mr. Groves about any missing items and Mr. Groves volunteered that there were firearms in the

residence. A cursory check for the firearms was conducted by Mr. Groves in the presence of the officers. The officers then left. Any motion to suppress the results of this “search” (if indeed it was even a search), would be without merit.

But the second entry into the home is very different. After an interval of 45 to 60 minutes, the officers returned to the home. Although the officers consulted with a Kitsap County deputy prosecutor, no attempt was made to obtain a warrant. The officers entered the home without a warrant and without consent. Officer Fatt entered the home and seized the firearms. According to Officer Fatt’s testimony, Officer Green also entered the home. Mr. Groves was in the restroom. When he came out of the restroom, Mr. Groves was escorted outside and arrested.

A warrantless entry into a person’s home is unlawful absent exigent circumstances or consent. Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980). Washington courts have identified five circumstances which could be determined to be exigent: (1) hot pursuit; (2) fleeing suspect; (3) danger to arresting officer or to the public; (4) mobility of the vehicle; and (5) mobility or destruction of the evidence. State v. Counts, 99 Wn.2d 54, 64, 659 P.2d 1087 (1983).

None of these circumstances is present here. The police were not in hot pursuit or pursuing a fleeing suspect. There was no realistic danger

to the arresting officer or the public. The firearms were in a home and not a car. Finally, given that Mr. Groves had volunteered the presence of the firearms and had no reason to believe he was the subject of a criminal investigation, there was no chance the firearms would be destroyed. The officers, who took the time to contact a deputy prosecutor, could have just as easily contacted a judge and obtained a warrant. No exigent circumstances existed and the warrantless, nonconsensual entry into the home was illegal.

Because the entry was unlawful, the evidence seized pursuant to the entry was illegally seized. Mr. Groves was prejudiced by his counsel's failure to bring a motion to suppress the illegally seized firearms.

2. Mr. Groves was misled into believing that he could lawfully possess a firearm after the completion of his probationary period.

A series of firearm cases in Washington have outlined an exception to the general axiom that ignorance of the law is no excuse. These cases are State v. Leavitt, 107 Wn. App. 361, 27 P.3d 622 (2001), State v. Minor, 162 Wn.2d 796, 174 P.3d 1162 (2008), and State v. Breitung, 155 Wn. App. 606, 230 P.3d 614 (2010). Each of these cases will be discussed in chronological order, then the facts of Mr. Groves' case will be analyzed in light of this series of cases.

In Leavitt, the defendant was convicted of a misdemeanor domestic violence offense which, by operation of law, suspended his right to possess a firearm. The trial court did not advise him that his firearm rights were being taken away and a notification box was not checked to that effect. He was advised that he could not possess a firearm during the one year probation period. The Court balanced the general principle that ignorance of the law is no excuse against the due process concern that the sentencing court had failed to comply with the notification requirements and, at least implicitly, told the defendant that he could possess a firearm after his probation was complete. The Court held:

Accordingly, we hold that where a defendant can demonstrate actual prejudice arising from a sentencing court's failure to comply with the statute's mandate to advise him about the statutory firearm-possession prohibition, RCW 9.41.047 cannot serve as the basis for convicting him of unlawful firearm possession.

Leavitt at 373.

The Washington Supreme Court agreed with the Leavitt Court in Minor. In Minor, the original sentencing court did not orally or in writing notify the defendant that he could not possess a firearm. In addition, the preprinted form's firearm notification box was not checked. The Court held that this affirmative misrepresentation barred the prosecution.

Finally, in Breitung, the Court of Appeals reviewed a case where the trial court had failed to notify the defendant of the firearm restrictions, in violation of the statute, but had done nothing to affirmatively mislead the defendant. The Court noted that the 1994 Amendments to the statute require affirmative notification of the firearm restrictions. The Court held that the failure of the court to affirmatively notify the defendant was, by itself, sufficient to reverse the conviction.

With this case law in mind, we turn to Mr. Groves' case. At the time of his sentencing in 1991, Mr. Groves was not notified orally or in writing that he could not possess a firearm. This would appear superficially to be the same situation the Court faced in Breitung, but with one material distinction: Mr. Groves' sentencing pre-dates the 1994 amendment to the statute. Therefore, at the time of his conviction, the trial court was not required to notify him.

The judgment and sentence from the 90-1-00135-1, at page 6, lists multiple conditions of Mr. Groves' community supervision, including a no contact order with the victims, no consumption of alcohol and drugs, and obtain an alcohol/drug evaluation and follow the recommended treatment. CP, 27. There is no mention of firearms in this paragraph. Additionally, there is a paragraph that reads: "Additional conditions are attached at Appendix F." This box is not checked and there is no Appendix F.

Arguably the judgment and sentence in Mr. Groves' case is comparable to the sentencing documents in Leavitt and Minor. The failure of the court to notify the defendant of the firearm restrictions and the failure to check a pre-printed box implicitly states that the listed restrictions encompass the totality of all restrictions. But Leavitt and Minor are distinguishable insofar as the unchecked boxes in those cases actually mention firearms, while the word "firearm" does not appear anywhere on Mr. Groves' judgment and sentence.

Therefore, Mr. Groves' case does not fall squarely within any of the three published cases. Although he was not notified of the firearm restriction, the date of offense makes that unnecessary. And although he was given multiple conditions of probation and the court implicitly stated that there were no additional conditions, the court did not specifically reference firearms. Instead, Mr. Groves' case falls into the narrow chasm between these cases where he was not notified of the firearm restriction, did not know of the firearm restriction, and, having completed his probation, had openly and publically possessed firearms for years believing he was in compliance with the law.

Having concluded that the trial court neither notified Mr. Groves of the firearm restriction nor affirmatively misled him, the last issue is whether the Department of Corrections misled him. The record in this

case contains a “Firearm Notice” that notifies Mr. Groves of his firearm restriction. The Notice, which contains Mr. Groves’ signature, says, in part, “I understand this prohibition will continue after I am discharged from supervision if the offense for which I was convicted is a crime of violence as defined by RCW 9.41.040.” The trial court relied on this sentence when it denied Mr. Groves’ pre-trial motion. The trial court reasoned that burglary was a crime of violence beginning in 1983 and, therefore, Mr. Groves was on notice that the firearm restriction would continue beyond the probationary period.

The trial court’s analysis is flawed, however. First and foremost, RCW 9.41.040 does not define crimes of violence. Crimes of violence are defined in RCW 9.41.010. Therefore, Mr. Groves was not convicted of a “crime of violence as defined by RCW 9.41.040.”

Second, at the time of Mr. Groves’ offense, firearm restrictions did not apply to second degree burglary. A crime of violence was defined in former RCW 9.41.010(2) as: “Crime of violence as used in RCW 9.41.010 through 9.41.160 means any of the following crimes or an attempt to commit any of the same: Murder, manslaughter, rape, riot, mayhem, first degree assault, second degree assault, robbery, burglary, and kidnapping.” This definition was in use from 1983 to 1994. As has already been discussed, the statute underwent major revisions in 1994. In addition to

requiring firearm notification in 1994, the legislature also redefined crimes of violence to include both second degree burglary and residential burglary.

Between 1983 and 1994, however, there were two significant changes to the criminal code that created confusion. First, for all felonies committed after June 30, 1984, the sentencing reform act (SRA) applies. Pursuant to the SRA, second degree burglary and residential burglary are not “violent crimes.” Although the legislature clarified the statute to 1994 to include second degree burglary and residential burglary as “crimes of violence” pursuant to RCW 9.41.010, the legislature has never included second degree burglary and residential burglary as violent crimes under the SRA.

Second, in 1989, the legislature created two new types of burglary: second degree burglary and residential burglary. But the legislature kept the definition of “crime of violence” the same, with its inclusion of the generic crime of “burglary.” Although the 1983 statute was clear that first and second degree assault were “crimes of violence,” it only mentioned “burglary,” a crime that did not exist after 1989. Therefore, in 1991 when Mr. Groves was convicted of second degree burglary, he was pleading guilty to a crime that was not a “violent crime,” and was not listed as a “crime of violence.”

In sum, the DOC Firearm Notice affirmatively misled Mr. Groves into believing that the firearm restriction applied only to the period of probation. The firearm restriction only continued beyond the probation period if he was convicted of a “crime of violence” as defined by RCW 9.41.040. RCW 9.41.040 does not define any “crimes of violence.” And RCW 9.41.010 defined “crime of violence” to include an offense that had not existed since 1989. Mr. Groves, who had been convicted of a crime that is not a “violent crime” under the SRA, had every reason to believe he could possess a firearm after he completed community supervision. He was never notified of the firearm restriction by the trial court and he was misled by the Department of Corrections and, pursuant to Leavitt and Minor, is entitled to dismissal.

3. The trial court erred by suppressing evidence of his wife’s ownership of the firearms.

The right to compel witnesses is guaranteed by the Sixth Amendment of the United States Constitution. In Washington v. Texas, 388 U.S. 14, 87 S.Ct. 1920, 18 L.Ed.2d 1019 (1967) the Court observed:

The right to offer the testimony of witnesses and compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant’s version of the facts as well as the prosecution’s to the jury so it may decide where the truth lie. Just as an accused has the right to confront the prosecution’s witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to

establish a defense. This right is a fundamental element of due process of law.

Washington at 19. A witness must be material to the defense case. State v. Smith, 101 Wn. 2d 36, 677 P.2d 100 (1984). The proposed testimony need not totally exonerate the defendant in order to be material. State v. Maupin, 128 Wn.2d 918, 913 P.2d 808 (1996) (other suspect evidence, which would not have totally exonerated defendant, was admissible because it would have brought into question the State's version of events). Because a violation of the right to compel witnesses is of constitutional magnitude, reversal is required unless the error is harmless beyond a reasonable doubt. Maupin.

In addition, a defendant has the right to present a complete picture of the facts and circumstances surrounding the crime. The res gestae rule, cited by defense counsel in this case, permits a party to present all facts surrounding a case.

Under this exception, evidence of other crimes or misconduct is admissible to complete the story of the crime by establishing the immediate time and place of its occurrence. Where another offense constitutes a "link in the chain" of an unbroken sequence of events surrounding the charged offense, evidence of that offense is admissible "in order that a complete picture be depicted for the jury."

State v. Brown, 132 Wn.2d 529, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007 (1998) (citations omitted).

In this case, the trial court unreasonably suppressed relevant evidence of the res gestae of the offense. Evidence of ownership is always relevant in a prosecution for possession of contraband. Relevant evidence is evidence that tends to make a fact more or less probable. ER 401. Evidence of ownership is relevant because it tends to make possession more probable. See State v. Chavez, 38 Wn.App. 29, 156 P.3d 246 (2007). It, therefore, stands to reason that evidence of lack of ownership is relevant as tending to make possession less probable. As the Washington Supreme Court has explained:

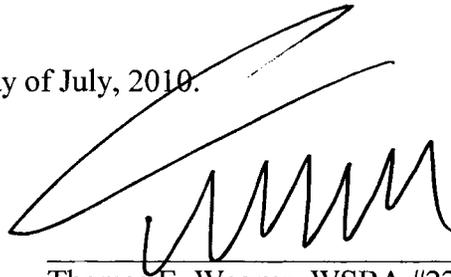
While under the statute possession alone is sufficient to constitute the crime, yet, in a case such as this, where the evidence of possession is largely a matter of inference, the evidence of lack of ownership is an element which the jury had the right to take into consideration in determining whether the appellants had possession, for evidence of lack of ownership was admissible as tending to establish lack of possession; a jury being warranted in giving weight to the suggestion that possession is usually the result of ownership, thus substantiating the appellants' explanation of their presence at the place and time.

State v. Scamzi, 141 Wn. 367, 368, 251 P. 567 (1926). The trial court erred by suppressing evidence of Ms. Groves' ownership.

D. Conclusion

This Court should reverse and dismiss Mr. Groves' convictions.

DATED this 6th day of July, 2010.

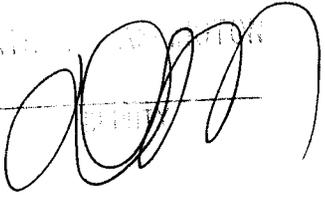
A handwritten signature in black ink, consisting of a large, sweeping initial 'T' followed by several vertical, wavy strokes.

Thomas E. Weaver, WSBA #22488
Attorney for Defendant

FILED
COURT OF APPEALS

10 JUL - 7 AM 11:54

STATE OF WASHINGTON

BY: 

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

STATE OF WASHINGTON,)	Case No.: 09-1-00244-2
)	Court of Appeals No.: 40252-1-II
Respondent,)	AFFIDAVIT OF SERVICE
vs.)	
LUKE T. GROVES,)	
Defendant.)	

STATE OF WASHINGTON)
)
COUNTY OF KITSAP)

THOMAS E. WEAVER, being first duly sworn on oath, does depose and state:

I am a resident of Kitsap County, am of legal age, not a party to the above-entitled action, and competent to be a witness.

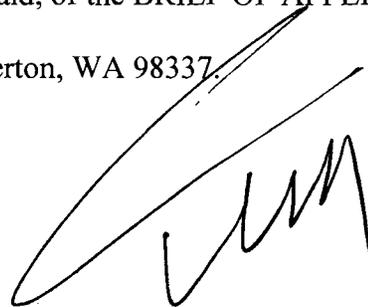
On July 6, 2010, I sent an original and a copy, postage prepaid, of the BRIEF OF APPELLANT, to the Washington State Court of Appeals, Division Two, 950 Broadway, Suite 300, Tacoma, WA 98402.

ORIGINAL

1 On July 6, 2010, I sent a copy, postage prepaid, of the BRIEF OF APPELLANT, to the
2 Kitsap County Prosecutor's Office, 614 Division St., MSC 35, Port Orchard, WA 98366-4683.

3 On July 6, 2010, I sent a copy, postage prepaid, of the BRIEF OF APPELLANT, to Mr.
4 Luke T. Groves, 306 Hewitt Avenue, Apt. 1, Bremerton, WA 98337.

5
6 Dated this 6th day of July, 2010.



7
8 Thomas E. Weaver
9 WSBA #22488
10 Attorney for Defendant

11 SUBSCRIBED AND SWORN to before me this 6th day of July, 2010.



12
13 Christy A. McAdoo
14 NOTARY PUBLIC in and for
15 the State of Washington.
16 My commission expires: 07/31/2010

