

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON, DIVISION II
NO. 43386-9-II
APPEAL FROM CLALLAM COUNTY NO. 11-1-00151-1

STATE OF WASHINGTON,

Respondent,

vs.

COLIN McCURDY,

Appellant.

BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF THE ISSUES

ISSUE ONE

When a competency evaluation found he is competent if the Court finds he is able to work with his counsel to present a defense, when Mr. McCurdy adamantly asserted he is competent to stand trial and is willing to work with assigned counsel to prepare a defense, when assigned counsel asserts to the court that he and the defendant have a good working relationship, and when the court then determines that Mr. McCurdy is competent, has Mr. McCurdy waived the error by presenting it for the first time on appeal?

ISSUE TWO

Even if the alleged error has been preserved for review, is the record sufficient to show the trial court abused its discretion by continuing to find Mr. McCurdy competent during the course of further proceedings?

ISSUE THREE

When the state shows that Mr. McCurdy is "Miles Twitter", that he rented a bedroom during March 2009 from the only other person who occupied a house, that the two were the only two people in the house during the month, that a significant number of documents established that he was the person residing in the room, and that the room contained 60 pounds of marijuana and two working firearms, has the state presented sufficient evidence to convict?

STATEMENT OF THE CASE

On April 14, 2011, the State charged Mr. Colin McCurdy with two counts of Unlawful Possession of a Firearm in the First Degree and Possession of More Than Forty Grams of Marijuana (CP 80). The court referred Mr. McCurdy on several occasions for mental health evaluations, but the only evaluation pertinent to this appeal is one dated February 14, 2012 (CP 60).

In this evaluation, Dr. Redick from Western State Hospital was asked to diagnose Mr. McCurdy's current medical condition, his competence, the likelihood and conditions for restoration if he found Mr. McCurdy incompetent, his sanity and the likelihood of future criminal behavior (CP 60). The only issue from this evaluation related to Mr. McCurdy's competence (CP 63). Dr. Redick determined that Mr. McCurdy clearly understood the judicial process (CP 63-64). However, Dr. Redick determined that Mr. McCurdy was not competent because his relationship with his assigned public

defender is “suggestive of his struggling with an acute mental disorder with strong elements of paranoia.” (CP 64). To Dr. Redick, that Mr. McCurdy could not get along with his assigned counsel was “consistent with an irrational understanding of his situation and a difficulty communicating effectively.” (CP 65). On the other hand, he recommended that assigned counsel “again try to meet with him and secure his cooperation with a reasonable defense strategy.” (CP 65). However, if the court determined that Mr. McCurdy continued to be grossly unreasonable and uncooperative, the court should understand the behavior arose from a mental disorder. (CP 65).

The court found Dr. Redick’s conclusion quite ambiguous (2/17/2012 RP 4). Mr. McCurdy informed the court that Peninsula Mental Health had done an evaluation the court should consider (2/17/2012 RP 4). He also stated he is completely competent and had not waived his right to a speedy trial (2/17/2012 RP 4-7). Mr. McCurdy explained to the court that the only basis for finding he was schizophrenic or

psychotic was his inability to work with the assigned counsel (2/17/2012 RP 4-7). The court set a competency hearing.

The competency hearing was held on March 7, 2012. New assigned counsel appeared for Mr. McCurdy (3/7/2012 RP 3). The court asked new counsel if he “found [Mr. McCurdy] to be uncooperative in his ability to address the defenses and so on?” (3/7/2012 RP 4). Counsel responded that they had not discussed possible defenses but stated they had a “pretty good” relationship, had no problems when they met, and that Mr. McCurdy seemed able to articulate his position on [defenses, relationship, and] “everything seems to reflect he’s capable of doing that.” (3/7/2012 RP 4). Defense counsel also noted his displeasure with the report from Western State Hospital, stating he had a problem finding a person incompetent “because he won’t work with his attorney.” (3/7/2012 RP 4). The court then stated Mr. McCurdy understood the nature of the charges, how the system works, and who plays what role; the only question was whether he could work with counsel towards a

defense in this case (3/7/2012 RP 7). Mr. McCurdy told the court he welcomed the opportunity to have “an earnest, honest, productive and amicable, civil relationship” with assigned counsel. (3/7/2012 RP 7). Mr. McCurdy expressed his belief that former assigned counsel had been “frivolously trying” to either send him to prison “or an insane asylum.” (3/7/2012 RP 8). The court found Mr. McCurdy competent (3/7/2012 RP 9; CP 51).

On March 20, 2012, the parties appeared again to determine a trial date. Assigned counsel indicated they were exploring new avenues and a state settlement offer (3/20/2012 RP 3-4). New counsel sought to continue the case to April 11, 2012 so he could investigate the case and consider the offer more closely (3/20/2012 RP 6). The State needed a continuance to April 11, 2012 to travel to Colville, Washington to clean up his rental (3/20/2012 RP 4). The court granted the continuance to allow new counsel to prepare (3/20/2012 RP 6).

Mr. McCurdy personally addressed the court, pointing

out that “this Court has been extremely liberal with my time...” (3/20/2012 RP 6). He also believed the state should conduct personal business “around their professional schedule versus vice versa.” (2/20/2012 RP 7). He again stated he had not waived his speedy trial and stated “I took a very thorough assessment at the beginning of November as to my mental status” (2/20/2012 RP 7). He asked the court not to continue the trial date again (2/20/2012 RP 8). The court took his comments into consideration and set the trial date for as quickly as he could, to April 11, 2012 (2/20/2012 RP 8).

TRIAL

Deborah Bays, 3036 River Road, Sequim (4/11/2012 RP 63), testified that on March 4th, 2011 (4/11/2012 RP 73), she let a bedroom to a young man who called himself “Miles Twitter” (4/11/2012 RP 64-5). Ms. Bays live in a house she rents from a landlord residing in Seattle (4/11/2012 RP 64). The rental to “Miles Twitter” was for 30 days, because “Mr. Twitter” told Ms. Bays, he was “just hanging out” for a month (4/11/2012 RP

65). On March 28 or March 29, 2011 (4/11/2012 RP 68, 74), she entered the bedroom to collect his things to put them on the deck for him to pick up (4/11/2012 RP 67). She discovered a bag of marijuana in the room and called law enforcement (4/11/2012 RP 66). When two Clallam County deputies responded, she went into the bedroom, retrieved the bag of marijuana and gave it to the deputies (4/11/2012 RP 68).

After the deputies left, she began packing more items and found a lot more marijuana under a box (4/11/2012 RP 69). A deputy responded for the second time (4/11/2012 RP 69). The deputy obtained a search warrant; he and another deputy entered the bedroom and began searching (11/2012 RP 69-70).

She was shown a photograph of Colin McCurdy and testified this was the person who introduced himself as Miles Twitter (4/11/2012 RP 70). She pointed out Mr. Colin McCurdy as the person who had rented the room from her (4/11/2012 RP 71).

She testified that only she, "Miles Twitter", and the

owner of the home possessed a key to enter (4/11/2012 RP 71). No one besides these three people had a key to the house (4/11/2012 RP 76). No one else lived in the home during that period (4/11/2012 RP 76). During the month of March, 2011, no one had access to his bedroom except for him (4/11/2012 RP 72). She testified that she saw Mr. McCurdy in the house during March 2011 (4/11/2012 RP 73). The last time she saw Mr. McCurdy at the home was March 21, 2011 (4/11/2012 RP 74).

Deputy Mark Millet, Clallam County Sheriff's Office (4/11/2012 RP 85), testified he responded when Ms. Bays called the first time on the 29th of March, 2011 (4/11/2012 RP 85). He obtained a bag of suspected marijuana from Ms. Bays and entered it into evidence for destruction (4/11/2012 RP 86). She called him back later in the same day, stating she had found more marijuana, six large garbage bags of what she believed was marijuana (4/11/2012 RP 87). Deputy Milledt obtained a search warrant to search the room and he and another deputy

began searching the room (4/11/2012 RP 87). 60 bags of marijuana weighing a pound each were seized (4/11/2012 RP 107).

As the search progressed, Deputy Millet found shotgun shells, so he obtained an addendum to the first search warrant to look for ammunition and firearms (4/11/2012 RP 96). The deputies found two firearms in a locked toolbox¹ (4/11/2012 RP 100, 108, exhibit 20). Exhibits 33 through 35 were documents showing indicia of occupancy the deputy found in books in the tenant's room² (4/12/2012 RP 7).

Mr. McCurdy then personally asked the Court if he could inquire whether the deputy had checked the keys found in his possession to see if they fit any locks within the State of Washington (4/12/2012 RP 12). He was told by the trial court to raise the issue if he chose to testify. Mr. McCurdy explained

¹ The "toolbox" is really a box that fits in the bed of a pickup. Deputy Millet testified it was approximately 5 feet wide, 18 by 18 inches (4/11/2012 RP 97).

² Mr. McCurdy objected to the admission of exhibit 35's contents. His objection was sustained (4/12/2012 RP 11).

to the trial court that he, himself, could not raise the issue because he was not the person who checked to see if any keys corresponded to any piece of property (4/12/2012 RP 12). Mr. McCurdy then asked the state the same question and was told the state did not know (4/12/2012 RP 12). Exhibits 33, 34, and 35 were admitted without personal contents (4/12/2012 RP 13).

Deputy Millet then testified that the contents of the three exhibits contained “[p]ersonal documents regarding taxing, banking,...personal letter,...personal documents, banking, pay stub, travel document...various letters addressed to or from the defendant...Personal identification documents....Letters, school work.” (4/12/2012 RP 14-5). The name associated with the documents was Colin McCurdy (4/12/2012 RP 15). There were approximately five other names on other documents, but nothing for “Miles Twitter”. (4/12/2012 RP 15).

Deputy Bill Cortani testified as a marijuana leaf identification technician (4/12/2012 RP 107). He tested a bag that weighed 111.28 grams to ascertain whether it contained

marijuana (4/12/2012 RP 28). The tests showed “the material in that of the sample that I tested from that bag contained marijuana” (4/12/2012 RP 28).

Deputy Kempf, also a Clallam County Deputy, test fired both the black powder rifle and the Springfield 30.06 rifle. He determined both were operable weapons that could fire a projectile. (4/12/2012 RP 29-32).

The state rested (4/12/2012 RP 33). Assigned counsel informed the court, during a time the jury was not in court, that the defense also rested (4/12/2012 RP 34). Assigned counsel told the court that Mr. McCurdy wished to renew his request to make his own closing argument (4/12/2012 RP 34).

A lengthy colloquy ensued (4/12/2012 RP 34-72³). It began with a discussion of assigned counsel’s role if Mr. McCurdy defended himself (4/12/2012 RP 34-36). The state asserted that Mr. McCurdy’s desire to represent himself “is pretty much absolute” (4/12/2012 RP 34). Defense counsel

³ Part of the time involved discussing jury instructions.

agreed (4/12/2012 RP 36). The court then asked Mr. McCurdy why he wanted to become his own attorney and make closing argument (4/12/2012 RP 36). Mr. McCurdy stated he did not really want to represent himself but saw no option because his attorney had rested without presenting a defense (4/12/2012 RP 36).

Mr. McCurdy then explained all he had done to prepare for this day in court. He had made an appointment to meet with counsel the day after he bonded out (4/12/2012 RP 36). He had tried to set up interviews with the deputy sheriff witnesses (4/12/2012 RP 36). He had found “numerous people that I would like to call as witnesses that I do believe would unquestionably testify on my own behalf.” (4/12/2012 RP 37). Mr. McCurdy did not believe he was more competent than assigned counsel, but “considering the fact that a defense is going to be better than no defense,…” but assigned counsel had indicated to him he did not care about Mr. McCurdy’s request to find witnesses on his behalf (4/12/2012 RP 36).

The discussion continued on for some time. Mr. McCurdy then sought a continuance to present a defense. The court ultimately denied his request for a continuance (4/12/2012 RP 44). The court then asked Mr. McCurdy if he wished to testify (4/12/2012 RP 45). Mr. McCurdy then stated again that he wished to present witnesses on his behalf (4/12/2012 RP 46).

The court initially denied Mr. McCurdy the opportunity to represent himself, citing to the serious charges and the risk of “serious consequences to how this case is resolved. (4/12/2012 RP 47). After lunch, the state provided case law explaining the court could not deny that right because of the risk to the defendant (4/12/2012 RP 68). The court reversed its ruling, stating that Mr. McCurdy could represent himself for the remainder of the trial if he wanted to, but asked Mr. McCurdy to discuss waiving his right with assigned counsel before deciding (4/12/2012 RP 69-70). After a short consultation with counsel, Mr. McCurdy stated on the record that he wished for assigned counsel to finish the case (4/12/2012 RP 72). After

clarifying that Mr. McCurdy was comfortable with his choice, the court moved on to closing argument (4/12/2012 RP 72).

The jury convicted Mr. McCurdy of one count of possession of over 40 grams of marijuana and two counts of unlawful possession of a firearm, first degree (CP 22, 23, 24). This appeal timely followed (CP 7).

ARGUMENT

ISSUE ONE

When a competency evaluation found he is competent if the Court finds he is able to work with his counsel to present a defense, when Mr. McCurdy adamantly asserted he is competent to stand trial and is willing to work with assigned counsel to prepare a defense, when assigned counsel asserts to the court that he and the defendant have a good working relationship, and when the court then determines that Mr. McCurdy is competent, has Mr. McCurdy waived the error by presenting it for the first time on appeal?

RESPONSE

Mr. McCurdy has waived any issue of competency because the issue was raised for the first time on appeal. RAP 2.5 requires he show a manifest error affecting a constitutional right to raise the issue. While all defendants have a right not to be tried while incompetent, nothing in this trial manifestly shows he was incompetent. Moreover, the doctrine of invited error applies. The issue is waived.

ANALYSIS

STANDARD OF REVIEW

Error raised for the first time on appeal is waived unless it involves a manifest error affecting a constitutional right.

State v. Warren, 134 Wn.App. 44, 56, 138 P.3d 1081 (2006).

A “manifest” error is “unmistakable, evident or indisputable, as distinct from obscure, hidden or concealed.” *State v. Lynn*, 67 Wn.App. 339, 345, 835 P.2d 251 (1992). “An appellant who claims manifest constitutional error must show that the outcome likely would have been different, but for the error.” *State v. Jones*, 117 Wn.App. 221, 232, 70 P.3d 171 (2003).

State v. Warren, 134 Wn.App 57, 138 P.3d 1081.

An accused in a criminal case has a fundamental right not to be tried while incompetent to stand trial. *Drope v. Missouri*, 420 U.S. 162, 171–72, 95 S.Ct. 896, 43 L.Ed.2d 103 (1975); *In re Pers. Restraint of Fleming*, 142 Wn.2d 853, 861, 16 P.3d 610 (2001). “Washington law affords greater protection by providing that ‘[n]o incompetent person shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity continues.’ ” *Fleming*, 142 Wn.2d at 862, 16 P.3d 610 (alteration in original) (quoting RCW 10.77.050)....

State v. Heddrick, 166 Wn.2d 898, 904, 215 P.3d 201 (2009).

A trial court's determination that a person is competent after following the statutory competency process is reviewed as a matter of discretion. *State v. Sisouvanh*, ___ Wn.2d ___, ___ P.3d ___ (WL 4944801 2012), page 6.

ANALYSIS

Mr. McCurdy cannot show the trial court erred. Because Mr. McCurdy did not raise the issue of his competence at trial, he must establish from the record of the proceedings below that the trial court abused its discretion when it found him competent to stand trial. The trial court ordered a competency evaluation, which determined that Mr. McCurdy was incompetent solely because he was unable or unwilling to work with defense counsel. Dr. Redick from Western State Hospital left it to the court to determine whether Mr. McCurdy could work with defense counsel. He recommended "that his attorney again try to meet with him and secure his cooperation with a

reasonable defense strategy.” Report, page 5 (CP 65). New counsel began working with Mr. McCurdy and the trial court held a competency hearing. Counsel and Mr. McCurdy indicated they could work well together at the hearing. The court found Mr. McCurdy competent and signed a minute order to that effect (CP 51). Because the standard of review is whether the record manifestly shows the trial court abused its discretion when it found Mr. McCurdy competent, and because the record shows the trial court both ordered an evaluation and conducted a competency evaluation, Mr. McCurdy has waived the issue.

Moreover, the invited error doctrine applies to these facts. Mr. McCurdy and his counsel both indicated on March 7, 2012, that he was competent, therefore completing the only competency issue flagged in Dr. Redick’s report. Raising the issue now, on appeal, permits the defendant to have two bites at the apple. *In re the Detention of D.F.F.*, 172 Wn.2d 37, 50, 256 P.3d 357 (2011)(Chambers, J., concurring). The doctrine

applies even to alleged errors of constitutional magnitude. *Heddrick*, at 909, 215 P.3d 201. For both these reasons, this Court should hold that the competency issue is waived on appeal.

ISSUE TWO

Even if the alleged error has been preserved for review, is the record sufficient to show the trial court abused its discretion by continuing to find Mr. McCurdy competent during the course of further proceedings?

RESPONSE

The trial court did not abuse its discretion when it found Mr. McCurdy competent to stand trial. The trial court did not abuse its discretion when it proceeded with and completed the jury trial without finding Mr. McCurdy incompetent.

ANALYSIS

This case presents an irony that most likely contributed to Mr. McCurdy's confusion. After all the delays, after all the problems working with counsel, after his decision to work with counsel to create a defense, no defense was presented. That there was no defense to present was lost on him because over a year had been lost to him to determine whether he was able to

assist counsel in the presentation of a defense.

This case involved only one disputed element: constructive possession. The marijuana was identified as marijuana in an amount well over 40 grams. Both weapons were identified as firearms in working condition. All that remained was whether Mr. McCurdy possessed the marijuana and firearms.⁴

The only witnesses the defense could call, therefore, were people who could testify that Mr. McCurdy was not “Miles Twitter” or that Mr. McCurdy was not the only person who had access to his room. There were none. There was no defense to be raised by the defendant; all of the defense was in cross examination of the state’s witnesses.

Mr. McCurdy raises two issues from the trial court level that he feels showed he was incompetent. He argues, first, that the names he called the first assigned counsel showed he was not competent. The reference to the relationship with the first

⁴ Mr. McCurdy stipulated to a lengthy criminal history.

public defender proves nothing about his competence. That a defendant does not like his assigned counsel is a fact of life. That he used inappropriate language to describe his relationship with his assigned counsel is common in criminal trial practice.

Mr. McCurdy also points to his desire to call witnesses that were not relevant to the issue before the jury as a sign he was not competent. Many litigants seek to introduce evidence that is not relevant. *See, for example only, State v. Cecotti*, 31 Wn.App. 179, 181-2, 639 P.2d 243 (1982) (sexual history not relevant); *Meredith v. Hanson*, 40 Wn.Ap. 170, 172, 697 P.2d 602 (1985) (stepfather's criminal history not relevant); *In re Detention of Post*, 170 Wn.2d 302, 310, 241 P.3d 1234 (2010) (evidence of postcommitment treatment availability not relevant); *Bell v. State*, 147 Wn.2d 52 P.3d 503 (2002) (magazine location not relevant, but if relevant, prejudicial); *State v. Harris*, 97 Wn.App. 865, 872, 989 P.2d 553(1999) (a rape victim's accusation against others not relevant); *Hensrude v. Sloss*, 150 Wn.App. 853, 861, 209 P.3d 432 (2009)

(settlement offer not relevant). Violation of ER 401 and 402 does not equate with (mental) incompetence.

More important than what he requested to introduce is what shows in the colloquy about why he wanted to introduce it. He wanted his attorney to represent him, but, if he would not, “any defense is better than no defense.” He understood how serious the charges were, what jeopardy he was in, the role of the court as arbiter, and the role of the state as the prosecutor. Mr. McCurdy fully understood the rights he was waiving, responded appropriately to the court's questions and explanations, and was able to communicate effectively with his counsel. His disagreement with counsel about trial strategy does not, by itself, raise a competency issue. See, e.g., *State v. Lord*, 117 Wn.2d 829, 901, 822 P.2d 177 (1991) (a defendant need not be able to choose among alternative trial strategies to be competent). Nor does his tendency to give narrative responses, despite the court's request that he stop so the jury could be called in, suggest that he did not understand the

proceeding. The trial court believed that Mr. McCurdy understood the procedure and simply did not want to end the trial without a continuance, so he could present his own witnesses. Despite his tendency to wander in and out of the formal trial structure, the trial court believed him to be not only competent but with a better understanding of criminal procedure than most people. Nothing in the record casts any doubt on those beliefs.

ISSUE THREE

When the state shows that Mr. McCurdy is “Miles Twitter”, that he rented a bedroom during March 2009 from the only other person who occupied a house, that the two were the only two people in the house during the month, that a significant number of documents established that he was the person residing in the room, and that the room contained 60 pounds of marijuana and two working firearms, has the state presented sufficient evidence to convict?

RESPONSE

The totality of the evidence proves that Mr. McCurdy was the person who rented and occupied a bedroom in Ms. Bays’ rental. The evidence shows he rented the room, that he had exclusive use of it, that all of the articles in the room belonged to him, that the amount of marijuana exceeded forty grams, that he was a felon, and that both firearms worked.

STANDARD OF REVIEW

Sufficient evidence exists to support a conviction if any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt when viewing the evidence in the light most favorable to the State. *State v. Hosier*, 157 Wn.2d 1, 8, 133 P.3d 936 (2006). A defendant claiming insufficiency of the evidence admits the truth of the State's evidence and all inferences that reasonably can be drawn from the evidence. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence and direct evidence are equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). We defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 415–16, 824 P.2d 533 (1992). We may infer specific criminal intent of the accused from conduct that plainly indicates such intent as a matter of logical probability. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.3d 410 (2004).

State v. Christopher Robin Briejer, ___ Wn.App. ___, ___ P.3d ___ (No. 40912-7-II, (12/07/2012), page 6.

ANALYSIS

Possession may be actual or constructive. *State v. Summers*, 107 Wn.App. 373, 389, 28 P.3d 780, 43 P.3d 526 (2001). Actual possession occurs when the defendant has physical custody of the item, and constructive possession occurs if the defendant has dominion and control over the item. *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1062

(2002). Dominion and control means that the defendant can immediately convert the item to their actual possession. *Jones*, 146 Wn.2d at 333, 45 P.3d 1062. Constructive possession need not be exclusive. *Summers*, 107 Wn.App. at 389, 28 P.3d 780. When a person has dominion and control over a premises, it creates a rebuttable presumption that the person has dominion and control over items on the premises. *Summers*, 107 Wn.App. at 389, 28 P.3d 780, *State v. Cantabrana*, 83 Wn.App. 204, 208, 921 P.2d 572 (1996).

State v. Reichert, 158, Wn.App. 374, 390, 242 P.3d 44 (2010).

Because Mr. McCurdy was not in actual possession of the marijuana or firearms found in his bedroom, the State had to prove constructive possession. In evaluating the evidence, the reviewing court looks at the totality of the circumstances and determines whether they support a reasonable inference that Mr. McCurdy had dominion and control over the marijuana or firearms and, thus, was in constructive possession of them. *State v. Portey*, 102 Wn.App. 898, 904, 10 P.3d 481 (2000).

Factors showing dominion and control for constructive possession include the ability to reduce the object to actual possession and proximity to the contraband. *State v. Hagen*, 55 Wn.App. at 499, 781 P.2d 892). The State may use

circumstantial evidence to show physical proximity and constructive possession. *State v. Gutierrez*, 50 Wn.App. at 592, 749 P.2d 213 (1988). As Mr. McCurdy argues, temporary residence or mere presence by itself is insufficient to establish dominion and control. *State v. Alvarez*, 105 Wn.App. 215, 222, 19 P.3d 485 (2001). There must be evidence demonstrating “that the defendant resides at the premises and is not merely visiting.” *State v. Amezola*, 49 Wn.App. 78, 87, 741 P.2d 1024 (1987).

The totality of the circumstances in this case supports an inference that Mr. McCurdy had dominion and control over the bedroom where the marijuana and firearms were found. Ms. Bays testified that she let a bedroom to a Mr. Miles Twitter, whom she identified in court as Mr. McCurdy, for the month of March 2009. She testified that no other person had been in the house, to her knowledge, for the entire month. She testified that only three people, including the owner, her and Mr. McCurdy had a key to the residence. The bedroom showed

signs of current occupancy, including bedding, clothing in both the closet and a box or bag, and a large tool box that included numerous items tying Mr. McCurdy to the room. Deputy Millet testified that “[p]ersonal documents regarding taxing, banking,...personal letter,...personal documents, banking, pay stub, travel document...various letters addressed to or from the defendant...Personal identification documents...Letters, school work” were found in books in the room, all belonging to Mr. McCurdy (4/12/2012 RP 14-5; Exhibits 33, 34, 35). The large toolbox, containing the firearms and more indicia of occupancy, was found on the bedroom floor next to the bed. A jury could reasonably infer from this evidence that Mr. McCurdy had possession and control of the bedroom where his personal items were found.

Deputy Bill Cortani testified his tests showed “the material in that of the sample that I tested from that bag contained marijuana” (4/12/2012 RP 28). Deputy Kempf, test fired both the black powder rifle and the Springfield 30.06

rifle and found both them were operable weapons that could fire a projectile. (4/12/2012 RP 29-32). The State presented evidence from which a reasonable juror could find all the elements of the three crimes charged.

CONCLUSION

Based upon the evidence the State presented, Mr. McCurdy is guilty as he was charged. Based upon a complete review of the record, Mr. McCurdy was competent. This Court should affirm.

Respectfully submitted this 18th day of January, 2013.

DEBORAH KELLY, Prosecutor

A handwritten signature in black ink, appearing to read "Lewis M. Schrawyer", written over a horizontal line.

Lewis M. Schrawyer, #12202
Deputy Prosecuting Attorney

CERTIFICATE OF DELIVERY

Lewis M. Schrawyer, under penalty of perjury under the laws of the State of Washington, does hereby swear or affirm that a copy of this document was forwarded electronically or mailed to Lise Ellner, Attorney at Law on January 18, 2013.

DEBORAH KELLY, Prosecutor

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Lewis M. Schrawyer

CLALLAM COUNTY PROSECUTOR

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