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

STATE OF WASHINGTON, RESPONDENT

v.

ROBERT JESSE HILL, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Timothy L. Ashcraft

No. 16-1-04605-5

Brief of Respondent

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

1. Did defendant's trial counsel make a competent decision to forego the submission of a voluntary intoxication instruction?
2. Was the defense in this case prejudiced by defense counsel's decision to forego the submission of a voluntary intoxication instruction?
3. Was the evidence of possession of Alprazolam presented in this case sufficient to support the jury's guilty finding?

B. STATEMENT OF THE CASE.

1. PROCEDURE

Defendant was found guilty at trial of three counts of assault in the third degree, one count of possession of Alprazolam, a controlled substance, and one count of obstructing a law enforcement officer. CP 73-88; CP 89-93. Prior to trial, defendant pled guilty to one count of driving while under the influence. 1 VRP 4-14; Supp. CP 103-08.

2. FACTS

Deputy Roberts testified that he and Deputy Holznagel responded to 9910 Pacific Avenue South. 1 VRP 128. When he got there he saw a BMW and a giant cement truck. *Id.* A picture of the two vehicles, as they were then, was admitted as Exhibit 17. 1 VRP 130-31. Deputy Roberts contacted the driver of the BMW, Robert Jesse Hill (hereinafter “defendant”). 1 VRP 132-33. The BMW’s engine was on. 1 VRP 133. Deputy Roberts testified that defendant locked the doors of the BMW when Deputy Roberts arrived. 1 VRP 134.

Deputy Roberts testified that he told defendant that he needed to speak with defendant about why he was blocking the truck in. 1 VRP 133. Defendant rolled down his window. *Id.* After Deputy Roberts told him that he needed to step out of the car so they could talk, defendant put the vehicle in reverse and started to back up. *Id.* After Deputy Roberts yelled at defendant to not back it up, defendant slammed the vehicle into park. 1 VRP 134. Deputy Roberts told defendant that he needed to step out or that he was going to be removed from the vehicle, and Deputy Roberts would break the window and remove him. 1 VRP 135. Defendant backed up again. *Id.* Deputy Finnerty, another Deputy present at the scene, broke the window. 1 VRP 137. Deputy Roberts tried to reach for the door handle. *Id.* Defendant, at that point, started screaming. 1 VRP 137-38.

Then he grabbed that silver mace gun, and then next thing I know, it's pointed at me, and I'm still not entirely sure what that is, but I know it's a weapon. And he points that at all three of us, so I used my left arm to knock it -- because now I'm inside the window. I don't have a whole lot of choices now. So I used my left arm to knock it away from my -- from it pointing at me and the other deputies. And then I managed, after knocking the mace gun away from us, to find the door handle.

1 VRP 138. The silver mace gun is Exhibit 6. *Id.*¹ The door was apparently opened. 1 VRP 139. Defendant was extracted from the vehicle, yelling and physically resisting. *Id.* Defendant slammed his head at least twice against the side of the patrol car during the course of the arrest process. 1 VRP 140. The deputies hobbled defendant.

Handcuffed behind the back, one end of the full limb restraint goes around the handcuffs, center of the handcuffs, and it gets wrapped down around the ankles, secured there, and then latched back onto the handcuff. So basically you're laying with hands behind your back and your feet bent at a 90 or more degree angle if you're on your stomach.

1 VRP 141. Defendant was able to manipulate himself free from the full-limb restraint to the point that he was able to start banging his head and kicking around in the back of the patrol car again. 1 VRP 141.

Deputy Roberts testified that an orange pill bottle was found “in a box under a box” in the black BMW (Exhibit 9). 1 VRP 147-48. Exhibit

¹ Admitted at 1 VRP 143. The State would have designated this exhibit, but for the prohibition of transmitting weapons included in RAP 9.8(b). The State suggests that it would be helpful for this court to direct transmission of this weapon pursuant to RAP 9.8(b) so that this Court can gauge the size of this weapon.

12, a photograph, depicts the pill bottle and the box as they were found. 1 VRP 149. There were 86 pills in the pill bottle. 1 VRP 150.

Deborah Price testified that a pill from that bottle contained Alprazolam, a controlled substance. 2 VRP 278.

Deputy Holznagel testified consistently with Deputy Roberts. 2 VRP 207-248. Deputy Holznagel testified that Defendant pointed the mace gun at all of the officers. 2 VRP 218. She testified that it scared her. *Id.*

Deputy Finnerty testified consistently with Deputy Roberts. 2 VRP 248- Deputy Finnerty testified that the silver object, which looked similar to a handgun, was waved in the direction of all three of the deputies and pointed in the direction of all three of the deputies. 2 VRP 254. He testified that it scared him. 2 VRP 255.

Kevin Laird was a concrete mixer driver. 2 VRP 332-33. He identified defendant as the person who, at a job site, pulled up and parked his BMW directly in front of his mixer truck. 2 VRP 334. Mr. Laird watched defendant's interaction with law enforcement from his perched above in his truck. 2 VRP 338. He had a great view. *Id.* Mr. Laird testified that defendant responded with nonsense when he tried to talk to him. 335. Mr. Laird testified that the defendant pointed each of two mace guns at him. 2 VRP 336. Mr. Laird testified that several people called

911 and deputies arrived. 2 VRP 337. Mr. Laird testified regarding defendant's action with the police. 2 VRP 341. Mr. Laird saw defendant "pick[] up the silver mace sprayer and point it at the officer." *Id.*

Defendant provided trial testimony replete with purposeful, goal directed behavior. He testified that:

- (a) He drove to the construction site (2 VRP 357);
- (b) He dropped off a young lady at a location she identified (*Id.*); and
- (c) He was able to park his car (and put it in park) (2 VRP 362; 371);
- (d) He had the "goal" "[t]o make the owner come crawling to my window" (2 VRP 369, 399);
- (e) This goal was the fruit of prior thought (2 VRP 368);²
- (f) He intended to wait for the woman he had dropped off, because she said that she might be back in 30 minutes (2 VRP 369);
- (g) He was trying to employ "leverage" (2 VRP 369);

² "Well, I follow a little bit where she's walking, and so I'm looking to the right, and I notice pavement ending about where this red line is, and it's dirt here, and I follow it, and it goes here and the building starts, and I see one set of gates, see a cement truck, see the gate, and instantly, I realize, oh, well, they're on a different parcel of land than the Dollar Tree people are. So -- oh, and there's a cement truck right there. And I instantly put together that if I pulled up in front of it, staying on the parcel of land for Dollar Tree, those guys can't make me move. Only Dollar Tree people. Either a manager, an employee, or an owner." 2 VRP 368.

(h) He opened a can of beer to give “anyone an extra reason to call law enforcement” (2 VRP 370);³

(i) He wanted law enforcement at the scene so that a “property rights discussion” could be had (2 VRP 370);

(j) He made a “confident” assessment of his legal position in this matter (2 VRP 370);

(k) He “looked forward” to the arrival of the police (2 VRP 370-71);

(l) He was staying in that parking place as part of a “protest,” and that he’s staying there until he needs to leave (2 VRP 371);

(m) He made sure that the contents of the car were visible so that “if TPD showed up and I was asleep, everyone needs to see what’s in this car” (2 VRP 371);

(n) He had the sunroof up “to hear them yelling at a distance or not.” (2 VRP 374);

(o) He turned the radio up louder (3 VRP 384);

³ Defendant’s testimony appears to deliberately avoid the inference that he consumed the beer: “I pour a can of -- open a can of 211, the black kind, that I purchased earlier to give anyone an extra reason to call law enforcement.” 2 VRP 370. It is beer. 3 VRP 399. In his testimony the following day, defendant talked about an intention to “taste test” that beer with another person, and he testified that he did drink the beer. 2 VRP 399. It was apparently two cans. 3 VRP 420-21.

(p) He “came up with the idea of blinking, blinking the lights. With the [mace]⁴ devices, when you let go of one time and pull again, then they start blinking” (3 VRP 384);

(q) He used a different light, a much brighter floodlight, and used for the purpose of continuing to annoy people (3 VRP 398);

(r) After the police officer told him to “get out of the car or the window’s going to be broken,” he thinks about the cost of a broken window, then “immediately” tries to escape from the seat belt which confines him (3 VRP 400);

(s) He screamed “because I thought, well I need – what’s going on? You can’t let me comply with getting out...” (3 VRP 404);

(t) He was trying to relax while he was being seized (3 VRP 405); and

(u) He banged his head on a window to get attention for repositioning the handcuffs (3 VRP 407).

Defendant’s lawyer argued reasonable doubt precluded conviction for assault in the third degree. 3 VRP 458-63; 466. He incorporated defendant’s stubbornness and obstinacy into that argument. 3 VRP 463.

⁴ At 3 VRP 385, defendant clarifies he is talking about exhibits 6 and 7. Those are the mace guns themselves. Supp. CP 109. The mace guns have not been designated as an exhibit for appeal. This court may order them to be transported to this Court pursuant to RAP 9.8(b).

Defense counsel's theory of the case also incorporated defendant's denial that he pointed the mace canister at anybody. 3 VRP 466.

Defendant's lawyer took care not to examine his client about drugs. 2 VRP 357-374, 3 VRP 384-408). At the close of his direct examination he took care to ensure that the prosecutor would not examine defendant about the drugs found in the car that formed the basis for Count IV. CP 15-17; 3 VRP 409-411.

In his closing argument, defendant's lawyer argued: "Furthermore, because the State hasn't shown any type of evidence linking the drugs in the vehicle to Mr. Hill, I'm going to ask you to find Mr. Hill not guilty of the unlawful possession of a controlled substance." 3 VRP 466-67.

C. ARGUMENT.

1. DEFENDANT HAS FAILED TO ESTABLISH THE DEFICIENT PERFORMANCE OF TRIAL COUNSEL.

Deficient performance is not shown by matters that go to trial strategy or tactics. *State v. Hendrickson*, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996). "A strong presumption exists that counsel's conduct was reasonable, and the defendant bears the burden of proving that the challenged action was not a legitimate trial strategy." *In re Nichols*, 171 Wn.2d 370, 378, 256 P.3d 1131 (2011) (citing *Strickland v. Washington*, 466 U.S. 668, 687-95, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and *State*

v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004)). “If defense counsel's trial conduct can be characterized as legitimate trial strategy or tactics, then it cannot serve as a basis for a claim that the defendant did not receive effective assistance of counsel. *State v. Lord*, 117 Wn.2d 829, 883, 822 P.2d 177, 208 (1991) (citing *State v. Adams*, 91 Wn.2d 86, 90, 586 P.2d 1168 (1978)).

- a. Many good reasons support defense counsels rejection of the voluntary intoxication defense.

In support of the voluntary intoxication defense argument, raised for the first time on appeal, defendant claims that “he did not intend to assault the deputies.” Appellant’s Brief at 7,16. That statement is true, but incomplete. When asked “Did you point the gray spray gun at the police officers?”, defendant answered “No.” Defendant’s testimony was that he was using his hands to get the seat belt off. 3 VRP 401.

Appellant’s Brief also asserts: “He did not intentionally point the spray device at them but might have accidentally waved it at Deputy Roberts while he was trying to remove his seat belt.” Appellant’s Brief at 7. That statement is **not** defendant’s trial testimony. See RP 400-02, 408. Rather, it is a fair argument that a different defense lawyer might have made at defendant’s trial.

That speculative argument presents its own vulnerabilities. The first problem with such a non-intentional accident kind of argument is that the defendant himself explicitly denied pointing the device at the officers, while at the same time admitting that he was waving it around earlier.⁵ Arguing “I didn’t do it, but if I did do it, it was unintentional.” is self-evidently problematic. This type of inconsistency has been addressed before:

To pursue the diminished capacity defense would have required Woods to essentially admit that he committed the murders, a position entirely inconsistent with his contention that he did not commit the murders. Woods, in short, does not provide any persuasive evidence that his trial attorneys were deficient in not presenting a diminished capacity defense.

In re Woods, 154 Wn.2d 400, 421, 114 P.3d 607, 618 (2005).

A related problem is presented by the shape of the mace gun itself. Exhibits 6 and 7 are weapons shaped like guns.⁶ Defendant testified that he was using his hands trying to adjust his seat belt so that he could obey the Deputy’s command’s and avoid having his window broken. 3 VRP 400. It would not make sense for defendant’s lawyer to argue that

⁵ 3 VRP 419.

⁶ The State would have designated these exhibits, but for the prohibition of transmitting weapons included in RAP 9.8(b). The State suggests that it would be helpful for this court to direct transmission of these weapons pursuant to RAP 9.8(b) so that this Court can gauge their size.

defendant was using his hands trying to adjust his seat belt while at the same time drunkenly and inadvertently holding the spray pistol.

Fundamental to a voluntary intoxication defense is a factual basis demonstrating that the accused is unable to form the requisite intent to commit the charged criminal act. In this case, defendant testified to a wide array of intentional and goal-directed behavior.⁷ Given the weight of the evidence of defendant's intentional behavior before, during, and after the assault, defendant's trial lawyer could have reasonably concluded that it would not be prudent to argue that the defendant was incapable of intentional behavior. On appeal, defendant cannot prove otherwise.

To establish a voluntary intoxication defense, a defense lawyer must demonstrate that his client was intoxicated to a significant extent. The record presented on appeal includes no suggestion that defendant thought himself intoxicated to a debilitating extent. The record strongly suggests otherwise.⁸ Had that defense been raised, defendant would have been confronted with all his intentional behavior. Would defendant have testified that he was intoxicated to the point where he couldn't act

⁷Twenty-one purposeful acts that the defendant testified to on direct examination are related in the fact section of this brief. Additionally, defendant's entire testimony included very few failures of recall about the incident.

⁸On cross examination defendant and his lawyer addressed, in detail, the content of a photograph taken after defendant's arrest. 3 VRP 393-397. Defendant's lawyer would have recognized that such perceptive recall was incompatible with drunken incapacitation.

intentionally? The answer to that question is unknown, and defendant has the burden of proof on this issue.

Defendant's trial counsel was also acutely aware that defendant was not only tried for four counts of assault and one count of obstructing a public servant; but that he was also charged with one count of possession of Alprazolam, a controlled substance, and one count of driving while under the influence of intoxicating liquor and/or drugs. CP 15-17. There was a blood test in this case. Supp. CP. 107. Appellant pled guilty to DWI pre-trial. 1 VRP 4-14; Supp. CP 103-08. Defendant's plea obviated the prosecution's need to introduce those blood tests into evidence. This means that the record cannot inform this Court whether or not Alprazolam was found in defendant's blood—or to put it another way—whether defense counsel's presumed competent tactics were successful, or not.⁹ It also means that the record cannot inform this Court of the actual alcohol content of defendant's blood.¹⁰

Defense counsel consciously chose to minimize defendant's alcohol consumption. *See* 1 VRP 20-21 (Where defense counsel moved pretrial to exclude photographs of alcohol containers found in defendant's

⁹ But *see* 2 VRP 354, where defense counsel asserts in oral argument that defendant's blood test result was "a .15" and "I know there was no Alprazolam in that blood test result."

¹⁰ *Id.*

automobile). Defense counsel did not examine his client about the Alprazolam,¹¹ and was careful to ensure that the prosecutor did not do so either.¹² In his closing argument, defendant's lawyer argued: "Furthermore, because the State hasn't shown any type of evidence linking the drugs in the vehicle to Mr. Hill, I'm going to ask you to find Mr. Hill not guilty of the unlawful possession of a controlled substance." At trial¹³ and on appeal¹⁴ defendant has consistently argued that there is insufficient evidence linking him to those drugs. Arguing to the jury that "I was extremely intoxicated at the time there were illegal drugs in my car" would have undercut the insufficiency of drug possession argument that defense counsel was attempting to preserve throughout the trial. This is one more indicator that the rejection of an involuntary intoxication defense was a reasonable trial strategy, and defendant has not proven otherwise on appeal.

Drunkenness is a double-edged sword. While it can help a defendant present a successful mental state argument, it can also help the prosecution establish drunken, inhibition-relaxed assaultive behavior and the drunken, inhibition-relaxed obstruction of law enforcement officers.

¹¹ 2 VRP 357-374, 3 VRP 384-408.

¹² 3 VRP 409-411.

¹³ 3 VRP 466-67.

¹⁴ Appellant's Brief at 18-21.

There are many good reasons why defense counsel chose not to wield that sword in this case. Those good reasons, plus the presumption of competent counsel, should preclude a finding of deficient performance.

- b. Defendant has failed to demonstrate that he was prejudiced by his lawyer's strategic and tactical choices.

If an attorney's performance is deficient, the next question is whether it caused prejudice. Prejudice exists if there is a reasonable probability that but for counsel's deficient performance, the outcome of the proceedings would have been different. A reasonable probability is lower than a preponderance standard. Rather, it is a probability sufficient to undermine confidence in the outcome.

(citations, braces, and quotation marks omitted) *State v. Lopez*, ___ Wn.2d ___, 410 P.3d 1117, 1123 (2018).

It is clear from the trial record, that defendant's trial counsel did not pursue a diminished capacity defense. It is clear from Appellant's Brief that defendant does not challenge that trial strategy on appeal—Appellant's Brief claims error only in the failure to propose a voluntary intoxication jury instruction. Appellant's Brief at 1. This presents the question: Is defendant entitled to a jury instruction unrelated to his theory of the case? The answer to this question is no. "The refusal to give instructions on a party's theory of the case when there is supporting evidence is reversible error when it prejudices a party." *State v. Werner*, 170 Wn.2d 333, 337, 241 P.3d 410 (2010). A failure to give an instruction

that does not advance a party's theory of the case cannot possibly be prejudicial.

Alternatively, defendant cannot prove that a trial strategy of diminished capacity to form intent would have probably changed the outcome of this case. First, as argued above, evidence of defendant's intentional conduct saturates this trial. It is an ocean of purposeful behavior that could never be transited, especially given defendant's own testimony demonstrating that he had a purposeful reason for just about everything he did during his confrontations with the cement truck driver and Sheriff's Deputies.

2. THE EVIDENCE IN THIS CASE WAS
SUFFICIENT TO SUPPORT DEFENDANT'S
CONVICTION FOR UNLAWFUL POSSESSION
OF 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). 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. *Id.*; *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)).

In this case, defendant challenges the sufficiency of the evidence to establish constructive possession of the Alprazolam found in his vehicle. An orange pill bottle was found in a box under a box in the black BMW (Exhibit 9). 1 VRP 147-48; Exhibit 12, 1 VRP 149; 2 VRP 224-25. There were 86 pills in the pill bottle. 1 VRP 150. A pill from that bottle contained Alprazolam, a controlled substance. 2 VRP 278. Defendant was seated in the driver's seat of that BMW. 1 VRP 132. The engine

was running. 1 VRP 133. Defendant drove the BMW in the presence of the deputies. VRP 133-34. Defendant drove the BMW earlier that day. 2 VRP 357; 3 VRP 417. Defendant was alone in the BMW.¹⁵ Defendant parked the vehicle and fell asleep inside. 2 VRP 369.

Defendant, as he was sitting in the car deciding whether or not to comply with the Deputy's commands, testified to his thought process about the car:

What I remember is waking up, hearing one slap on the glass, not the door -- because it's a "ping" and a "poom." "Pierce County Sheriff's Department. Get out of the car or the window's going to be broken." And then I think, "Oh, hell no. That's \$500. What's going on? That could be more than that. \$600."

And I immediately turn, use both hands to take the seat belt off, because we're -- where it's stored up in the frame, the spring is loose, so you have to push and wiggle it in, and before I could even try to do that, is when the window's broken, and I scream, and I'm taken out the car.

3 VRP 400. This statement, made on direct examination, indicates that defendant had significantly more than a casual or transitory connection with the BMW that he was sitting inside. On direct examination the following exchange occurred:

¹⁵ Deputy Finnerty testified that an "individual" had been reported to be blocking a cement truck. 2 VRP 252. Deputy Finnerty, when asked what he saw, referenced defendant, but no other vehicle occupants. 2 VRP 252. No witness explicitly stated that defendant was alone in the vehicle, but no other occupants were referenced in the testimony of the witnesses. In the context of this case, a finder of fact could reasonably conclude that defendant was alone in the BMW.

Q. Okay. And just to be clear, this is before your vehicle gets parked in front of the cement truck?

A. On the north side, correct.

(emphasis added) 2 VRP 361. Another exchange:

Q. Okay. And so why did you -- well, did you park your car in front? Well, did you park your car where we've seen the photos --

A. Yes.

(emphasis added) 2 VRP 362. Another exchange:

Q. Right around are where your car was parked?

A. (Nods head.)

(emphasis added) 2 VRP 366. Another exchange:

Q. Okay. And did you ever get out of your car? After putting it in park, and before the police arrived, did you ever get out of your car and have any kind of physical confrontation with any of the construction workers or the people around there?

A. No.

Q. Okay. At that point in time that you pulled up and parked your car, did you ever get out of the car except

for after the police smashed your window and dragged you out?

A. No.

(emphasis added) 2 VRP 371-72. Another exchange, on cross examination:

Q. Now, you testified yesterday that you were in fact protesting and that's why you parked your BMW in front of this truck; is that correct?

A. Yes.

(emphasis added) 3 VRP 418.

In this case defendant exercised dominion and control over the premises where the drugs were found—the BMW—by driving the vehicle, and by sleeping in its driver's seat. Furthermore, viewing the evidence in the light most favorably to the State, that BMW was defendant's vehicle, even though it was registered to his mother. Defendant admitted to driving the BMW earlier that day. 2 VRP 357; 3 VRP 417. Such facts are sufficient to support a finding of guilt.

To establish constructive possession, the State had to show that Bowen had dominion and control over the controlled substance and the firearm. *See State v. Callahan*, 77 Wash.2d 27, 29, 459 P.2d 400 (1969). The State need not show exclusive control, but it must show more than mere proximity. *State v. George*, 146 Wash.App. 906, 920, 193 P.3d 693 (2008). An individual's sole occupancy and

possession of a vehicle's keys sufficiently supports a finding that the defendant had dominion and control over the vehicle's contents.

State v. Bowen, 157 Wn. App. 821, 827–28, 239 P.3d 1114 (2010) (citing *State v. Potts*, 1 Wn.App. 614, 617, 464 P.2d 742 (1969)). See also *State v. Harris*, 14 Wn. App. 414, 417, 542 P.2d 122, 125 (1975).

D. CONCLUSION.

Defendant's trial counsel made a conscious decision to forego a diminished capacity defense founded on voluntary intoxication. Criticism of that decision does not bear up, especially given the strong presumption that defendant's trial counsel made a reasonable and competent decision.

The evidence of constructive possession of Alprazolam presented at trial is sufficient to support the jury's verdict of guilty.

The judgment in this matter should be affirmed.

DATED: March 23, 2018.

MARK LINDQUIST
Pierce County Prosecuting Attorney



Mark von Wahlde
Deputy Prosecuting Attorney
WSB # 18373

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.

3-23-10 Therese Kar
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

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Transmittal Information

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