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NO. 50868-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

LEANORD STEPHENS,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PACIFIC COUNTY

Pacific County Cause No. 17-1-00009-2

The Honorable Douglas E. Goelz, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The State did not prove beyond a reasonable doubt that Stephens knowingly possessed heroin.
2. Stephens was denied his constitutional right to effective assistance of counsel when his attorney failed to move to suppress the results of an illegal search of a closed foil packet.
3. Stephens was denied his constitutional right to effective assistance of counsel when his attorney failed to hire an expert to testify that the substance in Stephens' hat was a legal, marijuana derivative.
4. Stephens was denied his constitutional right to effective assistance of counsel when his attorney failed to move to suppress substance at 3.6 hearing.

Issues Presented on Appeal

1. Did the State prove beyond a reasonable doubt that Stephens was guilty of possession of heroin when Stephens was unaware that he possessed a trace amount of heroin?
2. Was Stephens denied his constitutional right to effective assistance of counsel when his attorney failed to

move to suppress the closed, foil container where there was no independent justification to conduct a warrantless search?

3. Was Stephens denied his constitutional right to effective assistance of counsel when his attorney failed to move to suppress the contents of the closed foil packet?

B. STATEMENT OF THE CASE

Leonard Stephens was charged with unlawful possession of heroin contrary to RCW 69.50.4013. CP 3. Stephens was 40 years old at the time of his arrest. CP 15. Stephens waived his right to a jury and the Court conducted a bench trial. CP 10. Stephens was convicted as charged. CP 15. This timely appeal follows. CP 30.

a. 3.5 Hearing

Prior to trial, the court held a CrR 3.5 hearing to determine whether Stephens' alleged out-of-court statement was admissible. RP 13. Pacific County Deputy Shawn Eastman testified that he arrested Stephens for domestic violence assault in the fourth degree. RP 23. During a subsequent search, Eastman found a folded foil packet. RP 34. Eastman opened it and saw a brown substance. RP 28. When Eastman asked Stephens to identify the substance, Stephens allegedly confessed that it was heroin. RP 28.

Stephens did not appear to be under the influence of narcotics when he made the statement. RP 31. Stephens did not testify at the 3.5 hearing and the court admitted the statements. RP 46.

b. Trial Facts

Shortly after midnight on August 7, 2016, Eastman responded to a domestic disturbance at the Dismal Nitch area. RP 51. When Eastman arrived, he contacted Stephens and his girlfriend, Danielle Demaris. RP 51, 97, 99. Eastman arrested Stephens for a domestic violence assault in the fourth degree and placed him in handcuffs. RP 51, 70, 73. After Eastman read Stephens his Miranda rights, he searched Stephens' person. RP 73. Eastman found a pipe and a straw on Stephens' person. RP 55.

Eastman then seized Stephens' baseball cap, looked inside, and found a closed, folded up aluminum foil packet. RP 53. Eastman opened the foil and saw black and brown residue. RP 53. After he unfolded the foil and looked inside, Eastman asked Stephens to identify the substance. RP 136-37.

Eastman and Stephens provided conflicting testimony about what occurred next. Eastman testified that Stephens said the substance was heroin, while Stephens testified that he said it was

Rick Simpson Oil (RSO). RP 64, 108.

At trial, Stephens' defense was unwitting possession. RP 143. RSO is a cannabis derivative made from a concentrated form of THC. RP 101-02. Stephens obtained it from a friend in Chehalis, who was recovering from cancer. RP 104. There was no evidence any money changed hands. Stephens had used heroin approximately 15 years ago and he recalled that it dulled his senses. RP 106. Stephens had no idea the material contained heroin, because when he smoked the material his friend gave him, it did not have the sense dulling, heroin-type effect on him. RP 106, 108. Stephens believed the RSO on the foil was entirely burnt but the foil was left in the hat. RP 122-24.

Eastman's memory of the incident was weak. He did not recall whether Demaris was intoxicated or whether he smelled alcohol on her breath. RP 66. During re-direct, the prosecutor stated that Eastman's testimony "sounds cagey" and pressed for more details. RP 73. Eastman responded, "I don't exactly remember the exact process I – at the exact point I asked him about the drugs specifically..." RP 73. On cross examination, defense counsel asked Eastman if Stephens ever denied the

substance was heroin and Eastman said he did not. RP 135. However, on direct rebuttal, Eastman testified that he asked Stephens more than once if this substance was heroin. RP 135-36.

At trial, Eastman suddenly, allegedly, remembered new details for the first time. He remembered that Stephens said he used heroin in the past, had stopped, and recently started using again. RP 67. But, later, Eastman admitted that may have been the conclusion he drew, and not what Stephens actually stated. RP 69. Eastman also remembered, for the first time on rebuttal, that he asked Stephens whether his girlfriend knew about the substance and Stephens said “no”. RP 133-34.

Forensic scientist, Debra Price, from the Washington State Crime Laboratory, tested two portions of the substance, using a gas chromatography mass spectrometry (GCMS), which contained trace amounts of heroin. RP 84, 87, 89. Price testified that if the substance did not contain heroin the GCMS would have identified what it did contain. RP 88. She used the GCMS because she suspected the substance was a mixture. RP 89. The defense did not present evidence from an independent test or any expert testimony about RSO.

In closing, the State argued that even if the substance was RSO, Stephens is still guilty because he bore the risk that the substance contained heroin, since he did not purchase it at a 502 store. RP 151.

The trial court found that Eastman did not recall much of anything that took place, but he was firm that Stephens admitted the residue on the foil was heroin at the time of his arrest. CP 12. The court found Stephens did not meet his burden of proof for unwitting possession because the defendant kept the foil, it tested positive for only heroin, and his only excuse for keeping it was that he could not find a place to throw it away. CP 13. The court found, “[t]his only makes sense if the defendant knew the residue on the tinfoil was heroin and still of value as a way to get high.” CP 13.

The court found Stephens guilty and sentenced him to a standard range sentence. RP 154, 158.

C. ARGUMENT

1. THE STATE FAILED TO PROVE THAT
STEPHENS KNOWINGLY
POSSESSED HEROIN.

The State failed to prove that Stephens knowingly possessed heroin because the evidence demonstrated that

Stephens did not know the substance contained heroin, but rather Stephens thought the substance was RSO, a legal cannabis derivative. RCW 69.50.4013 (4); RP 101-02. The State failed to prove that Stephens knowingly possessed heroin because the evidence provided that Stephens testified that he thought the substance was RSO, a legal cannabis derivative. RCW 69.50.4013 (4) RP 101-02.

Both the federal and state constitutional due process clauses require the state to prove each of those elements beyond a reasonable doubt. U.S. Const. Amend. XIV; Wash. Const. art. 1 § 3; *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); *State v. Johnson*, 188 Wn.2d 742, 750, 399 P.3d 507 (2017); *State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016); *State v. Hundley*, 126 Wn.2d 418, 421, 895 P.2d 403 (1995).

RCW 69.50.4013 (4) provides an exception to the crime of possession of a controlled substance when one adult delivers 3.5 grams or less of marijuana concentrates to another adult for personal use as long as there is no financial consideration and it is done in a nonpublic place.

This court reviews affirmative defenses for sufficiency of the

evidence. *State v. Lively*, 130 Wn.2d 1, 17, 921 P.2d 1035 (1996). (retype) Under this analysis the court asks whether, viewing the evidence in the light most favorable to the State, a rational trier of fact could have found that the defendant failed to prove the defense by a preponderance of the evidence. *Lively*, 130 Wn.2d at 17.

The State bears the burden of proving the nature of the substance and the fact of possession. *State v. Bradshaw*, 152 Wn.2d 528, 538, 98 P.3d 1190 (2004) *citing State v. Staley*, 123 Wn.2d 794, 798, 872 P.2d 502 (1994). “Possession is defined in terms of personal custody or dominion and control.” *Staley*, 123 Wn.2d at 798. “The state may establish that possession is either actual or constructive.” *Staley*, 123 Wn.2d at 798.

A defendant charged with possession of a controlled substance under RCW 69.50.4013, may assert as an affirmative defense that he unwittingly possessed the substance, either because he did not know he possessed it or because he was unaware of the nature of the substance. *City of Kennewick v. Day*, 142 Wn.2d 1, 11, 11 P.3d 304 (2000); *State v. Cleppe*, 96 Wn.2d 373, 381, 635 P.2d 435 (1981). The burden then shifts to the defendant to prove, by a preponderance of the evidence, the

possession was lawful or unwitting. *State v. Adame*, 56 Wn. App. 803, 806-07, 785 P.2d 1144 (1990).

If the defendant affirmatively establishes that “his ‘possession’ was unwitting, then he had no possession for which the law will convict”. *Cleppe*, 96 Wn.2d at 381. This “ameliorates” the harshness of the strict liability crime. *Bradshaw*, 152 Wn.2d at 538, *citing Cleppe*, 96 Wn.2d at 380–81.

Importantly, the affirmative defense of unwitting possession does not excuse the State from proving each element beyond a reasonable doubt. *Hundley*, 126 Wn.2d at 419. In *Hundley*, the defendant was arrested for a domestic violence incident and during a search incident to arrest, the officer discovered a small plastic bag in his wallet. *Hundley*, 126 Wn.2d at 419. The bag was wrapped in a mail-order form from Mid America Drug, which sells incense and legal stimulants. *Hundley*, 126 Wn.2d at 420.

Hundley testified the material was potpourri or incense, which was mailed to him unsolicited. The Washington State Patrol Crime Laboratory tested the substance and it tested negative for marijuana. The technician ran different test on the material and that test indicated trace amounts of heroin and cocaine. *Hundley*,

126 Wn.2d at 420-21. Hundley hired a private lab, who retested the material using the same method. The test failed to detect heroin or cocaine. *Hundley*, 126 Wn.2d at 421.

The Supreme Court held that while the open contradiction between the two tests “could” be accounted for by noting that drugs are often imperfectly mixed with benign materials, and one portion might reveal the presence of drugs while another portion may not, “could” is not the correct standard. Rather, the State must prove each element beyond a reasonable doubt. *Hundley*, 126 Wn.2d at 421.

Here, there was no evidence that the Crime Lab specifically tested the material for a cannabis derivative or tested all of the substance, which, as in *Hundley*, could have revealed a negative for the trace heroin. The results of a more comprehensive test suggested in *Hundley*, would have either refuted the state’s position or confirmed the material contained Heroin. *Hundley*, 126 Wn.2d at 421.

Stephens did not bear the risk that the substance contained heroin, as the State suggests. RP 150-51. He legally obtained the RSO under RCW 69.50.4013 (4), which authorizes a small delivery

of a cannabis derivative, for personal use without penalty as long as there is no financial consideration and both parties are over 21. To find otherwise would allow the State to convict a defendant for legal conduct.

Since Stephens raised an unwitting defense, the State was required to disprove the material was a legal cannabis derivative, which, in this case, means both that Stephens knew the material contained heroin, and that it was not a cannabis derivative.

Without such evidence, the State's case here is similar to *Hundley*, where the state merely established that the substance "could" have contained trace heroin in an otherwise legal substance. Since, "could" or is not the standard, the State failed to prove its case beyond a reasonable doubt.

The State also failed to prove that Stephens knew the RSO contained heroin. Stephens testified the substance was RSO, a marijuana concentrate. He received it from a friend in Chehalis. RP 101-02, 104. Stephens testified that he told Eastman it was RSO. RP 108. Eastman, on the other hand did not remember much of anything about the incident except that according to Eastman, Stephens confessed to possessing heroin. However, Eastman did

not recall the process he went through to search Stephens, he did not remember when Stephens made that statement, he did not recall whether Demaris was intoxicated, and he did not seem to know how to recognize someone under the influence of heroin. RP 31, 66, 73.

Unconvincingly to the trial court, Eastman, testified that he did remember things that were not in his report such as Stephens' statement that he had a problem with heroin in the past and that Stephens did not tell his girlfriend that he was carrying drugs. Eastman testified he did not recall that Stephens mentioned RSO, but he probably would have if Stephens used that term. RP 128-29. However, Eastman did corroborate Stephens' testimony that he received the substance from a friend for personal use. RP 133. 31-32, 65-66, 73, 112-13. The only evidence in the record to support a finding that Stephens knew the nature of the substance, is testimony from a police officer whose memory is selective at best.

In short, the evidence that Stephens knew the material contained heroin was thin. The State failed to prove that a crime took place. If the substance was RSO, there was no crime under RCW 69.50.4013 (4). Price tested two portions of substance, which

tested positive for heroin, but “testing one portion might reveal the presence of drugs, while testing another portion would not.” *Hundley*, 126 Wn.2d at 421; RP 84.

Even if the State did prove the possession and nature of the substance beyond a reasonable doubt, no rational trier of fact could have found that Stephens knew the substance contained heroin. The remedy is to reverse the conviction and remand for dismissal with prejudice. *Hundley*, 126 Wn.2d at 422.

2. STEPHENS WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHEN HIS ATTORNEY FAILED TO MOVE TO SUPPRESS THE RESULTS OF AN ILLEGAL SEARCH, AND FAILED TO HIRE AN EXPERT TO TEST THE ALLEGED CONTRABAND.

The Sixth Amendment to the United States Constitution and Wash. Const. art. I, § 22 guarantee a criminal defendant the right to effective assistance of counsel. U.S. Const. Amend. VI; *State v. Grier*, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011) The Court reviews ineffective assistance of counsel claims de novo. *State v. Wooten*, 178 Wn.2d 890, 895, 312 P.3d 41 (2013).

To prevail on an ineffective assistance of counsel claim, the

defendant must show that defense counsel's representation was deficient and that the deficient representation prejudiced him. *Grier*, 171 Wn.2d at 32-33. Failure to establish either prong is fatal to an ineffective assistance of counsel claim. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Counsel's performance is deficient if it falls below an objective standard of reasonableness, and there is “a strong presumption that counsel's performance was reasonable.” *Grier*, 171 Wn.2d at 33. (*quoting State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009)). To establish actual prejudice, Stephens must show the trial court likely would have granted the motion to suppress. *State v. Hamilton*, 179 Wn. App. 870, 882, 320 P.3d 142 (2014); *State v. Reichenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004).

a. Illegal Search

Under the Fourth Amendment, a search occurs if the government intrudes upon a subjective and reasonable expectation of privacy. U.S. Const. Amend. IV; *Katz v. United States*, 389 U.S. 347, 351-52, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967); *State v. Young*,

123 Wn.2d 173, 181, 867 P.2d 593 (1994). Generally, warrantless searches are unreasonable per se Under the Fourth Amendment to the United States Constitution. *State v. Kinzey*, 141 Wn.2d 373, 384, 5 P.3d 668 (2000). However, courts recognize a few carefully drawn exceptions to this rule. *Kinzey*, 141 Wn.2d at 384.

A search incident to arrest is one such exception. *State v. Valdez*, 167 Wn. 2d 761, 769, 224 P.3d 751 (2009). The search incident to arrest embraces two analytically distinct concepts under the Fourth Amendment and Wash. Const. art. I, § 7. *State v. Byrd*, 178 Wn. 2d 611, 617, 310 P.3d 793 (2013).

(i) Fourth Amendment

The first concept relating to search incident to arrest under the Fourth Amendment is that “a search may be made of the area within the control of the arrestee.” *Byrd*, 178 Wn.2d at 617 (*quoting United States v. Robinson*, 414 U.S. 218, 224, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973)). This type of search must be justified by concerns that an arrestee might access the article to obtain a weapon or destroy evidence. *Byrd*, 178 Wn.2d at 617, *citing Chimel v. California*, 395 U.S. 752, 763, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969) (*overruled in part by Arizona v. Gant*, 556 U.S. 332, 129

S.Ct. 1710, 1713, 173 L.Ed.2d 485 (2009)).

In *Gant*, the Court held that authorities may not conduct an unwarranted search of the passenger compartment of a vehicle unless “it is reasonable to believe that the arrestee might access the vehicle at the time of the search or that the vehicle contains evidence of the offense of arrest.” *Gant*, 129 S.Ct. at 1713.

Following, *Gant*, the Court in *U.S. v. Deitz*, 577 F.3d 672, 688 (2009), held the officers' warrantless search of Deitz's briefcase violated his Fourth Amendment rights because the officers had no reason to suspect that the briefcase contained evidence related to the offense of arrest—Deitz's failure to show proof of insurance. *Id.*

State v. MacDicken, 179 Wn.2d. 936, 319 P.3d 31 (2014), held permissible a search incident to arrest of a laptop bag that were in the defendant's actual possession on grounds that these items were part of “his person”. *MacDicken*, 179 Wn.2d. at 34. *MacDicken* is distinguishable on grounds that therein there was no evidence that the police searched a closed container within the laptop bag.

Here, distinguishable from *MacDicken*, under, *Gant*, and

Deitz, Eastman's warrantless search of the closed foil packet in Stephens' hat violated his Fourth Amendment rights because the officers had no reason to suspect that the hat or foil contained evidence related to the offense of arrest—domestic violence, or that Stephen's concealed a weapon.

The scope of a search incident to arrest is narrowly tailored to prevent access to a weapon or destruction of evidence, which must be related to the offense that prompted the arrest. *Valdez*, 167 Wn.2d at 768-69. If neither of those concerns exists, there must be another applicable exception or the officer must obtain a warrant. *State v. Wisdom*, 187 Wn. App. 652, 673, 349 P.3d 953 (2015).

The justification for a search of the person under the Fourth Amendment is narrower than under art. I, § 7. Therefore, an analysis under the State constitution controls.

b. Search Art. I, § 7

Art. I, § 7 provides qualitatively different protections than the Fourth Amendment. *State v. Snapp*, 174 Wn.2d 177, 275, P.3d 289 (2012). Under art. I, § 7, there is no search incident to arrest exception to the warrant requirement where the person does not

have access to the item searched *Snapp*, 174 Wn.2d at 187.

The expectation of privacy in a closed container inside a hat is reasonable because it is analogous to a purse, briefcase, or luggage. *State v. Kealey*, 80 Wn. App. 162, 170, 907 P.2d 319 (1995) (“Purses, briefcases, and luggage constitute traditional repositories of personal belongings protected under the Fourth Amendment.”). It is a repository for personal belongings. For an individual who does not carry a wallet, this may be a way to carry money or personal information, such as a license.

Washington State’s constitution and our State Supreme Court disapprove the expansive application of the Fourth Amendment search-incident-to-arrest exception to the period of time after the arrestee is secured and attendant risks to officers have passed. *Snapp*, 174 Wn.2d at 189. When a search can be delayed without running afoul of concerns for officer safety or to preserve evidence of the crime of arrest from destruction by the arrestee, there is no exception to the warrant requirement. *Snapp*, 174 Wn.2d at 195. The police officer can prevent destruction of evidence by holding the bag or a hat as a sealed unit until obtaining a warrant. *Id.*

For example, in *Wisdom*, sheriff deputy Boyer arrested the defendant for possession of a stolen vehicle. Boyer handcuffed Wisdom, searched his person, and escorted him to the patrol vehicle. *Wisdom*, 187 Wn. App. at 657-58. During the search of Wisdom's person, Boyer found a pipe. Wisdom admitted he used the pipe for smoking methamphetamine and told Boyer there was methamphetamine on the front seat of his truck. *Wisdom*, 187 Wn. App. at 658. Boyer looked inside the cab of the truck and saw a black shaving kit bag. The bag was closed, but Boyer saw money through the mesh side of the bag. Boyer removed the bag from the vehicle and opened it without a warrant and without Wisdom's consent. *Wisdom*, 187 Wn. App. at 658.

The Court of Appeals held the warrantless search of the truck and the shaving kit bag did not fall within the search incident to arrest exception because the officer's safety was not at issue once Wisdom was secured. There was no reason the bag could not be held, and the search delayed, to preserve evidence of the crime until an officer obtained a warrant, so the search was not justified by preservation of evidence. *Wisdom*, 187 Wn. App. at 672-73.

Similarly here, once Stephens was secured in handcuffs, he

could not access the hat, which he testified was on the ground 15 feet away. RP 100. Here there was even less justification to search the hat because Eastman had no reason to believe the hat contained evidence of the crime of domestic violence, Stephens did not have access to the hat once arrested and there were no officer safety concerns. Therefore, there was no justification for the warrantless search based on officer safety or preservation of evidence once Stephens was secured in handcuffs.

Stephens had a reasonable expectation of privacy in the foil because it was inside his hat, it was closed, and he did not consent to it being seized or searched. *Id.* See also, *State v. Evans*, 159 Wn.2d 402, 409, 150 P.3d 105 (2007). (Evans “easily” established a subjective expectation of privacy because (1) the briefcase was in his truck, (2) the briefcase was closed and locked, and (3) he objected to its seizure).

Hamilton, 179 Wn. App. at 877, also illustrates the greater protections afforded under article 1, section 7. At trial, Hamilton moved to suppress the methamphetamine on the ground that it was discovered as a result of a warrantless search of her house. On appeal, she argued the methamphetamine should have been

suppressed on the ground that it was obtained in an unlawful search of the purse. *Hamilton*, 179 Wn. App. at 877. The Court of Appeals treated the challenge to the search of her house and to her purse as two distinct issues. *Hamilton*, 179 Wn. App. at 882.

The Court held that Hamilton had a reasonable expectation of privacy in a purse, even though Hamilton denied ownership of the purse, but explained she used the purse to carry her rings in a small pouch. *Hamilton*, 179 Wn. App. at 883-886. The Court explained that and there was no exception to the warrant requirement and counsel was ineffective for failing to bring a motion to suppress. *Hamilton*, 179 Wn. App. at 888.

Here, as in *Hamilton*, Stephens' had a privacy interest in his hat; there was no issue with loss or destruction of evidence or access to a weapon, and no exception to the warrant requirement. The search of the foil was a new search outside the scope of the search of Stephens' person, incident to arrest. Eastman testified that he looked inside the hat. There was no weapon in the hat and no evidence of domestic violence. Yet, Eastman conducted another warrantless search of the foil itself. The foil is analogous to a closed container because it was folded and Eastman had to unfold it to

look inside. There was no justification for this second search.

These facts require this Court to find that Stephen's article 1, section 7 privacy rights were violated and as in *Hamilton, infra*, counsel was ineffective for failing to move to suppress. Moving to suppress the evidence would not have involved any risk to Stephens. If he prevailed, the charges would have been dismissed. If it was denied, he would have proceeded to trial. There was no strategic reason not to file a motion to suppress the most crucial evidence in the case. Therefore, as in *Hamilton*, counsel's performance here was prejudicially deficient, which requires this Court to reverse and remand for a new trial. *Hamilton*, 179 Wn. App. at 880.

c. No Expert Testimony

Drugs can be present in parts of material tested for drugs and not in other parts. This usually occurs when a substance is imperfectly mixed. *Hundley*, 72 Wn. App. at 748. In *Hundley*, the State was unable to prove its case when its expert, and the defense expert, both tested an alleged controlled substance and the test results conflicted. *Hundley*, 72 Wn. App. at 748.

Here, the State's expert tested the substance and only found

trace amounts of heroin. Defense counsel should have had the remainder of the substance tested by its own expert. There was no risk to Stephens in testing the material, and even if the results were positive for heroin, Stephens still could have moved forward with his unwitting possession defense. But, if the test contradicted the State's expert, the case would have been dismissed under *Hundley* for insufficient evidence. Therefore, there was no strategic reason not to retain an expert to test the substance.

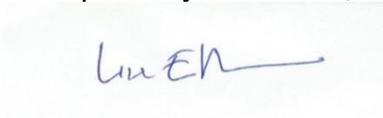
D. CONCLUSION

The State failed to prove Stephens knowingly possessed a controlled substance. Even if the elements were met, Stephens proved his possession was unwitting by a preponderance of the evidence. Therefore, this case should be remanded for dismissal with prejudice.

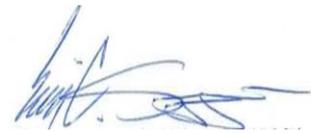
In the alternative, Stephens' was denied his constitutional right to effective assistance of counsel when defense counsel failed to move to suppress the substance located inside the closed, foil packet, which the trial court likely would have granted.

DATED this 1st day of February 2018.

Respectfully submitted,

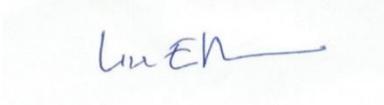


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I, Lise Ellner, a person over the age of 18 years of age, served the Pacific County Prosecutor’s Office mmclain@co.pacific.wa.us_and Leanord Stephens, 432 SW 19th Street, Chehalis, WA 98532 a true copy of the document to which this certificate is affixed on February 1, 2018. Service was made by electronically to the prosecutor and Leanord Stephens by depositing in the mails of the United States of America, properly stamped and addressed.



Signature

LAW OFFICES OF LISE ELLNER

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