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

STATE OF WASHINGTON, RESPONDENT

v.

RICKY RAY SEXTON, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Jack Nevin

No. 17-1-02934-5

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**Brief of Respondent**

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

1. Whether the trial court properly admitted the evidence where the warrant was supported by probable cause because there was a nexus between the defendant's trailer house and probable criminal activity, the information was not stale, and the warrant was properly served?
2. Whether the trial court properly denied defendant's request to represent himself, where the request was both untimely and equivocal and where there were legitimate questions about defendant's capability to act as his own counsel?
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4. When viewed in the light most favorable to the State, was sufficient evidence presented to establish that the defendant had dominion and control over the bedroom and therefore the drugs, in the trailer?
5. Should this court remand for the criminal filing fee, the interest accrual provision on nonrestitution legal financial obligations and the DNA collection fee to be stricken?

B. STATEMENT OF THE CASE.

1. PROCEDURE

On August 17, 2017, Ricky Ray Sexton, hereinafter "defendant" was arraigned in Pierce County Superior Court with one count of unlawful possession of a controlled substance with the intent to deliver –

methamphetamine including a major violation of the uniform controlled substances act aggravator. CP 1-3. The case was called for trial by the Honorable Jack Nevin on February 13, 2018. RP Vol I February 13, 14, 2018 p. 3. This case was recessed to allow defendant's other case to proceed to trial first. RP Vol I February 13, 14, 2018 p. 3. The parties reconvened on March 1, 2018 and the court called the case for trial. RP Vol II March 1, 5, 6, 2018 p. 3, 13. A CrR 3.6 hearing to suppress evidence was held on March 5, 2019. RP Vol II March 1, 5, 6, 2018 p. 43 – 175. The court denied the defense motion to suppress the search warrant finding that it was properly issued and served and contained sufficient facts and circumstances to establish probable cause. RP Vol II March 1, 5, 6, 2018 p. 164 - 174. The court entered findings of facts and conclusions of law. CP 176 - 182.

The parties reconvened for trial on March 26, 2018 where defendant attempted to discharge his defense counsel and obtain new counsel and also requested to represent himself. RP Vol. III March 26, 2018 p. 3 – 42. The court denied the defendant's request for a new attorney and to represent himself. RP Vol. III March 26, 2018 p. 43 – 53. The court entered findings of fact and conclusion of law. CP 183 – 186. Testimony began on March 28, 2018. RP Vol. V March 28, 2018. The defense moved to dismiss the major violation of uniform controlled

substances act aggravator at the close of the State's case in chief. RP Vol. VI p. 69 – 77, 83 - 92. The court granted the defense motion and dismissed the aggravating circumstance. RP Vol. VI p. 92.

The jury did not reach a decision on unlawful possession with intent to deliver methamphetamine but did find the defendant guilty of the lesser included crime of unlawful possession of a controlled substance. RP Vol. VI April 2, 3, 4, 2018 p. 153 – 156. The court denied defendant's request for a DOSA sentence and sentenced the defendant to 24 months at the high end of the standard range to run concurrently with the sentence imposed on defendant's other cause number 17-1-00988-3. RP Vol. VI May 4, 16, 2018.

## 2. FACTS

### a. Facts at CrR 3.6 Hearing

Pierce County Sheriff's Deputy Jesse L. Hotz has been employed by the Department for about 17 years. He is currently assigned to the Special Investigations Unit where he works in Narcotics. Deputy Hotz is also a member of the SWAT (Special Weapons and Tactics) team. RP Vol. II March 1, 5, 6, 2018 p. 44. Once selected for the team, officers attend basic SWAT training and continue to train two or more times per month. RP Vol. II March 1, 5, 6, 2018 p 45. The team trains for different scenarios to make entry into buildings as safe as possible. RP Vol. II

March 1, 5, 6, 2018 p 45 – 46. A high risk search warrant service is determined by knowledge of surveillance cameras, presence of firearms and the person's history as part of the threat assessment. RP Vol. II March 1, 5, 6, 2018 p. 47 – 48. The tactical plan for serving search warrants in narcotics cases differs from other plans because of the risk of evidence being quickly destroyed. RP Vol. II March 1, 5, 6, 2018 p 48 – 49. The tactical plan for warrant service tries to mitigate risk as much as possible. RP Vol. II March 1, 5, 6, 2018 p. 63. The warrant was served at 5:00 a.m. as opposed to 4:00 in the afternoon when suspected narcotics traffickers would be up, armed and awake. RP Vol. II March 1, 5, 6, 2018 p. 63. Deputy Hotz's experience includes finding people wide awake in narcotics residences at 4:00, 5:00, or 6:00 in the morning. RP Vol. II March 1, 5, 6, 2018 p. 63.

On July 31, 2017 at about 5:00 a.m., Deputy Hotz was part of the SWAT team that made entry into the defendant's residence and was assigned as the primary mechanical breacher for the operation. RP Vol. II March 1, 5, 6, 2018 p. 51, 62. The service in this case had been assessed as a high risk search warrant. RP Vol. II March 1, 5, 6, 2018 p. 54. This service was in regard to a narcotics investigation and the team had previously served a warrant on this same residence four or five months before. RP Vol. II March 1, 5, 6, 2018 p. 54. Deputy Hotz did not see a

light on or any civilians outside the residence as he approached. RP Vol. II March 1, 5, 6, 2018 p. 63 - 64.

Deputy Hotz made his way to the front porch and started his knock and announce on the front door. RP Vol. II March 1, 5, 6, 2018 p. 57. The knock and announce consisted of knocking and yelling “police, search warrant, open the door.” RP Vol. II March 1, 5, 6, 2018 p. 57. Deputy Hotz knocked twice using his fist. He did not get any response from within the residence the first time he knocked. RP Vol. II March 1, 5, 6, 2018 p. 58. After knocking and announcing a second time, Deputy Hotz heard a female start screaming from inside the house. RP Vol. II March 1, 5, 6, 2018 p. 58. The “knocking” was more like “hitting” the door. RP Vol. II March 1, 5, 6, 2018 p. 58. The pause between the two “knock and announce” was about a second. RP Vol. II March 1, 5, 6, 2018 p. 59. As the door was breached, other officers deployed a flash noise diversionary device and broke a window as part of a port and cover. RP Vol. II March 1, 5, 6, 2018 p. 64 – 65, 75.

The individual screaming was not communicating anything to Deputy Hotz. It was not “hold on, I’m going to answer the door.” RP Vol. II March 1, 5, 6, 2018 p. 59. Deputy Hotz believed that someone inside the residence was potentially alerting others that could destroy evidence or arm themselves. RP Vol. II March 1, 5, 6, 2018 p. 59. No

one inside the residence communicated an intent to open the door. RP Vol. II March 1, 5, 6, 2018 p. 59. Deputy Hotz did not hear anyone running or toilets flushing. RP Vol. II March 1, 5, 6, 2018 p. 68.

Deputy Hotz then forced open the front door. RP Vol. II March 1, 5, 6, 2018 p. 59 – 60. Deputy Hotz estimated that the elapsed time from his first knock and announce to the breach of the door was anywhere from seven to ten seconds. RP Vol. II March 1, 5, 6, 2018 p. 60.

Deputy Hotz observed a detained a female identified as Rolfe when he entered the residence. RP Vol. II March 1, 5, 6, 2018 p. 60. Rolfe was on a couch and was lying in broken glass. RP Vol. II March 1, 5, 6, 2018 p. 69. Deputy Hotz placed Douglas Thompson into handcuffs in the living room area. RP Vol. II March 1, 5, 6, 2018 p. 72. A total of six individuals were located inside the residence. RP Vol. II March 1, 5, 6, 2018 p. 61. The individuals were awake and dressed. RP Vol. II March 1, 5, 6, 2018 p. 74. Once the residence was cleared and secured, Deputy Hotz returned to the residence to assist SIU in the investigation. RP Vol. II March 1, 5, 6, 2018 p. 61 - 62.

The defense called Douglas Thompson who testified that he was at the defendant's house the day before the warrant service. RP Vol. II March 1, 5, 6, 2018 p. 76 -77. His fiancée' Michelle Stecker was there with him. RP Vol. II March 1, 5, 6, 2018 p. 77. Mr. Thompson was

asleep when he woke to the sound of shattering glass and people running into the house. RP Vol. II March 1, 5, 6, 2018 p. 77. The two were sleeping “on the couch behind the big couch” about five to ten feet from the door. RP Vol. II March 1, 5, 6, 2018 p. 78. Mr. Thompson heard glass breaking and sounds like bombs going off. RP Vol. II March 1, 5, 6, 2018 p. 79. He suddenly “popped up” and found guns in his face. RP Vol. II March 1, 5, 6, 2018 p. 79. Mr. Thompson did not hear any announcement before the door was opened. RP Vol. II March 1, 5, 6, 2018 p. 80, 81. His fiancée’ Michelle, Dana, Karen, and Dan were in the living room area with him. RP Vol. II March 1, 5, 6, 2018 p. 80. The living room and kitchen are one area with no divider. RP Vol. II March 1, 5, 6, 2018 p. 82. Mr. Thompson thought the defendant was in the bathroom doing laundry. RP Vol. II March 1, 5, 6, 2018 p. 80.

Mr. Thompson testified that he was living at the residence and working for the defendant as his mechanic. RP Vol. II March 1, 5, 6, 2018 p. 82 – 83. Mr. Thompson is a methamphetamine user but keeps his use separate from the residence and has not seen any drug activity there. RP Vol. II March 1, 5, 6, 2018 p. 83. Mr. Thompson was present when a search warrant was served at the residence on March 9, 2017 but never once saw drug use occurring at the house. RP Vol. II March 1, 5, 6, 2018

p. 84. Mr. Thompson has been previously convicted of several crimes of dishonesty. RP Vol. II March 1, 5, 6, 2018 p. 84 – 85.

Michelle Stecker testified that she knows the defendant and lives at his house. RP Vol. II March 1, 5, 6, 2018 p. 86. Ms. Stecker was not present at the house when the first warrant was served but had been living there for a month or two. RP Vol. II March 1, 5, 6, 2018 p. 87, 94 - 95.

On the morning of July 31, 2017, Ms. Stecker was at the house along with Doug Thompson, Dan Sanford, Karen, Dana, and Rick. RP Vol. II March 1, 5, 6, 2018 p. 87. She was sleeping on the “lay down” couch about five or six feet from the door before the police came in. RP Vol. II March 1, 5, 6, 2018 p. 88. Karen, Dana, and Doug were sleeping on couches in the living room area. RP Vol. II March 1, 5, 6, 2018 p. 89.

Ms. Stecker woke to “them” crashing through the house. RP Vol. II March 1, 5, 6, 2018 p. 89. Ms. Stecker heard a “big bang” in the back room, Rick’s room, and then windows breaking. RP Vol. II March 1, 5, 6, 2018 p. 89. She was scared and did not know the men were police until there was a gun to her head and someone saying Pierce County Sheriff. RP Vol. II March 1, 5, 6, 2018 p. 90. Ms. Stecker did not hear anybody yell “police with a search warrant open the door.” RP Vol. II March 1, 5, 6, 2018 p. 91.

Ms. Stecker testified that she did not see any drug use at the house. RP Vol. II March 1, 5, 6, 2018 p. 95. Neither she nor Mr. Thompson were using drugs at that time. RP Vol. II March 1, 5, 6, 2018 p. 96. Ms. Stecker did not discuss her testimony or the incident with Mr. Thompson before testifying. RP Vol. II March 1, 5, 6, 2018 p. 98 – 99. Ms. Stecker has been previously convictions for theft in the third degree, possession of stolen property and shoplifting. RP Vol. II March 1, 5, 6, 2018 p. 100 - 101.

Dana Rolfe testified that the defendant is her boyfriend and that she lives with him. RP Vol. II March 1, 5, 6, 2018 p. 103 – 104. On July 31, 2017, Ms. Rolfe was sleeping on one of the ottomans by the window. RP Vol. II March 1, 5, 6, 2018 p. 105. Ms. Rolfe is a heavy sleeper and woke up to sounds like the house was being “banged on” from all sides. RP Vol. II March 1, 5, 6, 2018 p. 106, 113. She heard glass breaking and felt it flying around. RP Vol. II March 1, 5, 6, 2018 p. 106. She did not hear any banging on the front door or someone saying “police with a warrant open up.” RP Vol. II March 1, 5, 6, 2018 p. 106 – 107. Ms. Rolfe did not know where the defendant was. RP Vol. II March 1, 5, 6, 2018 p. 107. Ms. Rolfe remembered that Karen, Doug, Doug’s girlfriend and Rick were there but wasn’t sure. RP Vol. II March 1, 5, 6, 2018 p. 105.

Ms. Rolfe was at the house when the first search warrant was served earlier in the year but testified this time was different. RP Vol. II March 1, 5, 6, 2018 p. 109. When she woke up, there were “some people” in the front room but she wasn’t sure and wasn’t paying attention to where people were. RP Vol. II March 1, 5, 6, 2018 p. 110. It takes her awhile to focus when she wakes up. RP Vol. II March 1, 5, 6, 2018 p. 111. Ms. Rolfe did not know of any drug activity at the house the day before or going on at the house at all. RP Vol. II March 1, 5, 6, 2018 p. 112. Ms. Rolfe did admit that she and others smoke “weed” there. RP Vol. II March 1, 5, 6, 2018 p. 112.

Ms. Rolfe testified at a previous hearing that she has a bad memory and isn’t sure about a lot of details. RP Vol. II March 1, 5, 6, 2018 p. 113 – 114. Ms. Rolfe also has bad hearing but believed that she would have heard knocking on the front door because she was so close to it. RP Vol. II March 1, 5, 6, 2018 p. 114. Ms. Rolfe thought that the incident occurred when it was cold outside but wasn’t sure if it was spring or winter time. RP Vol. II March 1, 5, 6, 2018 p. 115. Her memory of what happened isn’t 100% clear because she has a bad memory, but it wasn’t in the summer. RP Vol. II March 1, 5, 6, 2018 p. 114 – 115.

Karen Smith testified that she lives in the same mobile home park that the defendant lives in. RP Vol. II March 1, 5, 6, 2018 p. 119. She

does odd jobs around the trailer court such as mowing lawns, cleaning houses, and grocery shopping. RP Vol. II March 1, 5, 6, 2018 p. 120. She was at the defendant's trailer in the early morning hours of July 31<sup>st</sup>. RP Vol. II March 1, 5, 6, 2018 p. 120. Ms. Smith had gone grocery shopping for the defendant and then came back to the trailer and put the groceries away. RP Vol. II March 1, 5, 6, 2018 p. 120. Ms. Smith was coloring with Ms. Rolfe on the couch when they both fell asleep. RP Vol. II March 1, 5, 6, 2018 p. 121, 130 - 131.

Ms. Smith was just about to fall asleep when she heard somebody "bash" though the door. RP Vol. II March 1, 5, 6, 2018 p. 121. There was a bright light and people bashed through the door. RP Vol. II March 1, 5, 6, 2018 p. 122. It was dark, and Ms. Smith was "absolutely positive" that she did not hear anything from the outside before the door was broken open. RP Vol. II March 1, 5, 6, 2018 p. 122. There was a light on in the kitchen with enough light that she could see to color. RP Vol. II March 1, 5, 6, 2018 p. 134. Ms. Smith was not sure if Mr. Thompson and Ms. Stecker were in the room but remembered "Dan" was sleeping at the other end of the couch. RP Vol. II March 1, 5, 6, 2018 p. 123. Ms. Smith did not know where the defendant was, but he was not in the living room. RP Vol. II March 1, 5, 6, 2018 p. 123.

Ms. Smith saw a “whole bunch” of people coming in and they were yelling. She realized it was the police after a few minutes. RP Vol. II March 1, 5, 6, 2018 p. 124. Neither she nor Ms. Rolfe were yelling or screaming. RP Vol. II March 1, 5, 6, 2018 p. 124.

Ms. Smith testified that she had put the groceries away about an hour before the police arrived and later testified that it may have been two hours before. RP Vol. II March 1, 5, 6, 2018 p. 126, 128. First she said that Mr. Thompson had taken her to the store then later said she had driven a neighbor’s van. RP Vol. II March 1, 5, 6, 2018 p. 126 – 127. The van ran out of gas in the parking lot and Mr. Thompson drove there to give her some gas. RP Vol. II March 1, 5, 6, 2018 p. 127. Ms. Stecker was with Mr. Thompson when they brought the gas. RP Vol. II March 1, 5, 6, 2018 p. 127. Ms. Smith did not call them to bring the gas, she surmised that they “just figured” she was gone too long so they came to check on her. Ms. Smith sat in the store parking lot for an hour before anyone “came to her rescue.” RP Vol. II March 1, 5, 6, 2018 p. 128 – 129. Ms. Smith remembered talking with a female deputy and told her at that time that she was there to help the defendant move. RP Vol. II March 1, 5, 6, 2018 p. 135 – 136.

b. Facts at Trial

Pierce County Sheriff's Deputy Robert Tjossem has been with the department for 15 years and is currently assigned to the patrol department. RP Vol V p.20. He was assigned to the special investigations unit as a narcotics investigator from 2008 through 2012 and again from January 2016 until three days before testifying on March 28, 2018. RP Vol. V p. 21. A narcotics investigator works undercover and drives an unmarked vehicle. RP Vol. V p. 21 – 22. Deputy Tjossem attended the DEA basic narcotics investigation course, Seattle Police Department's undercover school and a drug warrant entry class. RP Vol. V p. 23. Deputy Tjossem is a certified member of the Pierce County Clandestine Meth Lab Team. RP Vol. V p. 23.

Deputy Tjossem has participated in over 500 narcotics investigations during his career. RP Vol. V p. 23. The investigations almost always involve serving a search warrant. RP Vol. V p. 24. Deputy Tjossem is familiar with the street value of narcotics in Pierce County because he has purchased them in the ordinary course of his investigations. RP Vol. V p. 24 – 25. The purchased substances include methamphetamine. RP Vol. V p. 27. The street value of methamphetamine in July of 2017 was approximately \$20 per gram. An eighth of an ounce (3.5 grams or an eight ball) would cost around \$100, a

full ounce (a zip) would be \$325 to \$350 and a full pound would cost around \$4,000. RP Vol. V p. 28 - 29.

Individuals who sell methamphetamine typically use digital gram scales, small ziplock baggies, and will record transactions in a ledger or notebook. RP Vol. V p. 32 – 34. Individuals who are involved in dealing methamphetamine tend to have larger quantities than those individuals who are only users. RP Vol. V p. 33 - 34. The dealers buy in bulk and break it down to sell it and make a profit. RP Vol. V p. 33 – 34.

Deputy Tjossem was the case officer and lead investigator of this investigation. RP Vol. V p. 36 – 37. As a case officer, his duties include receiving and gathering enough information to have probable cause for a search warrant. RP Vol. V RP 37. Deputy Tjossem puts the information into an affidavit and requests a search warrant from a Superior Court Judge. RP Vol. V p. 37. Deputy Tjossem coordinates the service of the warrant, including securing the residence and the suspect and processes the scene for evidence. RP Vol. V p. 37 – 38. The case officer is assisted during the course of the investigation and warrant service by other members of the Special Investigations Unit. RP Vol. V p. 38.

On July 31, 2017, Deputy Tjossem obtained a search warrant after conducting an investigation regarding the defendant. RP Vol. V p. 34 – 36. The warrant was for an address in Pierce County that was associated

with the defendant. RP Vol V p. 35. Deputy Tjossem and other officers served the warrant at the defendant's double wide trailer at 5:00 in the morning. RP Vol. V p. 39. The defendant was present inside the trailer and was in the living room area when Deputy Tjossem contacted him. RP Vol. V p. 40. The trailer was searched by Deputy Tjossem and other members of the Special Investigations Unit. RP Vol. V p. 40. The officers located 1 pound 1 ounce of a white crystalline substance. RP Vol. V p. 46. This amount is not consistent with personal use. RP Vol. V p. 47. The officers also recovered 5 digital scales, small ziplock baggies and ledgers detailing names, dates, amounts, debts, and prices. RP Vol V p. 51 – 54. Deputy Tjossem observed the term “zip” in the seized written materials. RP Vol. V p. 54. The officers seized approximately \$1,600 in cash from the residence. RP Vol. V p. 55.

Deputy Tjossem included the term “dominion and control” in his search warrant. RP Vol. V p. 56. The term refers to documents such as power bills or mail addressed to the location that shows who lives at or controls the residence. RP Vol. V p. 57. Officers located documents in the defendant's residence in the defendant's name and showing the residence address. RP Vol. V p. 57 - 58. Deputy Tjossem saw a power bill and a letter with the defendant's name and address on it. He did not locate a rental agreement or lease. RP Vol. V p. 59. Five people more

were located inside the trailer at the time of the warrant service. RP Vol. V p. 60. A copy of the warrant was left at the residence per standard policy. RP Vol. V p. 62 - 64.

Deputy Kristian Nordstrom has been employed as a Pierce County Deputy for just over 24 years. RP Vol. V p. 65 – 66. He is currently assigned to the Special Investigations Unit as a narcotics investigator where he has been a member for a total of 11 years. RP Vol. V p. 66. Deputy Nordstrom has been to classes on identifying substances and has been involved in several hundred narcotics investigations. RP Vol. V p. 66 – 67. He has been involved in serving around 200 search warrants. RP Vol. V p. 67.

On July 31, 2017, Deputy Nordstrom participated in servicing the search warrant at the defendant's trailer. RP Vol. V p. 68. The warrant was served around 5:00 a.m. RP Vol. V p. 68. Deputy Nordstrom interviewed one gentleman, took photographs, and searched the living room, kitchen, and the northwest back room. RP Vol. V p. 68 – 69. He then helped to package and seal the evidence as it was recovered. RP Vol. V p. 69. As the evidence is recovered, it is catalogued, packed and sometimes sealed. RP Vol. V p. 69. The sealing process consists of using specific sealing tape to seal bags and lids shut. RP Vol. V p. 70.

Deputy Nordstrom took photographs of the trailer after the SWAT team had entered the residence and secured the scene but before the offices began their search. RP Vol. V p. 72 – 84. The SWAT team is not always utilized in a warrant service, but their role is not to conduct the search. RP Vol V. P. 84 – 85. The SWAT team conducts the initial entry and detains the people inside. RP Vol. V p. 85. The SWAT team ensures that no one is hiding in a closet or under the couch for safety reasons. RP Vol. V p. 85. Once the residence is cleared, it is turned over to the investigating officers. RP Vol. V p. 85 – 86.

Once Deputy Nordstrom photographed the residence, he assisted in searching. The officer who finds the item will give it a number and take a photograph of it and its location. RP Vol. V p. 86 – 87. Deputy Nordstrom located a metal lockbox on the kitchen table and photographed it. He found two small electronic scales inside. RP Vol. V p. 90. Deputy Nordstrom did not request any fingerprint analysis. RP Vol. V p. 96. Deputy Nordstrom also located and seized a used glass methamphetamine pipe in the living room and crib notes in a purse in the kitchen with the metal lockbox. RP Vol. V p. 98. Another glass pipe and a bong was found in the kitchen. RP Vol. V p. 98 – 99. It is fairly common for individuals who sell methamphetamine to also use it. It is also common to find methamphetamine users at the scene where methamphetamine is

being sold. RP Vol. V p. 99 – 100. Deputy Nordstrom also found and recovered a cell phone, a box of assorted ammunition, four freezer bags with residue, a baggie containing a white crystalline substance, and three vials. RP Vol. V p. 100.

Pierce County Sheriff's Detective Elizabeth Reigle is a 20 year veteran of the department and has been assigned to the Special Investigations Unit for 10 years. RP Vol. V p. 103. Detective Reigle participated in the warrant service at the defendant's residence and searched the southeast master bedroom. RP Vol. V p. 106 -109. Detective Riegel located a document on the bed in the master bed room. The document had the defendant's name on it and was lying open on the bed as if it had recently been placed there. RP Vol. V p. 110 – 111, 158. Exhibit 2. The document was dated July 24, 2017 and had the name "Rick Sexton" and "Thrift, Washington" on it. RP Vol. V p. 156. The address line was blank. RP Vol V p. 156. Detective Reigle located a piece of paper with handwritten notes on it, a spiral notebook with handwritten notes, a little notebook with handwritten notes on the desk in the master bedroom and a cup containing a white crystalline substance in it. RP Vol. V p. 114 – 115, 117 – 118, 123 – 124, 137 - 138.

Detective Riegel located a digital scale with a white crystalline residue in the bottom drawer of a filing cabinet in the master bedroom.

RP Vol. V p. 128 – 131. A black cash box containing U.S. currency was found in the bottom drawer of a filing cabinet in the master bedroom. RP Vol. V p. 132 – 133, 136. A black nylon toiletry bag was found in the master bedroom closet mixed in with men's clothing. The black bag was found under folded men's pants. RP Vol. V 139. Inside the black bag, Detective Riegel located a gallon bag half full of a crystalline substance later tested positive for methamphetamine. RP Vol. V p. 139 – 144, RP Vol. 6 p. 49 – 68. Two digital scales and another smaller baggie of methamphetamine were also found in the black bag. RP Vol. V p. 144 – 145. When asked by defense counsel if she could identify the defendant, Detective Riegel testified that she had seen him before. RP Vol. V p. 150. Detective Riegel testified that this occasion was not the first time the team had been to that house. RP Vol. V p. 154.

Deputy Makana Jared Punahou testified that he has been with the Pierce County Sheriff's Department for 11 years and is currently assigned to the Special Investigations Unit. RP Vol. V p. 160 – 161. His first day with the unit was July 31, 2018. RP Vol. V p. 161 – 162. Deputy Punahou was part of the team that searched the defendant's trailer that day. RP Vol. V p. 164. Deputy Punahou searched the master bedroom area of the residence along with Detective Reigle. RP Vol. V p. 164 – 165.

Deputy Punahou located five documents bearing the name of the defendant in the master bedroom. RP Vol. V p. 167- 168, exhibit 5. These five documents were located on the bed in the master bedroom. RP Vol. V p. 169. The first page of the documents listed the address of the residence where the search warrant was executed. RP Vol. V p. 171 – 172. Deputy Punahou located mail in the defendant's name and address pinned to the wall in the master bedroom. RP Vol. V p. 172 – 173 exhibit 8. Documents in the defendant's name were located inside the closet of the master bedroom. RP Vol. V p. 174 – 176, exhibit 19. The six documents found in the closet were six Western Union money orders, a Puget Sound Energy check, correspondence from King County Clerk's Office sent to the incident address, a Washington State Department of Licensing Hearings and Interview section with the defendant's name and the incident address and a towing customer receipt with the incident address. RP Vol. VI p. 30 – 32, exhibit 19.

A baggie containing approximately 12 grams of methamphetamine was found in the pocket of a jacket hanging in the closet of the master bedroom. RP Vol. V p. 178 – 179, 181, RP Vol. VI p. 49 – 68, exhibit 25. Crib notes and a ledger along with U.S. Currency was found in a gray jacket in the closet in the master bedroom. RP Vol. V p. 182 – 183, 184 –

185 exhibit 34. A photograph taken before the search does not show any clothing hanging in the closet. RP Vol. VI p. 21 – 25.

Deputy Punahou also searched a desk that was located in the master bedroom. RP Vol. VI p. 7 – 19. Small baggies, \$163 in U.S. currency, and a digital scale were found in a drawer of the desk. RP Vol. VI p. 7 – 19, exhibit 45, exhibit 46, exhibit 48.

Maureena Dudschus is a forensic scientist with the Washington State Crime Laboratory and has been employed there for about 32 years. RP Vol. 6 p. 38. Ms. Dudschus holds a B.A. in science with an emphasis in chemistry and she has received on going specific training in the analysis of controlled substances. RP Vol. 6 p. 38 - 39. Her duties involve analyzing drugs or substances to determine their identity. RP Vol. 6 p. 38. She has analyzed substances in over 10,000 cases. RP Vol. 6 p. 43. Ms. Dudschus analyzed the substance in exhibits 14 (small baggie with 3.6 grams), 17 (plastic cup with 1.3 grams), 25 (baggie with 11.2 grams), 35 (baggie with 431 grams), 42 (baggie with 2.8 grams) and found all the substances contained methamphetamine. RP Vol. 6 p. 49 – 68.

C. ARGUMENT.

1. THE SEARCH WARRANT WAS PROPERLY ISSUED ON PROBABLE CAUSE, THE INFORMATION WAS NOT STALE, AND THE WARRANT WAS PROPERLY SERVED.

When a search warrant has been properly issued by a judge, the party attacking it has the burden of proving its invalidity. *State v. Fisher*, 96 Wn.2d 962, 639 P.2d 743 (1982). A judge's determination that a warrant should issue is an exercise of discretion that is reviewed for abuse of discretion and should be given great deference by the reviewing court. *State v. Cole*, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). *See also State v. Young*, 123 Wn.2d 173, 195, 867 P.2d 593 (1994) ("Generally, the probable cause determination of the issuing judge is given great deference."); *State v. J-R Distributions, Inc.*, 111 Wn.2d 764, 774, 765 P.2d 281 (1988) ("[D]oubts as to the existence of probable cause [will be] resolved in favor of the warrant.").

Probable cause for a search warrant is established if the affidavit sets forth sufficient facts to lead a reasonable person to conclude there is a probability that defendant is involved in criminal activity and the evidence of the criminal activity can be found at the place to be searched. *State v. Maddox*, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004). Probable cause to search requires (1) a nexus between the criminal activity and the item to be seized, and (2) a nexus between the item to be seized and the place to

be searched. *State v. McGovern*, 111 Wn. App. 495, 499, 45 P.3d 624 (2002).

A magistrate makes a practical, commonsense determination, based upon all the circumstances set forth in the affidavit and by drawing commonsense inferences. *State v. Maddox*, 152 Wn.2d at 509 (citing *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)).

Common experience suggests that drug dealers must mix and measure the merchandise, protect it from competitors, and conceal evidence of their trade—such as drugs, drug paraphernalia, weapons, written records, and cash—in secure locations. For the vast majority of drug dealers, the most convenient location to secure items is the home. After all, drug dealers don't tend to work out of office buildings. And no training is required to reach this commonsense conclusion.

*United States v. Spencer*, 530 F.3d 1003, 1007 (D.C. Cir. 2008). The review of a judge's decision to issue a search warrant is limited to the four corners of the affidavit. *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). However, an appellate court reviews *de novo* conclusions of law on whether probable cause was established. *State v. Chamberlin*, 161 Wn.2d 30, 40, 162 P.3d 389 (2007).

There are multiple factors a magistrate can consider when determining whether probable cause has been established. The experience and expertise of an officer can be taken into account. *State v. Maddox*,

152 Wn.2d at 511. Generalizations regarding the common habits of drug dealers can be used with other evidence where a factual nexus supported by specific facts is provided and are based on the affiant's experience. *State v. Thein*, 138 Wn.2d 133, 148, 977 P.2d 582 (1999). Prior convictions may be used when the prior conviction is for a crime of the same general nature. *State v. Clark*, 143 Wn.2d 731, 749, 24 P.3d 1006 (2001). Facts that individually would not support probable cause can do so when viewed together with other facts. *State v. Dunn*, 186 Wn. App. 889, 897, 348 P.3d 791 (2015).

Following a suppression hearing, the court reviews challenged findings of fact to determine whether they are supported by substantial evidence. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). Unchallenged findings are verities on appeal, and challenged findings supported by substantial evidence are binding. *O'Neill*, 148 Wn.2d at 571. Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). We defer to the fact finder on issues conflicting testimony, witness credibility, and persuasiveness of the evidence. *State v. Lohr*, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011).

- a. The affidavit sets forth specific facts to establish a nexus between the items to be seized and the defendant's residence.

A magistrate can draw a reasonable inference that evidence of drug deals, drugs themselves, and drug paraphernalia is likely to be found where the drug dealer lives. *United States v. Angulo-Lopez*, 791 F.2d 1934 (9th Cir. 1986). Probable cause can be met by showing *not only* that a drug dealer lives at a particular residence and drug dealers commonly keep drugs where they live, *but also* additional facts from which to reasonably infer that *this* drug dealer keeps drugs at *his or her* residence. *State v. McGovern*, 111 Wn. App. 495, 499-500, 45 P.3d 624 (2002) (emphasis in original). It is reasonable to suspect a drug dealer stores drugs in a home for which s/he owns a key. *United States v. Grossman*, 400 F.3d 212, 218 (4th Cir. 2005).

Here, police had ample evidence providing probable cause to believe that the defendant possessed a controlled substance and that evidence of that crime would be found at his residence. The following facts come from the complaint for search warrant probable cause to search. *See* CP 25 – 34.

According to the probable cause declaration to the search warrant, Deputy Tjossem had previously obtained and served a search warrant at the defendant's residence on March 9, 2017. When that warrant was

served, the officers located 1.25 pounds of methamphetamine, multiple scales, opiate and meth based pills, over \$5,000 in cash, a stolen handgun, multiple crib notes, packaging and measuring materials, and numerous documents in the defendant's name. The residence was equipped with a surveillance monitor, DVR, and multiple cameras. The handgun was located in the desk in the southeast bedroom. The defendant's cell phone and documents were found in the southeast bedroom. The defendant was seen in the southeast bedroom as the entry team approached. CP 30.

Deputy Tjossem reviewed the crib notes and found they recorded drug amounts, prices, debts, and that drugs were being "fronted" without payment. Deputy Tjossem recognized several names in the ledger to be associated with drugs sales. Based on the information in the notes, it appeared that the defendant was charging between \$300-\$400 per ounce, selling multiple ounces at a time and had the price of a pound of methamphetamine listed as \$4,000. This pricing is an accurate account of current street prices.

The defendant is currently charged with two counts of unlawful possession of a controlled substance with intent to deliver and his convictions include 6 narcotics related felonies. CP 30 – 31.

The C.I. became a reliable informant for the Pierce County Sheriff's Department in 2016 by completing two "reliability buys" and has

provided information that resulted in probable cause for search warrants, multiple drug related arrests and recovery of pounds of methamphetamine, heroin and prescription narcotics. The information resulted in charges being filed on multiple suspects. CP 31.

The C.I. reported to Deputy Tjossem that the defendant is a source of methamphetamine and sells it in the Spanaway/Pierce County area. The C.I. reported that the defendant sells the methamphetamine from his mobile home in the Fir Meadows neighborhood. The C.I. confirmed the defendant's identity and his residence by photograph. CP 31. The C.I. has been immersed in the drug culture for numerous years and is able to identify narcotics based on their unique characteristics of color, shape, smell, and texture. CP 32.

Within the last 72 hours, the C.I. contacted Deputy Tjossem and reported that he/she was inside the mobile home located at 20114 69<sup>th</sup> Ave E in Pierce County where he/she saw the defendant holding a large amount of methamphetamine in a large ziplock baggie. The C.I. saw a drug scale and saw the defendant sell an amount of the methamphetamine to another subject. CP 32. The warrant is dated July 25, 2017.

All of the factors a magistrate can consider when making a determination of probable cause are met. Deputy Tjossem made it clear in the affidavit that he has extensive experience with drug cases and the

techniques of drug dealers. CP 29. He was currently assigned to the Special Investigations Unit and had 5 years of previous experience in that unit. He is a certified member of the Department's clandestine lab team from 2007 to 2016 including being team leader for 4 years. He received training for undercover and drug investigations. CP 29. Tjossem has the requisite experience and expertise a magistrate can use and consider when determining there was sufficient probable cause to issue a search warrant.

In addition, Deputy Tjossem had information about the defendant and his residence from a warrant service just 5 months previous where the officers found 1.5 pounds of methamphetamine and the means for distributing it. A reliable C.I. provided information that the defendant was continuing his drug sales and had personally observed a large quantity of methamphetamine and the sale of such to another person. The defendant also has 7 prior convictions for drug related felonies.

The affidavit of the search warrant clearly establishes that evidence of the defendant's drug trafficking could be located at his residence. The issuance of the warrant was not an abuse of the judge's discretion. The trial court was correct in concluding the search warrant was issued on probable cause and that there was a nexus between the criminal activity, the defendant and his residence.

- b. The information within the affidavit was not stale and supports a finding of probable cause.

The defendant also challenges that the information provided in the complaint for the search warrant was stale by the time the police executed the search warrant on July 31, 2017. This claim also fails.

A delay in executing a search warrant may render the magistrate's probable cause determination stale. *State v. Maddox*, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004). "Common sense is the test for staleness of information in a search warrant affidavit." *Maddox*, 152 Wn.2d at 505. To evaluate whether the facts underlying a search warrant are stale, we look at the totality of the circumstances, including the length of time between issuance and execution of the warrant and the nature and scope of the criminal activity. *Maddox*, 152 Wn.2d at 506. Probable cause may also grow stale based on the time between a CI's observations of criminal activity and the presentation of the affidavit to the magistrate. *State v. Lyons*, 174 Wn.2d 354, 360-61, 275 P.3d 314 (2012). CrR 2.3(c) requires that search warrants require officers to search the specific place "within a specified period of time not to exceed 10 days."

Here, the C.I. observed a large quantity of methamphetamine in a large baggie and observed its sale to another. Additionally, Deputy Tjossem had information that the defendant had been selling large

amounts of methamphetamine 5 months earlier in an ongoing enterprise evidenced by the large quantity of methamphetamine and the detailed records of sales. Deputy Tjossem applied for the search warrant on July 25, 2017, within 72 hours of receipt of the information and served the warrant six days later. Less than 10 days had elapsed from the C.I.'s observations about the substance and the sale and the service of the warrant. The defendant fails to show the warrant was stale when it was served.

c. The officers waited a reasonable time before making entry into the defendant's residence.

“The knock and announce rule has both constitutional and statutory components. *State v. Ortiz*, 196 Wn. App. 301, 307, 383 P.3d 586 (2016). Both the Fourth Amendment of the United States Constitution and article I, section 7 of the Washington Constitution require that “a nonconsensual entry by the police ‘be preceded by an announcement of identity and purpose on the part of the officers.’” *State v. Coyle*, 95 Wn.2d 1, 6, 621 P.2d 1256 (1980) (quoting *State v. Young*, 76 Wn.2d 212, 214, 455 P.2d 595 (1969)); *Ortiz*, 196 Wn. App. at 307.

RCW 10.31.040 codifies these requirements. It allows officers making an arrest to “break open any outer or inner door, or windows of a dwelling house or other building” if “after notice of [their] office and purpose, [they] be refused admittance.” RCW 10.31.040. In order to

comply with this “knock and announce” rule, police officers “prior to a nonconsensual entry must (1) announce their identity, (2) announce their purpose, (3) demand admittance, (4) announce the purpose of their demand, and (5) be explicitly or implicitly denied admittance.” *State v. Richards*, 136 Wn.2d 361, 369, 962 P.2d 118 (1998). “The remedy for an unexcused failure to comply with the ‘knock and wait’ rule is suppression of the evidence obtained after the entry.” *Richards*, 136 Wn.2d at 371.

“Whether an officer waited a reasonable time before entering a residence is a factual determination to be made by the trial court and depends upon the circumstances of the case.” *Richards*, 136 Wn.2d at 374. We evaluate the reasonableness of the waiting period by looking to the underlying purposes of the knock and announce rule, including ““(1) reduction of potential violence to both occupants and police arising from an unannounced entry, (2) prevention of unnecessary property damage, and (3) protection of an occupant’s right to privacy.”” *Ortiz*, 196 Wn. App. at 308 (quoting *Coyle*, 95 Wn.2d at 5). The “waiting period ends once the rule's purposes have been fulfilled and waiting would serve no purpose.” *Ortiz*, 196 Wn. App. at 308. The police are not required to wait for an actual refusal because ““denial of admittance may be implied from the occupant's lack of response.”” *Ortiz*, 196 Wn. App. at 308 (quoting *State v. Garcia-Hernandez*, 67 Wn. App. 492, 495, 837 P.2d 624 (1992)).

In cases where the officers heard movement inside the residence, courts have upheld waiting periods between announcing and forcing entry of between five to ten seconds. See *State v. Johnson*, 94 Wn. App. 882, 890-91, 974 P.2d 855 (1999); *State v. Jones*, 15 Wn. App. 165, 166, 168, 547 P.2d 906 (1976). Credibility determinations are for the trier of fact and are not subject to appellate review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

Here, the officers had previously served a search warrant at the same residence 5 months earlier. At that time, the warrant uncovered the use of a surveillance system as well as the presence of a firearm in the bedroom where the defendant had been observed. RP Vol. II March 1, 5, 6, 2018 p. 54, CP 30. On July 31<sup>st</sup>, 2017, Deputy Hotz testified that he knocked on the door and yelled “Police, search warrant, open up” twice before breaching the door. RP Vol. II March 1, 5, 6, 2018 p. 58. In addition, Deputy Hotz heard a woman screaming and he feared that she would alert someone inside the trailer so that they could destroy evidence or arm themselves. RP Vol. II March 1, 5, 6, 2018 p. 58. Deputy Hotz estimated that the elapsed time from his first knock and announce to the breach of the door was anywhere from seven to ten seconds. RP Vol. II March 1, 5, 6, 2018 p. 60.

Defendant relies on *State v. Ortiz*, 196 Wn. App. 301. 383 P.3d 586 (2016). The instant case is distinguishable. In *Ortiz*, officers were investigating a marijuana grow based on a neighbor's tip about seeing two marijuana plants. In this case, the officers chose to serve the warrant early in the morning because of the risk assessment that was done prior to the service. RP Vol. II March 1, 5, 6, 2018 p. 47 – 48, 54. Officers had previously served a warrant at this same residence and the substance being investigated was methamphetamine, something easily destroyed, as opposed to growing marijuana plants. The reliance on *Ortiz* is misplaced.

The trial court found that Deputy Hotz knocked and announced police presence twice and noted activity within the home (woman screaming) before making entry into the residence. CP 176 – 182, RP Vol II March 1, 5, 6, 2018 p. 164 - 174. There was no response to the announcement and the officers waited seven to ten seconds before forcing the door. CP 176 – 182, RP Vol II March 1, 5, 6, 2018 p. 164 - 174. The trial court credited the officer's testimony and found the testimony of defense witnesses not to be credible. CP 176 – 182, RP Vol II March 1, 5, 6, 2018 p. 164 - 174. The entry into the residence was reasonable and is supported by the court's findings. The trial court did not err in denying the defendant's motion to suppress evidence.

2. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION BY NOT ALLOWING DEFENDANT TO PROCEED *PRO SE* WHEN THE REQUEST WAS EQUIVOCAL AND UNTIMELY.

The Sixth Amendment of the United States Constitution guarantees that a defendant in a criminal trial has the right to waive the assistance of counsel and represent themselves. *Faretta v. California*, 422 U.S. 806, 806, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975). Improper denial of the right of self-representation requires reversal regardless of whether prejudice results. *State v. Englund*, 186 Wn. App. 444, 455, 345 P.3d 859 (2015).

A defendant's request to proceed *pro se* must be timely made and stated unequivocally. *State v. Stenson*, 132 Wn.2d 668, 737, 940 P.2d 1239 (1997). When a request to proceed *pro se* is made during trial, the right to proceed *pro se* rests largely in the informed discretion of the trial court. *State v. Vermillion*, 112 Wn. App. 844, 855, 51 P.3d 188 (2002) (citing *State v. Fritz*, 21 Wn. App. 354, 361, 585 P.2d 173 (1978)). When a request to proceed *pro se* is an alternative to substitution for new counsel, the request is not necessarily equivocal, but may be an indication to the trial court in light of the whole record that the request is equivocal. *Stenson*, 123 Wn.2d at 740-741. Even when a request is unequivocal, a defendant still may waive their right to self-representation through subsequent words or actions. *Vermillion*, 112 Wn. App. at 851.

Our Supreme Court has found multiple times that when there is equivocation, a court acts well within its discretion in denying defendant's motion to proceed *pro se*. For instance, in *Stenson*, virtually all of the conversation between the court and defendant was how he wanted a new lawyer and discussed specifically whom should be assigned. *Stenson*, 132 Wn.2d at 742. He noted that he only wanted to proceed *pro se* because he felt as though he was forced to do so by the court and counsel. *Id.* Finally, when the court stated how it did not believe defendant truly wanted to represent himself, defendant did not argue or object. *Id.* Similarly, in *In re Detention of Turay*, 139 Wn.2d 379, 986 P.2d 790 (1999), in the context of a sexually violent predator commitment proceeding, defendant numerous times tried to represent himself. *Turay*, 139 Wn.2d at 395-400.

In the first attempt, defendant wanted to either represent himself or have a specific attorney. *Turay*, 139 Wn.2d at 396. When that lawyer was not available, defendant did not answer the court's questions related to what he wanted to do and asked for more time to consider the matter. *Turay*, 139 Wn.2d at 396-397. All of this showed that he wanted only a specific attorney, not that he truly wanted to proceed *pro se*. *Id.* Another time, defendant listed three alternatives he would be satisfied with, including the final option being *pro se* representation. *Turay*, 139 Wn.2d

at 398. The court found that this was again equivocal. On a third and final occasion, defendant stated he wanted to preserve his objection for the record on being denied the right to represent himself. *Turay*, 139 Wn.2d at 399. This was again an equivocal request.

The right to self-representation, however, is neither absolute nor self-executing. *State v. Madsen*, 168 Wn.2d 496, 504 229 P.3d 714 (2010); *State v. DeWeese*, 117 Wn.2d 369, 375, 816 P.2d 1 (1991). In order to guarantee a defendant a fair trial, “‘courts indulge in every reasonable presumption’ against a defendant’s waiver of his or her right to counsel.” *In re Det. of Turay*, 139 Wn.2d 379, 396, 986 P.2d 790 (1999) (quoting *Brewer v. Williams*, 430 U.S. 387, 404, 97 S. Ct. 1232, 51 L. Ed. 2d 424 (1977)). Before a request for pro se status may be granted, the defendant’s request to proceed pro se must be *both* timely and unequivocal. *State v. Stenson*, 132 Wn.2d 668, 737, 940 P.2d 1239 (1997) (emphasis in original). A trial court’s denial of a request to proceed pro se is reviewed for an abuse of discretion. *In re Pers. Restraint of Rhome*, 172 Wn.2d 654, 667, 260 P.3d 874 (2011); *Madsen*, 168 Wn.2d at 504.

A trial court’s decision on a defendant’s request for self-representation will only be reversed if the decision is manifestly unreasonable, relies on unsupported facts, or applies an incorrect legal

standard. *State v. Coley*, 180 Wn.2d 543, 559, 326 P.3d 702 (2014) (quoting *State v. Madsen*, 168 Wn.2d 496, 504 229 P.3d 714 (2010) (citing *State v. Rohrich*, 149 Wn. 2d 647, 654, 71 P.3d 638 (2003))). Courts should indulge every reasonable presumption against finding that defendant has waived their right to counsel. *Vermillion*, 112 Wn. App. at 851.

First, the defendant did not make an unequivocal request to proceed *pro se*. The defendant was unhappy with his retained attorney and wanted to fire him. RP Vol. III March 26, 2018 p. 9 – 10. The emphasis was on his displeasure with the court’s ruling against his motion to suppress. RP Vol. III March 26, 2018 p. 20 – 21. The defendant wanted to disqualify the trial court and stated that his attorney’s representation had been negligent. RP Vol. III March 26, 2018 p. 26. When asked by the trial court if he wanted to represent himself the defendant replied “I want to be represented by someone competent.” RP Vol. III March 26, 2018 p. 27. The equivocal nature of his request is further evidenced by his statement that he wanted an attorney that “would listen” to him and believed that an attorney could be helpful. The court attempted to pin down the defendant by asking the defendant directly whether he wanted to have an attorney represent him in this case. RP Vol.

III March 26, 2018 p. 28. The defendant stated “If I could get a competent one, yes.” RP Vol. III March 26, 2018 p. 28.

“The general loss of confidence or trust alone is not sufficient to substitute new counsel.” *State v. Stenson*, 132 Wn. 2d 668, 733-34, 940 P.2d 1239, 1272 (1997), citing *Smith v. Lockhart*, 923 F.2d 1314, 1320 (8th Cir.1991). “A criminal defendant who is dissatisfied with appointed counsel must show good cause to warrant substitution of counsel, such as a conflict of interest, an irreconcilable conflict, or a complete breakdown in communication between the attorney and the defendant.” *Id.*

When looked at in the context of the whole record, defendant’s request was equivocal. At no time did defendant make a formal motion or explicitly move to proceed *pro se*. Throughout the course of the proceedings his argument consistently was that he simply did not want his current counsel to continue to represent him. He made the request after the trial court ruled against his motion. This was done because of disagreements in terms of strategy and what he thought counsel should be doing. Defendant made it clear he simply did not want his current attorney on his case. The defendant stated on the record

“So I’m going to put a motion in for another judge as soon as I possibly can, and Mr. Short not doing that is just another indication that he knew how I felt about your decision on the 3.6 hearing both times and he should have

done that. And I'm going to make sure that I will or somebody who represents me will"

RP Vol. III March 26, 2018 p. 42 -43.

"If I had an attorney that would listen to me and – I believe yeah, I believe, yeah, an attorney could be helpful, of course, but last time around I was unable to say a word about anything."

RP Vol. III March 26, 2018 p. 28.

This is radically different from defendant making it unequivocally clear that he wanted to represent himself. The record supports the trial court's finding that the defendant's request for self representation was equivocal. CP 183 – 186.

Second, the defendant's request to discharge his attorney and to represent himself was untimely. Where a defendant's request for self-representation is untimely, "the right is relinquished and the matter of the defendant's representation is left to the discretion of the trial judge." *DeWeese*, 117 Wn.2d at 377. The trial court's discretion to grant or deny a motion to proceed pro se "lies along a continuum that corresponds with the timeliness of the request." *State v. Breedlove*, 79 Wn. App. 101, 107, 900 P.2d 586 (1995); *Fritz*, 21 Wn. App. at 361.

If the request is made well before the trial or hearing, the right to self-representation exists as a matter of law. *Fritz*, 21 Wn. App. at 361. If the request is made as the trial or hearing is about to commence, or shortly

before, the existence of the right depends upon the facts of the case with a measure of discretion reposing in the trial court. *Id.* at 361. Finally, if the request is made during the trial or hearing, “the right to proceed pro se rests largely in the informed discretion of the trial court.” *Id.* A court may deny a request for self-representation made as the trial or hearing is about to begin if granting the request would obstruct the orderly administration of justice. *Breedlove*, 79 Wn. App. 108; *Fritz*, 21 Wn. App. at 361.

The defendant made the request after the case had been called for trial and the trial court had ruled on the suppression motion. RP Vol II March 1, 5, 6, 2018 p. 164 - 174. Substantial evidence supports the trial court’s finding that the defendant’s request was untimely and was made primarily for the purpose of delay. CP 183 – 186.

Finally, the court engaged the defendant in a colloquy to determine whether the defendant’s request for self-representation was knowing, voluntary, and intelligent.

Where a request is unequivocal and timely, a trial court must then determine if the request is knowing, voluntary, and intelligent. *State v. Madsen*, 168 Wn.2d at 504, 229 P.3d 714 (2010) (citing *Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975)). The method for determining whether a defendant understands the risks of self-representation is a colloquy on the record. The colloquy should

generally include a discussion of the nature of the charges against the defendant, the maximum penalty, and the fact that the defendant will be subject to the technical and procedural rules of the court in the presentation of his case. *City of Bellevue v. Acrey*, 103 Wn.2d 203, 211, 691 P.2d 957 (1984). The trial court may also look to the defendant's behavior, intonation, and willingness to cooperate with the court. *See State v. Curry*, 191 Wn.2d 475, 423 P.3d 179 (2018).

Here, the trial court evaluated all of the information in front of it and used its discretion to determine that the defendant's waiver was not knowing, voluntary, and intelligent. The trial court found that the defendant has not studied law, did not have an accurate understanding of the charges against him, and no knowledge of the rules of evidence or applicable criminal procedure. RP Vol. III March 26, 2018 p. 22 – 28, 43 – 44, CP 183 - 186.

A trial court may properly deny a motion for self-representation “made without a general understanding of the consequences.” *Madsen*, 168 Wn.2d at 504–05. Given the defendant's demonstrated inability to understand that he was facing significant consequences and inability to focus his answers to the court's colloquy, the trial court's denial of the defendant's *pro se* request was not an abuse of discretion.

3. ALTHOUGH ONE OF THE PROSECUTOR'S STATEMENTS WAS IMPROPER, THE PARTIES ACCURATELY ARGUED THE RELEVANT LAW AND THE DEFENDANT HAS FAILED TO SHOW PREJUDICE BECAUSE THE JURY WAS PROPERLY INSTRUCTED.

In a prosecutorial misconduct claim, the defendant bears the burden of proving the conduct was both improper and prejudicial. *State v. Emery*, 174 Wn.2d 741, 756, 278 P.3d 653 (2012). Failure to object to an improper remark is a waiver of error unless the remark is “so flagrant and ill-intentioned that it causes an enduring and resulting prejudice that could not have been neutralized by an admonition to the jury.” *State v. Russell*, 125 Wn.2d 24, 86, 882 P.2d 747 (1994). Objections are required both to prevent further improper remarks and to prevent potential abuse of the appellate process. *Emery*, 174 Wn.2d at 762. The focus of a reviewing court should be less on whether the misconduct was flagrant or ill-intentioned and more on whether the resulting prejudice could have been cured. *Emery*, 174 Wn.2d at 762. When reviewing a claim that prosecutor’s statement requires reversal, the court should review the statements in the context of the entire case. *State v. Thorgerson*, 172 Wn.2d 438, 443, 258 P.3d 43 (2011) (citing *Russell*, 125 Wn.3d at 86).

As a quasi-judicial officer, a prosecutor must insure the defendant receives a fair trial. *Thorgerson*, 172 Wn.2d at 443; *State v. Boehning*, 127 Wn. App. 511, 518, 111 P.3d 899 (2005). However, in closing

argument, a prosecutor has wide latitude to argue reasonable inferences from the evidence. *Thorgerson*, 172 Wn.2d at 448. Appellate courts review a prosecutor's comments during closing argument in the context of the entire argument, the issues in the case, the evidence addressed in the argument, and the jury instructions. *State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d 546 (1997). Where the defendant claims prosecutorial misconduct, he bears the burden of establishing the impropriety of the prosecutor's comments as well as their prejudicial effect. *State v. Anderson*, 153 Wn. App. 417, 427, 220 P.3d 1273 (2009) (citing *State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d 546 (1997)).

“A person actually possesses something that is in his or her physical custody, and constructively possesses something that is not in his or her physical custody but is still within his or her ‘dominion or control.’” *State v. Davis*, 182 Wn.2d 222, 227, 340 P.3d 820 (2014) (citing *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969)). A court examines whether, under the totality of the circumstances, the defendant exercised dominion and control. *Id.* at 234. “Showing dominion and control over the premises where the drugs are found is a means by which constructive possession of drugs is often established.” *State v. Spruell*, 57 Wn. App. 383, 387, 788 P.2d 21 (1990) (citing *State v. Partin*, 88 Wn.2d 899, 567 P.2d 1136 (1977)).

a. The prosecutor misstated the law on actual possession.

A prosecutor's argument to the jury must be confined to the law stated in the trial court's instructions. *State v. Walker*, 164 Wn. App. 724, 736, 265 P.3d 191 (2011). The defendant is denied a fair trial when the prosecutor mischaracterizes the law and there is a substantial likelihood that the misstatement affected the jury verdict. *Id.* A jury is presumed to follow the court's instructions. *State v. Hopson*, 113 Wn.2d 273, 287, 778 P.2d 1014 (1989).

In the present case, defendant argues the prosecutor's statement in closing argument misstated the law on actual possession. Brief of Appellant, 38. The prosecutor stated:

The first manner which you can find possession is what the Court has defined as actual possession. Did the defendant, being in his home on the morning of July 31<sup>st</sup>, 2017 in his master bedroom where the vast majority of methamphetamine, approximately 430 grams, were in one baggie secreted between folded pairs of men's pants, place him in actual possession of the methamphetamine, that is, did he have physical custody of that methamphetamine?

Yes.

RP Vol VI April 2, 3, 4, 2018 p. 126.

Now, you may ask yourself during deliberation, doesn't he have to have it in his pocket? I would submit to you that based on the instruction you're being given now, I am in actual possession of the legal pad I'm holding in my hand.

The fact that I set it down a short distance away does not abrogate my possession of that item.

RP Vol VI April 2, 3, 4, 2018 p. 126.

The prosecutor then moved on to discuss constructive possession by explaining the second manner to find possession is constructive possession. The prosecutor's statement of the law accurately characterized constructive possession. The prosecutor explained, in the context of the evidence presented, how defendant had dominion and control over both the items at issue and the premises where they were found. It is apparent that the prosecutor was attempting to distinguish between actual and constructive possession but emphasize that either means still results in possession of the items at issue.

The prosecutor correctly argued that the State must prove more than mere proximity is not enough to establish dominion and control and properly distinguished "ownership" from possession and for the jury to consider the totality of the evidence. RP Vol VI April 2, 3, 4, 2018 p. 127 - 128. The improper argument is inartful but as argued below, the parties properly argued the law as given by the court.

- b. Even if there was a misstatement of the law to the jury, defendant is unable to show prejudice as the court's instructions on the law were clear and allowed both parties to argue their theory of the case.

The jury was instructed on the proper legal standard:

Possession means having a substance in one's custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession.

Constructive possession occurs when there is no actual physical possession but there is dominion and control over the item.

Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.

In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider among other include whether the defendant had the ability to take actual possession of the item, whether the defendant had the capacity to exclude others from possession of the item, and whether the defendant had dominion and control of the premises where the item was located. Dominion and control over the premises where drugs are found is insufficient as the sole factor to establish dominion and control over the drugs.

CP 134 – 153 Instruction 10. The jury was further instructed:

The lawyers' remarks, statements, and arguments are intended to help you understand the evidence and apply the law. It is important, however, for you to remember that the lawyers' statements are not evidence. The evidence is the testimony and the exhibits. The law is contained in my instructions to you. You must disregard any remark,

statement, or argument that is not supported by the evidence or the law in my instructions.

CP 134 – 153.

The jury is presumed to follow the trial court's instructions. *State v. Hopson*, 113 Wn.2d 273, 287, 778 P.2d 1014 (1989). Therefore, the jury was properly instructed on the law of actual and constructive possession and instructed to disregard any argument by the prosecutor that conflicted with that instruction.

Defense counsel did not object to the prosecutor's misstatement but did argue to the jury that the prosecutor was "absolutely wrong" on what constituted actual possession. Defense counsel stated: "Actual possession in when the item is in the actual physical custody of the person charged. Simple." Defense counsel then argued that there was no testimony that the defendant had "anything" on his person when detained. Defense counsel went on to argue that there was a lack of evidence to show constructive possession by dominion and control. In rebuttal, the prosecutor did not make the misstatement again and focused on direct and circumstantial evidence. RP Vol VI April 2, 3, 4, 2018 p. 141 – 146.

Defendant has failed to show the prosecutor committed flagrant and ill-intentioned misconduct and failed to show he was prejudiced by the misstatement of the law.

c. Defendant fails to prove a deficiency.

Counsel is deficient when the representation falls below an objective standard of reasonableness. *State v. McFarland*, 137 Wn.2d 322, 335, 880 P.2d 1251 (1995). “*Strickland* begins with a strong presumption ... counsel’s performance was reasonable.” *State v. Grier*, 171 Wn.2d 17, 42, 246 P.3d 1260 (2011) (citing *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009)). “To rebut this presumption, the defendant bears the burden of establishing the absence of any conceivable legitimate tactic explaining counsel’s performance.” *Id.* at 42 (citing *State v. Richenbach*, 153 Wn.2d 126, 130, 101 P.3d 80 (2004)); *see also State v. Piche*, 71 Wn.2d 583, 590, 430 P.2d 522 (1967), *cert denied*, 390 U.S. 912, 88 S. Ct. 838, 19 L. Ed. 2d 882 (1968). “In assessing performance, the court must make every effort to eliminate the distorting effects of hindsight.” *State v. Brown*, 159 Wn. App. 336, 371, 245 P.3d 776 (2011) (citing *State v. Nichols*, 161 Wn.2d 1, 8, 162 P.3d 1122 (2007)).

The decision of when or whether to object is a classic example of trial tactics. Only in egregious circumstances will the failure to object constitute incompetence of counsel justifying reversal. *State v. Madison*, 53 Wn. App. 754, 763, 770 P.2d 662 (1989) (citing *Strickland v. Washington*, 466 U.S. 668, 763, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). Claims of ineffective assistance based on counsel’s failure to object must show: (1) an absence of legitimate strategic or tactical reasons

supporting the challenged conduct; (2) the objection would have likely been sustained; and (3) the result of the trial would have been different if the objection was successful. *See generally State v. Saunders*, 91 Wn. App. 575, 578, 958 P.2d 364 (1998). Proof of demonstrable tactical errors will not support reversal so long as the adversarial testing envisioned by the Sixth Amendment occurred. *United States v. Cronin*, 466 U.S. 648, 656, 104 S. Ct. 2045, 80 L. Ed. 2d 657 (1984).

As stated above, the prosecutor's argument was a misstatement of the law but was not ill intentional nor flagrant. In this case, in an effort to clear up any confusion which may have occurred during the State's argument, defense counsel addressed what the law did say about actual possession. Rather than objecting, defense counsel took advantage of an opportunity to directly challenge the prosecutor's statements on actual possession.

In an attempt to show prejudice, defendant cites to the question submitted by the jury. CP 156. Their question clearly demonstrates that the jury was focused on constructive possession and not actual possession. Defendant has failed to satisfy both prongs of the *Strickland* test.

4. WHEN VIEWED IN THE LIGHT MOST FAVORABLE TO THE STATE, SUFFICIENT EVIDENCE WAS PRESENTED TO ESTABLISH THAT THE DEFENDANT WAS IN POSSESSION OF THE METHAMPHETAMINE FOUND IN THE MASTER BEDROOM.

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. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In considering this evidence, “[c]redibility determinations are for the trier of fact and cannot be reviewed upon appeal.” *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990) (citing *State v. Casbeer*, 48 Wn. App. 539, 542, 740 P.2d 335, *review denied*, 109 Wn.2d 1008 (1987)).

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

great deference . . . is to be given the trial court’s factual findings. It, alone, has had the opportunity to view the witness’ demeanor and to judge his veracity.

*State v. Cord*, 103 Wn.2d 361, 367, 693 P.2d 81 (1985) (citations omitted). Therefore, when the State has produced evidence of all the elements of a crime, the decision of the trier of fact should be upheld.

The jury was instructed that to convict defendant of possession with intent to deliver a controlled substance, it had to find the following elements beyond a reasonable doubt:

- (1) That on or about the 31<sup>st</sup> day of July, 2017, the defendant possessed methamphetamine;
- (2) That the defendant possessed methamphetamine with the intent to deliver methamphetamine; and
- (3) That this act occurred in the State of Washington.

CP 134 - 153, Instruction 7. Defendant's sole challenge as to the elements is a claim that the prosecution produced insufficient evidence to show that he *constructively possessed* the methamphetamine found in the bedroom.

BOA, page 47. The jury was given the following instruction on possession:

Possession means having a substance in one's custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession.

Constructive possession occurs when there is no actual physical possession but there is dominion and control over the substance.

Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.

In deciding whether the defendant had dominion and control over an item, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant had the immediate ability to take actual possession of the item, whether the defendant had the capacity to exclude others from possession of the item, and whether the defendant had dominion and control over the premises where the item was located. Dominion and control over the premises where

drugs are found is insufficient as the sole factor to establish dominion and control over the drugs.

CP 134 - 153, Instruction #10.

As the jury was instructed in this case, possession may be actual or constructive. *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002). A defendant actually possesses an item if he has physical custody of it; he constructively possesses the item if he has dominion and control over it or the premises where the item is found. *Jones*, 146 Wn.2d at 333; *State v. Coahran*, 27 Wn. App. 664, 668, 620 P.2d 116 (1980) (citing *State v. Callahan*, 77 Wn.2d 27, 31, 459 P.2d 400 (1969)). A person's dominion and control over a premises "creates a rebuttable presumption that the person has dominion and control over items on the premises." *State v. Reichert*, 158 Wn. App. 374, 390, 242 P.3d 44 (2010). Therefore, a jury can infer constructive possession of items on the premises from a person's dominion and control over the premises. See *State v. Shumaker*, 142 Wn. App. 330, 334, 174 P.3d 1214 (2007). A person has dominion and control of an item if he has immediate access to it. *Jones*, 146 Wn.2d at 333. Mere proximity, however, is not enough to establish possession. *Jones*, 146 Wn.2d at 333. No single factor is dispositive in determining dominion and control. *State v. Collins*, 76 Wn. App. 496, 501, 886 P.2d 243, *review denied*, 126 Wn.2d 1016, 894 P.2d 565 (1995). The totality of the circumstances must be considered. *Collins*, 76 Wn. App. at 501.

When there is sufficient evidence of the defendant's dominion and control over the premises, the defendant may be found guilty of constructive possession of contraband found in those premises even if he denies knowledge of the item. *Callahan*, 77 Wn.2d at 29-30 (citing *State v. Weiss*, 73 Wn.2d 372, 438 P.2d 610 (1968); *State v. Chakos*, 74 Wn.2d 154, 443 P.2d 815 (1968), *cert. denied*, 393 U.S. 1090, 89 S. Ct. 855, 21 L. Ed. 2d 783 (1969); *State v. Mantell*, 71 Wn.2d 768, 430 P.2d 980 (1967); *State v. Morris*, 70 Wn.2d 27, 422 P.2d 27 (1966)).

In this case, the totality of the circumstances establish that the defendant was in constructive possession of the methamphetamine. There was substantial evidence presented that defendant had dominion and control over the premises where the methamphetamine, baggies, scales, cash, and drug ledgers were located. The bulk of the methamphetamine, scales, measuring cups, baggies and ledgers were found in the southeast bedroom, identified as the "master bedroom." Inside that bedroom there were men's clothes and documents with the defendant's name and the current address on them. One document with the defendant's name was found lying on the bed as if it had been recently opened.

The defendant now relies on two cases—*State v. Callahan*, 77 Wn.2d 27, 459 P.2d 400 (1969), and *State v. Spruell*, 57 Wn. App. 383, 788 P.2d 21 (1990). These cases are distinguishable from the case at bar.

In *Callahan*, the defendant was charged with unlawful possession of dangerous drugs. *Callahan*, 77 Wn.2d 27 at 28. At Callahan’s trial, however, another person testified that the drugs belonged to him— testimony that was substantiated by other witnesses. *Id.* at 31. The court found that there was “undisputed direct proof” that placed the drugs in the exclusive possession of another person. *Id.* In this case, no one else claimed ownership of the trailer.

In *State v. Spruell*, the court held, relying on *Callahan*, *supra*, that mere proximity to the drugs, along with evidence of momentary handling, was insufficient to establish constructive possession. *Spruell*, 57 Wn. App. 383 at 388. In *Spruell*, the defendant was in a kitchen of a home where drugs were found and his fingerprint was on a dish that had cocaine on it. *Id.* at 388. The court held that there was nothing to refute the claim that the defendant was a mere visitor in the house and that proximity alone was not sufficient to establish dominion and control. *Id.*

In this case, evidence was presented beyond “mere proximity.” Deputy Punahou located five documents on the bed in the master bedroom. RP Vol. V p. 169. The first page of the documents listed the address of the residence where the search warrant was executed. RP Vol. V p. 171 – 172. Deputy Punahou also located mail in the defendant’s name and address pinned to the wall in the master bedroom. RP Vol. V p.

172 – 173 exhibit 8. And the six documents located in the closet, with men's clothing, of the master bedroom were six Western Union money orders, a Puget Sound Energy check, correspondence from King County Clerk's Office sent to the incident address, a Washington State Department of Licensing Hearings and Interview section with the defendant's name and the incident address and a towing customer receipt with the incident address. RP Vol. VI p. 30 – 32, exhibit 19. The State presented more than sufficient evidence of the defendant's dominion and control where the drugs were located.

5. THIS COURT SHOULD ORDER THAT THE IMPOSITION OF THE CRIMINAL FILING FEE, THE INTEREST ACCRUAL PROVISION AND THE DNA COLLECTION FEE BE STRICKEN

In this case, the trial court found the defendant to be indigent. CP 211 - 212. House Bill 1783, effective June 7, 2018, prohibits the imposition of the \$200.00 filing fee on defendants who were indigent at the time of sentencing. As the court held in *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714 (2018), House Bill 1783 is applicable to cases that are on appeal and therefore not yet final. The State agrees that the criminal filing fee of \$200.00 that was imposed in this case should be stricken. The State further agrees that House Bill 1783 eliminates any interest accrual on nonrestitution legal financial obligations.

The State acknowledges that this defendant was found indigent by the sentencing court, and therefore the \$200.00 criminal filing fee and the interest accrual provision on nonrestitution legal financial obligations should be stricken.

The appellant in this case did not raise an issue regarding the imposition of a \$100 DNA-collection fee imposed in the judgment and sentence. However, the State concedes that a DNA sample has been taken as a result of a prior conviction. A legislative amendment to RCW 43.43.7541, which took effect June 7, 2018, requires imposition of the DNA-collection fee “unless the state has previously collected the offender’s DNA as a result of a prior conviction.” The amendment applies to defendants whose appeals were pending — i.e., their cases were not yet final — when the amendment was enacted. *State v. Ramirez*, 191 Wn.2d 732, 426 P.3d 714, (2018).

The State’s records show that this appellant’s DNA was previously collected and is on file with the Washington State Patrol Crime Lab. The State respectfully asks this Court to remand this case to the superior court to amend the judgment and sentence to strike the imposition of the \$100 DNA collection fee.

D. CONCLUSION.

This court should remand for the trial court to strike the imposition of the \$200.00 filing fee, the imposition of the \$100 DNA collection fee and the nonrestitution interest accrual provision and affirm defendant's conviction.

DATED: May 13, 2019

MARY E. ROBNETT  
Pierce County Prosecuting Attorney



Maureen C. Goodman  
Deputy Prosecuting Attorney  
WSB # 34012

Certificate of Service:

The undersigned certifies that on this day she delivered by <sup>file</sup> ~~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.

5/13/19   
Date Signature

**PIERCE COUNTY PROSECUTING ATTORNEY**

**May 13, 2019 - 2:58 PM**

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**Appellate Court Case Title:** State of Washington, Respondent v Ricky Ray Sexton, Appellant  
**Superior Court Case Number:** 17-1-02934-5

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