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NO. 52309-4-II

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

STATE OF WASHINGTON,

Respondent,

v.

JEANIA WATTS DYSON,
Appellant.

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

The Honorable Philip K. Sorensen, Judge

BRIEF OF APPELLANT

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TABLE OF CONTENTS

Page

A. ASSIGNMENTS OF ERROR.....1

Issues Presented on Appeal.....1

B. STATEMENT OF THE CASE.....2

 a. Procedural Facts.....2

 b. Substantive Facts.....3

C. ARGUMENT.....6

 1. WATTS DYSON WAS DENIED HER
 RIGHT TO HAVE THE COURT
 INSTRUCT THE JURY ON HER
 THEORY OF THE CASE
 6

 2. THE STATE FAILED TO PROVE
 POSSESSION WHILE ARMED WITH A
 DEADLY WEAPON IN THE
 POSSESSION WITH INTENT TO
 DELIVER NARCOTICS CHARGES
 AND THE UNLAWFUL POSSESSION
 OF FIREARMS AND NARCOTICS
 CHARGES
 10

 1. While Armed With a Handgun.....12

 2. Possession Firearms and Narcotics.....17

D. CONCLUSION.....24

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

<i>State v. Ague-Masters</i> , 148 Wn. App. 86, 156 P.3d 265 (2007).....	15, 16, 17
<i>State v. Anderson</i> , 141 Wn.2d 357, 5 P.3d 1247 (2000).....	11
<i>State v. Bradshaw</i> , 152 Wn.2d 528, 98 P.3d 1190 (2004).....	6
<i>State v. Buford</i> , 93 Wn. App. 149, 967 P.2d 548 (1998).....	7, 8
<i>State v. Call</i> , 75 Wn. App. 866, 880 P.2d 571 (1994).....	14, 16
<i>State v. Callahan</i> , 77 Wn.2d 27, 459 P.2d 400 (1969).....	19, 20, 24
<i>State v. Cantabrana</i> , 83 Wn. App. 204, 921 P.2d 572 (1996).....	19
<i>State v. Chouinard</i> , 169 Wn App. 895, 282 P.3d 117 (2012), <i>rev. denied</i> , 176 Wn.2d 1003 (2013)	17, 24
<i>State v. Cote</i> , 123 Wn. App. 546, 96 P.3d 410 (2004).....	19
<i>State v. Easterlin</i> , 159 Wn.2d 203, 149 P.3d 366 (2006).....	13
<i>State v. Echeverria</i> , 85 Wn. App. 777, 934 P.2d 1214 (1997).....	20, 24
<i>State v. George</i> , 146 Wn. App. 906, 193 P.3d 693 (2008).....	6, 7, 8, 9, 10, 21, 22, 23

TABLE OF AUTHORITIES

Page

WASHINGTON CASES, continued

<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980).....	11
<i>State v. Gurske</i> , 155 Wn.2d 134, 118 P.3d 333 (2005).....	14
<i>State v. Jones</i> , 146 Wn.2d 328, 45 P.3d 1062 (2002).....	17
<i>State v. McPherson</i> , 111 Wn. App. 747, 46 P.3d 284 (2002).....	19
<i>State v. Otis</i> , 151 Wn. App. 572, 213 P.3d 613 (2009).....	7
<i>State v. Schelin</i> , 147 Wn.2d 562, 55 P.3d 632 (2002).....	13, 14, 15
<i>State v. Shumaker</i> , 142 Wn. App. 330, 174 P.3d 1214 (2007).....	19
<i>State v. Simonson</i> , 91 Wn. App. 874, 960 P.2d 955 (1998).....	15, 16
<i>State v. Spruell</i> , 57 Wn. App. 383, 788 P.2d 21 (1990)	22, 23, 24
<i>State v. Staley</i> , 123 Wn.2d 794, 872 P.2d 502 (1994).....	11, 12
<i>State v. Valdobinos</i> , 122 Wn.2d 270, 858 P.2d 199 (1993).....	13, 14, 16, 17

TABLE OF AUTHORITIES

Page

FEDERAL CASES

In re Winship,
397 U.S. 358, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) 10

Jackson v. Virginia,
443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) 11

RULES, STATUTES, AND OTHERS

11 WASHINGTON PRACTICE: WASHINGTON PATTERN JURY
INSTRUCTIONS: CRIMINAL 52.01 (4th ed. 2016)..... 7

66th Legislature Regular Session 2019 3

RCW 46.61.040 12

RCW 69.50.4012, 3, 11, 12

RCW 69.50.4013 3

RCW 9.41.001 3

RCW 9.41.010 2, 3

RCW 9.41.040 3, 11

RCW 9.94A.825..... 12, 13, 17

U.S. Const. Amend. XIV 10

A. ASSIGNMENTS OF ERROR

1. The state failed to prove beyond a reasonable doubt that Watts Dyson constructively possessed narcotics based on her residence.
2. The state failed to prove beyond a reasonable doubt that Watts Dyson constructively possessed the narcotics based on her residence.
3. The trial court committed reversible error by denying the defense jury instruction on unwitting possession.

Issues Presented on Appeal

1. Did the state fail to prove beyond a reasonable doubt that Watts Dyson constructively possessed narcotics based on her residence, where residence merely raised a rebuttable presumption of dominion and control over the premises?
2. Did the state fail to prove beyond a reasonable doubt that Watts Dyson constructively possessed the firearms based on her residence, where residence merely raised a rebuttable presumption of dominion and control over the

premises?

3. Did the trial court commit reversible error by denying the defense jury instruction on unwitting possession where the defense provided evidence of the lesser included offense of simple possession, where unwitting possession is a defense to the lesser included offense?

B. STATEMENT OF THE CASE

a. Procedural Facts

Jeania Watts Dyson was charged with: unlawful possession of heroin with intent to deliver while armed with a handgun (count 1); unlawful possession of methamphetamine with intent to deliver while armed with a handgun (count 2); unlawful possession of cocaine (count 3); unlawful possession of oxycodone (count 4); unlawful possession of a firearm in the first degree (count 5); and unlawful possession of a firearm in the first degree (count 6). CP 1-3.

Following a jury trial, Watts Dyson was convicted of: unlawful possession of heroin while armed with a handgun contrary to RCW 69.50.401(1)(2)(a)(i); RCW 9.41.010 (lesser included count 1); unlawful possession of methamphetamine while armed with a

handgun contrary to RCW 69.50.401(1)(2)(b); RCW 9.41.0101 (lesser included count 2); unlawful possession of cocaine (count 3); unlawful possession of oxycodone contrary to RCW 69.50.4013(1)(count 4); unlawful possession of a firearm in the first degree contrary to RCW 9.41.040(1)(a) (count 5); and unlawful possession of a firearm in the first degree contrary to RCW 9.41.001(a); RCW 9.41.040(1)(a) (count 6). CP 56-65, 70-85.

The court denied defense counsel's unwitting possession instruction declaring that the instruction was not appropriate in this case because Watts Dyson had dominion and control over the premises and there was no evidence of actual possession thus this instruction was not warranted. RP 424-426.

This timely appeal follows. CP 100.

b. Substantive Facts

Jeania Watts Dyson's husband lives in the house that the police raided and searched 5:20 am on April 6, 2017. RP 151. Watts Dyson too lived at this location but spent as much time as possible away from the house in April 2017 and did not communicate much with her husband. At times, she slept in her

1 Amendments, not applicable: 66th Legislature Regular Session 2019.

car. RP 322, 375 -76, 397.

When the police raided the house, Watts Dyson was asleep in the recreation room on a futon couch with a separator in between herself and her husband so he would not touch her. RP 151, 154. 333. The police found a gun wrapped in a towel hidden near the top of the futon on the floor on the husband's side of the bed, along with a small black bag containing methamphetamine, heroin and oxycodone. RP 157-58, 164-70, 216, 238-39, 240-41, 248. Watts Dyson did not know there was gun in the rec room. RP 249.

The police also found a gun hidden under the mattress in the master bedroom on the side closest to the men's clothing, along with male and female clothing and mail addressed to Watts Dyson and her husband. RP 200, 204, 209, 253-54. The police found methamphetamine in a black bag the middle of a 5 foot high closet shelf, not visible to Watts Dyson who was unaware of its presence in the closet. RP 236-37, 251. The police had no idea the last time Watts Dyson slept in the master bedroom, or how long the gun and drugs were hidden in the room. RP 258. Watts Dyson did not know there were any drugs or guns in her home. RP 236, 334-344, 364-65.

She spent a great deal of time away from the house her husband, and kept odd hours, to avoid him. RP 326-27, 374. Watts Dyson knew that her husband took prescription pills and got high, but she did not participate in this activity anymore. RP 368.

Watts Dyson never saw the drugs on a ledge in the rec room because the ledge was too high for her to see over, and never looked inside the bowl containing methamphetamine. RP 338-340, 344. She did not see any of the drugs in the rec room because she came home in the middle of the night and immediately washed her clothes and fell asleep without turning on the lights. RP 218-19, 332, 340-344. There was no fingerprint evidence linking Watts Dyson to any of the contraband. RP 28, 34, 37 The police also found scales and drugs in Watts Dyson's husband's Lexus, a car she never drove. RP 218-19, 332, 340-344.

Mr. Watts Dyson told the police he knew there were guns and drugs in the house and Lexus. RP 113-115, 124, 222.

C. ARGUMENT

1. WATTS DYSON WAS DENIED HER
RIGHT TO HAVE THE COURT
INSTRUCT THE JURY ON HER
THEORY OF THE CASE

Although Watts Dyson was charged with delivery offenses, the jury was specifically instructed to consider lesser included simple possession offenses if it failed to find guilt on the delivery charges. CP 17-55. The jury rejected all of the delivery charges, instead finding guilt only on the lesser simple possession offenses. CP 56-65.

Unlawful possession of a controlled substance is a strict liability crime that requires the state to prove the nature of the substance and the fact of possession. *State v. Bradshaw*, 152 Wn.2d 528, 538, 98 P.3d 1190 (2004). As an affirmative defense, a defendant may allege that possession was unwitting. *Id.* To raise a successful unwitting possession defense, the defendant must prove by a preponderance of the evidence that she did not know that the substance was in her possession or did not know the nature of the substance. *State v. George*, 146 Wn. App. 906, 914–15, 193 P.3d 693 (2008); see 11 WASHINGTON PRACTICE: WASHINGTON

PATTERN JURY INSTRUCTIONS: CRIMINAL 52.01 at 1196 (4th ed. 2016) (listing elements).

The defendant is entitled to have the trial court instruct the jury on her theory of the case when there is evidence to support the theory. *George*, 146 Wn. App. at 915. The trial court's failure to do so is reversible error. *State v. Otis*, 151 Wn. App. 572, 578, 213 P.3d 613 (2009). Evidence is sufficient it permits a reasonable juror to find by a preponderance of the evidence that the defendant unwittingly possessed the controlled substance. *State v. Buford*, 93 Wn. App. 149, 153, 967 P.2d 548 (1998).

When the trial court evaluates whether the evidence is sufficient to support an unwitting possession instruction, it must interpret the evidence in favor of the defendant without weighing the proof or judging witness credibility. *George*, 146 Wn. App. at 915. This court reviews the sufficiency of the evidence in light of all the evidence presented at trial, irrespective of which party presented it. *Id.*

Here, Watts Dyson presented evidence of unwitting possession. She did not know that there were illegal narcotics and guns in the house. She spent a great deal of time away from the

house her husband, and kept odd hours, in part to avoid him. RP 326-27, 374. Watts Dyson knew that her husband took prescription pills and got high, but she did not participate in this activity anymore. RP 368. This evidence was sufficient to require the court to provide her unwitting possession instruction, because weighing the evidence in the light most favorable to Watts Dyson, a reasonable juror could find by a preponderance of the evidence that the Watts Dyson unwittingly possessed the controlled substance. *George*, 146 Wn. App. at 915; *Buford*, 93 Wn. App. at 153.

George provides authority for establishing that the trial court erred by refusing to provide an unwitting possession instruction. In *George*, the court held that an unwitting possession instruction was proper where a police officer pulled over a car with three occupants, including the defendant who was sitting in the back seat. *George*, 146 Wn. App. at 912. The officer smelled marijuana, and after searching the vehicle found a large water pipe containing burnt marijuana behind the driver's seat. *George*, 146 Wn. App. at 912-13. Throughout the encounter, all three occupants denied that

marijuana was present and the defendant denied owning the pipe. *Id.*

The court held that this evidence justified giving an unwitting possession instruction, based on specific relevant facts: (1) all three parties denied any knowledge that marijuana was present or ownership of the pipe, the defendant was not driving (2), the defendant did not own the vehicle and the owner was present, (3) and no fingerprint evidence linked the defendant to the pipe. *George*, 146 Wn. App. at 915. Therefore, it was possible that someone in the front seat placed the pipe in the back or that the pipe had been placed there previously. *George*, 146 Wn. App. at 915-16.

Here, similar to *George*, there was more than one occupant in the house, Watts Dyson's husband; the husband admitted knowing about both the narcotics and firearms, there was no forensic evidence connecting Watts Dyson to the contraband, and it is possible that the husband placed the drugs and firearms in the house without Watts Dyson's knowledge. This evidence like that in *George* justified giving an unwitting possession instruction because Watts Dyson presented evidence that could have allowed the jury

to conclude that she did not know the illegal contraband and firearms were in the house. *George*, 146 Wn. App. at 915.

As in *George*, Watts Dyson was denied her right to have the trial court instruct the jury on her unwitting defense theory of the case because she presented sufficient evidence from which a reasonable juror could find by a preponderance of the evidence that the defendant unwittingly possessed the controlled substance. *George*, 146 Wn. App. at 915-16.

The trial court committed reversible error. Accordingly, this Court must reverse the conviction and remand for a new trial. *George*, 146 Wn. App. at 915-16.

2. THE STATE FAILED TO PROVE POSSESSION WHILE ARMED WITH A DEADLY WEAPON IN THE POSSESSION WITH INTENT TO DELIVER NARCOTICS CHARGES AND THE UNLAWFUL POSSESSION OF FIREARMS AND NARCOTICS CHARGES

The state must prove every element of each crime beyond a reasonable doubt. The Due Process Clause protects the accused from conviction unless the state proves every element of the crime beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970); U.S. Const. Amend. XIV. On

appellate review, the court determines whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 334, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Green*, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980).

Watts Dyson challenges her conviction on two counts of unlawful possession of a firearm in the first degree, RCW 9.41.040, and her multiple convictions for unlawful possession of narcotics, while armed with a handgun, as well as her simple possession convictions. CP 70-85. To prove these crimes, the state must establish beyond a reasonable doubt that the defendant knowingly owned, possessed, or controlled the firearm. *State v. Anderson*, 141 Wn.2d 357, 366-67, 5 P.3d 1247 (2000) (addressing second degree possession of a firearm), and possessed narcotics, while armed with a handgun. *State v. Staley*, 123 Wn.2d 794, 798, 872 P.2d 502 (1994); RCW 69.50.401.

Watts Dyson's convictions must be reversed because the state did not prove beyond a reasonable doubt that she knowingly owned, possessed, or controlled the guns, or that she possessed

narcotics while armed with a handgun.

An essential element of first degree possession of a firearm is knowing possession, control, or ownership of a firearm. RCW 46.61.040(1). The state offered no proof that Watts Dyson owned the firearm or that she had actual possession or control of it. Rather, the evidence indicated that both guns were hidden from view, and the guns were wrapped in cloth under a mattress or and under the futon. The state's case was based upon constructive possession.

Similarly, Watts Dyson was convicted of multiple counts of possession of narcotics, while armed with a handgun. CP 70-85. To convict, the state was required to prove beyond a reasonable doubt that Watts Dyson possessed methamphetamine, heroin, cocaine, and oxycodone. *Staley*, 123 Wn.2d at 798; RCW 69.50.401.

1. While Armed With a Handgun

Watts Dyson challenges her deadly weapon enhancement, based on insufficient evidence established that she was "armed" according to RCW for purpose of RCW 9.94A.825. To prove that Watts Dyson was "armed with a handgun", the state was required to prove Watts Dyson:

A person is armed with a firearm if, at the time of the commission of the crime, the

firearm is easily accessible and readily available for offensive or defensive use. The State must prove beyond a reasonable doubt that there was a connection between the firearm and the defendant or an accomplice. The State must also prove beyond a reasonable doubt that there was a connection between the firearm and the crime. In determining whether these connections existed, you should consider, among the factors, the nature of the crime and the circumstances surrounding the commission of the crime, including the location of the weapon at the time of the crime and the type of weapon.

RCW 9.94A.825; CP 34.

Whether a person is armed is a mixed question of law and fact, reviewed de novo. *State v. Schelin*, 147 Wn.2d 562, 565-66, 55 P.3d 632 (2002). “A person is “armed” if a weapon is easily accessible and readily available for use, either for offensive or defensive purposes,” and there is a connection or nexus between the defendant, the weapon, and the crime. *State v. Easterlin*, 159 Wn.2d 203, 208-09, 149 P.3d 366 (2006) (quoting *State v. Valdobinos*, 122 Wn.2d 270, 282, 858 P.2d 199 (1993)).

To determine if a the nexus exists between the defendant and the weapon, and the crime, the court examine “ ‘the nature of the crime, the type of weapon, and the circumstances under which

the weapon is found (e.g., whether in the open, in a locked or unlocked container, in a closet on a shelf, or in a drawer).’ ” *State v. Gurske*, 155 Wn.2d 134, 142, 118 P.3d 333 (2005) (quoting *Schelin*, 147 Wn.2d at 570). “[M]ere constructive possession [of a deadly weapon] is insufficient to prove a defendant is “armed” with a deadly weapon during the commission of a crime.” *Gurske*, 155 Wn.2d at 138 (quoting *Schelin*, 147 Wn.2d at 567) (internal quotation marks omitted).

For example, in *Valdobinos*, the defendant was not armed where police arrested him then searched house, finding cocaine under a bed and a rifle under a bed. *Valdobinos*, 122 Wn.2d at 272-73. Similarly, in *State v. Call*, 75 Wn. App. 866, 867-69, 880 P.2d 571 (1994), the defendant was not armed where he walked into a bedroom to get identification and police later found two unloaded guns and a loaded gun in a toolbox in the bedroom. *Id.* By contrast, in *Schelin*, the defendant was armed where police found him at the bottom of stairs 6 to 10 feet away from loaded revolver in a holster hanging on a nail. *Schelin*, 147 Wn.2d at 574-75.

In *Valdobinos* the court determined that because there was no evidence that defendant was in close proximity to the weapon

when police discovered it or when availability for use for defensive or offensive purposes, it was not readily available. *Valdobinos*, 122 Wn.2d at 282. By contrast, in *Schelin*, the defendant was close to the easily accessible and readily available weapon at the time police entered the house. *Schelin*, 147 Wn.2d at 574-75. The defendant's proximity of the weapon is part of the nexus analysis, but it is possible for a defendant to be armed during a commission of a crime for purposes of a sentence enhancement even if not arrested in close proximity to the weapon, if the evidence suggested the defendant possessed and recently dropped a loaded pistol, outside a methamphetamine lab, and other evidence suggested that the defendant manufactured methamphetamine for six weeks and during some or all of that time had seven guns on the premises, with at least four kept loaded, in order to protect the manufacturing site. *State v. Simonson*, 91 Wn. App. 874, 877, 882-83, 960 P.2d 955 (1998).

In *State v. Ague-Masters*, 148 Wn. App. 86, 156 P.3d 265 (2007), this court held that the defendant was not armed where he manufactured methamphetamine in a detached lab 100 feet from his front door with 12 unloaded firearms and drug paraphernalia

locked in a safe in the house. The court determined the defendant was not armed in part because there was no evidence the defendant attempted to use or had used one of the firearms for offensive or defensive purpose, even though he could have easily accessed the guns. *Ague-Masters*, 148 Wn. App.at 104 (*citing, Valdobinos*, 122 Wn.2d at 282; *Call*, 75 Wn. App. at 869).

Watts Dyson's case is similar to *Valdobinos*, *Call* and *Ague-Masters*. As in each of these cases, the guns were theoretically accessible, but Watts Dyson did not actually possess the firearms, the firearms were hidden and there was no evidence that she had used of attempted them for offensive or defensive purposes at any time. . *Ague-Masters*, 148 Wn. App.at 104 (*citing, Valdobinos*, 122 Wn.2d at 282; *Call*, 75 Wn. App. at 869). Under Washington State law, "courts have found that a defendant is not "armed" even though he, presumably, could have obtained a weapon by taking a few steps." *Ague-Masters*, 148 Wn. App.at 104 (*citing, Valdobinos*, 122 Wn.2d at 282).

These cases control the outcome of this issue rather than *Simonson* which is readily distinguishable on grounds first that in this case there was no evidence of manufacturing narcotics and no

evidence of a surveillance system or other defensive or offensive system for possessing the narcotics. Additionally, there was no evidence of recent handling of the wrapped, hidden weapons. *Valdobinos*, 122 Wn.2d at 282; *Ague-Masters*, 148 Wn. App.at 104-05; *Simonson*, 91 Wn. App, at 877-78. The evidence in this case is insufficient to show that Watts Dyson knew of the hidden, wrapped guns, and even if she was in constructive possession of the guns, this was insufficient to show she was “armed” for purposes under RCW 9.94A.825. The remedy is to vacate the deadly weapon enhancements. *Ague-Masters*, 148 Wn. App. at 105.

2. Possession Firearms and Narcotics

For all of the possession charges, possession may be actual or constructive. *State v. Chouinard*, 169 Wn App. 895, 889, 282 P.3d 117 (2012), *rev. denied*, 176 Wn.2d 1003 (2013).

Constructive possession may be established by proving dominion and control over the firearm or contraband. *Id.* Dominion and control means that the object may be reduced to actual possession immediately. *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002). Proximity to a weapon or contraband alone is not sufficient to establish constructive possession. *Id.*

In this case, the state proved that Watts Dyson was in the home when the search warrant was executed and that she had clothing in the home and there were documents with her name on them in the master bedroom where one of the guns and was found hidden under the mattress and there were drugs in a closet at a height she could not see. RP 216-18, 234, 236-37, 240, 251-52, 336-37, 344.

Watts Dyson did not sleep in the master bedroom and testified that she spent as much time as possible away from the residence and away from her husband. RP 374, 390. At most, the state proved that Watts Dyson maintained night time hours and lived with her husband but often stayed elsewhere. Both guns were hidden and most of the contraband was not out in the open but in closets or containers that Watts Dyson never entered or viewed. RP 216-18, 234, 236-37, 240, 251-52, 336-37, 344, 379. The small amounts of methamphetamine in plain view were in the living room, where Watts Dyson arrived late at night, in the dark and was unable to see any contraband. RP 218-19, 332, 340-344.

Constructive possession requires proof that the defendant had control over the contraband itself, not just the place where it

was located. *State v. Shumaker*, 142 Wn. App. 330, 334, 174 P.3d 1214 (2007); *State v. Cantabrana*, 83 Wn. App. 204, 207-08, 921 P.2d 572 (1996). Physical proximity to the contraband alone will not support finding constructive possession beyond a reasonable doubt to support conviction for possessing illegal narcotics. *State v. Callahan*, 77 Wn.2d 27, 29, 459 P.2d 400 (1969); *State v. McPherson*, 111 Wn. App. 747, 46 P.3d 284 (2002).

Establishing constructive possession is a fact-specific inquiry that requires examining the totality of the situation to determine whether the jury could have reasonably inferred that Watts Dyson had dominion and control over the contraband. *State v. Cote*, 123 Wn. App. 546, 549, 96 P.3d 410 (2004) (citations omitted)

“Consideration must be given to the ownership of the drugs as ownership can carry with it the right of dominion and control.” *Callahan*, 77 Wn.2d at 31.” In *Callahan*, Charles Weaver testified the drugs belonged to him. *Id.* His testimony was uncontroverted by the state and any evidence indicating the defendant had dominion or control over the drugs was purely circumstantial and insufficient in light the undisputed direct proof that Charles Weaver possessed the drugs. *Id.*

Here, there was evidence that Watts Dyson had dominion and control over the premises with her husband, but this did not establish that she had possession of the contraband. Rather, similar to *Callahan*, Watts Dyson's husband told the police where they could find the drugs and stated he knew where the guns were as well. RP 113-116. This acknowledgment from the husband is sufficient to establish, that he, not Watts Dyson possessed the contraband. *Callahan*, 77 Wn.2d at 31-32.

State v. Echeverria, 85 Wn. App. 777, 779-80, 783, 934 P.2d 1214 (1997), is also instructive based on the facts that when contraband is not readily visible, the state cannot necessarily establish possession of the contraband based on dominion and control over the premises. *Id.* In *Echeverria*, the court affirmed a conviction for unlawful possession of a firearm when a juvenile was found driving a car with a firearm sticking out from underneath the driver's seat. *Echeverria*, 85 Wn. App. at 777, 779-80, 783. In that circumstance, the juvenile court made a reasonable inference that the defendant knowingly possessed or controlled the gun that was within his reach. *Echeverria*, 85 Wn. App at 783. In contrast, the Court of Appeals overturned the juvenile's conviction for possession

of throwing stars that were in the car but not visible. *Echeverria*, 85 Wn. App at 783-84.

Here, similar to the throwing stars, the guns and narcotics in this case were not visible or within easy reach. The guns were located under a mattress and wrapped in a towel hidden on the floor at the front of the bed, and the narcotics were in containers and in closets, but not much in open view where Watts Dyson could see them. RP 96-98, 211, 216-18, 234, 236-37, 240, 251-52, 336-37, 344. And, while there were women's clothes and documents with Watts Dyson's name in the bedroom where Watts Dyson did not sleep, the evidence demonstrated that neither the guns nor the narcotics were visible without a search. *Id.* Thus, the state did not prove beyond a reasonable doubt that Watts Dyson knew the guns were present in the house or that she possessed the narcotics.

George, 146 Wn. App. at 912-13, provides analogous authority for finding a lack of possession where more than one person has access to a premise/vehicle. In *George*, the police stopped a vehicle occupied by George and three other passengers and found an eight-inch long water pipe with burnt marijuana next to where George was seated. The state produced no evidence that

George had used the pipe or possessed or used marijuana with or without the pipe. *George*, 146 Wn. App. at 922.

Nor did the state offer evidence to rule out that the other occupants of the vehicle had used or possessed it. In short, the state offered no evidence linking George to the pipe. *George*, 146 Wn. App. at 922. In reversing George's conviction for possession of marijuana and drug paraphernalia, the court rejected the state's argument that George's proximity to and knowledge of the pipe was sufficient to prove dominion and control. *George*, 146 Wn. App. at 923.

Similarly, in *State v. Spruell*, 57 Wn. App. 383, 384, 788 P.2d 21 (1990). police entered a home and found Hill and another individual near a table on which there was cocaine residue, a scale, vials, and a razor blade. Division One of our court reversed Hill's conviction for possession of cocaine, holding the evidence was insufficient. There was no evidence other than the testimony of his presence in the kitchen. There is no he had a connection with the house or the cocaine, other than being present and having a fingerprint on a dish which appeared to have contained cocaine.

“[P]resence and proximity to the drugs is not enough”. *George*, 146 Wn. App. at 922; *Spruell*, 57 Wn. App. at 388-89.

Even though Watts Dyson was a residence of the home, she avoided the home and spent hours away. There are however other similarities between her case and *George* and *Spruell*. Primarily, there was no evidence connecting Watts Dyson to the narcotics or firearms: there was no evidence regarding her past use or ownership of the firearm, or association with the narcotics; there was no testimony to show that Watts Dyson’s husband did not have possession of the firearm and narcotics; the state did not offer evidence to rule out Watts Dyson husband’s use or possession of the contraband; there was no fingerprint evidence linking Watts Dyson to the contraband, and Watts Dyson did not make incriminating statements or admissions. In short, the state offered no evidence linking Watts Dyson to the contraband. *George*, 146 Wn. App. at 922.

Reviewing these facts in the light most favorable to the state, the state failed to connect Watts Dyson to the contraband with sufficient evidence to prove that she had constructive possession rather than was in mere proximity to the contraband. The evidence

here was less than in *Spruell*, where the defendant's fingerprints were found on a dish covered with cocaine residue. *Spruell*, 57 Wn. App. at 388-89.

Here the state established mere proximity to the contraband. While this raised the rebuttable presumption of constructive possession, it was insufficient to establish beyond a reasonable doubt that Watts Dyson had constructive possession of the narcotics or firearms. Accordingly, Watts Dyson's conviction must be reversed. Watts Dyson's convictions must be reversed and dismissed with prejudice. *Callahan*, 77 Wn.2d at 31-32; *Chouinard*, 169 Wn. App. at 903; *Echeverria*, 85 Wn. App. at 785.

D. CONCLUSION

Ms. Watts Dyson respectfully requests this Court reverse and remand for dismissal with prejudice based on insufficient evidence of guilt. In the alternative, Ms. Watts Dyson requests this Court reverse and remand for a new trial based on the trial court denying her right to have the juror's instructed on her theory of the case.

DATED this 21st day of March 2019.

Respectfully submitted,



LISE ELLNER
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Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Pierce County Prosecutor's Office pcpatcecf@co.pierce.wa.us and Jeania Watts dyson/DOC#719488, Washington Corrections Center for Women, 9601 Bujacich Rd. NW, Gig Harbor, WA 98332 a true copy of the document to which this certificate is affixed on March 21, 2019. Service was made by electronically to the prosecutor and Jeania Watts dyson 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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