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Court of Appeals
Division II
State of Washington
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NO. 53376-6-II

THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent

v.

JEFFREY PALMER,

Appellant.

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

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

A. ARGUMENT IN REPLY..... 1

**This Court should find that knowledge is a required
element of possession of a controlled substance. 1**

B. CONCLUSION 3

TABLE OF AUTHORITIES

United States Supreme Court

Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) 2

Morissette v. United States, 342 U.S. 246, 72 S. Ct. 240, 96 L. Ed. 288 (1952) 2

Rehaif v. United States, ___ U.S. ___, 139 S. Ct. 2191, 204 L. Ed. 2d 594 (2019) 2

Decisions of Other Courts

State v. Brown, 389 So. 2d 48 (La. 1980)..... 2

Constitutional Provisions

Const. art. I, § 3 1

U.S. Const. amend. XIV 1

A. ARGUMENT IN REPLY

Because the prosecution does not contest the second two assigned errors, this reply only addresses the question of whether knowledge is a required element of possession of a controlled substance. Mr. Palmer asks this Court to hold that because knowledge is a required element of this offense, that reversal of Mr. Palmer's conviction for possession of a controlled substance is required.

This Court should find that knowledge is a required element of possession of a controlled substance.

Since Mr. Palmer's opening brief, the Washington Supreme Court heard argument in *State v. Blake*, 96873-0, which addresses whether knowledge is an essential element of possession of a controlled substance. An opinion has not been issued yet in that case. Even without guidance from the Supreme Court, this Court can find that knowledge is an essential element of possession of a controlled substance.

The government cannot deprive persons of liberty without due process of law. U.S. Const. amend. XIV; Const. art. I, § 3. Consistent with this principle is the notion that it

is fundamental that “wrongdoing must be conscious to be criminal.” *Morissette v. United States*, 342 U.S. 246, 252, 72 S. Ct. 240, 96 L. Ed. 288 (1952). A “defendant’s intent in committing a crime is perhaps as close as one might hope to come to a core criminal offense ‘element.’” *Apprendi v. New Jersey*, 530 U.S. 466, 493, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000).

Courts apply “a longstanding presumption, traceable to the common law,” that every statutory offense contains a mens rea element. *Rehaif v. United States*, ___ U.S. ___, 139 S. Ct. 2191, 2195, 204 L. Ed. 2d 594 (2019). A statute like Washington’s sweeps in entirely innocent conduct. *State v. Brown*, 389 So. 2d 48, 51 (La. 1980). Mr. Palmer committed a crime that he did not know he had committed. He did not know the marijuana container contained methamphetamine. RP 257. The record does not establish beyond a reasonable doubt the result of Mr. Palmer’s trial would have been the same if the prosecution had been required to prove knowledge.

The trial court erred by failing to require the prosecution to prove beyond a reasonable doubt that Mr. Palmer knowingly possessed the drugs. Had the jury been instructed that the government was obligated to prove Mr. Palmer knew he possessed methamphetamine, it would have found him not guilty of this offense. Instead, Mr. Palmer was required to prove his possession was unwitting. This is insufficient for due process. Reversal is required.

B. CONCLUSION

Mr. Palmer asks this Court to reverse his conviction for possession of a controlled substance, dismiss the charge of possession of a controlled substance by a prisoner or inmate, and strike the interest provision from his legal financial obligations.

DATED this 23 day of March 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

TRAVIS STEARNS (WSBA 29935)
Washington Appellate Project (91052)
Attorneys for Appellant

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 53376-6-II
v.)	
)	
JEFFREY PALMER,)	
)	
Appellant.)	

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