

FILED
Court of Appeals
Division II
State of Washington
12/31/2019 9:58 AM

NO. 53455-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

DAVID MIKEALS,

Appellant.

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

The Honorable Michael H. Evans, Judge

BRIEF OF APPELLANT

JARED B. STEED
Attorney for Appellant

NIELSEN KOCH, PLLC
1908 E Madison Street
Seattle, WA 98122
(206) 623-2373

TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENT OF ERROR</u>	1
<u>Issue Pertaining to Assignment of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
1. <u>Trial Testimony</u>	1
2. <u>Sentencing</u>	5
C. <u>ARGUMENT</u>	6
WASHINGTON’S STRICT LIABILITY DRUG POSSESSION STATUTE EXCEEDS THE LEGISLATURE’S AUTHORITY AND OFFENDS DUE PROCESS.	6
D. <u>CONCLUSION</u>	16

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>Buchanan v. Int’l Bhd. of Teamsters</u> 94 Wn.2d 508, 617 P.2d 1004 (1980).....	9
<u>Dep’t of Ecology v. Campbell & Gwinn LLC</u> 146 Wn.2d 1, 43 P.3d 4 (2002).....	8
<u>State v. A.M.</u> 194 Wn.2d 33, 448 P.3d 35 (2019).....	9, 10, 11, 12, 13
<u>State v. Anderson</u> 141 Wn.2d 357, 5 P.3d 1247 (2000).....	8, 10
<u>State v. Bradshaw</u> 152 Wn.2d 528, 98 P.3d 1190 (2004).....	7, 8, 13
<u>State v. Chavez</u> 163 Wn.2d 262, 180 P.3d 1250 (2008).....	8
<u>State v. Cleppe</u> 96 Wn.2d 373, 635 P.2d 435 (1981).....	7, 8
<u>State v. Conover</u> 183 Wn.2d 706, 355 P.3d 1093 (2015).....	8
<u>State v. Coristine</u> 177 Wn.2d 370, 300 P.3d 400 (2013).....	14
<u>State v. Higgs</u> 177 Wn. App. 414, 311 P.3d 1266 (2013).....	13
<u>State v. Turner</u> 78 Wn.2d 276, 474 P.2d 91 (1970).....	11
<u>State v. Weatherwax</u> 188 Wn.2d 139, 392 P.3d 1054 (2017).....	8

TABLE OF AUTHORITIES (CONT'D)

	Page
 <u>FEDERAL CASES</u>	
 <u>Elonis v. United States</u>	
__U.S.__, 135 S. Ct. 2001, 192 L. Ed. 2d 1 (2015).....	6
 <u>Lambert v. California</u>	
355 U.S. 225, 78 S. Ct. 240, 2 L. Ed. 2d 228 (1957).....	10
 <u>Morrisette v. United States</u>	
342 U.S. 246, 72 S. Ct. 240, 96 L. Ed. 288 (1952).....	6, 11
 <u>Papachristou v. City of Jacksonville</u>	
405 U.S. 156, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972).....	10
 <u>Rehaif v. United States</u>	
__U.S.__, 139 S. Ct. 2191, 204 L. Ed. 2d 594 (2019).....	7
 <u>Staples v. United States</u>	
511 U.S. 600, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994).....	12
 <u>United States v. Apollo Energies, Inc.</u>	
611 F.3d 679 (10th Cir. 2010)	10
 <u>United States v. Macias</u>	
740 F.3d 96 (2d Cir. 2014)	10
 <u>United States v. Wulff</u>	
758 F.2d 1121 (6th Cir. 1985)	13
 <u>United States v. X-Citement Video, Inc.</u>	
513 U.S. 64, 115 S. Ct. 464, 130 L. Ed. 2d 372 (1994).....	14

TABLE OF AUTHORITIES (CONT'D)

Page

OTHER JURISDICTIONS

Finn v. Commonwealth
313 S.W.3d 89 (Ky. 2010)..... 13

Hudson v. State
30 So. 3d 1199 (Miss. 2010)..... 13

RULES, STATUTES AND OTHER AUTHORITIES

Preliminary Report on Race and Washington’s Criminal Justice System,
35 SEATTLE U. L. REV. 623 (2012). 12

R. Dickerson,
THE INTERPRETATION AND APPLICATION OF STATUTES 181-82 (1975) 9

William Eskridge,
Interpreting Legislative Inaction, 87 MICH. L. REV. 67 (1988) 9

RCW 2.36.070 12

RCW 9.41.040 13

RCW 9A.04.060 8

RCW 10.64.140 12

RCW 69.50 14

RCW 69.50.4013 1, 6, 12, 13

RCW 69.50.603 14

U.S. Const. Amend. XIV 1, 9, 11

A. ASSIGNMENT OF ERROR

The basic drug possession statute, under which appellant was convicted, is unconstitutional because it violates due process under the Fourteenth Amendment.

Issue Pertaining to Assignment of Error

Does Washington's strict liability basic drug possession statute, RCW 69.50.4013, violate due process, where it results in harsh felony consequences, criminalizes innocence conduct, and lacks a public welfare rationale? Must appellant's conviction under the statute be reversed where this constitutional error was not harmless beyond a reasonable doubt?

B. STATEMENT OF THE CASE

1. Trial Testimony.

After her husband's death, Martin Flindt's mother, moved out of the house they shared in Woodland. 2RP¹ 156-57, 183-84, 192, 202-03. Flindt's mother was a hoarder and continued to store all her possessions in the home. 2RP 203-04, 216, 333. Flindt asked neighbors, Ronald and Karina Child, to keep an eye on the home in his absence. 2RP 157, 192-93, 200-01, 204. The Child's did not have access to the inside of the house. 2RP 162-63, 182.

¹ This brief refers to the verbatim report of proceedings as follows: 1RP – October 9, 2017; December 11, 2017; and July 23, 2018; 2RP – July 25-26, 2018 and April 1, 8, 11, 2019.

Ronald drove past the house nearly everyday. 2RP 155, 194-95. In September 2017 Ronald noticed a Green Pontiac parked in the field opposite the house. 2RP 159-60, 162. Ronald had never seen the car before and took a picture of it. 2RP 160-61. Ronald did not see anything out of the ordinary when we walked around the house. 2RP 162-63, 181. Ronald put a red Christmas stocking at the top of the front door anticipating that if it fell it would suggest someone was inside the house. 2RP 163-64, 181, 196.

As the Child's passed the house on October 8, 2017, they noticed the stocking had fallen. 2RP 165, 183, 196. Ronald also noticed the same Green Pontiac parked near the house. 2RP 165. The Child's did not see anyone outside the house or notice any home items outside. 2RP 166, 169, 196-97. Ronald nonetheless called 911 and parked his car while he waited for police to arrive. 2RP 167, 197-98.

While waiting for the police, the Child's saw appellant David Mikeals run across the road carrying a garbage bag and wicker basket. 2RP 168-69, 197-98. The Child's did not actually see Mikeals exit the house. 2RP 176, 198, 325. After Mikeals got into the Pontiac, Ronald drove his car in front in order to block the car. 2RP 169-70, 198. Woodland police officer, James Keller, arrived a short time later and pulled in behind the Pontiac. 2RP 295-300.

Mikeals was arrested and during a subsequent search of his person, police found several silver dollar coins, a lighter, harmonica, and flashlight. 2RP 303-04, 314-15, 330-31. Police searched the house but found no one inside. 2RP 304-05, 312, 315, 332. Several rooms could not be accessed because of the amount of clutter inside. 2RP 307, 315-16, 323. Police observed that the front door jamb had been damaged and that items were placed outside the front door. 2RP 304-06, 309, 316, 334.

Mikeals consented to a search of the car and police found his wallet and cellphone inside. 2RP 335, 342, 345. The center console contained pocketknives, a watch, and a glass pipe. 2RP 336-37, 341-43. Forensic testing revealed the pipe contained methamphetamine "residue". An exact amount of methamphetamine could not be determined. 2RP 338, 247. In the back of the car was a wicker basket and garbage bag containing household type items. 2RP 339-40. The license plate on the Pontiac was not registered to that car. 2RP 311, 335. Mikeals told police that the car was his but denied that the glass pipe belonged to him. 2RP 346-47. Mikeals also denied being inside the house. 2RP 326. No fingerprint testing was conducted. 2RP 319-22, 345.

Although Flindt had not inventoried the contents of the house, he later identified several items found by police outside the house. 2RP 221-22, 24-25, 239. Flindt explained that his father was a collector of coins

and that several coins and antique lighters were inside the house in a desk drawer. 2RP 218, 224-26. Flindt identified some pieces of jewelry after sending his mother pictures. 2RP 233. Flindt was not able to identify every item. 2RP 222, 343, 345. Flindt denied that Mikeals had permission to be inside the house. 2RP 234.

Mikeals acknowledged that he was at the house on October 8 but denied entering the house. 2RP 368, 378-79, 388-89. Mikeals explained that he made his living buying and selling items. 2RP 367. He first went to the house to talk with a man named Ron, Jr. about buying the 1957 Chevrolet car that was parked in front of the house. 2RP 368-69. Ron, Jr. declined to sell him the car, but nonetheless told Mikeals that he would leave some items on the side of the house for Mikeals to take. 2RP 371. Mikeals returned to the house on October 8 to pick up the items left for him. 2RP 372-74. Mikeals retrieved the garbage bag which contained paper towels, napkins, and candle holders and carried them to his car. 2RP 374-77, 380.

Other items found inside the car had been gathered elsewhere by Mikeals over time. 2RP 381-85. The glass pipe was already inside the car when he bought the car days earlier. 2RP 385. At the time of purchase, Mikeals was not aware that the license plates were not registered to the car. 2RP 386, 390.

Mikeals acknowledged that he did not appear in court on December 11, 2017 but explained that it was because he was suffering from food poisoning. 2RP 286-88, 387-88. Mikeals appeared in court as scheduled on January 11, 2018. 2RP 290-91, 388. Mikeals stipulated that he was the person named in court documents relevant to the bail jumping charge. CP 29-30; 2RP 14-16.

Based on this evidence, the Cowlitz County prosecutor charged Mikeals by amended information with one count each of residential burglary, unlawful possession of methamphetamine, and bail jumping. CP 14-15. A jury found Mikeals guilty as charged. CP 65, 68-69; 2RP 472-75.

2. Sentencing.

Before sentencing Mikeals's trial attorney was permitted to withdraw after acknowledging that he had miscalculated Mikeals's offender score and accordingly misadvised him as to the standard range sentence he was facing. CP 70-71; 2RP 484-85. In exchange for Mikeals withdrawing his motion to vacate the judgement, the parties agreed to a sentencing recommendation. 2RP 484-86. The trial court adopted the parties subsequent agreed recommendation of concurrent sentences of 63 months on the residential burglary, 33 months on the bail jumping, and

12+ months for the unlawful possession of methamphetamine. 2RP 485-90; CP 74-85.

Mikeals timely appeals. CP 86.

C. ARGUMENT

WASHINGTON'S STRICT LIABILITY DRUG POSSESSION STATUTE EXCEEDS THE LEGISLATURE'S AUTHORITY AND OFFENDS DUE PROCESS.

Mikeals was charged with and convicted of felony possession of methamphetamine under RCW 69.50.4013. CP 14-15, 68; 2RP 472. Washington's basic drug possession statute provides, "(1) It is unlawful for any person to possess a controlled substance" RCW 69.50.4013(1). The statute does not specify a mindset that must accompany the possession. The Washington Supreme Court has interpreted basic drug possession to be a strict liability crime. The legislature has acquiesced to this interpretation. However, the strict liability drug possession statute violates due process, where it criminalizes innocent conduct, lacks a public welfare rationale, and entails harsh felony consequences, including up to five years in prison.

"The fact that the statute does not specify any required mental state . . . does not mean that none exists." Elonis v. United States, __U.S.__, 135 S. Ct. 2001, 2009, 192 L. Ed. 2d 1 (2015). The United States Supreme Court has "repeatedly held that 'mere omission from a

criminal enactment of any mention of criminal intent’ should not be read ‘as dispensing with it.’” Id. (quoting Morrisette v. United States, 342 U.S. 246, 250, 72 S. Ct. 240, 96 L. Ed. 288 (1952)). This rule is based on the fundamental principle of common law that “wrongdoing must be conscious to be criminal.” Morrisette, 342 U.S. at 252; Rehaif v. United States, ___ U.S. ___, 139 S. Ct. 2191, 2195, 204 L. Ed. 2d 594 (2019). Otherwise, innocent conduct may be criminalized.

Notwithstanding these principles, the Washington Supreme Court has held basic drug possession to be a strict liability crime, first in State v. Cleppe, 96 Wn.2d 373, 380, 635 P.2d 435 (1981), and then reaffirming Cleppe in State v. Bradshaw, 152 Wn.2d 528, 539-40, 98 P.3d 1190 (2004). The State need prove only the nature of the substance and the fact of possession. Bradshaw, 152 Wn.2d at 537-38. To avoid conviction, defendants bear the burden of proving, by a preponderance of the evidence, that their possession was unwitting. Id. at 538.

There are several reasons the holdings of Cleppe and Bradshaw are dubious. Faced with the basic drug possession statute’s silence on mens rea, the Cleppe court looked to legislative history. 96 Wn.2d at 378-80. Legislative history then drove the court’s conclusion that “the legislative intent is clear”—mens rea is not an element of basic drug possession, despite the offense being a felony crime. Id. at 380.

By looking first to legislative history, Cleppe did not follow the common law presumption in favor of a mens rea, which becomes stronger as the offense’s penalties become harsher. Rehaif, 139 S. Ct. at 2197; State v. Anderson, 141 Wn.2d 357, 366, 5 P.3d 1247 (2000). Nor did Cleppe follow the legislature’s directive to apply the common law, as specified in RCW 9A.04.060.² See State v. Chavez, 163 Wn.2d 262, 273-74, 180 P.3d 1250 (2008) (holding this legislative directive permits courts to rely on common law to determine elements of crimes).

Moreover, courts may resort to aids of construction like legislative history only when a statute is ambiguous. Dep’t of Ecology v. Campbell & Gwinn LLC, 146 Wn.2d 1, 12, 43 P.3d 4 (2002). But courts must also resolve ambiguous statutes in favor of the defendant (and against the drafter—the State) under the rule of lenity. State v. Conover, 183 Wn.2d 706, 711-12, 355 P.3d 1093 (2015). “The underlying rationale for the rule of lenity is to place the burden on the legislature to be clear and definite in criminalizing conduct and establishing criminal penalties.” State v. Weatherwax, 188 Wn.2d 139, 155, 392 P.3d 1054 (2017). Thus, courts

² RCW 9A.04.060 provides: “The provisions of the common law relating to the commission of crime and the punishment thereof, insofar as not inconsistent with the Constitution and statutes of this state, shall supplement all penal statutes of this state and all persons offending against the same shall be tried in the courts of this state having jurisdiction of the offense.”

should not rely on legislative history to interpret criminal statutes when the rule of lenity suffices.

Thirty-eight years have passed since Cleppe was decided and 15 years since Bradshaw upheld Cleppe's interpretation of the statute. The drug possession statute has been amended 11 times since Cleppe. State v. A.M., 194 Wn.2d 33, 55-57, 448 P.3d 35, & n.6 (2019) (Gordon McCloud, J., concurring). But the legislature has not added a mens rea element to the statute. Id. at 55-56. The legislature's failure to amend the statute after the Washington Supreme Court interpreted it suggests the legislature agrees with the court's interpretation.³ See Buchanan v. Int'l Bhd. of Teamsters, 94 Wn.2d 508, 511, 617 P.2d 1004 (1980).

Nevertheless, the legislature's creation of a strict liability felony drug possession statute violates the Fourteenth Amendment right to due process. In the recent A.M. decision, a majority of the Washington Supreme Court declined to reach this issue, reversing on other grounds.

³ The doctrine of legislative acquiescence has been criticized, but Mikeals assumes, for the sake of argument, the legislature has done so here. See, e.g., Buchanan, 94 Wn.2d at 519 (Horowitz, J., dissenting) ("In the realities of the legislative process, almost no reliable inference of current intent could be drawn. In many cases the legislature is unaware of the relevant court decision. Even where it is fully aware of it, there are often reasons other than approval why a legislature remains silent or inactive." (quoting R. Dickerson, THE INTERPRETATION AND APPLICATION OF STATUTES 181-82 (1975)); William Eskridge, Interpreting Legislative Inaction, 87 MICH. L. REV. 67, 69 (1988) ("Inferring intent from Congressional inaction is nothing more than the pursuit of a mirage.").

194 Wn.2d at 44. But two concurring justices would have held the basic drug possession statute unconstitutional under the Fourteenth Amendment, given “the harsh consequences of this statute, paired with the innocent conduct that it criminalizes, and the lack of a public welfare rationale.” Id. at 66-67 (Gordon McCloud, J., concurring).

There is no dispute the legislature can create strict liability crimes. Anderson, 141 Wn.2d at 361. However, they are “generally disfavored,” id. at 363, “especially as the prescribed punishment ratchets up,” A.M., 194 Wn.2d at 60 (Gordon McCloud, J., concurring). Due process likewise limits the legislature’s power, allowing “only a narrow category of strict liability crimes, generally limited to regulatory measures where penalties are relatively small.” United States v. Macias, 740 F.3d 96, 105 (2d Cir. 2014) (Raggi, J., concurring). “Severe fines and jail time would warrant a state of mind requirement.” United States v. Apollo Energies, Inc., 611 F.3d 679, 688 n.4 (10th Cir. 2010).

In Lambert v. California, 355 U.S. 225, 226, 78 S. Ct. 240, 2 L. Ed. 2d 228 (1957), for instance, a Los Angeles ordinance made it a crime for felons to be in the city for more than five days without registering. The Court held the ordinance violated Lambert’s right to due process because it lacked any element of willfulness, thereby punishing purely passive, innocent conduct. Id. at 229. The same was true in Papachristou

v. City of Jacksonville, 405 U.S. 156, 163, 92 S. Ct. 839, 31 L. Ed. 2d 110 (1972), where the Court held a vagrancy ordinance violated the Fourteenth Amendment because it “makes criminal activities which by modern standards are normally innocent.”

These unconstitutional statutes stand in contrast to constitutionally permissible, scienterless public welfare offenses. See Morissette, 342 U.S. at 252-55. Such offenses most frequently “relat[e] to pure food and drugs, labeling, weights and measures, building, plumbing and electrical codes, fire protection, air and water pollution, sanitation, [and] highway safety.” State v. Turner, 78 Wn.2d 276, 280, 474 P.2d 91 (1970). “Accordingly, scienter may be omitted from a regulatory or criminal offense when a person or business opts to engage in conduct that, if not performed with care, could result in harm to vulnerable third parties.” A.M., 194 Wn.2d at 62 (Gordon McCloud, J., concurring).

The same public welfare rationale does not apply to Washington’s basic drug possession statute. The purpose of the statute is “substantively criminal,” not to “heighten the duties of those in control of particular industries, trades, properties or activities that affect public health, safety or welfare.” Id. at 63 (quoting Morissette, 342 U.S. at 254). The punitive focus of Washington’s drug statute becomes readily apparent when considering the racially disproportionate treatment of felony drug

offenders—based on 2009 data, African American defendants were 62 percent more likely to be sentenced to prison than similarly situated Caucasian defendants.⁴

Washington’s statute also sweeps in entirely innocence conduct. In her A.M. concurrence, Justice Gordon McCloud provided several easy-to-imagine scenarios: “A person might pick up the wrong bag at the airport, the wrong jacket at the concert, or even the wrong briefcase at the courthouse. Or a child might carry an adult’s backpack, not knowing that it contains the adult’s illegal drugs.” Id. at 64. “All of this conduct is innocence,” she emphasized; “none of it is blameworthy.” Id.; see also Staples v. United States, 511 U.S. 600, 614-15, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994) (refusing to interpret a statute to “impose criminal sanctions on a class of persons whose mental state . . . makes their actions entirely innocent”). Individuals might be completely unaware they are in violation of the law, raising serious lack of notice concerns.

Furthermore, a basic drug possession conviction in Washington is generally a class C felony, punishable by up to five years in prison and a \$10,000 fine. RCW 69.50.4013(2); RCW 9A.20.021(1)(c). A convicted felon loses numerous civil rights, such as the right to vote (RCW

⁴ Research Working Group of the Task Force on Race and the Criminal Justice System, Preliminary Report on Race and Washington’s Criminal Justice System, 35 SEATTLE U. L. REV. 623, 627-28, 651-53 (2012).

10.64.140), sit on a jury (RCW 2.36.070), and possess a gun (RCW 9.41.040). Not to mention the other significant collateral consequences of a felony drug conviction “affecting basic aspects of life, such as housing, government benefits, and professional licensure.” A.M., 194 Wn.2d at 66 (Gordon McCloud, J., concurring) (citing scholarly articles). Lack of a mens rea “does not violate the due process clause where (1) the penalty is relatively small, and (2) where conviction does not gravely besmirch.” United States v. Wulff, 758 F.2d 1121, 1125 (6th Cir. 1985). Plainly, neither are met here.

Notably, Washington is the only state in the country that does not require the State prove knowing possession beyond a reasonable doubt. A.M., 194 Wn.2d at 58 n.7 (Gordon McCloud, J., concurring); Bradshaw, 152 Wn.2d at 534. Strict liability is particularly harsh where drug residue alone is sufficient for a possession conviction in Washington.⁵ State v. Higgs, 177 Wn. App. 414, 437-38, 311 P.3d 1266 (2013) (interpreting the absence of a “measurable amount” element in RCW 69.50.4013 to allow convictions based on residue alone). Holding that the basic drug possession statute violates due process would therefore “make uniform the

⁵ But see, e.g., Finn v. Commonwealth, 313 S.W.3d 89, 92 (Ky. 2010) (possession of residue sufficient because prosecution established defendant’s knowledge); Hudson v. State, 30 So. 3d 1199, 1204 (Miss. 2010) (possession of a mere trace sufficient if state proves “awareness” and “conscious intent to possess”).

law with respect to the subject of [chapter 69.50 RCW] among those states which enact it,” as directed by our legislature. RCW 69.50.603.

Mikeals’s drug possession conviction is based on an unconstitutional strict liability statute. Where an error, like here, is of constitutional magnitude, “prejudice is presumed and the State bears the burden of proving it was harmless beyond a reasonable doubt.” State v. Coristine, 177 Wn.2d 370, 380, 300 P.3d 400 (2013). The State cannot do so here.

The State did not have to prove Mikeals knowingly possessed the substance, aware that it was methamphetamine.⁶ CP 40; United States v. X-Citement Video, Inc., 513 U.S. 64, 72, 115 S. Ct. 464, 130 L. Ed. 2d 372 (1994) (holding “the presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct”). Testimony established that a glass pipe was found in the center console of the car allegedly belonging to Mikeals. But the pipe contained such a small amount of methamphetamine “residue” that even the State’s forensic scientist could not say how much methamphetamine actually existed. 2RP 247.

⁶ The two elements, as instructed, were: (1) Mikeals possessed a controlled substance, to-wit: Methamphetamine; and (2) this act occurred in Washington. CP 55 (instruction 21).

Mikeals was not found in actual possession of the pipe and denied that it belonged to him. 2RP 345-47, 385. As such, the State acknowledged that the case turned on whether Mikeals constructively possessed the pipe. 2RP 446-47. Defense counsel accordingly requested, and received, an unwitting possession affirmative defense instruction. RP 2RP 400; CP 56 (instruction 22). Counsel argued in closing that Mikeals may not even have known the pipe was inside the car because it might have belonged to Mikeals friend who he gave a ride to days earlier. 2RP 459-60. The jury could have maintained reasonable doubt as to whether Mikeals knowingly possessed the pipe which contained a residual amount of methamphetamine. Knowledge, therefore, went to the heart of Mikeals's defense. The error was not harmless under the circumstances.

This Court should hold the strict liability basic drug possession statute violates due process, reverse Mikeals's conviction, and remand for a new trial at which the State must prove Mikeals knowingly possessed the substance, aware that it was methamphetamine.

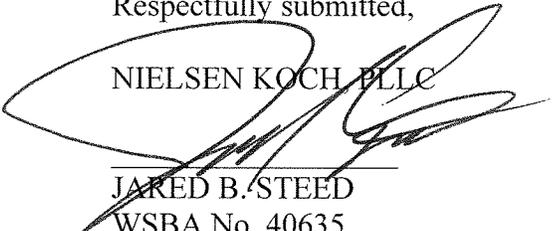
D. CONCLUSION

For the foregoing reasons, Mikeals asks this Court to reverse his drug possession conviction, where the statute violates due process, and remand for a new trial.

DATED this 30th day of December, 2019.

Respectfully submitted,

NIELSEN KOCH PLLC



JARED B. STEED

WSBA No. 40635

Office ID No. 91051

Attorneys for Appellant

NIELSEN, BROMAN & KOCH P.L.L.C.

December 31, 2019 - 9:58 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53455-0
Appellate Court Case Title: State of Washington, Respondent v. David Ace Mikeals, Appellant
Superior Court Case Number: 17-1-01337-1

The following documents have been uploaded:

- 534550_Briefs_20191231095517D2092414_1931.pdf
This File Contains:
Briefs - Appellants
The Original File Name was BOA 53455-0-II.pdf

A copy of the uploaded files will be sent to:

- appeals@co.cowlitz.wa.us
- nguyenm@co.cowlitz.wa.us

Comments:

Copy mailed to: David Mikeals 413673 Coyote Ridge Corrections Center PO Box 769 Connell, WA 99326-

Sender Name: John Sloane - Email: Sloanej@nwattorney.net

Filing on Behalf of: Jared Berkeley Steed - Email: steedj@nwattorney.net (Alternate Email:)

Address:
1908 E. Madison Street
Seattle, WA, 98122
Phone: (206) 623-2373

Note: The Filing Id is 20191231095517D2092414