

FILED

JUL 28 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 29512-5-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff/Respondent,

v.

ERIC H. HUFFERD-OUELLETTE,
Defendant/Appellant.

BRIEF OF RESPONDENT

Gary A. Riesen
Chelan County Prosecuting Attorney

James A. Hershey WSBA #16531
Deputy Prosecuting Attorney

Chelan County Prosecuting Attorney's Office
P.O. Box 2596
Wenatchee, Washington 98807-2596
(509) 667-6204

FILED

JUL 28 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 29512-5-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Plaintiff/Respondent,

v.

ERIC H. HUFFERD-OUELLETTE,
Defendant/Appellant.

BRIEF OF RESPONDENT

Gary A. Riesen
Chelan County Prosecuting Attorney

James A. Hershey WSBA #16531
Deputy Prosecuting Attorney

Chelan County Prosecuting Attorney's Office
P.O. Box 2596
Wenatchee, Washington 98807-2596
(509) 667-6204

TABLE OF CONTENTS

	<u>Page</u>
I. <u>STATEMENT OF THE CASE</u> -----	1
II. <u>ISSUE AND ARGUMENT</u> -----	2
<u>The Trial Court Did Not Err When it Found a Sufficient Nexus Between the Firearm and the Crime of Possession of Cocaine</u> -----	2
III. <u>CONCLUSION</u> -----	8

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Garrison v. Rhay</u> , 75 Wn.2d 98, 101, 449 P.2d 92 (1968) -----	3
<u>Pers. Restraint of Tems</u> , 28 Wn. App. 631, 632, 626 P.2d 13 (1981) -----	3
<u>State v. Barnes</u> , 153 Wn.2d 378, 383, 103 P.3d 1219 (2005)-----	4
<u>State v. Carrier</u> , 36 Wn. App. 755, 757, 677 P.2d 768 (1984)-----	3
<u>State v. Delmarter</u> , 94 Wn.2d 634, 638, 618 P.2d 99 (1980) -----	3
<u>State v. Easterlin</u> , 159 Wn.2d 203, 205, 149 P.3d 366 (2006)-----	4,5,6,7
<u>State v. Eckenrode</u> , 159 Wn.2d 488, 493, 150 P.3d 1116 (2007)-----	7
<u>State v. Green</u> , 94 Wn.2d 216, 221, 616 P.2d 628 (1980)-----	3
<u>State v. Knight</u> , 162 Wn.2d 806, 811, 174 P.3d 1167 (2008)-----	3
<u>State v. McGrew</u> , 156 Wn. App. 546, 554, 234 P.3d 268 (2010)-----	4
<u>State v. Neff</u> , 163 Wn.2d 453, 464, 181 P.3d 819 (2008)-----	5,7
<u>State v. Salinas</u> , 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)-----	3

Rules and Statutes Page

RCW 9.94A.533(3)(f)----- 4

RCW 9.94A.602 ----- 4

Other Page

Hard Time for Armed Crime Act. Laws of 1995,
Ch. 129 § 1(1)(a) (Initiative 159) ----- 4

I. STATEMENT OF THE CASE

On August 9, 2006, the defendant attempted a carjacking in a church parking lot in Wenatchee, Washington. (CP 229-235; 243-244). The defendant was armed with a firearm at the time and assaulted the victim, Patti Irish, with the firearm. (CP 160). The victim physically resisted the defendant's attack, struggled over the firearm, and began screaming. (CP 229-235; 243-244). The defendant then fled on foot, but was apprehended by police officers moments later a few blocks from the scene of the crimes. (CP 229-235; 243-244). When the defendant was arrested, he no longer had the firearm as he had left the handgun in an alley he had run through. (RP 13). When arrested, the defendant was found to have a small amount of cocaine on his person. (CP 229-235).

On July 20, 2007, the defendant pleaded guilty to his charges of attempted robbery in the first degree while armed with a firearm (count 2), unlawful possession of a firearm in the second degree (count 3), possession of cocaine while armed with a firearm (count 4), and unlawful possession of a stolen firearm (count 5). (CP 152-161). This plea agreement included the dismissal of the defendant's remaining charge of assault in the first degree while

armed with a firearm (count 1). (CP 152-161). In the defendant's statement on plea of guilty, he stated:

On August 9, 2006, in Chelan County, I attempted to take a car belonging to Patti Irish, by attempting to remove her from the car. I pointed a handgun that was stolen from Stevens County at Ms. Irish during my attempt to take her car. At this time, I also possessed a small amount of cocaine. At this time, I had previously been convicted of a felony. At the times I committed counts 2 and 4 I was armed with a firearm.

(CP 160).

II. ISSUE AND ARGUMENT

The Trial Court Did Not Err When it Found a Sufficient Nexus Between the Firearm and the Crime of Possession of Cocaine.

The defendant now claims on appeal that there was insufficient evidence of a nexus between the firearm and the crime of possession of cocaine. This claim is clearly without merit. In addressing a claim for insufficient evidence, the reviewing court examines the evidence in a light most favorable to the State to

determine “whether . . . any rational trier of fact could have found guilt beyond a reasonable doubt.” State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); State v. Green, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). (All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.) Salinas, 119 Wn.2d at 201. “A claim of insufficiency admits the truth in the State’s evidence and all inferences that reasonably can be drawn therefrom.” Id. Circumstantial evidence and direct evidence carry equal weight when weighed by an appellate court. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Furthermore, a guilty plea, by its nature, admits factual guilt—and thus waves any challenge on that ground. State v. Knight, 162 Wn.2d 806, 811, 174 P.3d 1167 (2008). By pleading guilty, the defendant waived any challenge to the sufficiency of the evidence because “[a] plea of guilty, voluntarily made, waives the right to trial and all defenses other than that the complaint, information, or indictment charges no offense.” Garrison v. Rhay, 75 Wn.2d 98, 101, 449 P.2d 92 (1968); State v. Carrier, 36 Wn. App. 755, 757, 677 P.2d 768 (1984); Pers. Restraint of Tems, 28 Wn. App. 631, 632, 626 P.2d 13 (1981). The defendant’s own

words to the court stated that he was armed at the time and he possessed the cocaine. Consequently, any claim as to an insufficient nexus between the firearm and the possession of cocaine is obviously not supported by the record.

The Sentencing Reform Act (SRA) applies a firearm enhancement to all felonies except “possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degrees, and the use of a machine gun in a felony.” RCW 9.94A.533(3)(f); State v. McGrew, 156 Wn. App. 546, 554, 234 P.3d 268 (2010). Firearm enhancements apply to all but the excepted felonies because “armed criminals pose an increasing and major threat to public safety and can turn any crime into serious injury and death.” *Hard Time for Armed Crime Act*. Laws of 1995, Ch. 129 § 1(1)(a) (Initiative 159). Reducing armed crime is a laudable goal. State v. Easterlin, 159 Wn.2d 203, 205, 149 P.3d 366 (2006).

To impose a firearm enhancement the State must prove that the defendant was armed with a firearm at the time he committed the crime. RCW 9.94A.602; State v. Barnes, 153 Wn.2d 378, 383, 103 P.3d 1219 (2005). A defendant is armed when a weapon is easily accessible and readily available for use and there is a

connection between the defendant, the weapon, and the crime. Easterlin, 159 Wn.2d at 208-09 (citing State v. Valdobinos, 122 Wn.2d 270, 282, 858 P.2d 199 (1993)). But the connection between the defendant, the weapon, and the crime is not an element of a firearm enhancement; rather, it is definitional. Easterlin, 159 Wn.2d at 209 (citing State v. Willis, 153 Wn.2d 366, 374, 103 P.3d 1213 (2005)). Where the defendant actually, instead of constructively, possesses a firearm, the State need not show more than that the weapon was easily accessible and readily available unless some unique circumstance so requires. Easterlin, 159 Wn.2d at 209 n. 3 (giving examples of such circumstances, including possession of a ceremonial weapon for religious purposes or a kitchen knife and a picnic basket). The defendant does not have to be armed at the time of arrest to be armed for purposes of the firearm enhancement. State v. Neff, 163 Wn.2d 453, 464, 181 P.3d 819 (2008).

In Easterlin, the defendant pleaded guilty to unlawful possession of a controlled substance with a firearm enhancement. There, the defendant was found asleep in the driver's seat with a 9 mm pistol in his lap and cocaine in his sock. On review, Easterlin claimed that the trial judge erred by failing to determine there was a

factual basis for his plea with regard to the firearm enhancement.

The court held:

In this case, an officer saw a gun on Easterlin's lap. That is more than sufficient for the trial judge to find a connection between Easterlin and the weapon.

There was ample evidence from which a trier of fact could find Easterlin was armed to protect the drugs. See, State v. Simonson, 91 Wn. App. 874, 883, 960 P.2d 955 (1998) (holding that a nexus exists if the weapons were there to protect an active methamphetamine manufacturing operation). Easterlin's statement on plea of guilty specifically admitted, in his own words, that he was armed and that he possessed a controlled substance. Even without a statement, there was more than sufficient evidence to uphold a jury's determination that he was armed in connection with a crime.

Easterlin, 159 Wn.2d at 210. Likewise, a rational trier of fact examining the evidence in the instant case could conclude that, even though the defendant committed other serious offenses as well, he used the weapon to prevent his apprehension because possessing cocaine would cause additional criminal punishment. The victim, of course, saw the defendant with the firearm as he shoved it into her face, actually causing a laceration. And the defendant told the court he possessed the cocaine at that time. (CP 160).

As the Easterlin court held, actual possession of a firearm is almost always sufficient to show a nexus and Easterlin's statements that he possessed drugs and was armed are sufficient for a trier of fact to find that he was armed to protect his drugs. Easterlin, 159 Wn.2d at 210. The facts involved here are no less compelling. As the Washington Supreme Court observed, "We are also mindful of the legislative purpose in creating the deadly weapons enhancement: to recognize that armed crime, including having weapons available to protect contraband, imposes particular risks of danger on society." State v. Eckenrode, 159 Wn.2d 488, 493, 150 P.3d 1116 (2007). The potential use of the firearm "may be offensive or defensive and may be to facilitate the crime's commission, to escape the scene, or to protect contraband." State v. Neff, 163 Wn.2d 453, 462, 181 P.3d 819 (2008). In the present case, a nexus between the defendant, the firearm, and his possession of cocaine is obvious. Hence, the defendant fails to show any error by the trial court in finding a sufficient nexus.

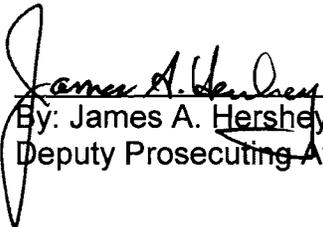
III. CONCLUSION

The defendant has failed to establish the trial court erred in finding a sufficient nexus between the firearm and the crime of possession of cocaine. The record clearly demonstrates that the defendant was armed and in actual possession of the firearm at the time he possessed the cocaine. Easterlin is on point and controlling; the defendant's conviction must be affirmed.

DATED this 27th day of July, 2011.

Respectfully submitted,

Gary A. Riesen
Chelan County Prosecuting Attorney


By: James A. Hershey WSBA #16531
Deputy Prosecuting Attorney