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CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
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IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

SOPHIA FATIMA THOMAS,

Petitioner.

PETITION FOR REVIEW

Court of Appeals No. 45101-8-II
Appeal from the Superior Court of Pierce County
Superior Court Cause Number 12-1-00723-5
The Honorable Thomas Larkin, Judge

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I. IDENTITY OF PETITIONER

The Petitioner is SOPHIA FATIMA THOMAS, Defendant and Appellant in the case below.

II. COURT OF APPEALS DECISION

Petitioner seeks review of the unpublished opinion of the Court of Appeals, Division 2, case number 45101-8-II, which was filed on February 24, 2015. The Court of Appeals affirmed the conviction entered against Petitioner in the Pierce County Superior Court.

III. ISSUES PRESENTED FOR REVIEW

1. Where the evidence shows at most that Sophia Thomas constructively possessed drugs found in her home, that she knew her boyfriend was dealing drugs, and that she allowed her boyfriend to stay in her home and use her cars while she was at work, did the State fail to meet its burden of proving, beyond a reasonable doubt, that Sophia Thomas acted as an accomplice to possession of a controlled substance with intent to deliver?
2. Where the firearms found in Sophia Thomas' home were legally registered to her boyfriend and were not found in proximity to any of the illegally possessed controlled

substances, and where no other security or police monitoring devices were found in the home, did the State fail to meet its burden of proving, beyond a reasonable doubt, a nexus between the firearms and the crimes of possession of a controlled substance and possession of a controlled substance with intent to deliver?

IV. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

The State charged Sophia Fatima Thomas in Pierce County Superior Court with four counts of unlawful possession of a controlled substance with intent to deliver (count 1, cocaine; count 2, oxycodone; count 4 oxycodone; count 5 hydrocodone), and alleged that Thomas and/or an accomplice was armed with a firearm during the commission of the offenses (RCW 69.50.401; RCW 9.94A.530, .533). (CP 7-9) The State also charged Thomas with one count of money laundering (RCW 9A.83.010, .020). (CP 8)

After the State rested its case-in-chief, Thomas moved to dismiss the charges for failure to prove the crimes. The trial court denied the motion. (RP 258-61, 264) Thomas' motion to dismiss for discovery violations was also denied. (RP 264-70, 655-58; CP 159-61) At Thomas' request, the jury was instructed on the concept of

unwitting possession. (CP 46, 49,92)

The jury found Thomas guilty of money laundering and unlawful possession of a controlled substance with intent to deliver for count 5 only (hydrocodone). (RP 630-31; CP 99, 102) The jury found Thomas guilty of simple possession of a controlled substance for counts 1, 2, and 4. (RP 630-31; CP 97, 98, 101) The jury also found that Thomas was only armed with a firearm during the commission of the possession offense charged in count 1 (cocaine) and count 5 (hydrocodone). (RP 631-32; CP 104-07)

Thomas has no criminal history. (CP 212-14) The trial court did not impose a term of confinement for the substantive crimes, but imposed two mandatory consecutive 18-month sentences for the firearm enhancements. (RP 673; CP 203-04)

Thomas timely appealed. (CP 195-96) The Court of Appeals rejected Thomas' arguments that the State failed to prove that she acted as an accomplice to possession of a controlled substance with intent to deliver, or prove that she laundered proceeds of drug sales, or prove that there was a nexus between the offenses and the firearms found in her apartment. The Court of Appeals affirmed Thomas' conviction and sentence.

B. SUBSTANTIVE FACTS

In late 2011 and early 2012, the Pierce County Sheriff's Department was involved in investigating a suspected drug dealer named Kenneth Criswell. (RP 125-26, 131) Investigators arranged controlled buys from Criswell using confidential informants, and conducted live and GPS surveillance of Criswell's movements. (RP 126-28, 131-33)

Even though Criswell's residence was in Tacoma, investigators noticed that Criswell spent a great deal of time at the University Place home of his girlfriend, Sophia Thomas. (RP 133) They also observed that on several occasions Criswell arrived at the controlled buys driving one of the vehicles registered to Thomas.¹ (RP 55, 128-29) However, investigators never saw Thomas with Criswell during any of the drug buys. (RP 55, 130, 135)

In the early morning hours of February 28, 2012, Deputies served a search warrant on Thomas' home. (RP 38) Thomas and Criswell were found asleep in the master bedroom. (RP 101, 102-03) As he placed Criswell into custody, a Deputy noticed a holstered handgun hanging on the headboard. (RP 104)

¹ Thomas owned a Mercedes and an Acura. (RP 43, 128, 129)

During the search, Deputies found several different controlled substances. They found a bottle containing oxycodone pills and a jar containing marijuana in separate kitchen drawers.² (RP 51, 52, 166, 187, 190, 257) Investigators found oxymorphone pills concealed in a fake mayonnaise jar in the kitchen. (RP 166, 257) They found a plastic baggie containing 29 grams of cocaine inside a Crown Royal bag on the kitchen counter. (RP 88, 91, 92, 256-57) Thomas' purse was found in the master bedroom, and contained a bottle and a baggie both with hydrocodone pills inside. (RP 107, 109, 257)

Deputies found an electronic currency counter in a closet, a digital scale on the kitchen counter, and plastic sandwich baggies in a kitchen drawer. (RP 48, 52, 89) These are items commonly used by people engaged in selling drugs. (RP 52, 84, 89, 122) Deputies also found nearly \$3,000 in cash inside a desk in the master bedroom. (RP 113) And inside Thomas' purse, Deputies found an envelope with what appeared to be drug transaction "crib notes" written on the outside and nearly \$3,500 in cash inside. (RP 107, 111, 122-23)

² The oxycodone was found in a drawer that also contained several documents addressed to Criswell at his Tacoma home. (RP 48, 62)

In addition to the handgun in the bedroom, Deputies found a firearm on the passenger seat of Thomas' Mercedes, which was parked in the garage, and a rifle in the living room, behind a coffee table between the drapes and the wall.³ (RP 161, 163, 174-75, 191-92) One Deputy testified that it is common for drug sellers to have firearms in their home for protection. (RP 135)

When questioned by investigators, Thomas explained that she and Criswell had only been dating for a few months, and she did not know if Criswell kept drugs in the house or sold drugs. (RP 42, 43, 72) She acknowledged that the marijuana in the kitchen belonged to her, but she denied knowledge of the other drugs found in the house and denied being involved in selling drugs. (RP 44-45) When asked about the crib notes, she said it was not her handwriting. (RP 224)

In December of 2011, Thomas' BECU bank account was flagged because she made several large cash deposits. (RP 208, 239, 241) First she deposited \$9,055 in small bills then immediately withdrew the same amount in larger, mostly \$100 bills. (RP 240) Then, on separate occasions, she deposited about \$9,000 and

³ Criswell had valid weapon permits and legally owned all of the firearms. (RP 144, 145)

\$1,200 in smaller bills. (RP 241)

Investigators were suspicious because Thomas had not made large cash deposit in the past, and because drug sellers often take a large amount of small bills collected through many transactions and deposit them or exchange them for larger bills. (RP 208, 241)

Deputies testifying at trial believed that the amount of drugs found in Thomas' house was greater than the amount a person would commonly possess for personal use. (RP 92) Oxycodone and hydrocodone pills generally sell for \$5 to \$30 on the street, and cocaine sells for \$80 to \$100 per gram. (RP 93, 124-25) And drug transactions are usually conducted using smaller denomination bills. (RP 124-25)

The defense called a number of witnesses to testify, including Thomas and Criswell. Thomas testified that she began working at Boeing Employees' Credit Union (BECU) after she graduated from high school. (RP 401-02) While attending college, she worked her way up to a position of responsibility in the BECU IT department, and had recently received an increase in salary to \$86,000 per year. (RP 404, 410-11)

In 2004, Thomas and her then-husband purchased their first home in Tacoma. (RP 407) Thomas' sister, Sesilia Thomas,

currently lives there and pays Thomas \$1,250 per month in cash for rent. (RP 285, 407-08)

In 2008, while her husband was in the military and stationed overseas for long periods of time, Thomas decided to find ways to fill her time. (RP 275, 409) She began working as a waitress at Latitude 84, a sports bar and grill managed by Sesilia. (RP 274, 275, 409) Thomas worked part-time for \$50 per night, plus whatever tips she received from patrons. (RP 276-77) On an average night, she might earn \$300 to \$500 dollars in cash tips. (RP 278) Most of the tip money was \$1 and \$5 bills, but the owner would allow the staff to exchange the bills for \$20 bills. (RP 279)

In November of 2011, Thomas met Criswell at Latitude 84, and they began dating soon after. (RP 422) Thomas did not know that Criswell had brought drugs or guns into her house. (RP 400, 500) She also testified that Criswell would often watch her purse while she played pool, and she was so focused on the game that she did not notice his activities or whether he placed anything in her purse. (RP 434-35)

As an employee of a bank, Thomas was aware that large cash deposits would raise a red flag on her account. (RP 413-14) She explained that the cash deposits were not made at Criswell's request,

and were not the proceeds of his drug sales. (RP 423, 425) One deposit was the tips that she had accumulated over several months. (RP 426) Another deposit was money she had collected from family members in order to help a dying uncle, and to pay for his funeral. (RP 423-24, 425)

Criswell testified that he was injured while serving in the military, and was unemployed and receiving veterans and disability benefits. (RP 335, 336-37, 338, 339) Just before he met Thomas, he had been arrested for driving while intoxicated, and had lost his job. (RP 338) Things "went downhill," and he started taking and dealing drugs. (RP 338, 350)

Criswell explained that Thomas did not know that he was selling drugs because he did not tell her and did not conduct business in front of her. (RP 356, 358) He testified that he put the drugs and envelope in her purse while she was shooting pool the night before his arrest. (RP 362) Criswell put the cocaine in the Crown Royal bag so that Thomas would not see it. (RP 363-64) He also explained that he had an ignition interlock on his car, so he often drove Thomas' cars because it was less hassle. (RP 348)

Criswell testified that as a result of his experience in the military and in combat, he is "paranoid" and keeps firearms for

personal protection. (RP 339-40, 349) Thomas knew he had a permit for the guns he owned, but she did not know the details and did not know that the guns were in her home or car. (RP 341, 342) He hid the rifle behind the curtains in Thomas' living room because he did not want her to know it was there. (RP 342)

Criswell testified that the drugs were his, and he felt responsible for the fact that Thomas was facing charges as a result of his behavior, because she was not involved. (RP 369)

V. ARGUMENT & AUTHORITIES

The issues raised by Thomas' petition should be addressed by this Court because the Court of Appeals' decision conflicts with settled case law of the Court of Appeals, this Court and of the United State's Supreme Court. RAP 13.4(b)(1) and (2).

"Due process requires that the State provide sufficient evidence to prove each element of its criminal case beyond a reasonable doubt." City of Tacoma v. Luvene, 118 Wn.2d 826, 849, 827 P.2d 1374 (1992) (citing In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)). Evidence is sufficient to support a conviction only if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas,

119 Wn.2d 192, 201, 829 P.2d 1068 (1992). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” Salinas, 119 Wn.2d at 201.

A. THE STATE DID NOT PROVE THAT THOMAS AIDED CRISWELL IN THE CRIME OF POSSESSING HYDROCODONE WITH THE INTENT TO DELIVER.

The State proceeded on the theory that Thomas constructively possessed the drugs, and acted as an accomplice to Criswell’s intent to deliver the drugs. (RP 536, 604) The State argued to the jury that it could convict Thomas as an accomplice to possession with intent to deliver if they found that she “encouraged or aided” Criswell by “letting him stay at her house or letting him use her cars[.]” (RP 554) The jury found Thomas guilty of simple possession on three of four charges, but found her guilty of possession with intent to deliver the hydrocodone, which was found in her purse. (CP 102; RP 631)

Under RCW 9A.08.020(3)(a)(i)-(ii), an accomplice is one who, “[w]ith knowledge that it will promote or facilitate the commission of the crime ... encourages ... or aids” another person in committing a crime. The evidence must show that the accomplice aided in the planning or commission of the crime and that he had knowledge of the crime. State v. Berube, 150 Wn.2d 498, 511, 79 P.3d 1144

(2003). An accomplice must associate herself with the venture and take some action to help make it successful. In re Welfare of Wilson, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979).

Mere knowledge or presence of the defendant is not sufficient to establish accomplice liability. State v. Parker, 60 Wn. App. 719, 724-25, 806 P.2d 1241 (1991); Wilson, 91 Wn.2d at 491. Rather, the State must prove that the defendant was ready to assist the principal in the crime and that she shared in the criminal intent of the principal, thus “demonstrating a community of unlawful purpose at the time the act was committed.” State v. Castro, 32 Wn. App. 559, 564, 648 P.2d 485 (1982); see also State v. Rotunno, 95 Wn.2d 931, 933, 631 P.2d 951 (1981); Wilson, 91 Wn.2d at 491.

Thus, the focus is on whether Thomas, by her presence and actions, attempted to facilitate Criswell’s possession with intent to deliver. State v. Fisher, 74 Wn. App. 804, 816, 874 P.2d 1381 (1995).

In State v. Amezola, evidence showing only that the defendant cooked and kept house for other household members dealing in heroin was insufficient to establish accomplice liability with respect to a charge of possession of a controlled substance with intent to deliver. 49 Wn. App. 78, 741 P.2d 1024 (1987). There was

no evidence that the defendant participated in the drug dealing activities at all, as she did not go on deliveries or answer the phone.

49 Wn. App. at 83, 89-90. As the court explained:

The mere performance of domestic tasks which, at most, might have made life easier for those committing the crime, is hardly conduct sufficient to expose one to criminal liability. [Defendant's] cooking and cleaning are activities totally distinct from and incidental to the criminal acts charged here. Her connection to the latter is no more than physical presence and assent, both insufficient to establish accomplice liability for possession of a controlled substance with intent to deliver.

49 Wn. App. at 89-90.

In this case, as the State acknowledged, the evidence shows at most that Thomas allowed Criswell, her boyfriend, to stay at her house and use her cars. (RP 554) Though this may have “made life easier for” Criswell and made it easier for him to make drug sales, her connection to the deliveries or to Criswell’s intent to deliver amounts to, at most, knowledge and assent. There is no evidence that Thomas took any steps to aid or assist Criswell, or that she shared in his criminal purpose. As with Amezola, the evidence in this case is insufficient to establish accomplice liability. Thomas’ conviction on this count should be reduced to simple possession of a controlled substance.

B. THE STATE FAILED TO PROVE A NEXUS BETWEEN CRISWELL'S FIREARMS AND THE CRIMES.

The State alleged that Thomas was armed with a firearm when she committed the possession offenses. (CP 7-9) The State acknowledged that there was no proved connection between Thomas and the firearms, other than their presence in her home. (RP 555) The State instead offered the theory that because Criswell was armed, as his accomplice Thomas was armed as well. (RP 555)

The jury found that Thomas was armed only during commission of the possession of the cocaine (found in the Crown Royal bag in the kitchen), and possession with intent to deliver the hydrocodone (found in her purse). (CP 104, 107; RP 631-32) The jury did not find that she was armed when she possessed the oxymorphone and the oxycodone (also found in the kitchen). (CP 105, 106; RP 631-32) However, the evidence does not support a finding that Criswell, and Thomas as his alleged accomplice, was "armed" during the commission of any of the possession offenses.

The Sentencing Reform Act authorizes a sentence enhancement whenever a defendant or an accomplice is armed with a deadly weapon during the commission of a crime. RCW

9.94A.533(3)(4), RCW 9.94A.602. 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 between the defendant, the weapon, and the crime. State v. Eckenrode, 159 Wn.2d 488, 493, 150 P.3d 1116 (2007) (quoting State v. Valdobinos, 122 Wn.2d 270, 282, 858 P.2d 199 (1993)). Thus, to support a finding that a defendant was armed with a deadly weapon during the commission of a crime, there must be a nexus between the weapon and the crime. State v. O’Neal, 159 Wn.2d 500, 503-04, 150 P.3d 1121 (2007) (quoting State v. Schelin, 147 Wn.2d 562, 575-76, 55 P.3d 632 (2002)).

In determining whether a defendant is armed, the court “should 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).” Schelin, 147 Wn.2d at 570. In this case, one firearm was found hanging from the headboard in the master bedroom, one firearm was found behind a coffee table and curtain in the living room, and one firearm was found in a car in the garage. (RP 104, 161, 163, 174-75, 191-92)

However, a person is not armed simply because a weapon is

present or on the premises during the commission of a crime. Schelin, 147 Wn.2d at 570 (the mere presence of a weapon is not sufficient to impose a firearm enhancement). Courts are especially careful in this area because of the constitutional right to bear arms. U.S. Const. amend. II; Wash. Const. art. I, § 24; *see also* State v. Rupe, 101 Wn.2d 664, 703-08, 683 P.2d 571 (1984) (“constitutionally protected behavior cannot be the basis of criminal punishment;” thus, courts must be protective of the right to bear arms during criminal trials implicating gun possession); State v. Johnson, 94 Wn. App. 882, 892-97, 974 P.2d 855 (1999).

When a crime is a continuing crime—like a drug possession or manufacturing operation—a nexus exists if the weapon was “there to be used,” which requires more than just the weapon’s presence at the crime scene. State v. Gurske, 155 Wn.2d 134, 138, 118 P.2d 333 (2005). Generally, in drug cases, courts have found the required nexus between the drug crime and a weapon where there is evidence from which a jury can infer that the weapon was used to protect the possession, distribution or manufacture of the drugs, and was therefore used in furtherance of the crime.

For example, in Schelin, the Court concluded that the jury could infer that the defendant was using the weapon to protect his

marijuana grow operation, where the operation was located in the same room in which the officers found the defendant and the easily-accessible weapon. 147 Wn.2d at 574-75.

In State v. O'Neal, officers searched the defendants' methamphetamine laboratory. 159 Wn.2d at 503. Besides evidence of drug manufacturing, the officers found over 20 guns, body armor, night vision goggles, and a police scanner. 159 Wn.2d at 503. The Court affirmed the firearm enhancements, noting that since the weapons were easily accessible to protect the drugs, and since the defendants kept a police scanner in the laboratory, the jury could find that the defendants used the guns to protect the drugs. 159 Wn.2d at 502, 504.

In Eckenrode, the defendant called the police, alerting them to an intruder in his house. 159 Wn.2d at 491. The defendant told the dispatcher he was armed, and police later found what appeared to be methamphetamine, dried marijuana, two firearms, and a police scanner in the house. 159 Wn.2d at 491-92. The Court affirmed Eckenrode's firearm enhancements, finding that the presence of two weapons and a police scanner supported an inference that he was monitoring police activity against the chance he might be raided. 159 Wn.2d at 494. Therefore, a jury could readily have found that the

weapons were there to protect an apparent drug manufacturing operation. 159 Wn.2d at 494.

In State v. Neff, during a search of the defendant's garage, police found two loaded pistols in a safe, which also contained four bags of marijuana. Police also found two security cameras and a monitor in the garage on which to view live feeds. 163 Wn.2d 453, 464, 181 P.3d 819 (2008). An officer testified that the monitors were for counter surveillance. The Court found the presence of the additional equipment was enough to find that Neff used the guns to protect his drug operation. 163 Wn.2d at 464-65.

In Valdobinos, by contrast, police arrested the defendant when he offered to sell cocaine to an undercover officer. They searched his house, finding cocaine and an unloaded rifle under his bed. 122 Wn.2d at 274. The Court reversed the firearm enhancement, holding the jury could not infer from an unloaded rifle near the cocaine that the defendant was armed. 122 Wn.2d at 282.

And in Johnson, police executing a search warrant for drugs arrested the defendant, took him into the living room and sat him down. 94 Wn. App. at 891-92. They then asked him if there were any weapons in the home. 94 Wn. App. at 891-92. Johnson indicated that there was a loaded handgun in a bookcase under the

coffee table five to six feet in front of him. 94 Wn. App. at 892. The court rejected the State's contention that the mere presence of the weapon on the premises established the requisite nexus to support the enhancement. 94 Wn. App. at 896-97.

In this case, the hydrocodone was in a container in Thomas' purse in the master bedroom, and the other drugs were in the kitchen. (RP 48, 88, 91, 107, 109, 166, 187) One firearm was hanging from the bedframe, one was hidden behind a table and curtains in the living room, and one was in a car in the garage. (RP 104, 161, 163, 191, 192) The weapons were therefore not kept in proximity to the drugs.

There were no additional security items or police monitors located in the home. There was no evidence that Criswell was ever armed during any of his deliveries, or that he ever indicated an intent to use the firearms to protect the possession or delivery of the drugs. The only evidence presented by the State was a detective's testimony that drug dealers often have firearms for protection. (RP 135)

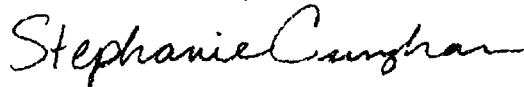
As in Valdobinos and Johnson, the mere presence of a weapon on the premises does not establish the requisite nexus to support the enhancement. There is insufficient evidence to establish

a nexus between Thomas' constructive possession of the cocaine and the hydrocodone, and the firearms. The jury's two firearm findings should be reversed, and Thomas' firearm sentence enhancements should be stricken.

VI. CONCLUSION

The State failed to prove that Thomas acted as an accomplice to Criswell's possession with intent to deliver, or that Thomas was armed with a firearm when she constructively possessed Criswell's drugs. Thomas therefore respectfully requests that this Court accept review and reverse and dismiss this conviction and the two firearm enhancements.

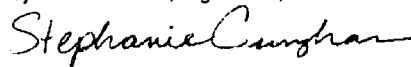
DATED: March 24, 2015



STEPHANIE C. CUNNINGHAM, WSB #26436
Attorney for Petitioner Sophia F. Thomas

CERTIFICATE OF MAILING

I certify that on 03/24/2015, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Sophia F. Thomas, DOC# 381229, Washington Corrections Center for Women, 9601 Bujacich Road NW, Gig Harbor, WA 98332-8300.



STEPHANIE C. CUNNINGHAM, WSBA #26436

CUNNINGHAM LAW OFFICE

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

SOPHIA F. THOMAS,

Appellant.

No. 45101-8-II

UNPUBLISHED OPINION

BJORGEN, A.C.J. — A jury found Sophia Thomas guilty of three counts of possession of a controlled substance, one count of possession of a controlled substance with intent to deliver, and one count of money laundering. The jury also found that Thomas or her accomplice was armed with a firearm during two of these offenses. Thomas now appeals, claiming that insufficient evidence supports (1) the jury's guilty verdict for possession with intent to deliver, (2) the jury's guilty verdict for money laundering, and (3) the jury's findings that Thomas or her accomplice was armed with a firearm. In a pro se statement of additional grounds, Thomas also contends that she received ineffective assistance of counsel and that juror misconduct tainted her trial.

Permissible inferences drawn from evidence presented by the State allowed a rational jury to find that the State had proven beyond a reasonable doubt that (1) Thomas was an accomplice to the possession with intent to deliver offense, (2) Thomas committed money laundering, and (3) Thomas or her accomplice was armed with a firearm while committing two offenses. To the extent that Thomas bases her SAG arguments on the trial record, they do not show any error. To the extent that Thomas's SAG relies on matters outside the record, we decline to address them in her direct appeal. We affirm Thomas's convictions and the firearm enhancements.

FACTS

Sometime in late 2011 or early 2012, the Pierce County Sheriff's Department began investigating Kenneth Criswell for trafficking narcotics. The investigators turned their interest to Thomas when officers noticed Criswell arriving at several controlled drug sales while driving her cars. Investigators also discovered that in December 2011 and January 2012, just after she began dating Criswell, Thomas made several large cash deposits and immediate withdrawals at her credit union.

Through surveillance of Criswell, police determined that he spent a "majority of time" at Thomas's house, although he maintained a separate apartment. II Verbatim Report of Proceedings (VRP) at 129-31, 133. Accordingly, police served a search warrant on Thomas's house early one morning in February 2012. Officers found Thomas and Criswell asleep in the upstairs bedroom and took both into custody.

In the bedroom where they arrested Thomas and Criswell, police found a loaded pistol, hydrocodone pills, and \$3,500 in cash. The pistol was hanging from the bed's headboard, and the hydrocodone was in Thomas's purse. The purse also contained the cash, stuffed inside an

envelope. Writing on the envelope appeared to detail Criswell's sale of controlled substances, recording the names of buyers, the quantity of drugs sold to each, and the cash value of the transactions.

A search of the house yielded two additional firearms, other drugs, and items linked to trafficking in drugs. Police found one of the guns, a loaded assault rifle, behind window drapes in Thomas's living room. The rifle was placed so that it was "grabable" without moving any furniture. III VRP at 179. Police found another loaded handgun on the passenger seat of one of Thomas's cars, which was parked in her garage. The search also turned up 29 grams of cocaine in a bag on Thomas's kitchen counter, along with a digital scale, and oxycodone and oxymorphone pills in Thomas's kitchen. Finally, in one of the house's closets, an officer found an electronic currency counter.

The State charged Thomas with four counts of possession of a controlled substance with intent to deliver in violation of RCW 69.50.401(1)(2)(a), (c), and one count of money laundering in violation of RCW 9A.83.010(7) and RCW 9A.83.020(1).¹ The State alleged that Thomas or

¹ RCW 69.50.401(1) provides that "[e]xcept as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance." RCW 69.50.401(2) prescribes that a violation of RCW 69.50.401(1) is either a class B or class C felony depending on the controlled substance involved.

RCW 9A.83.020(1) provides, in relevant part, that

[a] person is guilty of money laundering when that person conducts or attempts to conduct a financial transaction involving the proceeds of specified unlawful activity and:

- (a) [k]nows the property is proceeds of specified unlawful activity; or
- (b) [k]nows that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds, and acts recklessly as to whether the property is proceeds of specified unlawful activity.

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an accomplice was armed with a firearm during the commission of each of the possession with intent to deliver offenses.²

At trial, the State presented evidence connecting Thomas to drug possession and trafficking. Police officers testified about their search of Thomas's house and their seizure of controlled substances and other paraphernalia, including the cocaine, oxymorphone, and oxycodone found in her kitchen; the hydrocodone and the envelope of cash with drug transactions written on it found in her purse in her bedroom; and the digital scale and currency counter. Officers testified that the digital scale, currency counter, and the notations on the envelope in Thomas's purse were hallmarks of the drug trade. Officers also testified that the volume of drugs found in Thomas's home were not the small quantities associated with personal use.

The manager of security risk who oversaw the fraud and investigations group at Thomas's credit union testified about three suspicious transactions Thomas had made in December 2011 and January 2012, just after she began dating Criswell. In the first, Thomas deposited \$9,055 in small denomination bills and immediately withdrew the same amount in large denomination bills. In the second, Thomas again deposited \$9,000 in small bills and then immediately withdrew the same amount in large denomination bills. In the third, Thomas deposited \$1,250 in small bills and immediately withdrew the same amount in large bills. Thomas had never made transactions like these before the first December 2011 deposit. A Pierce

² RCW 9.94A.533 provides that certain additional time "shall be added to the standard sentence range for felony crimes . . . if the offender or an accomplice was armed with a firearm . . . and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements." Possession of a controlled substance with intent to deliver and possession of a controlled substance are crimes eligible for an enhanced sentence under RCW 9.94A.533. RCW 9.94A.533(f); RCW 69.50.401(2).

County sheriff testified that drug sales typically involved smaller denomination bills, usually “[\$10s] and \$20s,” II VRP at 124-25, the types of bills Thomas deposited.³ Another Pierce County sheriff’s detective testified that Thomas reacted oddly when asked, after her arrest, if the deposits involved cash from Criswell.

Finally, testimony at trial connected Thomas and Criswell to several firearms. Officers described finding the loaded pistols in Thomas’s master bedroom and car and the assault rifle behind the curtains in her living room while searching her house.

Thomas testified in her defense. She denied knowing that Criswell dealt drugs, kept drugs in her house, or kept firearms there. Thomas explained that Criswell could have used her cars without her knowledge because he had access to her house and her spare keys. Thomas also testified that Criswell had put the hydrocodone and cash in her purse the night before their arrest without her knowledge.

Thomas explained that each of the large cash deposits involved in the money laundering charges were unconnected to Criswell or drug trafficking. She stated that the first consisted of funds sent to her by family members to care for a sick uncle and to pay for funeral expenses. She explained the exchange of small for large bills as necessary to get the type of cash her culture required her family to give to people attending her uncle’s funeral. Thomas claimed that the second deposit consisted of a collection of the cash tips she earned at her second job, which she exchanged for large bills for a trip to Las Vegas. She testified that the third cash deposit was rental income from her second home.

³ The security risk manager testified that, in the first transaction, Thomas exchanged over 400 \$20 bills, a “couple of tens and a couple fives” for “[p]rimarily hundred dollar bills.” III VRP at 240. The second transaction also involved the deposit of “over 400 \$20 bills.” III VRP at 241.

Criswell also testified for Thomas. He agreed that Thomas did not know he dealt drugs or that he kept drugs at her house. Criswell admitted that he had sold drugs at a bar the night before his and Thomas's arrest, and that he had put the proceeds of those sales, as well as the hydrocodone pills, in Thomas's purse without her knowledge because he could not hide the drugs on his person. Criswell also testified that he owned the guns police found in Thomas's house, that Thomas did not know about them because he hid them, and that he kept the guns because of post-traumatic stress related to his military service, not because he used them in the course of his drug operations.

Other defense witnesses testified that Thomas earned large volumes of small bills as tips at her second job. Thomas's sister verified Thomas's claims that their culture required giving cash gifts to those attending their uncle's funeral and that Thomas was the caretaker of the funds given by family members for the uncle's care and funeral.

After the parties presented their evidence, the trial court instructed the jury on the State's burden of proof, the elements of the offenses, and the firearm enhancements. The trial court also instructed the jury on accomplice liability, on its ability to convict Thomas as a principal or an accomplice, and on the affirmative defense of unwitting possession.

The jury found Thomas guilty of three counts of possession of a controlled substance for possessing the cocaine, oxymorphone, and oxycodone; possession of a controlled substance with intent to deliver for the possession of the hydrocodone; and money laundering. The jury returned special verdicts finding that Thomas or an accomplice was armed with a firearm while possessing the cocaine and possessing the hydrocodone with intent to deliver.

Thomas now appeals.

ANALYSIS

I. STANDARD OF REVIEW

The due process clauses of the state and federal constitutions “require[] [that] a criminal defendant be convicted only when every element of the charged crime is proved beyond a reasonable doubt.” *State v. O’Hara*, 167 Wn.2d 91, 105, 217 P.3d 756 (2009). We review whether sufficient evidence supports the convictions by examining whether, when viewed in the light most favorable to the prosecution, the State’s evidence permits a rational trier of fact to find the essential elements of the charged crime beyond a reasonable doubt. *State v. Kintz*, 169 Wn.2d 537, 551, 238 P.3d 470 (2010).

We apply similar principles to a jury’s finding that a defendant was armed with a firearm during the commission of a crime. We review whether, when viewed in the light most favorable to the State, the evidence allowed a rational trier of fact to find that the defendant was armed with a firearm during the commission of an offense. *State v. Eckenrode*, 159 Wn.2d 488, 494, 150 P.3d 1116 (2007).

By challenging the sufficiency of the State’s evidence, Thomas ““admits the truth”” of that evidence ““and all inferences that reasonably can be drawn therefrom.”” *Kintz*, 169 Wn.2d at 551 (quoting *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)). We do not distinguish between direct and circumstantial evidence: both ““are equally reliable”” in providing evidence sufficient to sustain a jury’s guilty verdict. *Kintz*, 169 Wn.2d at 551 (quoting *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004)). On review, we defer to the jury’s credibility determinations and resolution of conflicting testimony. *State v. McCreven*, 170 Wn. App. 444, 477, 284 P.3d 793 (2012), *review denied*, 176 Wn.2d 1015 (2013).

II. SUFFICIENCY OF THE EVIDENCE UNDERLYING THE CRIMINAL CONVICTIONS

On appeal, Thomas challenges the sufficiency of the evidence underlying her convictions for possession of a controlled substance with intent to deliver and money laundering. Thomas also challenges the sufficiency of the evidence underlying the findings that she or an accomplice was armed with a firearm while committing two of the offenses. The State contends that sufficient evidence supports the jury's finding in each respect. We agree with the State.

A. Possession with Intent

Thomas first argues that insufficient evidence supports the conviction for possession with intent to deliver, claiming that the State failed to show she acted as an accomplice to Criswell's hydrocodone sales. Thomas maintains that the State's evidence, "at most," showed Thomas "kn[ew]" of Criswell's illegal activities and "assent[ed]" to them, which is insufficient for accomplice liability. Br. of Appellant at 14. The State contends that the jury could rationally have found that Thomas agreed to participate in Criswell's criminal activities and was therefore his accomplice.

Under Washington's complicity statute, "[a] person is guilty of a crime if it is committed by the conduct of another person for which he or she is legally accountable." RCW 9A.08.020(1). A person is "legally accountable for the conduct of another person," among other circumstances, if "[h]e or she is an accomplice of such other person in the commission of the crime." RCW 9A.08.020(2)(c). One of the ways a person may become an accomplice to another person's commission of a crime is by "[a]id[ing] or agree[ing] to aid such other person in planning or committing" the crime "[w]ith knowledge that it will promote or facilitate the commission of the crime." RCW 9A.08.020(3)(a)(ii).

A person's mere presence at the scene of a crime and assent to its commission does not make the person an accomplice to the crime. *In re Welfare of Wilson*, 91 Wn.2d 487, 491, 588 P.2d 1161 (1979) (quoting *State v. J-R Distribs., Inc.*, 82 Wn.2d 584, 593, 512 P.2d 1049 (1973)). Instead, to become an accomplice, a person must "associate[] himself [or herself] with the undertaking [and] participate[] in it as in something he [or she] desires to bring about, and seeks by his [or her] action to make it succeed." *Wilson*, 91 Wn.2d at 491 (quoting *State v. J-R Distribs., Inc.*, 82 Wn.2d 584, 593, 512 P.2d 1049 (1973)).

The jury could rationally have found that these requirements of complicity were met, because the evidence allowed it (1) to infer that Thomas knew any aid would facilitate Criswell's possession of a controlled substance with intent to deliver and (2) to find that Thomas gave Criswell aid. First, the jury could rationally find beyond a reasonable doubt that Thomas knew her activities would promote or facilitate Criswell's possession of the hydrocodone with intent to deliver. Criswell testified that he put the drugs in Thomas's purse because he had so many of them that he could not hide them on his person. The jury saw evidence of the volume of pills involved. From this evidence the jury could reasonably infer that Thomas must have known why Criswell had put the drugs in her purse and that by carrying them for him she would promote or facilitate his possession of the hydrocodone with intent to deliver.

This jury could also find beyond a reasonable doubt that Thomas aided Criswell in his hydrocodone sales. Thomas carried Criswell's hydrocodone away from the bar where he sold drugs the evening before their arrest. As noted, above, Criswell placed the drugs in Thomas's purse because he could not successfully hide them on himself and he did not want to "get caught with [them]." IV VRP at 362. At the time of her arrest, Thomas was still in constructive possession of the drugs, which were still in her purse, inside her house, inside her bedroom, near

where she lay sleeping when police found her.⁴ Carrying and hiding Criswell's drugs falls within the meaning of "aid" in the accomplice liability statute. RCW 9A.08.020.

Thomas analogizes her conviction to one reversed by Division One of our court in *State v. Amezola*, 49 Wn. App. 78, 741 P.2d 1024 (1987), *overruled on other grounds by State v. MacDonald*, 138 Wn.2d 680, 689, 981 P.2d 443 (1999), and asks that we reverse her conviction as well. The appellant in *Amezola*, Ramirez, had lived with her alleged accomplices; the State presented evidence that she cooked and cleaned their shared residence. The State argued that Ramirez's cooking and cleaning enabled her housemates to engage in the delivery of heroin, making her an accomplice in their criminal enterprise. 49 Wn. App. at 89. Division One rejected the argument, holding that Ramirez's housework was legally insufficient to show that she had associated herself with her housemate's illegal activities, thereby making her their accomplice. *Amezola*, 49 Wn. App. at 89-90.

Any analogy to *Amezola* fails. Unlike Ramirez, Thomas actively engaged in activity related to Criswell's drug sales, not just routine domestic tasks unconnected to illegal activities. By doing so, Thomas associated with and aided Criswell's criminal enterprise and became his accomplice. *Wilson*, 91 Wn.2d at 491 (quoting *J-R Distribs., Inc.*, 82 Wn.2d at 593).

B. Money Laundering

Thomas also contends that the State failed to present sufficient evidence that she engaged in money laundering by depositing the proceeds of Criswell's illicit drug sales. She contends that she "was receiving significant amounts of cash from legitimate sources" and that the State

⁴ Actual possession involves "physical custody of" an object; constructive possession involves "dominion and control over the object." *State v. Jones*, 146 Wn.2d 328, 333, 45 P.3d 1062 (2002). Dominion and control means that the defendant may reduce the object "to actual possession immediately." *Jones*, 146 Wn.2d at 333.

failed to prove she knowingly deposited the proceeds of Criswell's drug sales. Br. of Appellant at 21.

The crime of money laundering is defined in RCW 9A.83.020, which provides, in relevant part, that

(1) A person is guilty of money laundering when that person conducts or attempts to conduct a financial transaction involving the proceeds of specified unlawful activity and:

(a) Knows the property is proceeds of specified unlawful activity; or

(b) Knows that the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or control of the proceeds, and acts recklessly as to whether the property is proceeds of specified unlawful activity.

The possession of a controlled substance with intent to deliver is "[s]pecified unlawful activity" within the meaning of RCW 9A.83.020. RCW 9A.83.010(7); RCW 9A.82.010(4)(q).

Here, the State presented evidence that Thomas had not engaged in suspicious transactions before she began dating Criswell. Shortly after the two met, however, she engaged in three such transactions. In each of these transactions, Thomas deposited large numbers of small denomination bills, the type that police testified were generated by drug sales, and then immediately withdrew an amount of money equivalent to the deposit in large denomination bills. The jury also heard that, at the time of her arrest, Thomas's purse contained an envelope filled with the proceeds of Criswell's drug sales. When viewing this evidence in the light most favorable to the State, a rational trier of fact could find beyond a reasonable doubt that Thomas engaged in a continuing money laundering scheme that ended only with her arrest while in constructive possession of Criswell's drug money.

Thomas contends also that her exculpatory explanations for the transactions create reasonable doubt. We, however, are not the jury. "An essential function of the fact finder is to discount theories which it determines unreasonable," *State v. Bencivenga*, 137 Wn.2d 703, 709,

974 P.2d 832 (1999), and the jury did so here. By Thomas's own explanations, the second and third deposits were the type of recurring event that should have occurred before she met Criswell. The jury could readily infer from the lack of previous, similar deposits that Thomas's explanations were not truthful, and we defer to that determination. *McCreven*, 170 Wn. App. at 477.

III. SUFFICIENCY OF THE EVIDENCE UNDERLYING THE FIREARM SPECIAL VERDICTS

Thomas next argues that insufficient evidence supports the jury's finding that she or an accomplice was armed with a firearm while possessing the cocaine or hydrocodone. Specifically, Thomas contends that the State's evidence did not establish a nexus between herself or Criswell, the firearms, and the drugs. We hold that the evidence was sufficient to sustain the firearm finding.

Washington has proscribed the constitutionally unprotected use of firearms to commit crimes. *State v. Schelin*, 147 Wn.2d 562, 575, 55 P.3d 632 (2002) (lead opinion of Ireland, J.) (no constitutional protection for criminal use of a firearm); RCW 9.94A.533(3) (enhanced sentence for offenders armed with a firearm during the commission of a crime). Accordingly, the State may seek a finding that "the offender or an accomplice was armed with a firearm" during the commission of an offense. RCW 9.94A.533(3); RCW 9.94A.825. If a jury makes the finding, the trial court must add statutorily prescribed time to the offender's sentence. RCW 9.94A.533(3).

A person is armed during the commission of a crime "if a weapon is easily accessible and readily available for use, either for offensive or defensive purposes." *State v. Valdobinos*, 122 Wn.2d 270, 282, 858 P.2d 199 (1993). These purposes include using the weapon "to facilitate the commission of the crime, escape from the scene of the crime, protect contraband or the like,

or prevent investigation, discovery, or apprehension by the police.” *State v. Gurske*, 155 Wn.2d 134, 139, 118 P.3d 333 (2005). In constructive possession cases such as this, the State must show both a nexus between the defendant and the firearm and between the firearm and the crime. *Gurske*, 155 Wn.2d at 140-42. To determine whether these connections exist, the factfinder must look to “the nature of the crime, the type of weapon, and the circumstances under which the weapon was found.” *Gurske*, 155 Wn.2d at 142 (quoting *Schelin*, 147 Wn.2d at 570).

The State’s evidence allowed a rational jury to find beyond a reasonable doubt a nexus between the defendant and a firearm. Police discovered a loaded pistol on the headboard of the bed where they had just arrested Thomas and Criswell after finding them asleep. Thomas’s and Criswell’s constructive possession of the pistol establishes a nexus between each of them and the firearm. *Schelin*, 147 Wn.2d 574-75 (proximity to firearm at time of arrest for ongoing drug operation satisfies nexus test); *State v. Taylor*, 74 Wn. App. 111, 124-26, 872 P.2d 53 (1994) (affirming firearm enhancement because defendant was in constructive possession of firearm during arrest for drug offenses); *State v. Sabala*, 44 Wn. App. 444, 447-49, 723 P.2d 5 (1986) (same); *cf. State v. Mills*, 80 Wn. App. 231, 907 P.2d 316 (1995) (no nexus where the defendant is not in physical proximity to the firearm).⁵

The State’s evidence also allowed a rational jury to find beyond a reasonable doubt that a nexus existed between the firearm recovered in the bedroom and the possession of the hydrocodone and cocaine for several reasons.

⁵ *Taylor* and *Sabala* were decided before the Supreme Court adopted the nexus requirement, but the Supreme Court has stated that *Sabala* is “instructive because there was clearly a nexus between the defendant and the weapon.” *Gurske*, 155 Wn.2d at 142. This same reasoning would apply to *Taylor* as well. *See Taylor*, 74 Wn. App. at 125 (“the gun was sitting on a table next to the couch where Taylor was sitting and was easily accessible to him.”).

First, with regard to only the hydrocodone, the State's evidence shows that Thomas and Criswell kept the pistol in the same room as the drug. The hydrocodone and the firearm were thus in close proximity to each other, and this proximity establishes a nexus between the two. *Schelin*, 147 Wn.2d at 564, 574-75;⁶ see *Mills*, 80 Wn. App. at 236. The jury could rationally have inferred that Criswell kept the gun in the same room as the hydrocodone in order to protect the contraband or to thwart law enforcement officers coming to search the room.

Second, the extensive evidence of the drug operation recovered in Thomas's house allowed the jury to infer Thomas or Criswell was armed in the commission of possession of the cocaine and hydrocodone. Where evidence of the drug trade "pervade[s] [a] house," the jury may rationally infer that firearms recovered in the house "[are] there to protect the criminal enterprise." *Eckenrode*, 159 Wn.2d at 494, 497-99 (Alexander, C.J. concurring) (Madsen, J. concurring); see *State v. Simonson*, 91 Wn. App. 874, 883, 960 P.2d 955 (1998). As noted, police found various types of drugs in various places in Thomas's kitchen and bedroom and other items of paraphernalia associated with drug dealing in the house. The evidence of a large drug operation in Thomas's house allowed the jury to infer that Thomas or Criswell kept firearms there to protect the operation.

Third, the locations of the weapons in the house allowed the jury to infer that each was used in the drug operation. The firearms were in strategic positions for use in a drug operation. The pistol in the bedroom was available to protect both Thomas and Criswell and the drugs, to thwart investigators, and to aid in flight from arrest. The assault rifle in the living room, a

⁶ Although the lead opinion of *Schelin* did not command a majority, the *Gurske* court used *Schelin* as an example where there was a nexus between the defendant, crime, and firearm because police arrested the defendant in close proximity to the firearm and the drug operation. 155 Wn.2d at 140.

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readily “grabable” large capacity weapon, III VRP at 179, was available to thwart attempts by law enforcement or any intruder to force entry through the house’s main door; and the pistol in the car was available to aid in flight from the house. *See Gurske*, 155 Wn.2d at 139 (listing possible uses for a firearm in a drug operation). The jury could infer from the strategic positioning of each of these firearms that all were used for specific purposes related to the drug operations, and that a nexus therefore existed between each of them and Thomas and Criswell’s possessory crimes.

IV. STATEMENT OF ADDITIONAL GROUNDS (SAG) ARGUMENTS

In her SAG, Thomas contends that her trial counsel provided ineffective assistance by failing to communicate the State’s plea offers, failing to advise her of her right to a bench trial, and failing to prepare for trial. Thomas also asserts that a biased juror tainted her trial. Thomas’s claims about communication of the State’s offer and the biased juror concern matters discussed in the record, and we address and reject them below. Thomas’s other claims require consideration of evidence not in the trial record and we do not address them on direct appeal; Thomas must instead seek relief with a personal restraint petition. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

A. Ineffective Assistance

Both the state and federal constitutions guarantee criminal defendants the right to effective representation by their counsel. *State v. Grier*, 171 Wn.2d 17, 32, 246 P.3d 1260 (2011). We review ineffective assistance claims de novo using the federal test announced in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). *State v. Cienfuegos*, 144 Wn.2d 222, 226, 25 P.3d 1011 (2011). To obtain relief under *Strickland*, the defendant must show that counsel performed deficiently and that this deficient performance

prejudiced her or him. *Strickland*, 466 U.S. at 687. We may reject an ineffective assistance claim where the defendant fails to make the necessary showing on either prong. *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009).

With regard to her claim that her counsel failed to apprise her of the State's acceptance of her plea offer, we find no deficient performance because the record is contrary to Thomas's claim. The sentencing colloquy shows that she rejected the best plea offer that the State would make. The State did not accept her counter offer and there was nothing for her counsel to communicate to her, meaning her counsel did not perform deficiently.

B. Right to An Impartial Jury

The state and federal constitutions also protect the right to trial by an impartial jury. *State v. Davis*, 141 Wn.2d 798, 824, 10 P.3d 977 (2000). Based on this right, a party may challenge the seating of a potential juror for cause where he or she has shown actual bias. RCW 4.44.130, .170(2), .190.

Thomas's claims of juror bias fail on the record before us. At sentencing, her attorney did state that one of the jurors appeared to have known Thomas. But Thomas's attorney specifically stated that the juror appeared to harbor no bias against Thomas. Thomas therefore cannot show a violation of her right to an impartial jury. RCW 4.44.190 (right to challenge a juror for cause requires actual bias).⁷

⁷ If Thomas does have evidence that the juror harbored bias, it exists outside the trial record and, again, she must seek relief through a personal restraint petition. *McFarland*, 127 Wn.2d at 335.

CONCLUSION

We hold that sufficient evidence supported the jury's finding that Thomas was guilty of possession of a controlled substance with intent to deliver and money laundering and that Thomas or an accomplice was armed with a firearm while possessing the cocaine and hydrocodone with intent to deliver it. We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Bjorge, A.C.J.

BJORGE, A.C.J.

We concur:

Worswick, J.

WORSWICK, J.

Melnick, J.

MELNICK, J.

CUNNINGHAM LAW OFFICE

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