

NO. 35789-5-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

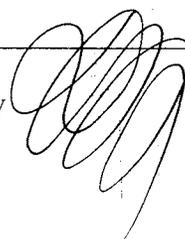
STATE OF WASHINGTON, RESPONDENT

v.

STEVEN KIE CHANG, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable John R. Hickman

No. 06-1-01853-4



BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Was defendant's Constitutional right to confront witnesses violated by the admission of non-testimonial hearsay statements made informally to a co-worker prior to the police investigation?

(Pertains to Appellant's Assignment of Error #1.)

2. Should this Court consider Appellant's claim of error regarding hearsay raised for the first time on appeal where defense counsel elicited some of the hearsay to support his theory of the case?

(Pertains of Appellant's Assignment of Error #1.)

3. Did the prosecutor commit misconduct in closing argument by discussing evidence admitted during trial without objection?

(Pertains of Appellant's Assignment of Error #2.)

4. Did the prosecutor violate Appellant's exercise of a constitutional right by discussing in closing argument properly admitted evidence of defendant's furtive movements when approached by police?

(Pertains to Appellant's Assignment of Error #4.)

5. Should defendant prevail on his claim of insufficient evidence of the element of possession when defendant had dominion and control of the motel room where the items were

found and his photograph appeared on torn-up, falsified identifications located near those items?

(Pertains of Appellant's Assignment of Error #3.)

B. STATEMENT OF THE CASE.

1. Procedure

On the first day of trial, November 15, 2006, the State filed the Second Amended Information charging Steven Chang (defendant) with second degree identity theft, two counts of second degree possession of stolen property (PSP), and two counts of first degree PSP for an incident that occurred on May 23, 2005. CP 34-36.

At the close of the State's case, defendant moved to dismiss the charges for insufficient evidence. RP 161. The trial court denied the motion. RP 165. The State agreed to dismiss one count of first degree PSP because the victim did not appear for trial. RP 166. The State also agreed to reduce one count of second degree PSP to third degree PSP. RP 190.

On November 20, 2006, the jury returned a verdict of guilty as charged on all counts. RP 248.

On December 22, 2006, the court sentenced defendant to 40 months in the department of corrections. CP 105. This timely appeal follows.

2. Facts

On May 23, 2005, at 6:52 AM, Heather Cromwell rented room 220 at the King's Motor Inn in Fife. RP 76-77; 84-86. Later that day, defendant went to the motel and tried to get the clerk, Maria, to let him into room 220. RP 78. Defendant told Maria that he was there to get a key because Cromwell left the key in the room. RP 90. The room was rented to Cromwell only, so Maria denied defendant access. RP 84. Maria called the front desk manager, Joseph Campbell, who was on his way to work and told him what was going on. RP 76; 87. Maria, who did not appear for trial and who was not interviewed by police, told Campbell that she had seen suspicious items in room 220, namely, cameras, printers, a copy machine, ID's, and IRS and Social Security checks. RP 77.

Campbell arrived at work at 4:30 p.m. RP 77. He and Maria went to room 220 and he looked inside, seeing what Maria had earlier described. RP 77. Campbell and Maria returned to the office and Campbell called police. RP 78. Right after police were called, defendant, who had been trying to get into the room earlier, returned. RP 78. Defendant was on his cell phone purportedly talking to Cromwell, who had rented the room. RP 78-79. Campbell spoke to Cromwell on defendant's phone, verified her information, and got her authorization to let defendant into the room. RP 79. Campbell took a copy of defendant's identification and let defendant into the room. RP 80. Campbell returned to the front desk and called police a second time informing them that a

guest, defendant, had registered in room 220 and was currently in the room. RP 81. Just before police arrived, Campbell saw two women with defendant. RP 82. He saw one of the women holding a copy machine or a big printer in her arms. RP 82.

At approximately 5:06 p.m., police arrived at the motel. RP 98. The drapes in room 220 were closed, but officers saw someone inside pull the drapes back to look out. RP 96. Police knocked on the door to contact the occupants. RP 95. There was no immediate response. RP 96. The officers could hear a lot of shuffling noises coming from the room. RP 96. Officers pounded on the door two or three more times and announced, "Police!" Id. Officers then heard a male voice ask, "Who is it?" Id. Defendant then cracked the door open, just far enough for him to get out of the room and slid outside. RP 96-97. Officers knocked on the door again and ordered the two female occupants to exit as well. RP 103. As the women came out, defendant told them to close the door. RP 103-04.

Officers obtained a search warrant and searched room 220. RP 112-134. Inside a brief case on the bed in the room, there were various checks and identifications, none of which were under the name of any of the people associated with room 220. RP 119. Officers found two U.S. Treasury checks, one was an IRS refund check in the amount of \$5,264.00, payable to Dale Burlingame who had never received the check, endorsed it, or given anyone else permission to have it. RP 120; 148-50.

The other was in the amount of \$434.40, payable to John Blair, Jr. RP 122. Mr. Blair never received his check. RP 141.

Also inside the brief case were two checks written on the account of Eberle Vivian in the amount of \$2,495.00 and \$5,000.00, both checks were made payable to the order of Brewer Chrysler. RP 120-21. There was a check written on the account of CMF Construction in the amount of \$450.00 payable to cash, and another check. RP 122.

Officers discovered two fraudulent Washington State driver's licenses, one in the name of John Blair and one in the name of Doug Koyle. RP 123-24. The same person, an unknown blonde male, appeared in the photo on both licenses. RP 124. The unknown person was neither Douglas Koyle, nor John Blair, Jr. RP 136; 142.

Next to the brief case in a white plastic grocery-type bag, police found fraudulent driver's licenses printed on glossy photo paper. RP 114; 117; 127. Defendant's photograph appeared on the fraudulent licenses/identification, which had been torn up. Id.

When defendant had sought access to room 220, motel staff photocopied his current driver's license, which was collected by police and admitted at trial for the jury's consideration. RP 80-81. The fraudulent licenses found in the plastic bag were not copies of defendant's actual driver's license. RP 134. On the fake licenses, defendant's middle name and date of birth were different and his address was different. RP 133. Similarly, the photograph on the fake licenses was that of defendant,

but was not the same photograph on his valid driver's license. Id. His hairstyle and clothing were different in the photographs on the fake licenses. Id.

Cromwell never returned to the motel and police were unable to locate her. RP 91-92; 98; 126.

C. ARGUMENT.

1. THE TRIAL COURT DID NOT VIOLATE DEFENDANT'S SIXTH AMENDMENT RIGHT TO CONFRONTATION WHERE HEARSAY WAS NOT 'TESTIMONIAL' AND WHERE DEFENDANT DID NOT OBJECT.

a. Maria's statements to Campbell are non-testimonial in nature and therefore are not subject to the Confrontation Clause.

The Confrontation Clause of the Sixth Amendment provides that: "In all criminal prosecutions, the accused shall enjoy the right. . . to be confronted with the witnesses against him." U.S. CONST. amend. VI. Under Crawford, admission of an out-of-court testimonial statement from an unavailable witness violates the Confrontation Clause unless the defendant had a prior opportunity to cross-examine the witness. Crawford v. Washington, 541 U.S. 36, 68-69, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). In contrast, the Confrontation Clause does not govern the admissibility of non-testimonial out-of-court statements. "Where non-testimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay

law. . . .” Crawford, 541 U.S. at 69. Hearsay evidence that is non-testimonial is not subject to the Confrontation Clause. See, Davis v. Washington, 126 S. Ct. 2266, 2273, 165 L. Ed. 2d 224 (2006).

Interrogations by law enforcement officers fall squarely within the classification of testimonial statements. Crawford, 541 U.S. at 53. However, Crawford allows that “not all hearsay implicates the Sixth Amendment’s core concerns.” Id. at 51. Even testimonial statements may be admitted if offered for purposes other than to prove the truth of the matter asserted. Id. at 60 n.9.

Our Supreme Court has analyzed the testimonial nature of a 911 call:

The primary issue in the present case is whether [the victim’s] 911 call constitutes a “testimonial” statement under the Crawford analysis. The context of a 911 call presents a more complex scenario than the in-custody, *Miranda*-warned interrogation by police officers at issue in Crawford. Sylvia Crawford's statement was given during a custodial examination, which the Crawford Court indicated fell within even a narrow definition of testimonial.

Generally, an emergency 911 call is not of the same nature as an in-custody interrogation by police. Such an emergency call is not the functional equivalent of uncross-examined, in-court testimony. Even though a call to 911 involves personnel associated with the police, the 911 operator is not a police officer. Moreover, the purpose of the call is generally not to “bear witness.” **The call must be scrutinized to determine whether it is a call for help to be rescued from peril or is generated by a desire to bear witness.**

A 911 call is typically initiated by the victim, not the police. Even though an emergency 911 call may assist police in investigation or assist the State in prosecution, where the call is not undertaken for those purposes, it does not resemble the specific type of out-of-court statement with which the Sixth Amendment is concerned.

In People v. Corella, 122 Cal. App. 4th 461, 18 Cal.Rptr. 3d 770 (2004), the court held that admission of a 911 call did not violate the defendant's right to confrontation, and his conviction for corporal injury to his spouse was affirmed. The Corella court determined that the **statements** made to the 911 operator **were not “knowingly given in response to structured police questioning” and did not have the formal and official quality** of the statements deemed testimonial by Crawford. 18 Cal.Rptr. 3d at 776 (*quoting Crawford*, 541 U.S. at 53 n.4).

. . . It is necessary to look at the circumstances of the 911 call in each case to determine whether the declarant knowingly provided the functional equivalent of testimony to a government agent.

State v. Davis, 154 Wn.2d 291, 301-02, 111 P.3d 844 (2005) [emphasis added].

In the present case, front desk manager Campbell testified on direct examination by the State that Maria advised him that she had seen something suspicious in room 220. RP 77. Campbell was the one who called the police after he went up to the room with Maria to see what was in there and to put a safety lock on the door. RP 78. Campbell testified that when defendant came back to the motel, after police had been called, Maria advised him that defendant had tried to get into the room earlier. RP 78.

On cross examination of Campbell, defense counsel elicited more of Maria's statements, establishing that Maria called Campbell while he was on the way to work to report that something was going on. RP 87. Campbell also testified on cross-examination that Maria told him she did not let defendant into the room and that defendant had told her that he was there to get the key for Cromwell who locked the key in the room. RP 90-91.

Detective Farnworth testified to essentially the same statements made by Maria. RP 110-11. Defendant objected to this hearsay, even though the statements had been previously elicited during Campbell's testimony by both counsel without objection. RP 110. The trial court overruled the objection: "I'm going to allow it not for the truth of the matter asserted but in terms of background." RP 110.

Maria went home after her shift and was not present when officers arrived at the scene. RP 110. Therefore she did not make a statement to police. Nor did she testify at trial.

The facts of this case clearly show that Maria's statements were not testimonial under Crawford. She was merely updating the front desk manager as to potential problem at the motel. There is no indication whatsoever that she was intending to "bear witness." She did not remain until police arrived and never talked to police, even though she was present when Campbell called police. Therefore, her statements made to Campbell were not "knowingly given in response to structured police

questioning” and did not have the formal and official quality of the statements deemed testimonial by Crawford. See Davis above. Nor by any stretch can Maria’s informal statements to her co-worker be construed as the functional equivalent of testimony to a government agent. Defendant’s claim of constitutional error fails.

- b. Defendant may not raise the non-constitutional issue of improper hearsay for the first time on appeal.

When no objection is made to evidence at trial, an evidentiary error is not preserved for appeal. State v. Guloy, 104 Wn.2d 412, 422, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020, 106 S. Ct. 1208, 89 L. Ed. 2d 321 (1995). However, a party can raise for the first time on appeal a “manifest error affecting a constitutional right.” RAP 2.5(a)(3), State v. McNeal, 145 Wn.2d 352, 37 P.2d 280 (2002), State v. McFarland, 127 Wn.2d 322, 899 P.2d 1251 (1995). As demonstrated above, there was no constitutional error in the present case.

All of Maria’s statements to Campbell were elicited during Campbell’s testimony via questions posed by both parties. RP 77-91. Defendant objected to Maria’s statements during the testimony of Detective Farnworth, but that was *after* all the statements had been admitted without objection through Campbell. Defendant’s assertion on appeal that defendant objected to Maria’s statements is not entirely accurate as all the statements had been previously admitted without

objection. When defendant did object during Farnsworth's testimony and the court limited the use of the testimony to "background," there was never any mention of striking the prior testimony of Campbell from the record, nor was any ruling ever directed to that testimony. Therefore, Campbell's testimony of Maria's statements remained unaffected and the State was free to argue that evidence and any reasonable inferences there from. The jury was likewise free to consider that evidence substantively.

It is understandable that defendant did not object to Maria's statements initially, because some of her statements supported his theory of the case, which was that he was not in possession of the contraband in room 220. On cross-examination of Campbell, defense counsel established that Maria never let defendant into the room. RP 89-90. The jury could infer from this testimony that defendant had very limited access to room 220 and also that he had been in the room only a very short period of time. This evidence *could* weaken the State's claim of constructive possession. Defendant also established, via Maria's statements, and Maria's statements only, that defendant went to the motel to help a friend who locked her key in the room. RP 89-91. This provided defendant with a potentially legitimate reason for being at the motel.

Because the hearsay does not rise to a Constitutional level, defendant may not raise the issue for the first time on appeal. Defendant is further barred from raising the issue under the invited error doctrine.

The doctrine of invited error “prohibits a party from setting up an error at trial and then complaining of it on appeal.” In re Pers. Restraint of Breedlove, 138 Wn.2d 298, 312, 979 P.2d 417 (1999). The invited error doctrine is strict in Washington. The doctrine has been applied to errors of constitutional magnitude, including where an offense element was omitted from the “to convict” instruction. State v. Studd, 137 Wn.2d 533, 547, 973 P.2d 1049 (1999); State v. Henderson, 114 Wn.2d 867, 869, 792 P.2d 514 (1990)(failing to specify the intended crime in a conviction for attempted burglary). The doctrine has been applied even in cases where the error resulted from neither negligence nor bad faith. See e.g., Studd, 137 Wn.2d at 547.

In this case, the defense did not object to Campbell testifying about Maria’s hearsay statements. RP 77-79. In fact, defense counsel elicited additional hearsay statements made by Maria that were favorable to the defense. RP 87-91. Defendant may not now claim this testimony was error.

2. THE PROSECUTOR DID NOT COMMIT MISCONDUCT IN CLOSING ARGUMENT WHEN HE DISCUSSED NON-CONSTITUTIONAL, UNOBJECTED TO HEARSAY THAT WAS NOT SUBJECT TO LIMITED USE, AND WHERE TRIAL COURT OVERRULED DEFENDANT’S OBJECTION.

To prevail on a claim of prosecutorial misconduct, the burden is on the defendant to show (1) that the prosecutor did not act in good faith and

(2) that the conduct complained of was both improper and so prejudicial as to deny the defendant a fair trial. State v. Manthie, 39 Wn. App. 815, 820, 696 P.2d 33 (1985), State v. Weekly, 41 Wn.2d 727, 252 P.2d 246 (1952); State v. Wilson, 29 Wn. App. 895, 626 P.2d 998 (1981). The granting of a new trial on the basis of prosecutorial misconduct is a matter of the trial court's discretion, and a new trial should be granted only when there is substantial likelihood that such misconduct, considered in terms of its cumulative effect, may have affected the jury's verdict. Manthie, 39 Wn. App. at 820, citing State v. Torres, 16 Wn. App. 254, 554 P.2d 1069 (1976).

The defendant bears the burden of establishing that the prosecutor's remarks were improper and that they were prejudicial. State v. Graham, 59 Wn. App. 418, 426, 798 P.2d 314 (1990); citing State v. Mak, 105 Wn.2d 692, 726, 718 P.2d 407 (1986). If the prosecutor's misconduct is so flagrant that no instruction can cure it, a new trial is the mandatory remedy. State v. Belgarde, 110 Wn.2d 504, 508, 755 P.2d 174 (1988).

In the present case, the prosecutor referred to Maria's statements in closing argument. RP 219-21. Defendant's assertion that these statements were not admitted for the truth of the matter asserted is incorrect. BOA 18-19. In fact, Maria's statements were fully admitted during the testimony of Campbell. RP 76-92. There was no objection by the defense when the prosecutor elicited these statements from Campbell on direct

examination, and there was no objection by the State when defense counsel elicited more of Maria's statements on cross-examination. Id. The court never limited the use of this evidence. Id. It was not until the testimony of Detective Farnsworth that defendant objected to Maria's statements. RP 110. At that point there was also another layer of hearsay because Farnsworth was testifying to what Maria told Campbell, whereas Campbell testified as to what Maria told *him*. During Farnsworth's testimony, the court limited the use of the evidence to background. RP 110. This ruling did not incorporate the testimony of Campbell. Id. The trial court did not "inexplicably" overrule the objection. BOA at 22. The trial court overruled the objection because Maria's statements had been elicited by the State and defense during Campbell's testimony with no restrictions. Therefore, the prosecutor did not commit misconduct because (1) he did not violate the court's ruling in limine, (2) his comments *were* supported by un-objected to evidence, and (3) his comments were not misleading. Defendant's claim fails.

3. THE PROSECUTOR PROPERLY ARGUED
DEFENDANT'S FURTIVE ACTIONS WHEN
CONTACTED BY POLICE AND DID NOT
COMMENT ON AN EXERCISE OF A
CONSTITUTIONAL RIGHT.

Two days prior to the commencement of trial, a judge other than the trial judge heard defendant's suppression motion. 11/13/06 RP 1-22. Defendant moved to suppress evidence seized during the execution of a

search warrant. Id. Defendant filed a Memorandum in support of his motion. CP 11-21. He did not move to suppress the officers' observations regarding (1) the substantial delay between the time police knocked on the door of room 220 and identified themselves and (2) the manner in which defendant exited the room in order to prevent police from seeing what was inside the room. Id.

Judge Culpepper found probable cause for issuing the search warrant for the motel room. RP 18-19. However, Judge Culpepper found there was not a sufficient connection to the car to establish probable cause to search it and, therefore, any evidence found as a result of searching the car would be suppressed. 11/13/06 RP 21-22. There was no request to suppress the officers' observations, and as such, there was no specific mention of that evidence in the court's ruling. 11/13/06 RP 18-22.

At the beginning of the trial before Judge Hickman, counsel for the defense and State informed regarding the outcome of the suppression hearing:

[DEFENSE]: Just briefly, additionally, Your Honor, both the prosecutor and defense made argument on Monday for the search warrant involved arguing [sic] that the motel door was not opened immediately by [defendant] or the other occupants of the motel room in question in this case, and that when [defendant] did come out he did not then talk to the police officers and asked to have an attorney, and I don't anticipate that [the State] will be arguing that in trial since obviously it is a very different situation, but in an abundance of caution I would ask that obviously - - obviously I think that the witnesses need to be cautioned

that that is not something that should be coming into evidence.

[THE STATE]: **I believe that he was slow to open the door and took several times to announce. I believe that comes in.** The fact that he would not talk to them and asked for a lawyer, I agree with counsel, that doesn't come in and I would just ask the officer what they informed him and go on from there.

RP 9-10 [emphasis added]. Defendant did not object or argue further regarding the points made by the prosecutor. RP 10-11. Defense counsel later told the court, “. . . it's just all the evidence that was seized from the car was suppressed.” RP 11. This statement seems to acknowledge that defendant's furtive movements were not suppressed.

Defendant now argues that the officer's testimony regarding their observations of defendant trying to conceal the contraband is tantamount to commenting on his exercise of his right to remain silent or his right to refuse to consent to a search of room 220. Defendant argues that by closing the door so police could not see into the room was an exercise of his right to refuse to consent to a search. However, officers never ordered defendant out of the room. They merely knocked and identified themselves as police. RP 96-97; 102-03. Defendant chose to exit the room to talk to police rather than talk to them through the door open. Officers never asked defendant for consent to search the room. Defendant could not be exercising his right to have the room free from search when

officers had not asked to search the room, and had no intention of searching the room at that time because they intended to get a warrant.

Furtive movements demonstrate consciousness of guilt. State v. Huff, 64 Wn. App. 641, 647, 826 P.2d 698 (1992)(citations omitted). Further, deliberate furtive gestures at the approach of the police are a strong indicia of a guilty mens rea. Id. (citations omitted).

Defendant's reliance on Easter is misplaced. In Easter, the court held that police officer testimony that the defendant was a "smart drunk" who refused to answer questions violated the defendant's right to silence. State v. Easter, 130 Wn.2d 228, 241, 922 P.2d 1285 (1996).

Here, the State did nothing more than comment on defendant's furtive movements and his efforts to conceal contraband, which clearly demonstrate guilty knowledge. This is a legitimate purpose for this evidence. See Huff, supra. Defendant could not have been exercising his right to "prevent a search" because officers were not attempting to perform a search at that point. Defendant's attempt to create constitutional error out of testimony regarding furtive movements that illustrate his guilty knowledge must therefore fail.

4. THERE WAS AMPLE EVIDENCE SUPPORTING
DEFENDANT'S CONVICTIONS FOR
POSSESSION OF THE STOLEN ITEMS.

In reviewing facts in a challenge to the sufficiency of the evidence, appellate courts will draw all inferences from the evidence in favor of the

State and against defendant. State v. Schelin, 147 Wn.2d 562, 573, 55 P.3d 632 (2002). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and any reasonable inferences from it. State v. Barrington, 52 Wn. App. 478, 484, 761 P.2d 632 (1987), review denied, 111 Wn.2d 1033 (1988)(citing State v. Holbrook, 66 Wn.2d 278, 401 P.2d 971 (1965)); State v. Turner, 29 Wn. App. 282, 290, 627 P.2d 1323 (1981). All reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Circumstantial and direct evidence are considered equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

Conflicts in testimony are credibility determinations, which are resolved only by the trier of fact and cannot be reviewed upon appeal. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)(citing State v. Casbeer, 48 Wn. App. 539, 542, 740 P.2d 335, review denied, 109 Wn.2d 1008 (1987)).

In the present case, defendant claims that the State did not meet its burden with regard to possession of the various items found in the motel room. BOA at 24.

However, in a possession of controlled substances prosecution, for example, a defendant may be shown to be in constructive possession of a

controlled substance when he “has dominion and control over either the drugs or the premises upon which the drugs were found.” State v. Mathews, 4 Wn. App. 653, 656, 484 P.2d 942 (1971). This dominion and control need not be exclusive. See State v. Tadeo-Mares, 86 Wn. App. 813, 816, 939 P.2d 220 (1997). A court considers whether a person has dominion and control over an item by considering the totality of the circumstances. State v. Partin, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977). When a person has dominion and control over a premises, it creates a reputable presumption that the person has dominion and control over items on the premises. State v. Cantabrana, 83 Wn. App. 204, 208, 921 P.2d 572 (1996).

In the present case there was ample evidence showing defendant had dominion and control over the items in the motel room. First, defendant had been trying to get into the room earlier in the day. Second, Cromwell gave permission for defendant to enter room 220 and she never returned to collect any items from that room. Third, defendant and the two women had been transporting items to and from the room. Fourth, defendant told motel staff he needed to get into the room 220 to get the key for Cromwell because she had locked the key in the room, however, he did not do so. Fifth, the checks were out on the bed when Campbell first checked the room. When police entered, however, the checks had been placed inside

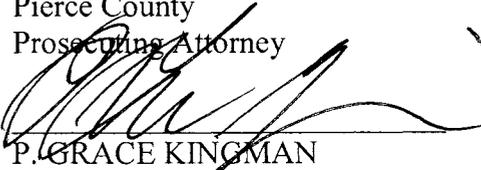
the briefcase. Sixth, defendant's photograph was on ripped-up, fake identifications found in the room near the other items. Seventh, defendant acted as the spokesman for the room when police arrived; it was he who inquired who was at the door. Defendant was the one who answered the door and he opened it just wide enough to get out so police could not see into the room. Eighth, defendant instructed the women to close the door behind them after they exited. Ninth, the fake ID's with defendant's picture strongly tie defendant to the contents of the room and show his intent to defraud. This evidence, along with all inferences from it to be drawn in favor of the State, provide ample proof to support a finding that defendant possessed the contraband.

D. CONCLUSION.

For the foregoing reasons, the State respectfully requests this Court to affirm defendant's convictions.

DATED: September 10, 2007.

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WSB # 16717

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

9/10/11 [Signature]
Date Signature

[Signature]