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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
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No. 37650-4-II  
COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

MARLYS B. SAMOY,

Appellant.

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APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR MASON COUNTY

The Honorable James B. Sawyer II, Trial Court Judge  
Cause No. 07-1-00518-8

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BRIEF OF RESPONDENT

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A. ASSIGNMENT OF ERROR

1. The jury's verdict that Marlys Samoy possessed methamphetamine with the intent to distribute was not supported by substantial evidence.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

1. Did the trial court err by allowing Samoy's case go to the jury when law enforcement found methamphetamine, scales, drug paraphernalia and a ledger containing records of drug sale transactions in a trailer that Samoy had lived in and where mail in her name was found?

C. EVIDENCE RELIED UPON

The official Report of Proceedings will be referred to as "RP." The Clerk's Papers shall be referred to as "CP."

D. STATEMENT OF THE CASE

1 & 2. Procedural History & Statement of Facts. Pursuant to RAP 10.3(b), the State accepts Samoy's recitation of the procedural history and facts and adds the following:

Detective Borcharding of the Mason County Sheriff's Department (MCSO) was involved with the search of Samoy's property on November 6, 2007. RP 48: 9-12. While searching the travel trailer, this detective found "drug paraphernalia related to the use and possession and delivery of methamphetamine." RP 50: 18-19. Among the items Detective

Borcherding found were “a methamphetamine pipe, some baggies and packaging materials, and a set of scales.” RP 50: 19-21. Although the back 10 to 12 feet of the trailer “was basically collapsed and not habitable and didn’t have clothing or documents” in it, “photographs, documents and mail” were present in the “first section” of the trailer “where the kitchen and bed were.” RP 53: 4-14. The “photographs, documents and mail” that were found throughout the inhabitable part of the trailer were “in the defendant’s [Samoy’s] name.” RP 53: 14-15; 71: 5-10. This mail, however, was not addressed to Samoy at 480 Northeast Beitzel Drive where her trailer was located. RP 71: 5-14.

Also found in this trailer was a ledger that contained notations regarding the sale of methamphetamine and a handwritten note that read, “Nate ripped you off, need to talk to you.” RP 55: 12-16. Inside the wooden box law enforcement found “a spoon, a pen, a syringe cap,” along with other miscellaneous items. RP 63: 15-16. Detective Borcherding testified that the combination of these items, in conjunction with methamphetamine, constitute a “a basic drug dealer kit” that is “portable,” and assists a dealer to complete drug deals. RP 64: 12-19.

### 3. Summary of Argument

The trial court did not err by allowing Samoy’s case go to the jury because law enforcement found methamphetamine, scales, drug

paraphernalia and a ledger containing records of drug sale transactions in a trailer that Samoy had lived in and where mail in her name was found. That the mail with Samoy's name on it did not have the same address as that where the trailer located was for the jury, and not the judge, to consider in determining her guilt or innocence.

When viewed in the light most favorable to the State, the evidence in Samoy's case permits any rational trier of fact to find all of the essential elements of the crime, possession of methamphetamine with intent to deliver, beyond a reasonable doubt. The trial court did not err, and the State asks the Court to affirm Samoy's judgement and sentence.

#### E. ARGUMENT

1. THE TRIAL COURT DID NOT ERR BY ALLOWING SAMOY'S CASE TO GO TO THE JURY BECAUSE LAW ENFORCEMENT FOUND METHAMPHETAMINE, SCALES, DRUG PARAPHERNALIA AND A LEDGER CONTAINING RECORDS OF DRUG SALES IN A TRAILER THAT SAMOY HAD LIVED IN AND WHERE MAIL IN HER NAME WAS FOUND.

The trial court did not err by allowing Samoy's case go to the jury because law enforcement found methamphetamine, scales, drug paraphernalia and a ledger containing records of drug sales in a trailer that Samoy had lived in and where mail in her name was found.

Possession of property may be either actual or constructive.

Actual possession means that the goods are in the personal custody of the person charged with possession. State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). Constructive possession means that the goods are not in actual, physical possession, but that the person charged with possession has dominion and control over them. Callahan, 77 Wn.2d at 29. Whether a person has dominion and control is determined by considering the totality of the situation. State v. Partin, 88 Wash.2d 899, 906, 567 P.2d 1136 (1977).

Evidence is sufficient if, viewed in the light most favorable to the State, it permits any rational trier of fact to find all of the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). In a criminal case, the State must prove each element of the alleged offense beyond a reasonable doubt. State v. Alvarez, 128 Wash.2d 1, 13, 904 P.2d 754 (1995). A claim of insufficiency admits the truth of the State's evidence and requires that all reasonable inferences be drawn in favor of the State and interpreted most strongly against the defendant. Salinas, 119 Wn.2d at 201. Direct evidence is not required to uphold a jury's verdict; circumstantial evidence can be sufficient. State v. O'Neal, 159 Wash.2d 500, 506, 150 P.3d 1121 (2007).

Circumstantial evidence is accorded equal weight with direct evidence. State v. Delmarter, 94 Wash.2d 634, 638, 618 P.2d 99 (1980). In reviewing the evidence, deference is given to the trier of fact, who resolves conflicting testimony, evaluates the credibility of witnesses, and generally weighs the persuasiveness of the evidence. State v. Walton, 64 Wash.App. 410, 415-16, 824 P.2d 533 (1992).

The facts of Callahan and Walton are partially analogous to Samoy's case and allow the concept of constructive possession to be distinguished. In Callahan, officers executed a search warrant on Callahan, who lived on a houseboat. Callahan, 77 Wn.2d at 28. When the officers entered the living room of the houseboat, they found the defendant and a co-defendant sitting at a desk on which were various pills and hypodermic syringes. A cigar box filled with various drugs was on the floor between the two men. Other drugs were found in the kitchen and bedroom of the premises. The defendant admitted that he had handled the drugs that day, and that he had stayed on the houseboat for 2 or 3 days prior to his arrest.

The Court in Callahan found that in order for the jury to find the defendant guilty of actual possession of the drugs, they had to find that they were in his personal custody. No evidence was introduced at trial that the defendant was in physical possession of the drugs other than his

close proximity to them at the time of his arrest and the fact that the defendant told one of the officers that he had handled the drugs earlier. The Callahan court did not find that the defendant could have constructively possessed the drugs because possession entails actual control, and not a passing control that involves only a momentary handling.

In Walton, the defendant hurried to the kitchen when his son opened the door to their residence at the request of the police who were there to execute a search warrant. Walton, 64 Wash.App. at 412. The officers observed what appeared to be black tar heroin on the kitchen table together with a shooting kit, including a spoon and a razor-type tool used for cutting purposes. Defendant Walton was arrested, and in response to questions from a booking officer, he said that he lived at that address. During a later search officers found, among other items, a telephone bill and letters addressed to Walton at this address. The Court affirmed Walton's conviction for possession of a controlled substance because this evidence was sufficient for the trier of fact to find that he constructively possessed the heroin. Walton, 64 Wash.App. at 416-417.

In Samoy's case, law enforcement found methamphetamine, scales, drug paraphernalia, a ledger containing records of drug sales, and mail in her name in a trailer where she had lived. Unlike Walton, where

the phone bill and other letters were addressed to him at the residence where the heroin was found, the mail in Samoy's case was not addressed to her at the place where the trailer was located. When viewed in the light most favorable to the State, however, this evidence would permit any rational trier of fact to find that Samoy constructively possessed the methamphetamine.

Although Samoy's mail may not have been addressed to her at 480 Northeast Beitzel Drive, it was nonetheless specifically addressed to her by name. It was for the jury, and not the judge, to determine what Samoy's mail was doing in a trailer that she had lived in, along with methamphetamine, scales, drug paraphernalia and a ledger that contained records of illegal drug transactions.

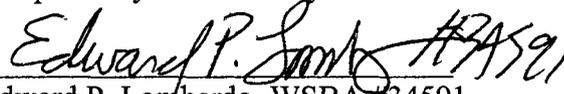
All of this evidence indicated that Samoy had far more than a "passing control" of drugs that the Court in Callahan mentions, but rather sufficient dominion and control over the methamphetamine to weigh, package and sell it. As the Court enunciated in Partin, dominion and control is determined by considering the totality of the situation, and it was for the jury to render a decision in Samoy's case based on these facts.

F. CONCLUSION

The State respectfully requests that the judgment and sentence of the trial court be affirmed.

Dated this 21<sup>st</sup> day of NOVEMBER, 2008

Respectfully submitted by:

 #34591

Edward P. Lombardo, WSBA #34591  
Deputy Prosecuting Attorney for Respondent  
Gary P. Burleson, Prosecuting Attorney  
Mason County, WA

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

STATE OF WASHINGTON, )  
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 Respondent, )  
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 vs. )  
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 MARLYS B. SAMOY, )  
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 Appellant, )  
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No. 37650-4-II

DECLARATION OF  
FILING/MAILING  
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EDWARD P. LOMBARDO  
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COURT OF APPEALS  
DIVISION II

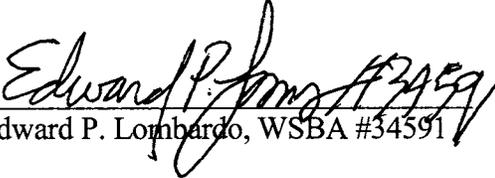
I, EDWARD P. LOMBARDO, declare and state as follows:

On FRIDAY, NOVEMBER 21, 2008, I deposited in the U.S. Mail,  
postage properly prepaid, the documents related to the above cause number  
and to which this declaration is attached, BRIEF OF RESPONDENT, to:

Thomas M. Kummerow  
Attorney at Law  
Washington Appellate Project  
1511 Third Avenue, Suite 701  
Seattle, WA 98101

I, EDWARD P. LOMBARDO, declare under penalty of perjury of  
the laws of the State of Washington that the foregoing information is true  
and correct.

Dated this 21<sup>ST</sup> day of NOVEMBER, 2008, at Shelton, Washington.

  
Edward P. Lombardo, WSBA #34591