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CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

NO. 38235-1-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

STANLY BURRELL, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
THE HONORABLE ROBERT L. HARRIS
CLARK COUNTY SUPERIOR COURT CAUSE NO. 08-1-00947-5

BRIEF OF RESPONDENT

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I. STATEMENT OF THE FACTS

The State accepts the statement of the case as set forth by the defendant. Where additional information is needed, it will be set forth in the argument section of the brief.

II. RESPONSE TO ASSIGNMENTS OF ERROR 1 AND 2

The first two assignments of error deal with the concept of corpus delicti and insufficient evidence to allow the question of possession of methamphetamine to go to the trier of fact.

The defendant was charged by Information with the crime of Possession of a Controlled Substance – Methamphetamine. (CP 1). The charging language was as follows:

Count 1 – Possession of a Controlled Substance – Methamphetamine. [Cites omitted].

That they, Karen Nicole Phillips and Stanly Lewis Burrell, together and each of them, in the County of Clark, State of Washington, on or about June 5, 2008, did unlawfully possess a controlled substance, to wit: Methamphetamine; contrary to the Revised Code of Washington 69.50.4013(1).

The defendant waived jury trial (CP 6) and this matter was tried to the Judge.

The defense first claims that the State had failed to prove that this defendant possessed the backpack or the drugs that were found inside it.

As a result, corpus delicti was not established and the defendant's conviction should be reversed. (Appellate Brief, page 13). The defendant further maintains that the evidence does not link the named defendant to the backpack and as such was insufficient to support a logical and reasonable inference that he owned, possessed, or controlled the drugs. (Appellate Brief, page 13).

As the statement of facts have set forth, the defendant's girlfriend, Ms. Phillips, had physical control of the blue backpack within which a camouflage bag was also located. In these bags were contained various items related to the drug culture, including methamphetamine.

Officer Nicholson testified for the State and described what he found when he looked inside the bag.

QUESTION (Deputy Prosecutor): Describe for the court what you observed when you took a look inside the blue backpack.

ANSWER (Officer Nicholson): Inside the blue backpack was another bag, a camouflage bag, and then inside both were drug paraphernalia; needles, cotton swabs, plastic Ziploc baggies, glass pipe, and a metal tin that contained a white crystal substance.

-(RP 11, L25 – 12, L6)

The white crystal substance that was located inside the bag was tested and determined to be methamphetamine. The defendant comes into this because several days later he approaches law enforcement and admits

to them that the drugs, which were the contents of the bags, belonged to him and him alone.

QUESTION (Deputy Prosecutor): And did Mr. Burrell make any statements to you regarding the suspected drugs and paraphernalia that you found on June 5 of this year?

ANSWER (Officer Nicholson): He did. Mr. Burrell told me that the drugs and drug paraphernalia that we located in the blue backpack were his, and he wanted his girlfriend, Karen Phillips, to be released.

QUESTION: Did he make any statements regarding the camouflage bag that was inside the blue backpack?

ANSWER: Yeah. He indicated the drugs in the blue backpack and camouflage bag as one.

-(RP 20, L25 – 21, L10)

The officer further clarified that the defendant knew about the drugs, knew about the blue backpack, and also knew about the camouflage bag that was located inside the backpack. (RP 33). The defendant argues that ownership has not been established and therefore no corpus delicti.

The question of corpus delicti in a drug case was reviewed in State v. Solomon, 73 Wn. App. 724, 870 P.2d 1019 (1994). As that court indicates:

The sole issue on appeal is whether the trial court erred in finding that the State presented prima facie proof, independent of Solomon's extrajudicial admissions, which established the corpus delicti of the crime of possession of a controlled substance.

The "corpus delicti" of the crime charged refers to "the objective proof or substantial fact that a crime has been

committed." Black's Law Dictionary 344 (6th ed. 1990). In general, proof of the corpus delicti is established by two elements: "(1) an injury or loss (e.g., death or missing property) and (2) someone's criminal act as the cause thereof." Bremerton v. Corbett, 106 Wn.2d 569, 573-74, 723 P.2d 1135 (1986). Washington law provides that a confession or admission may support a conviction only when the State produces independent evidence sufficient to establish the corpus delicti of the crime charged. State v. Smith, 115 Wn.2d 775, 780-81, 801 P.2d 975 (1990). Independent evidence is sufficient if it prima facie establishes the corpus delicti. State v. Meyer, 37 Wn. 2d 759, 763-64, 226 P.2d 204 (1951). That is to say, the evidence need not establish the corpus delicti beyond a reasonable doubt or even by a preponderance of the evidence. Meyer, at 763. Rather, a prima facie showing simply requires evidence which supports a "logical and reasonable deduction" that the crime occurred. State v. Riley, 121 Wn.2d 22, 32, 846 P.2d 1365 (1993) (quoting State v. Hamrick, 19 Wn. App. 417, 419, 576 P.2d 912 (1978)). The reviewing court must assume the truth of the State's evidence and must draw all reasonable inferences in favor of the State. State v. Neslund, 50 Wn. App. 531, 544, 749 P.2d 725 (citing Corbett, at 571), review denied, 110 Wn.2d 1025 (1988).

Solomon contends that the State failed to present prima facie proof that he, in particular, possessed the cocaine found in the apartment. Specifically, Solomon argues that the crime of possession of cocaine is analogous to those crimes where the identity of the accused is included as an element of the corpus delicti. See Bremerton v. Corbett, supra; State v. Hamrick, supra. Thus, in this case, because there was no independent evidence showing that he, in particular, possessed the cocaine, Solomon contends that the elements of the corpus delicti were not established. We disagree.

While the State must always prove the identity of the accused, proof of the identity of the person who committed the crime is not an element of the corpus delicti. Rather, to

establish the corpus delicti, the State need only offer proof that someone committed the crime. 3 Meyer, at 763 ("The identity of the person who has committed the crime is not material when the corpus delicti is being proven.") (citing C.J.S. 181, Criminal Law, § 916); Corbett, at 574 ("Proof of the identity of the person who committed the crime is not part of the corpus delicti, which only requires proof that a crime was committed by someone.").

-(State v. Solomon, 73 Wn. App. at 727-728)

In our case, there is clearly established possession of methamphetamine by the named co-conspirator, Karen Phillips. The question of whether or not the crime of possession was being committed has been answered by the officers finding her in possession of the drugs. The State submits that it is proper at that point to use the defendant's volunteered representation that the drugs belonged to him and no one else. It's also of importance that the defendant provided clear information to the officer about exactly what he was talking about. He described the blue backpack and he also described that inside that backpack would be found a camouflage bag. He further indicated that in the backpack and bag would be found drug paraphernalia and the actual drug itself, which he identified as methamphetamine. This type of evidence clearly links the defendant to the backpack and is sufficient to support a logical and reasonable inference that he owned and controlled the drugs that were found.

The case law cited by the defendant concerning corpus delicti are crimes where identity is a necessity. As the previous long quote from Solomon indicates drug possession is not one of these types of crimes where identity is necessary to be proven for purposes of corpus delicti. As indicated in State v. Scriber, 20 Wn. App. 388, 394, 580 P.2d 265 (1978) the law of corpus delicti in a drug case requires independent evidence of the corpus delicti of the crime of possession of a controlled substance by someone before a confession may be introduced. It does not require evidence “of the identity of the person who committed the crime”. City of Bremerton v. Corbett, 106 Wn.2d 569, 574, 723 P.2d 1135 (1986).

The second issue argued by the defendant is insufficient evidence. It's interesting though that he puts this in the context of taking out of the equation the defendant's confession of ownership. If you put the defendant's statement into the context of sufficiency of the evidence, it becomes obvious that there is sufficient evidence. This is consistent with the Findings of Fact and Conclusions of Law on Non-Jury Trial. (CP 11). Finding of Fact number 7 indicates as follows:

7. Defendant Burrell indicated that the drugs were in the backpack and the camouflage bag, and that the drugs belonged to him and to him alone. The court therefore finds that on the date in question the defendant had ownership of the subject drugs, the methamphetamine.

A copy of the complete Findings of Fact and Conclusions of Law on Non-Jury Trial is attached hereto and by this reference incorporated herein. Although the narcotics were not in the possession of the defendant at the time that his girlfriend was arrested, the possession of narcotics may be established by application of the doctrine of constructive possession. State v. Callahan, 77 Wn.2d 27, 29-30, 459 P.2d 400 (1969). To establish constructive possession, courts look at the totality of the situation to determine if there is substantial evidence tending to establish circumstances from which the trier of fact can reasonably infer that the defendant had dominion and control of the drugs and thus was in constructive possession of them. State v. Partin, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977). The evidence established by the State in our case clearly establishes ownership of the drugs. The defendant admits that the drugs belonged to him and to him alone. The State submits that this is sufficient to allow the question to go to the trier of fact.

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 3

The third assignment of error raised by the defendant is a novel concept that the trial court denied the defendant a right to counsel and thus that requires a reversal of the conviction. The defendant argues that he was

denied a closing argument in the non-jury case and therefore constitutes reversible error.

The State has no objection to the case law that is cited by the defendant. This appears to be a simple mistake that was remedied by the court.

After a long argument by the defendant that there was insufficient evidence (RP 65-75) the court ruled that it felt that there was sufficient evidence (RP 75-78). The court and the prosecutor erroneously assumed that the defendant had waived further argument. (RP 78-79). When it was determined that the defendant had not waived closing argument, the court allowed the defense attorney to argue. (RP 81-82). The defendant maintains in his brief that this is a denial of an opportunity to present a closing argument. In fact, the State would argue, that this is exactly the opposite of that. Once both the State and the court understood that the defendant wished to make additional argument, the court allowed that argument and that argument was given. The defense attorney agreed and went ahead and conducted the closing argument to the court. (RP 82-83). Once the defense attorney had completed the argument, the court then indicated that it was finding the defendant guilty of the crime. (RP 83).

The State submits that there is nothing in this record that would indicate that this was a denial of the right to conduct a closing argument.

The problem that the State has is that none of this case law appears to fit a situation where the defense attorney misunderstood what the court was saying, the court went ahead and proceeded to enter its findings, at which point the defense attorney indicated that she wished to conduct the closing and the court indicated that that was fine and allowed it. This was simply a misunderstanding that was corrected by the court. The claim further is that the court erred in finding the defendant guilty without allowing the closing argument. (Brief of Appellant, page 24). Yet the court did not make a finding of guilt until after both sides had had an opportunity to present any issues that they wished to raise on closing. What the court had done was proposed findings and indicated to the attorneys, once it was understood that the defense had not waived closing, that they could make comment and issue about any of those findings. (RP 80-83). It was after this period of argument that the court made a specific finding of guilt. That finding of guilt was not made prior to both sides having the opportunity to argue this case. (RP 83). As indicated, the State has no problems with the case law cited, it just is not applicable to our situation. Our situation appears to be similar to a mistrial when an irregularity in the trial proceedings has occurred.

A trial court should grant a mistrial when an irregularity in the trial proceedings is so prejudicial that it deprives the defendant of a fair trial.

See State v. Post, 59 Wn. App. 389, 395, 797 P.2d 1160 (1990), aff'd, 118 Wn.2d 596, 826 P.2d 172, 837 P.2d 599 (1992); State v. Johnson, 60 Wn.2d 21, 371 P.2d 611 (1962). In determining whether a trial irregularity deprived a defendant of a fair trial, this court examines several factors: (1) the seriousness of the irregularity; (2) whether challenged evidence was cumulative of other evidence properly admitted; and (3) whether the irregularity could be cured by an instruction to disregard the remark, an instruction which a jury is presumed to follow. State v. Escalona, 49 Wn. App. 251, 254, 742 P.2d 190 (1987) (citing State v. Weber, 99 Wn.2d 158, 165-66, 659 P.2d 1102 (1983)). Because the trial judge is in the best position to determine the prejudice of circumstances at trial, an appellate court reviews the decision to grant or deny a mistrial for abuse of discretion. Weber, 99 Wn.2d at 166.

As the case law indicates, the trial court is in the best position to determine whether or not the circumstances of this has deprived the defendant of a fair trial. It's a little unusual in the sense that normally this is reviewed as a question of possible prejudice to a jury and here we have a situation where it is tried to the Bench. In that regard then the appellate court normally reviews a decision following a bench trial to determine whether substantial evidence supports any challenged findings and whether the findings support the conclusions of law. State v. Carlson, 143

Wn. App. 507, 178 P.3d 371 (2008). The trial court in a bench situation is usually given broad discretion in how it wants to look at the evidence and the sequencing of presentation. This appears to be nothing more than an irregularity that occurred at the time of trial. The trial court fixed the irregularity and the defense was allowed to present a closing argument. There is nothing that indicates that the trial court abused its discretion in any way whatsoever.

IV. CONCLUSION

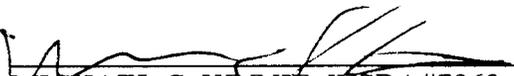
The trial court should be affirmed in all respects.

DATED this 7 day of March, 2009.

Respectfully submitted:

ARTHUR D. CURTIS
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Clark County, Washington

By:


MICHAEL C. KINNE, WSBA#7869
Senior Deputy Prosecuting Attorney

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Sherry W. Parker, Clerk, Clark Co.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
v.
STANLEY LEWIS BURRELL,
Defendant.

No. 08-1-00947-5
FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
NON-JURY TRIAL

THIS MATTER having come duly and regularly before the Court on the 30th day of July, 2008, for trial, Plaintiff State of Washington appearing by and through Scott S. Ikata, Deputy Prosecuting Attorney for Clark County, State of Washington; and defendant Stanley Lewis Burrell appearing in person and with his attorney Brandy Jeffers, defendant having previously entered a knowing, intelligent and voluntary written waiver of his right to trial by a jury, the Court now finds the following facts to have been proven beyond a reasonable doubt:

FINDINGS OF FACT

1. On June 5, 2008, a search warrant was executed at 14703 NE 35th Street, in Vancouver, Washington, which is in Clark County, Washington.

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2. In the course of law enforcement officers serving the search warrant, a blue backpack which also contained a camouflage bag was located in the west bedroom, which was subsequently labeled the master bedroom.
 3. In the course of the officers searching the blue backpack, pursuant to the search warrant, various drug paraphernalia was found, which included: needles, syringes, cotton swabs, alcohol swab packs, and a metal tin which contained a white powder substance. The subject white powder substance was submitted to the Washington State Crime Laboratory.
 4. That the examination by Catherine Dunn (of the Washington State Crime Lab) of the subject metal tin and the contents therein revealed that the tin contained Methamphetamine. [See Exhibit Number 12, the lab report by Catherine Dunn]. In addition, the court finds that the testing by Ms. Dunn from the Crime Lab was appropriate. The Court therefore finds that the metal tin, Exhibit Number 1, contained Methamphetamine.
 5. That in searching the master bedroom of the subject residence, officers also found identification of defendant Stanley Lewis Burrell in the form of a State Identification Card and a bank check with his name on it. [See Exhibit Number 3].
 6. That on the 11th of June, 2008, defendant Burrell contacted the west precinct of the Vancouver Police Department asking for the investigating

1 officer who made himself available to take a statement from the defendant.

2 The investigating officer was Officer Dustin Nicholson. During the course of
3 the interview, the defendant, after being advised of his Miranda warnings and
4 rights, claimed that he was the owner of the subject drugs and that the drugs
5 did not belong to his girlfriend Karen Phillips.
6

7 7. Defendant Burrell indicated that the drugs were in the blue backpack and the
8 camouflage bag, and that the drugs belonged to him and to him alone. The
9 Court therefore finds that on the date in question the defendant had
10 ownership of the subject drugs, the Methamphetamine.
11

12
13 8. The acts of the defendant hereinabove described occurred in Clark County,
14 State of Washington, on June 5, 2008.
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16 Based on the foregoing Findings of Fact, the court makes the following:
17

18 CONCLUSIONS OF LAW
19

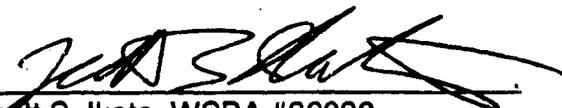
- 20 1. The Court has jurisdiction of the defendant Stanley Lewis Burrell and the
21 subject matter.
22 2. Methamphetamine is a controlled substance.
23 3. That on June 5, 2008, defendant Burrell through ownership of the drugs in
24 question was guilty of the crime of Unlawful Possession of a Controlled
25 Substance, to wit: Methamphetamine.
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27

1 4. Judgment and Sentence should be entered accordingly.

2
3 DONE in open Court this 11 day of August, 2008.

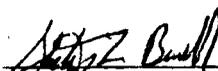
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6 
7 ROBERT L. HARRIS
8 JUDGE OF THE SUPERIOR COURT

9 Presented by:

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11 
12 Scott S. Ikata, WSBA #36030
13 Deputy Prosecuting Attorney

14
15 Copy received, approved for entry
16 this 11 day of August, 2008.

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18 
19 Brandy Jeffers, WSBA# 39478
20 Attorney for Defendant

21 
22 Stanley Lewis Burrell
23 Defendant

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CLERK OF COURT OF APPEALS DIV II
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
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STATE OF WASHINGTON,
Respondent,

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STANLY BURRELL,
Appellant.

No. 38235-1-II

Clark Co. No. 08-1-00947-5

DECLARATION OF
TRANSMISSION BY MAILING

STATE OF WASHINGTON)

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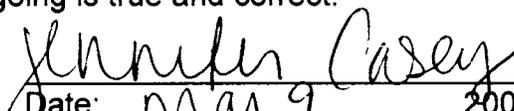
COUNTY OF CLARK)

On Mar 9, 2009, I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

TO: David Ponzoha, Clerk Court of Appeals, Division II 950 Broadway, Suite 300 Tacoma, WA 98402-4454	Peter B. Tiller Attorney at Law PO Box 58 Centralia, WA 98531
Stanly Burrell, DOC# 782020 c/o Appellate Attorney	

DOCUMENTS: Brief of Respondent

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.


Date: Mar 9, 2009.
Place: Vancouver, Washington.