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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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

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NO. 38655-1

STATE OF WASHINGTON,

Respondent.

vs.

LUCAS LEE WOODS,  
Appellant.

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On Appeal from the Superior Court of Lewis County

**STATE'S RESPONSE BRIEF**

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## STATEMENT OF THE CASE

### ARGUMENT

#### **A. THE OFFICER HAD PROBABLE CAUSE TO ARREST WOODS FOR POSSESSION OF A CONTROLLED SUBSTANCE.**

Woods argues that there was no probable cause for his arrest. Woods is mistaken.

“Probable cause to arrest exists if, under the circumstances, a reasonably cautious person would believe an offense is being committed.” State v. Olman, 147 Wn.App. 867, 882, 197 P.3d 1198 (2008), citing O’Neill, 62 Wn.App. at 116-117, 813 P.2d 166.

Furthermore, courts give consideration to the arresting officer’s special expertise in identifying criminal behavior. State v. Scott, 93 Wn.2d 7, 11, 604 P.2d 943 (1980). Moreover, an officer may arrest a suspect without a warrant if the officer has probable cause to believe the suspect has either committed a felony or is in the act of committing a felony. State v. Cabigas, 3 Wn.App. 740, 742, 477 P.2d 648 (1970). Put differently, “[p]robable cause for arrest has been defined as a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing the accused to be guilty.” State v. Huegen, 3 Wn.App. 572, 573-74, 476 P.2d 132 (1970)(citations

omitted). While more than a bare suspicion of criminal activity is necessary, proof beyond a reasonable doubt is not required. State v. Moles, 130 Wn.App. 461, 467, 123 P.3d 132 (2005)(citations omitted).

When deciding whether there was probable cause to arrest, one of the circumstances to be considered

is the qualification and function of the person making the arrest. An officer of a narcotics detail may find probable cause in activities of a suspect and in the appearance of paraphernalia or physical characteristics which to the eye of a layman could be without significance. His action should not, therefore, be measured by what might or might not be probable cause to an untrained civilian passerby, but by a standard appropriate for a reasonable, cautious, and prudent narcotics officer under the circumstances of the moment.

State v. Haugen, 3 Wn.App. at 573, 574, citing State v. Poe, 74 Wn.2d 425, 428, 445 P.2d 196 (1968). However, an officer does not need evidence to prove each element of a crime beyond a reasonable doubt at the time of an arrest. State v. Potter, 56 Wn.2d 835, 840, 132 P.3d 1089 (2006). "The officer is only required to be aware of facts sufficient to cause a reasonable person to believe a crime has been committed." Bishop v. City of Spokane, 142 Wn.App. 165, 170, 173 P.3d 318 (2007), citing Potter, supra, and State v. Gaddy, 152 Wn.2d 64, 70, 93 P.3d 872 (2004). In narcotics cases, the court examines "the totality of the

facts and circumstances within the officer's knowledge at the time of the arrest. The standard of reasonableness to be applied takes into consideration the special experience and expertise of the arresting officer." State v. Chavez, 138 Wn.App. 29, 34, 156 P.3d 246 (2007), quoting State v. Graham, 130 Wn.2d 711, 724, 927 P.2d 227 (1996)(quoting State v. Fore, 56 Wn.App. 339, 343, 783 P.2d 626 (1989). In other words, Courts look to the totality of the circumstances and determine whether all facts, taken together, in light of the officer's experience and knowledge are sufficient to establish probable cause. State v. Fore, 56 Wn.App. 339, 343, 783 P.2d 626 (1989).

In the present case, the totality of the circumstances, when viewed in light of the officer's experience and knowledge, established probable cause for the Officer to arrest Woods and his cohort. The arresting officer in this case, Officer Royal, testified as to his training and experience in the field of various controlled substances. RP 19. Officer Royal also said that he was familiar with the various ways that people ingest controlled substances, such as snorting or injecting. Id. Officer Royal said that on June 14, 2008, it was dark and he was on duty driving near Haps Tavern in Lewis County. RP 19,20. The Officer noted that there are

apartments above the tavern. RP 21. As the Officer drove past Haps Tavern he saw two males bending over a bench in the entryway. RP 20,21. The two males were inside an area which was open to the public, and there was a glass door with wood trim around it which made it possible for passers-by to see inside. RP 21. Officer Royal drove by, parked his vehicle, and walked back to the area where he had seen the two males, who were about five feet from the glass door. RP 21,22. Upon returning on foot to where Officer Royal had seen the two men, the Officer noted that the two males were still in the same place, and that they were still bending over the bench. RP 22. Officer Royal then opened the door, stuck his head inside, and asked the two males what they were doing. RP 22.

The men said that they were exchanging phone numbers. Officer Royal asked the two men if he could see the phone numbers. RP 22. Woods fumbled through his wallet and produced a phone number. RP 23. While this was going on, Officer Royal looked at the bench and in plain view saw what appeared to be a line of methamphetamine on top of the bench that the two men had been bending over. RP 23. The Officer also saw a little bindle on top of the bench. RP 24. The little bindle was a clear, plastic

baggie—about 2 x 2 with red writing on it that said, “stay high.” RP 24. Inside the bindle, about a quarter inch deep across the bottom of the bag was a white, crystal powdery substance. RP 26. Officer Royal also saw that Wood’s cohort, Mr. Osborne, was holding a rolled-up \$20 bill-- commonly used to snort drugs. RP36. Officer Royal also noted that it is common for people to take turns snorting lines of drugs. RP 36. Officer Royal then arrested the two men for possession of a controlled substance (methamphetamine). RP 23,24. Officer Royal performed a field test on the powdery substance and it tested positive for methamphetamine. RP 24. Officer Royal scraped the line of meth on the bench into a baggie and put the bindle in another baggie and put them into evidence. These items were shipped to the crime laboratory where it was determined the items contained methamphetamine. RP 37-42.

What these facts show is that the totality of the circumstances, given the expertise and training of Officer Royal, show that Officer Royal had probable cause to arrest Woods and his cohort for possession of a controlled substance. After all, “[t]he officer is only required to be aware of facts sufficient to cause a reasonable person to believe a crime has been committed.” Bishop v. City of Spokane, 142 Wn.App. at 170. When Officer Royal went

back in the dark to the building where he had seen the two men bending over a bench, and when he got a strange reason as to why the two men had been huddled together over the bench (exchanging phone numbers?), and when he saw in plain view that on the top of the bench there was a substance arranged in a line for snorting, along with a bindle containing white crystal powdery stuff, said bindle also having “stay high” printed on it, plus the fact that Woods’ cohort was holding a rolled-up \$20 bill (commonly used to snort drugs), all of these facts properly contributed to Officer Royal’s belief that he had probable cause to arrest Woods and his cohort. Woods’ argument to the contrary is without merit and this court should find that there was probable cause to arrest Woods in this case.

**B. THERE WAS SUFFICIENT EVIDENCE PRESENTED TO PROVE THAT WOODS WAS IN CONSTRUCTIVE POSSESSION OF THE CONTRABAND.**

Woods also claims that there was insufficient evidence to support his conviction for possession of methamphetamine. This argument is also without merit.

Sufficient evidence will be found where, viewed in the light most favorable to the State, it supports a rational fact finder’s finding of guilt 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 reasonable inferences drawn from it. Id. at 201. On review, circumstantial and direct evidence carry equal weight. State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004). Actual possession of contraband exists where goods are in the personal custody of the person charged with possession. Chavez, 138 Wn.App. at 34(citations omitted). A person has constructive possession of illegal drugs if he or she has dominion and control over those drugs. State v. Roberts, 80 Wn.. App. 342, 353, 908 P.2d 892 (1996).

Constructive possession exists where a person not in actual possession still has dominion and control over the item. State v. Callahan, 77 Wn.2d 27, 29, 459 P.2d 400 (1969). Dominion and control can be established by circumstantial evidence. State v. Collins, 76 Wn.App. 496, 501, 886 P.2d 243, *review denied*, 126 Wn.2d 1016, 894 P.2d 565 (1995).

Courts determine whether a person has dominion and control over an item by considering the totality of the circumstances. State v. Parton, 88 Wn.2d 899, 906, 567 P.2d 1136 (1977). Dominion and control does not need to be exclusive. State v. Wood, 45 Wn.App. 299, 312, 725 P.2d 435, *review denied*, 107

Wn.2d 1017 (1986). Thus, one can be in constructive possession of the contraband jointly with another person. State v. Morgan, 78 Wn.App. 208, 212, 896 P.2d 731, *review denied*, 127 Wn.2d 1026, 904 P.2d 1158 (1995)(citations omitted). “One aspect of dominion and control is that the defendant may reduce the object to actual possession immediately.” State v. Chavez at 35. However, “mere proximity to the drugs and evidence of momentary handling is not enough to establish constructive possession. State v. Galbert, 70 Wn.App. 721, 727-729, 855 P.2d 310 (1993), citing State v. Spruell, 57 Wn.Ap. 383, 388, 788 P.2d 21 (1990).

In the present case, the State proved beyond a reasonable doubt that Woods had constructive possession of the methamphetamine located on top of the bench where he and his cohort were bending over. RP 22. The facts, when viewed in the light most favorable to the State, including all inferences therein, show that not only was there a “line” of meth all ready for snorting, but there was also more white, crystalline substance located inside the “little bundle”— which was also located on the top of the bench where Woods and his cohort had been seen bending over. RP 28. Woods and his cohort were seen bending over the bench both times that Officer Royal saw the men—when he first drove by, and

when he approached the entrance on foot. RP 20, 22. The little bindle seen on top of the bench contained a powdery substance about a quarter inch deep across the bottom of the baggie. RP 27. This little bindle had the words “stay high” written on it. RP 35. And then we have Woods’ cohort standing there holding a rolled-up \$20 bill—commonly used for snorting a substance. RP 36. And, according to Officer Royal, it is common for people to take turns snorting lines of drugs. RP 36. And, while it is true that Officer Royal did not see Woods actually snorting any of the substance, it is also true that the facts presented here show that Woods was in constructive possession of the methamphetamine because, from where Woods was standing, he could have reduced, at minimum, the “little bindle” containing more of the substance to “actual possession immediately” by grabbing the bindle off the top of the bench. State v. Chavez at 35 (“One aspect of dominion and control is that the defendant may reduce the object to actual possession immediately.”) Put another way, Woods’ posture when bending over the bench, plus his proximity to the bench, plus the fact that Woods was seen bent over the bench both times the officer saw him, viewed in the light most favorable to the State, is at least an inference that Woods was in constructive possession of the

contraband. In sum, the State proved beyond a reasonable doubt that Woods was in constructive possession of the contraband, and his conviction should be affirmed.

CONCLUSION

The totality of the circumstances here, coupled with the Officer's training and experience, show that the Officer had probable cause to arrest Woods and his cohort for possession of a controlled substance. Likewise, the State proved beyond a reasonable doubt that Woods was in constructive possession of the contraband. Accordingly, Woods' conviction should be affirmed in all respects.

RESPECTUFLY SUBMITTED this 29th day of June, 2009.

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Deputy Prosecuting Attorney

COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON, ) NO. 38655-1 II  
Respondent, )

vs. )

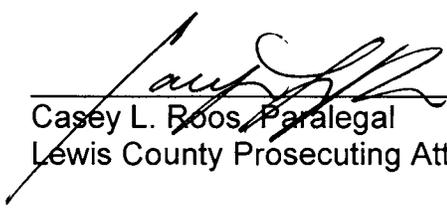
LUCAS LEE WOODS, )  
Appellant. )  
DECLARATION OF  
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BY [Signature]  
COURT OF APPEALS  
DIVISION II

Ms. Casey Roos, paralegal for Lori Smith, Deputy Prosecuting Attorney, declares under penalty of perjury under the laws of the State of Washington that the following is true and correct: On June 29, 2009, the appellant was served with a copy of the **Respondent's Brief** by depositing same in the United States Mail, postage pre-paid, to the attorney for Appellant at the name and address indicated below:

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DATED this 29<sup>th</sup> day of 2009, at Chehalis, Washington.

  
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