

NO. 40607-1

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

STATE OF WASHINGTON
BY  DEPUTY

STATE OF WASHINGTON, RESPONDENT

v.

CHRISTOPHER GREEN, APPELLANT

Appeal from the Superior Court of Pierce County
The Honorable Ronald E. Culpepper

No. 08-1-05855-9

BRIEF OF RESPONDENT

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

1. Did the trial court correctly deny the defendant's motion to suppress the results of the properly obtained search warrant?
2. Did the State present sufficient evidence for the jury to conclude that the defendant had constructive possession of the controlled substances and intended to distribute them?
3. Did the trial court properly instruct the jury where there was no unanimity instruction but the location of the marijuana as found by law enforcement and the nature of the charge of possession with intent to distribute?

B. STATEMENT OF THE CASE.

1. Procedure

The State charged the defendant, Christopher Green, with three counts of unlawful possession of a controlled substance with intent to deliver and two counts of unlawful possession of a controlled substance on December 10, 2008. CP 1-3. The State later submitted amended information on January 25, 2010 to correct an error with respect to the date of the charges, changing it from December 3, 2008 to December 9, 2008. CP 126-128.

The court held a CrR 3.6 suppression hearing on January 19, 2010 regarding the efficacy of the search warrant and admissibility of the

evidence obtained from the search of the residence. RP 8-54. The court held that the warrant had been properly issued. RP 50.

On January 20, 2010, the court held a CrR 3.5 hearing regarding statements made by the defendant to Officer Quinn during the search of the residence and held the statements inadmissible. RP 61-92.

The jury found the defendant guilty of three counts of unlawful possession of a controlled substance with intent to deliver and one count of unlawful possession of a controlled substance on January 25, 2010. CP 76-83. The jury found him not guilty of unlawful possession of a controlled substance (cocaine). CP 82.

The court sentenced defendant to 20 months confinement on March 26, 2010. CP 148-161.

On April 23, 2010, defendant filed notice of appeal. CP 162.

2. Facts

On December 9, 2008, Tacoma Police Officer Aaron Quinn served a search warrant at 901 East 61st Street in Tacoma. CP 29-30; RP 107. The officers sought out narcotics at the residence. *Id.*

When Officer Kenneth Smith entered the master bedroom of the house, he found the defendant in bed. RP 145. At the time, he had been in bed with a female. RP 146.

When initially contacted, the defendant had no pants on. RP 114. Officer Quinn asked him if a pair of pants on the floor belonged to him;

the defendant stated that they did. RP 115. When Officer Quinn searched the pants, he found a large wad of cash in the pocket. *Id.* After handcuffing the defendant, Pierce County Deputy William Brand arrived with the drug dog and searched the bedroom for drugs. RP 147.

Deputy Brand and Charlie, the drug dog, detected drugs in two locations within the bedroom: the nightstand and a box in the closet. RP 220. Officer Stephen found a digital scale next to the box. RP 224. Officer Smith stated that in the box, he found 119 small bags with markings of aliens and skulls, the types of bags he would expect for use in selling drugs. RP 158. He also found 27 individually wrapped small bags of marijuana. RP 159; RP 295. Officer Smith testified that he discovered a pill bottle in the box. RP 160. The bottle contained two bags: one contained an assortment of pills while the other contained heroin. RP 185; RP 299.

Of the pills taken from the defendant's closet, Officer Smith identified 62 of them as five milligram methylphenidate, also known as Ritalin, a schedule 2 controlled substance. He also identified 32 pills as ten milligram methylphenidate. RP 154-55; 304-08. An additional 33 yellow tablets were identified as clonazepam, a schedule 4 controlled substance. RP 156.

The officers found a letter that had the defendant's name and the address of the residence on it. RP 246-48. They also found another document, a supermarket club card application, in the closet near the box

containing the drugs. RP 180-81. The supermarket club card application contained the defendant's name and the address of the residence on it. RP 178-79.

After searching the house, Deputy Brand and Charlie, the drug dog, went outside to examine the automobiles. RP 216. Charlie alerted to a pocket on the door. RP 216-17. They found additional marijuana and crack-cocaine in the door pocket. RP 217.

C. ARGUMENT.

1. THE TRIAL COURT DID NOT ERR IN DENYING THE DEFENDANT'S MOTION TO SUPPRESS THE PROPERLY EXECUTED SEARCH WARRANT.

When a search warrant has been properly issued by a judge, the party attacking it has the burden of proving its invalidity. *State v. Fisher*, 96 Wn.2d 962, 639 P.2d 743 (1982). When a magistrate issues a warrant, the court exercises judicial discretion; these decisions are reviewed for abuse of discretion and should be given great deference by the reviewing court. *State v. Cole*, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). *See also State v. Young*, 123 Wn.2d 173, 195, 867 P.2d 593 (1994) ("Generally, the probable cause determination of the issuing judge is given great deference."); *State v. J-R Distribs., Inc.*, 111 Wn.2d 764, 774, 765 P.2d 281 (1988) ("[D]oubts as to the existence of probable cause [will be] resolved in favor of the warrant."). Hypertechnical interpretations should

be avoided when reviewing search warrant affidavits. *State v. Feeman*, 47 Wn. App. 870, 737 P.2d 704 (1987). The magistrate can draw commonsense and reasonable inferences from the facts and circumstances set forth. *State v. Yokley*, 139 Wn.2d 581, 596, 989 P.2d 512 (1999). “Doubts should be resolved in favor of the warrant.” *State v. Partin*, 88 Wn.2d 899, 904, 567 P.2d 1136 (1977) (citing *United States v. Ventresca*, 380 U.S. 102, 85 S. Ct. 741, 13 L. Ed. 2d 684 (1965)).

In reviewing probable cause the court looks to the four corners of the search warrant itself. Probable cause to search is established if the affidavit in support sets forth facts sufficient for a reasonable person to conclude that the defendant is probably involved in criminal activity, and that evidence of a crime can be found at the place to be searched. *State v. Maxwell*, 114 Wn.2d 761, 791 P.2d 223 (1990). Facts that, standing alone, would not support probable cause can do so when viewed together with other facts. *State v. Cole*, 128 Wn.2d at 286. A finding of probable cause will not be reversed absent a showing of abuse of discretion on the part of the judge. *State v. Condon*, 72 Wn. App. 638, 642, 865 P.2d 521 (1993).

- a. The information provided to the court was not stale as to render probable cause insufficient.

Regarding matters of timing, the court has no definitive rule as to what renders facts stale for purposes of determining probable cause: “The

test for staleness of the information in an affidavit is common sense.” *State v. Hall*, 53 Wn. App. 296, 300, 766 P.2d 512 (1989), *review denied*, 112 Wn.2d 1016 (1989). The court must examine the totality of the circumstances to determine whether the information provided is stale for purposes of finding probable cause. *State v. Maddox*, 152 Wn.2d 499, 506, 98 P.3d 1199 (2004). “What is important is not the actual date on which illegal activity was observed, but rather a magistrate’s conclusion that the property sought is probably on the ... premises ... *at the time [the judge] issues the warrant.*” *State v. Young*, 62 Wn. App. 895, 903, 802 P.2d 829 (1991) (*quoting Partin*, 88 Wn.2d at 904) (emphasis added).

The defendant accepts the court’s findings of fact and only disputes court’s conclusion of law regarding the validity of the warrant. App. Br. at 8.

Here, the trial court held that “[t]he issuing judge did not abuse her discretion when she authorized the search warrant, because the affidavit established probable cause that a crime was being committed and established a nexus between the crime and the places to be searched.” CP 140 (Conclusion of Law #4). The magistrate issued this warrant on December 5, 2009, within 72 hours of the time at which the confidential informant claimed to have seen crack cocaine. RP 23-24.

“Staleness, in other words, involves not only duration but the probability that the items sought in connection with the suspected criminal activity will be on the premises at the time of the search.” *State v. Perez*,

92 Wn. App. 1, 8-9, 963 P.2d 881 (1998). In *Perez*, the Court of Appeals held that the number of intervening days “is not the final determinant of probable cause” and that “the three-day period that elapsed between the last observation described in the affidavit and the issuance of the warrant was not long enough to render the warrant invalid.” *Perez*, 92 Wn. App. at 8-9. The court in *Perez* recognized that given evidence of continuing drug sales, three days did not render stale the information provided as a basis for the warrant. *Perez*, 92 Wn. App. at 9.

In *State v. Higby*, the court held that a warrant was stale, but the information of a single drug transaction was two weeks old when the magistrate approved the warrant. 26 Wn. App. 457, 461, 613 P.2d 1192 (1980). Information regarding a single sale of marijuana two weeks prior did not represent sufficient probable cause for a warrant. *Id.* at 461. However, in *State v. Petty*, the court reviewed similar circumstances to *Higby* in which the trial court issued a warrant on two week old information. 48 Wn. App. 615, 621-22, 740 P.2d 879 (1987). In *Petty*, unlike *Higby*, the court held that two week old information was sufficient to support probable cause since the informant had observed “an extensive growing operation.” *Id.* at 622.

Here, the information provided by the confidential informant concerned events within 72 hours prior to the issuance of the warrant. CP 32. Thus, the information provided for issuance of the warrant resembled the information provided in *Perez*. While *Higby* concerned two week old

information, the information provided to the magistrate here concerned events only three days prior. Using the common sense rule set forth in *Hall*, the judge had no reason to consider the information stale. Based on the totality of the circumstances, the judge did not abuse her discretion in finding sufficient probable cause to issue the warrant.

- b. Law enforcement demonstrated a sufficient nexus between the criminal activity and the location to be searched to justify issuance of the warrant.

In issuing a search warrant, a judge must find a “nexus between the items to be seized and the place to be searched ...established by specific facts.” *State v. Thein*, 138 Wn.2d 133, 145, 977 P.2d 582 (1999). “(I)f in the considered judgment of the judicial officer there has been made an adequate showing under oath of circumstances going beyond suspicion and mere personal belief that criminal acts have taken place and that evidence thereof will be found in the premises to be searched, the warrant should be held good.” *State v. Seagull*, 95 Wn.2d 898, 907, 632 P.2d 44 (1981) (quoting *State v. Patterson*, 83 Wn.2d 49, 58, 515 P.2d 496 (1973)).

In *Thein*, the court found unpersuasive the argument that a “nexus is established between the items to be seized and the place to be searched where there is sufficient evidence to believe a suspect is probably involved in drug dealing, and the suspect resides at the place to be searched.” *Thein*, 138 Wn.2d at 141. Law enforcement obtained a warrant to search

the defendant's residence based on vague information provided during a search of a defendant's rental property. *Id.* at 137-40. Specifically, the court found that the little information gained from the search of the first residence did not provide a sufficient nexus to associate the defendant or justify a search of his primary residence. *Id.* at 140; 148-49.

Here, unlike *Thein*, Officer Quinn had a reliable informant who provided information regarding the sale of drugs at 901 E. 61st Street in Tacoma. CP 32. He identified a black male at the address by the name of Chris that conducted the sale. *Id.* Officer Quinn identified the suspect as the defendant, having been previously arrested for unlawful possession of a controlled substance with intent to distribute and having given his address as 901 E. 61st Street to the Department of Corrections. CP 32. The court here determined that "there [was] probable cause to believe that ... [c]ontrolled substances as defined by law ... are being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept, about and upon" the residence at 901 E. 61st Street. CP 29.

A determination of probable cause will not be reversed absent a showing of an abuse of discretion on the part of the judge. *Condon*, 72 Wn. App. at 642. There is nothing to suggest that the magistrate here abused her discretion in authorizing the search warrant. Therefore, the

trial court did not err in finding that the magistrate properly issued the warrant.

2. THE JURY HAD SUFFICIENT INFORMATION TO CONCLUDE THAT DEFENDANT POSSESSED THE CONTROLLED SUBSTANCES AND INTENDED TO DISTRIBUTE THEM.

Due process requires the State to prove every element of a crime beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d 484, 489, 656 P.2d 1064 (1983). When examining claims of insufficiency of evidence, the reviewing court must construe the evidence in light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Given the evidence, the appropriate standard of review is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Joy*, 121 Wn.2d 333, 338, 851 P.2d 654 (1993). “[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.” *Joy*, 121 Wn.2d at 338 (citing *State v. Partin*, 88 Wn.2d 899, 906-7, 567 P.2d 1136 (1977)). Further, “claims of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn from them.” *Joy*, 121 Wn.2d at 338 (citing *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254 (1980)). Regarding issues of credibility, conflicting testimony, and persuasiveness of evidence, the

reviewing court defers defer to the trier of fact's interpretations. *State v. Walton*, 64 Wn. App. 410, 415-16, 824 P.2d 533 (1992).

“Except 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(1). The defendant first argues that the State failed to properly demonstrate that he possessed the substances in question. App Br. at 13. Second, the defendant argues that the State did not show defendant's intent to distribute the controlled substance. App. Br. at 17.

- a. The State presented sufficient evidence for the jury to find that the defendant constructively possessed the controlled substances.

“To establish constructive possession, courts must ‘look at the *totality of the situation* to determine if there is substantial evidence tending to establish circumstances from which the jury can reasonably infer that the defendant had dominion and control of the drugs and thus was in constructive possession of them.’” *State v. Paine*, 69 Wn. App. 873, 878, 850 P.2d 1369 (1993) (*quoting State v. Porter*, 58 Wn. App. 57, 60, 791 P.2d 905 (1990)) (emphasis in original). Finding that the defendant has dominion and control of the location where the drugs were found can demonstrate constructive possession. *Paine*, 69 Wn. App. at 878 (*citing Porter*, 58 Wn. App. at 60-61). “[D]ominion and control over premises in which police discover drugs is but one factor in determining whether the

defendant had dominion and control, i.e., constructive possession, over the drugs themselves.” *State v. Cantabrana*, 83 Wn. App. 204, 208, 921 P.2d 572 (1996).

In *Cantabrana*, the court reversed a criminal conviction based on a jury instruction which did not properly state the law of constructive possession. *Cantabrana*, 83 Wn. App. at 207-08. However, the court distinguishes a case involving an improper jury instruction from that of sufficiency of evidence. *Cantabrana*, 83 Wn. App. at 207-08. “When the sufficiency of the evidence is challenged on the basis that the State has only shown dominion and control over premises, and not over drugs, *courts correctly say that the evidence is sufficient* because dominion and control over premises raises a rebuttable inference of dominion and control over the drugs.” *Cantabrana*, 83 Wn. App. at 208 (emphasis added). The court in *Cantabrana* emphasized the importance of giving the jury a proper instruction regarding the relevant legal standard. *Cantabrana*, 83 Wn. App. at 207-08 (citing *State v. Lefaber*, 128 Wn.2d 896, 900, 913 P.2d 369 (1996)).

At trial, the court instructed the jury on constructive possession. CP 95. “Constructive possession occurs when there is no actual physical possession but there is dominion and control over the substance.” *Id.* Further, the trial court here instructed the jury to consider all of the relevant circumstances, including “whether the defendant had the immediate ability to take actual possession of the substance, whether the

defendant had the capacity to exclude others from possession of the substance, and whether the defendant had dominion and control over the premises where the substance was located.” *Id.* The court properly instructed the jury on the legal meaning of constructive possession.

Here, law enforcement found the defendant at the residence during the execution of the search warrant. RP 107-08; 116-17. In the bedroom that the defendant was found in, they also found the drugs and baggies. RP 148-60. Police officers found two documents with the defendant’s name that listed the residence as his address next to the box. RP 162-63. During closing argument, the State argued to the jury that the defendant had constructive possession of the drugs in question. RP 371-382. In response, defense counsel made a counter-argument, attempting to convince the jury that the State had not sufficiently demonstrated that the defendant possessed the controlled substances in question. RP 389-391. The jury had enough information to properly make an informed decision.

Demonstrating dominion and control over the premises raises a rebuttable inference of dominion and control of the drugs; “courts correctly say that the evidence is sufficient[.]” *Cantabrana*, 83 Wn. App. at 208. Furthermore, the jury had the correct instruction as to finding constructive possession. Based on the evidence presented at trial and the jury instruction given by the court, the jury had sufficient evidence to find that defendant had constructive possession of the drugs.

- b. The State presented sufficient evidence for the jury to find that the defendant intended to distribute the controlled substances.

An inference of intent to distribute cannot be drawn merely from a large quantity of a controlled substance; the court generally requires that at least one additional factor be present. *State v. Zunker*, 112 Wn. App. 130, 136, 48 P.3d 344 (2002) (citing *State v. Hagler*, 74 Wn. App. 232, 236, 872 P.2d 85 (1994)). However, the court held that a large quantity of drugs was not necessarily required to demonstrate intent to distribute; even a small quantity may suffice. *Zunker*, 112 Wn. App. at 136 (citing *State v. Brown*, 68 Wn. App. 480, 485, 843 P.2d 1098 (1993)). The courts have found various factors as indicative of intent to distribute, including: possession of cocaine, heroin, and \$3,200, combined with an officer's observations of deals; 1 1/2 pounds of cocaine combined with an informant's tip and a controlled buy; 1 ounce of cocaine, together with large amounts of cash and scales supported an intent to deliver, where the court specifically noted that cocaine is commonly sold by the 1/8 ounce; possession of cocaine, uncut heroin, lactose for cutting, and balloons for packaging supported an inference of intent to deliver. *Brown*¹, 68 Wn. App. at 484. "Even though evidence may be consistent with personal use,

¹ *Brown* cites *State v. Llamas-Villa*, 67 Wn. App. 448, 836 P.2d 239 (1992); *State v. Mejia*, 111 Wn.2d 892, 766 P.2d 454 (1989); *State v. Lane*, 56 Wn. App. 286, 297, 786 P.2d 277 (1989); and *State v. Simpson*, 22 Wn. App. 572, 590 P.2d 1276 (1979).

it is the duty of the fact finder, not the appellate court, to weigh the evidence.” *State v. Goodman*, 150 Wn.2d 774, 783, 83 P.3d 410 (2004).

At trial, Officer Patrick Stephen testified that he had training on how to recognize a case of distribution from one of simple possession. RP 225. Specifically, “[p]ackaging, weighing devices, [and] different denominations of currency” all provided indication that a suspect intended to distribute drugs. RP 225. Officer Quinn gave similar testimony, stating that “individual packaging in addition to multiple plastic bags and scales” were certain signs which would indicate a suspect had intent to distribute drugs. RP 107.

The officers found a digital scale, which Officer Stephen testified that in his experience “[is] primarily used to weigh narcotics.” RP 228. They also found “a wad of cash” in the defendant’s pants pocket and a large sum of money in the closet. RP 115; 226. The two wads amounted to a large number of bills of various denominations.² RP 246. Officers found approximately 119 small marked baggies “commonly found to contain a narcotic or be used for holding narcotics.” RP 158-160; 183-84. Officer Smith found 62 five milligram pills of methylphenidate, 32 ten

² Officer Sugai testified that the bills from the closet amounted to \$1,155. He counted “[s]even five-dollar bills, four ten-dollar bills, 14 20-dollar bills, two 50-dollar bills, and seven 100-dollar bills.” RP 246. He further testified that the bills from defendant’s pocket amounted to \$645. He counted “Five one-dollar bills, 14 five-dollar bills, three ten-dollar bills, 22 twenty-dollar bills, and two fifty-dollar bills.”

milligram pills of methylphenidate, and 33 pills of clonazepam. RP 154-157.

The large amount of cash consistent with dealing, as well as the packaging, pre-packaged marijuana, and the scale are all compelling evidence of intent to deliver. The State presented sufficient evidence for the jury to find that the defendant had intent to deliver the methylphenidate and clonazepam.

3. SINCE THE POSSESSION OF MARIJUANA IN MULTIPLE LOCATIONS CONSTITUTED CONTINUOUS ELEMENTS OF A SINGLE CRIMINAL ACT, THE COURT DID NOT NEED TO GIVE A UNANIMITY INSTRUCTION TO THE JURY.

When a jury decides a case of “multiple acts” as part of a single crime charged, the court must provide a unanimity instruction to ensure “jury unanimity regarding the act or incidents constituting the crime.” *State v. Kitchen*, 110 Wn.2d 403, 405, 756 P.2d 105 (1988) (citing *State v. Petrich*, 101 Wn.2d 566, 573, 683 P.2d 173 (1984)). Failure to provide such an instruction or for the State to elect which act constitutes the crime charged represents error “because of the possibility that some jurors relied on one act or incident and some relied on another, resulting in a lack of unanimity on all of the elements necessary for a valid conviction.” *State v. Coleman*, 159 Wn.2d 509, 512, 150 P.3d 1126 (2007) (citing *Kitchen*,

110 Wn.2d at 411-12). This error requires reversal unless the court finds it harmless beyond a reasonable doubt. *Coleman*, 159 Wn.2d at 512.

However, the court need not give the jury a unanimity instruction in cases “where the evidence indicates a ‘continuing course of conduct.’” *State v. Handran*, 113 Wn.2d 11, 17, 775 P.2d 453 (1989) (quoting *Petrich*, 101 Wn.2d at 571). “To determine whether criminal conduct constitutes one continuing act, the facts must be evaluated in a commonsense manner.” *Handran*, 113 Wn.2d at 17 (citing *Petrich*, 101 Wn.2d at 571). Thus, a commonsense evaluation of the circumstances can determine whether or not different elements presented by the State constitute a single, continuing course of conduct instead of multiple acts.

With regard to the manufacturing methamphetamine, the court held that conducting portions of the manufacturing process at different locations did not require a unanimity instruction; “the fact that [the defendant]’s acts occurred at different times and places is outweighed by the commonsense conclusion that the purpose of the acts was to make methamphetamine for Ms. Garoutte and himself. The acts were one continuous course of conduct.” *State v. Naillieux*, 158 Wn. App. 630, 640, 241 P.3d 1280 (2010) (internal citation omitted). Commonsense evaluation indicated that performing multiple steps as part of a single act of manufacturing methamphetamine did not constitute separable acts. Therefore, the court need not give a unanimity instruction to the jury.

Here, law enforcement found marijuana in defendant's bedroom and in the car outside. Officer Quinn testified at trial that "[i]t's typical of narcotics dealers to keep their proceeds and their goods, for lack of a better word, narcotics, scattered throughout the house and also in their vehicles." RP 114. It falls within the purview of common sense for a person distributing drugs to keep them in different places under his control: to protect the product in case one supply is damaged or stolen; smaller parcels could be temporarily stored for distribution; different containers could be used for purely logistical reasons. Using the commonsense evaluation rule of *Handran*, the court can conclude that the defendant's act constituted a single continuous act of possession with intent to distribute and not, as the defendant argues, two separable counts of possession with intent to distribute.

The defendant suggests that although the State only charged him with a single count of possession of marijuana, the State "presented evidence of and argued to the jury that multiple acts of possession of marijuana were committed[.]" App. Br. at 18-19. RCW 69.50.401(1) states that "it is unlawful for any person to manufacture, deliver, or *possess* with intent to manufacture or deliver, a controlled substance." (emphasis added). Nothing in the statute or case law requires that the controlled substance be possessed in only one location or in only a single parcel. Therefore, the State's reference to marijuana stored in two separate locations was not a reference to two separate acts of possession.

There was a single act of possession of marijuana. Accordingly, no unanimity instruction was required. Moreover, nothing in the State's argument suggested that storing the drugs in multiple locations constituted multiple instances of possession. *See* RP 372-386; 418-431.

The State presented evidence to the jury that the defendant possessed marijuana and intended to deliver it. Although the defendant stored the marijuana in multiple locations, a behavior Officer Quinn testified to as typical for drug dealers, the State did not intend nor did anything at trial suggest that these acts constituted multiple acts requiring a unanimity jury instruction. Therefore, the trial court did not error in not providing such an instruction.

D. CONCLUSION.

The law enforcement personnel searched the residence in question pursuant to a properly issued search warrant. They obtained evidence that the State presented at trial, sufficiently demonstrating to the jury that defendant unlawfully possessed controlled substances and intended to deliver them. Further, a commonsense evaluation of the possession charge indicates that having the marijuana in multiple locations does not

necessitate a unanimity instruction for the jury. For the reasons argued,
the State respectfully requests that the defendant's sentence be affirmed.

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STATE OF WASHINGTON
BY [Signature]
DEPUTY

DATED: MARCH 28, 2011.

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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.

3/28/11 [Signature]
Date Signature