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Supreme Court No. 94325-7
(Court of Appeals No. 72553-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

ADRIAN SASSEN -VANELSLOO, Appellant.

RESPONDENT'S SUPPLEMENTAL BRIEF

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A. ISSUES PRESENTED

1. Whether the trial court has discretion pursuant to RCW 2.36.110 and CrR 6.5, to dismiss a juror mid-trial when a juror reveals she previously met with and benefited from the assistance of a material alibi witness whose testimony was central to the issues before the jury. Following limited questioning of juror 12, the trial court determined in an abundance of caution that replacing her with an alternate juror would be appropriate.

2. Whether sufficient evidence supports the imposition of a firearm enhancement when the evidence shows Sassen Vanelsloo was engaged in an ongoing criminal operation of possessing and selling drugs from the Kia he was driving and had strategically placed a pistol grip shotgun a position suggesting it was 'there to be used' to protect his drugs located in the rear of the Kia.

B. FACTS

Adrian SassenVanelsloo was identified as the driver of a black Kia SUV who on September 7th 2012, eluded a traffic stop by speeding through multiple stop signs and traffic lights reaching speeds up to 70 mph in residential 25 mph neighborhoods. RP 540-551, 78. Eventually SassenVanelsloo stopped the Kia in the middle of an intersection and fled, leaving the Kia with the driver side door open and his terrified girlfriend, Athena, sitting in the front passenger seat. RP 540-551, 78.

Athena was reluctant to identify the driver as Sassen Vanelsloo but eventually explained he had driven her to a 9:30 a.m. court hearing in Bellingham that morning. RP 82-84, 157. After picking Athena up from

the hearing, SassenVanelsloo made an unlawful right hand turn at a red light prompting Officer Leake to initiate a traffic stop. RP 86-88.

Athena explained both she and SassenVanelsloo sold drugs, usually methamphetamine and heroin. RP 105-6. Athena also confirmed that at the time of the stop, she was also a maintenance level drug user. RP 101. Athena explained that SassenVanelsloo sold drugs and sometimes traded drugs for goods, such as electronics and jewelry. RP 107, 444.

When the Kia was searched, investigators noted the Kia looked very messy and lived in. RP 336, 636-39, 718-19. Drug needles were scattered around the interior of the vehicle as well as, a blond wig, a stocking cap, electronic devices and seven burner phones. RP 94, 238, 636-39, 569. Two gun cases were also lying on the back floor board and back seat respectively. RP 295, 302. A large black safe, that belonging to SassenVanelsloo was located behind the driver's seat. RP 105-6, 295, 440 According to Athena, SassenVanelsloo often kept his drugs in that safe. RP 105-6, 295.

The Kia SassenVanelsloo was driving was rented by his friend Wade Hardenbrook for his use. RP 78-9, 559, 711-12, 717-18, 722, 731-2. Sassen Vanelsloo had been using the Kia for a month or two prior to this incident. RP 78-79, 559, 711, 731. When the Kia was lent to

SassenVanelsloo it was in good condition but when it was returned to the rental agency it was in bad shape. RP 718-19.

While talking to Officer Leake, SassenVanelsloo called Athena, told her he was ok and directed her to grab his red Jansport backpack from the Kia before she left. RP 96, 553, 557. Leake immediately noticed a pistol grip to a long gun sticking out under the backpack and some other clothing items, when he opened the rear cargo area of the Kia for Athena. RP 558-9. The weapon appeared ready to use by anyone accessing the cargo area. RP 558, 563-566. Leake impounded the Kia and obtained a search warrant.RP 560.

A search warrant revealed the firearm was a 12 gauge pistol grip pump shotgun. RP 562. The shotgun was found in a position with the pistol grip sticking out in such a manner that would enable anyone entering the cargo area to easily grab it, pump the magazine into the chamber and shoot. RP 315-16, 563. The shotgun was sitting below and within a foot of a red Jansport backpack, later found to contain various controlled substances. RP 562-566. Several of the drugs were packaged in a manner or of sufficient quantity to suggest they were for drug sales. RP 566, 668-9. Athena knew SassenVanelsloo had weapons, had seen this shotgun prior to this incident at a shop with SasenVanelsloo but had not

previously seen the shotgun in the Kia. RP 441-43. SassenVanelsloo's DNA was recovered from the shotgun. Id at 254, 359-60.

Investigators found a locked bank bag and a small black case with a latch, amongst other items in the red Jansport backpack. RP 297-98, 303, 306-07, 329, 337, 566-67. The locked bank bag was opened with a key found in the center console of the passenger compartment of the Kia. Id at 298-99, 566-67. Inside the bank bag, were smaller bags, some of which contained different zippered compartments within which investigators discovered a digital scale, methamphetamine, five morphine pills, a pipe, a butane torch, 30 alprazolam pills, 67 clonazepam pills and seven baggies of various amounts of heroin, the largest of which contained 11.86 grams of heroin. RP 300-302, 318-19, 324, 330, 337,660-62, 667-770.

In a black box, also found within the red Jansport backpack, investigators found receipts and a bill of sale with SassenVanelsloo's name on it from April, May 2012 and four pre-paid cell phone cards purchased in August 2012. RP 304-05. Seven 'burner' cell phones in total were also found in the KIA and a green satchel with envelopes addressed to SassenVanelsloo. RP 295, 307-08, 331, 567-68, 577, 646.

In the black safe, found on the floor board behind the driver's seat of the Kia, investigators found gold jewelry, a bundle of twenty $1.00 bills, an iPad, title for a 1990 Lincoln Town car, a loaded .38 revolver

loaded with four bullets and a loaded .22 pistol with a magazine containing five bullets. RP 310-15, 330, 341-43, 570-72, 634-35. Six more ammunition rounds and a sock containing eight 12-gauge shotgun shells were also found in a gun case on the floor behind the driver's seat of the Kia. RP 295, 303, 322. Of the cell phones found in the KIA, one phone had text messages on it disparaging Athena, another one had a text that stated "hey Adrian" and another mentioned a "Preston" and buying "black," a term used to reference heroin. RP 433.

In December 2012, Officer Leake pulled SassenVanelsloo over while he was driving a 1990 Lincoln town car; the same Lincoln whose title was previously found inside the black safe in the Kia. RP 236-37, 240, 573-74. Officer Leake, informed SassenVanelsoo they had met before. Id at 573. SassenVanelsloo responded, "oh, ya. I heard it was a nineteen year old guy but you and I know who was driving." RP 575.

Adrian SassenVanelsloo was charged with three counts of unlawful possession of a firearm, two counts of possession of a controlled substance (morphine, methamphetamine), three counts unlawful possession of a controlled substance with intent to deliver (alprazolam, clonazepam and heroin) and one count of attempting to elude a police vehicle. CP 3-5. SassenVanelsloo was also charged with being "armed with a firearm during the commission of the unlawful possession and

unlawful possession with intent to deliver controlled substances predicated on the pistol grip shotgun found in the rear cargo area of the Kia near the drugs. CP 3-5.

While awaiting trial, SassenVanelsloo reached out to Athena multiple times asking her to check and make sure his friend 'Matt[1]' was on the same page as him regarding the events of September 7 2012. Athena thought Sassen Vanelsloo wanted to ensure Matt and other witnesses would corroborate his account that he wasn't the driver on September 7th 2012. 17 RP 157-58, 445-458, 465-66. Matt was identified as Matt Burton, a good friend of SassenVanelsloo. RP 780-81, 455.

Matt's mother, Sharon Burton worked as an inpatient coordinator and, drug and alcohol counselor for Lummi Nation. RP 869-771. Sharon Burton testified as a material alibi witness for the defense that SassenVanelsloo couldn't have been driving on September 7th 2012 because he was at her home that day with her son Matt. RP 776-78, 780-81, 786. Burton never reached out to law enforcement with this information. RP 818. When Burton was initially interviewed by defense investigators, she wasn't sure if she saw SassenVanelsloo at her home in the morning or in the afternoon. RP 799. Burton also testified she knew

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[1] Matt refers to Matt Burton who did not testify and is referred herein as Matt. Matt's mother Sharon Burton did testify and is referred to herein as Burton.

Athena but that Athena wasn't welcome at her home. RP 773. She further testified Seth Alexander, a witness for the State, had called her before trial expressing confusion over this incident. RP 773, 783. Athena and Seth Alexander both testified Seth picked SassenVanelsloo up from the Cornwall park area after SassenVanelsloo fled the traffic stop. Matt then took SassenVanelsloo from Seth's home to Sharon Burton's home where he met up with Athena. RP 98, 140, 196, 199.

After Burton testified, juror 12 alerted the trial court that she recognized Burton. RP 852. The trial court held a limited inquiry wherein juror 12 explained she and her family were referred to Burton in 2012 to get assistance for her nephew who needed drug treatment. RP 854. Juror 12's nephew was living with juror 12 during when she sought help from Burton. Juror 12 recalled meeting Burton twice and that Burton successfully assisted getting her nephew into treatment and arranging transportation for him. RP 855-7.

When the prosecutor was given a limited opportunity to question juror 12, she (juror 12)would not say whether her experience with Burton was good or bad and seem to resist answering any question that required her to acknowledge any positive feelings from the experience. Eventually, juror 12 reluctantly agreed she 'guessed' she had a good feeling about Burton as a result of these circumstances. RP 858.

The prosecutor asked the trial court to remove juror 12, noting the trial court had two alternate jurors and he was concerned about juror 12's ability to be fair in light of her family having been helped by Burton. RP 860. The trial court, noting that this was a "close case," dismissed juror 12 reflecting that while the relationship was not particularly strong, given that Burton was a critical witness and played an important role in this case, it was 'appropriate' for juror 12 to be excused. RP 861. The trial court replaced juror 12 with an alternate juror and the trial continued.

SassenVanelsloo was convicted as charged. The jury also returned special verdicts finding SassenVanelsloo was armed with a firearm while committing the five drug related offenses. CP 66-67, CP 68, 70-3.

C. ARGUMENT

1. The trial court made a reasonable, discretionary decision mid-trial to excuse and replace a sitting juror with an alternate after the juror revealed her family previously benefited from the assistance of a material alibi witness. The trial court is required to make decisions during trial that ensure the fairness of the proceedings.

The Sixth Amendment and Wa. Const. art. I, § 22 guarantees the right to a fair trial "by an impartial jury." U.S. Const. amend. VI; WASH. CONST. art.I, sec.22. Additionally, RCW 2.36.110 and CrR 6.5 collectively place a continuing obligation on the trial courts to excuse and

replace any juror who becomes compromised during trial. State v. Jorden, 103 Wn. App. 221, 227, 11 P.3d 866 (2000).

RCW 2.36.110 states:

> It shall be the duty of a judge to excuse from further jury service any juror, who in the opinion of the judge, has manifested unfitness as a juror by reason of bias, prejudice, indifference, inattention, or any physical or mental defect or by reason of conduct or practices incompatible with proper and efficient jury service.

CrR 6.5 additionally provides:

> If at any time before submission of the case to the jury a juror is found unable to perform the duties the court shall order the juror discharged, and the clerk shall draw the name of an alternate who shall take the juror's place on the jury.

In Jorden, the reviewing court upheld the trial court's conclusion pursuant to RCW 2.36.110 and CrR 6.5, that a sitting juror who was falling asleep during trial was compromised. Jorden, 103 Wn. App. at 230. The reviewing court confirmed that in light of these circumstances, the trial court was obligated to dismiss her. Id. On review, the court also observed that because the compromised juror was removed and replaced prior to deliberations with a previously vetted alternate juror, Jorden could make no argument the trial court's decision was prejudicial.

The same should be said here. Given the benefit juror 12's family received from her limited but personal contacts with Burton and the

significance of Burton's testimony to the issues before the jury, the trial court had an objective basis to conclude juror 12's ability to serve was compromised. Inherent in the trial court's decision to dismiss and replace juror 12 as 'appropriate' was the trial court's understanding of its constitutional obligation to ensure the fairness of the trial. By replacing juror 12, the trial court ensured no extrinsic information could prejudice the impartiality of the proceedings and that juror 12's personal experience could not distort her ability to evaluate Burton's credibility based solely on the evidence presented at trial. And, as in Jorden, because juror 12 was removed and replaced prior to deliberations with a previously vetted alternate juror, the trial court understood, no prejudice would ensue. Id at 221. The trial court's discretionary decision was reasonable.

SassenVanelsloo complains the trial court abused its discretion because the record does not reflect the trial court found juror 12 was actually or implicitly biased and subject to removal pursuant to RCW 4.44.170[2], 180[3] and State v. Noltie, 116 Wn.2d 831, 838, 809 P.2d 190

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[2] Actual bias is 'the existence of a state of mind on the part of the juror in reference… to either party, which satisfies the court that the challenged juror cannot try the issue impartially and without prejudice to the substantial rights of the party challenging said juror. RCW 4.44.170

[3] Implied bias on the other hand, exists when conditions or relationships from which a bias for or against a party may be inferred based on a relationship between the juror and the parties sufficient enough to create in the juror, consciously or unconsciously, a special interest in the success of either party. RCW § 4.44.180. Implied bias may extend to

(1991). The question pertaining to alleged bias during voir dire, is whether in the trial court's opinion, the challenged juror can set aside the conflict or preconceived ideas and try the case fairly and impartially. [4] Hough v. Stockbridge, 152 Wn.App. 328, 216 P.3d 1077, *review denied*, 168 Wn.2d 1043 (2009).

Dismissing a juror pursuant to RCW 2.36.110 and CrR 6.5 is distinguishable from a trial court's decision to excuse or deny a challenge for bias during voir dire.[5] CrR 6.5 does not require a colloquy or specific finding to remove a sitting juror and instead leaves it to the trial judge to determine how best to resolve any issues that arise. Jorden, 103 Win. App. 221. This is understandable. Requiring a colloquy or extensive questioning by either party to a sitting juror regarding their continued fitness to serve risks damaging a party's ability to get a fair trial and maintain an impartial jury. Id. Second, given that CrR 6.5 enables a trial court to seat an alternate juror when a sitting juror is found unable to

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circumstances not described within the statute, such as when a prospective juror withholds information during voir dire in hopes of getting seated on the jury. State v. Cho, 108 Wn. App. 315, 30 P.3d 496 (2001).

[4] Where implied bias of juror exists, it is conclusively presumed from facts shown, but where actual bias of juror is claimed during voir dire, it must be established by proof. Noltie, 116 Wn. 2d 831.

[5] The request to remove a juror during voir dire must be granted if the trial court finds by a preponderance of the evidence that the juror's state of mind reflects she can't try the case fairly and impartially. Ottis v. Stevenson-Carson Sch. Dist. No. 303, 61 Wn. App. 747, 812 P.2d 133 (1991).

perform the duties of a juror, the reviewing court can be assured removal of the juror will not result in prejudice to either party or implicate the fairness of the trial since the alternate juror was accepted by both parties as impartial prior to trial. See, Jorden. Deference to the trial court's decision to remove or deny a request to remove a juror mid-trial in these circumstances is appropriate so long as an objective basis in the record supports the trial court's decision.

In making a determination pursuant to RCW 2.36.110 the trial court acts as both an observer and decision-maker. Jorden, 103 Win. App. 221. While mere acquaintance with someone, standing alone, is generally insufficient to disqualify a juror from participating in *void dire* pursuant to RCW 4.44.170, this question has not been examined in the context of RCW 2.36.110, where parties are unable to fully explore any potential bias or prejudice without risking alienating a juror or impacting the fundamental fairness of the proceeding. See, State v. Tingdale, 117 Wn.2d 595, 817 P.2d 850 (1991).

Moreover, a juror's declaration that he or she would hear the evidence and be controlled by that and the jury instructions is not conclusive evidence the juror is not biased. State v. Wilcox, 11 Wash. 215, 39 P. 368 (1895). A juror may not be conscious of a bias that is apparent to others on examination. Id. Thus, it is critical to defer to the

trial court's assessment of bias, prejudice or juror fitness because the trial court is in the best position to evaluate the juror's demeanor and credibility. State v. Depaz, 165 Wn.2d 842, 204 P.3d 217 (2009).

> Considerable light will be thrown on the fairness of a juror by the juror's character, mental habits, demeanor, under questioning and all other data which may be disclosed by the examination. A judge with some experience in observing witnesses under oath becomes more or less experienced in character analysis, in drawing conclusions from the conduct of witnesses. The way they use their hands, their eyes, their facial expression, their frankness or hesitation in answering, are all matters that do not appear in the transcribed record of the questions and answers. They are available to the trial court in forming its opinion of the impartiality and fitness of the person to be a juror. The Supreme Court, which has not had the benefit of this evidence recognizes the advantageous position of the trial court and gives it weight in considering any appeal from its decision. *Unless it very clearly appears to be erroneous, or an abuse of discretion, the trial court's decision on the fitness of the juror will be sustained.*

State v. Noltie, 116 Wn. 2d 831 (*emphasis added*). Doubts regarding bias or prejudice revealed mid trial resolved against the juror to ensure the fairness of the proceedings should be upheld. See State v. Cho, 108 Wn.App. 315, 30 P.3d 496 (2001), *citing*, Burton v. Johnson, 948 F.2d 1150, 1158 (10th Cir. 1991); Smith v. Phillips, 455 U.S. 209, 221, 102 S. Ct. 940, 71 L. Ed. 2d 78 (1982).

Similar to CrR 6.5, Federal Rule of Criminal Procedure 24(c)(1) permits courts to replace jurors unable to perform or who are disqualified

from performing their duties during trial with an alternate juror. In United States v. Thompson, 744 F.2d 1065, 1068 (4th Cir. 1984) the court held the right to an impartial jury outweighed all other considerations and the jurors equivocal responses necessitated removal of the sitting juror. Similarly, in United States v. Bolden, 596 F.3d 976, 981 (8th Cir. 2010) the court held the trial court's action dismissing a possibly biased juror, in an effort to err on the side of caution, was appropriate.

Here, the record reflects concern that juror 12's experience with Burton would make it difficult, if not impossible, for juror 12 to evaluate Burton's testimony based solely on the evidence presented at trial. A personal experience that provides a benefit to a juror is distinct from an everyday experience of which jurors are expected to have and bring with them into deliberations. Moreover, relying on extrinsic evidence constitutes juror misconduct and can require a new trial. State v. Balisok, 123 Wn.2d 114, 118, 866 P.2d 631 (1994). Extrinsic evidence is information outside what is admitted at trial. Id. The trial court's decision pursuant to RCW 2.36.110 was reasonable given the importance of Burton's testimony to the issues before the jury and her personal connection with Burton to her family's benefit.

Both the State and the defendant have a right to an impartial jury. State v. Hughes, 106 Wn.2d 176, 721 P.2d 902 (1986). Moreover,

SassenVanelsloo has no right to be tried by a jury that includes a particular juror. State v. Gentry, 125 Wn.2d 570, 615, 888 P.2d 1105 (1995), *aff'd sub nom*. Gentry v. Sinclair, 693 F.3d 867 (9th Cir. 2012), and *aff'd sub nom.* Gentry v. Sinclair, 705 F.3d 884 (9th Cir. 2013). Additionally, the presence of a biased juror would not be harmless error and could have required a new trial if the trial court had not appropriately exercised its discretion. State v. Irby, 187 Wn. App. 183, 193, 347 P.3d 1103 (2015), *review denied*, 184 Wn.2d 1036, 379 P.3d 953 (2016) and CrR 6.5.

Even if the trial court's findings are insufficient to support its mid-trial decision, Sassen Vanelsloo cannot demonstrate the trial court's decision resulted in any prejudice that warrants ordering a new trial. Jorden, 103 Wn. App. 221; State v. Fire, 145 Wn.2d 152, 34 P.3d 1218 (2001), *see also*, State v. Phillips, 65 Wash. 324, 118 P. 43 (1911)(If the trial court sustains a challenge to a juror, the ruling will not be reversed on appeal unless an unqualified juror was selected as a replacement.) The trial court's decision to excuse juror 12 should be affirmed.

2. SassenVanelsloo used the Kia to possess, use, trade and sell drugs from as part of ongoing criminal drug activity. The placement and position of the shotgun, with Vanelsloo's DNA on it, in the rear cargo area near his drugs, permitted the jury to conclude he strategically placed the shotgun there to be used to protect the drugs in his possession and drugs he intended to sell.

A challenge to the sufficiency of the evidence requires this Court to determine "whether, after viewing the evidence in a light most favorable to the State, 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). In applying this test, "all 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 339. In evaluating the sufficiency of the evidence, circumstantial evidence and direct evidence are considered equally reliable. State v. Delmarter, 94 Wn.2d 634, 618 P.2d 99 (1980). Credibility determinations are left to the trier of fact and cannot be reviewed on appeal. State v. Camarillo, 115 Wn.2d 60, 794 P.2d 850 (1990).

A person is 'armed' for purposes of a sentencing enhancement if the weapon is *easily accessible and readily available* for offensive or defensive use during the time of the crime. State v. Brown, 162 Wn.2d 422, 173 P.3d 245 (2007). Whether a person is armed with a firearm is a mixed question of law and fact. State v. Schelin, 147 Wn.2d 562, 565, 55 P.3d 632 (2002). When the court determines as a matter of law the facts are sufficient to support that a defendant is armed, it is a question of law reviewed de novo. Schelin, 147 Wn. 2d at 566.

A defendant does not have to be armed at the moment of arrest to be armed for purposes of the firearm enhancement. State v. O'Neal, 159 Wn.2d 500, 150 P.3d 1121 (2007). Nor does the State need to establish the specific time and place that a weapon was readily available and easily accessible. O'Neal, 159 Wn. 2d 500. Similarly, a person is not armed simply because he possesses a weapon or is in mere proximity to that weapon. State v. Eckenrode, 159 Wn.2d 488, 493, 150 P.3d 1116 (2007).

Whenever a firearm enhancement is based on constructive possession of a weapon, there must be a nexus between the defendant, the crime and the weapon. State v. Brown, 162 Wn.2d 422, 173 P.3d 245 (2007). In evaluating the sufficiency of the nexus, the reviewing court looks at the nature of the crime, the type of weapon and the circumstances under which it was found. State v. Ague-Masters, 138 Wn. App. 86, 104, 156 P.3d 265 (2007). When a crime is alleged to be a continuing crime, a nexus exists if the firearm is "there to be used" in connection to the crime. State v. Neff, 163 Wn.2d 453, 462, 181 P.3d 819 (2008), *quoting* State v. Gurske, 155 Wn.2d 134, 138, 118 P.3d 333 (2005).

SassenVanelsloo's reliance and contention, that the firearm enhancement finding in this case conflicts with this Court's decision in State v. Gurske, 155 Wn.2d 134, 118 P.3d 333 (2005), is misguided. There officers found, incidental to a traffic stop, that Gurske was in constructive

possession of a controlled substance and an unloaded weapon. Both were found in a zipped backpack that was sitting behind the driver's seat. This Court reversed the weapon enhancement on the controlled substance offense because there was insufficient evidence to show the unloaded pistol was easily accessible or readily available for offensive or defensive use at the time of possession, the 'fact of possession' was not enough to make this showing. Gurske, 155 Wn. 2d at 143.

Here, in contrast to Gurske, not only was the pistol grip shotgun loaded with a magazine ready to be used, it was also placed in a manner that reflected it was 'there to be used' by to protect his drug activity. Overwhelming evidence found within the Kia demonstrates SassenVanelsloo was actively engage in possessing, trading and selling illegal drugs from the Kia as part of ongoing criminal activity. In addition to Athena's testimony that SassenVanelsloo sold drugs, investigators found drug needles, electronics and seven burner phones scattered throughout the passenger compartment of the Kia. While the controlled substances were found in a locked bank bag within a red Jansport backpack in the rear cargo area of the Kia, the key to the locked bank bag was located in the passenger console of the Kia, further demonstrating the entire Kia was involved in SassenVanelsloo's drug activities. Additionally, the controlled substances found in the locked bank bag were

separated and packaged in a manner consistent with both personal use and street drug sales. The black safe found behind the driver's seat, which Athena testified went everywhere with SassenVanelsloo and usually contained drugs, contained two more loaded weapons, title to a 1990 Lincoln, an iPad and a wad of twenty 'one' dollar bills. These items further suggested SassenVanelsloo was using the Kia to engage in ongoing drug related criminal activity.

The drugs found in the red Jansport backpack in conjunction with the placement and positioning of the pistol grip Shotgun under the backpack, permitted the jury to conclude SassenVanelsloo strategically placed the shotgun in a position to best enable him to protect his drugs when he accessed the cargo area of the Kia. The pistol grip shot gun was not locked in a gun case or near the other guns or gun cases found in the passenger compartment of the Kia, but instead was positioned just below the backpack that contained drugs in it. Moreover, unlike Gurske, this firearm had a magazine in it, and was positioned in a manner that made it easy to grab, pump and shoot.

In State v. Eckenrode, 159 Wn.2d 488, 150 P.3d 1116 (2007), officers searched the defendant's home and found several weapons, drugs and evidence of drug manufacturing. In upholding a weapon enhancement the Eckenrode court distinguished the case from Gurske, concluding the

jury could infer from the circumstantial evidence that there was a connection between Eckenrode, the weapons and drug charges given that the weapons were loaded and evidence of the illegal drug manufacturing pervaded the house. See also, O'Neal, 159 Wn. 2d 500, (firearm enhancement upheld based on an ongoing enterprise even though none of the defendants were holding weapons when they were arrested.); State v. Easterlin, 159 Wn.2d 203, 207, 210, 149 P.3d 366 (2006) ("so long as the facts and circumstances support an inference of a connection between the weapon, the crime and the defendant, sufficient evidence exists" to support a finding the defendant was armed.) As in O'Neal, Eckenrode and Easterlin, the evidence here, when viewed in the light most favorable to the State, permitted the jury to find beyond a reasonable doubt a nexus between, the pistol grip firearm, SassenVanelsloo and his controlled substance crimes.

D. CONCLUSION

The State of Washington respectfully requests that this Court affirm SassenVanelsloo's convictions and sentence.

Respectfully submitted this 27 day of October, 2017.

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