NO. 96873-0

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

SHANNON B. BLAKE, a/k/a BOWMAN, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. ISSUES PRESENTED

1. Does Blake demonstrate that prior precedent from this Court which held the Legislature intended possession of a controlled substance to have no mens rea element are both incorrect and harmful, and should be overruled?

2. Does the affirmative defense of unwitting possession infringe on the presumption of innocence and unconstitutionally shift the burden of proof to criminal defendants to prove they are not guilty of possession of a controlled substance when the defense does not negate an element of the crime?

3. Although the Legislature has the authority to define public welfare offenses as strict liability crimes and possession of a controlled substance is a public welfare offense, does this policy decision nonetheless violate due process?

II. STATEMENT OF THE CASE

The State charged Shannon Blake by amended information with one count of possession of a controlled substance. CP 18. The trial court found Blake guilty of the charge after a bench trial. CP 19, 71.

Officer Daniel Cole contacted Blake while assisting in the service of a search warrant at a residence on October 3, 2016. CP 66. He arrested Blake at the scene for unrelated crimes. CP 10, 66. Officer Cole transported Blake to jail and jail staff searched her. CP 66-67. Officer Cole observed the jail staff remove what appeared to be a baggie containing a substance that was later determined to be methamphetamine from Blake's jeans' pocket. CP 67-69.

The State amended the information to dismiss several charges, but prosecuted Blake on one remaining charge pertaining to the methamphetamine jail staff discovered in her jeans. CP 1-2, 18. At trial, Blake asserted the affirmative defense of unwitting possession. CP 71. She testified that a friend had given her the jeans two days prior to her arrest. CP 70. She testified that she did not know the jeans contained a baggie of methamphetamine in the pocket and denied having ever used methamphetamine. CP 70.

The trial court did not find Blake credible. CP 70-71. The court rejected Blake's affirmative defense and found her guilty of possession of methamphetamine. CP 71. Blake appealed her conviction to Division III of the Court of Appeals, which affirmed.

III. SUMMARY OF ARGUMENT

This Court has repeatedly held that the Legislature has the authority to create strict liability crimes that do not include a culpable mental state. This Court has twice directly addressed whether the elements of possession of a controlled substance under prior versions of the statute contain a mens rea element. In both cases, the Court has held that the Legislature deliberately omitted knowledge and intent as elements of the crime and that this Court would not imply the existence of those elements. Blake provides no justification for uprooting those prior decisions as harmful and

incorrectly decided. Moreover, this Court has held that affirmative defenses that do not require a defendant to negate an element of an offense do not burden-shift. Finally, the United States Supreme Court and this Court have held that the Legislature's decision to create a strict liability crime does not violate due process.

IV. STANDARD OF REVIEW

This Court reviews statutory construction issues and constitutional issues de novo. *City of Redmond v. Moore*, 151 Wn.2d 664, 668, 91 P.3d 875 (2004). This Court presumes statutes are constitutional, and the challenging party has the heavy burden of proving unconstitutionality beyond a reasonable doubt. *Island Cty. v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998).

V. ARGUMENT

A. BLAKE DOES NOT DEMONSTRATE THAT *CLEPPE*[1] AND *BRADSHAW*[2] ARE BOTH INCORRECT AND HARMFUL

Blake implicitly asks this Court to overrule *Cleppe* and *Bradshaw*. However, she does not demonstrate those cases are both incorrect and harmful.

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[1] *State v. Cleppe*, 96 Wn.2d 373, 380, 635 P.2d 435 (1981).

[2] *State v. Bradshaw*, 152 Wn.2d 528, 531, 98 P.3d 1190 (2004).

1. Stare decisis.

The principle of stare decisis holds that this Court "will not reject [its] precedent unless it is 'both incorrect and harmful.'" *State v. Otton*, 185 Wn.2d 673, 688, 374 P.3d 1108 (2016). The "respect for precedent 'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'" *City of Fed. Way v. Koenig*, 167 Wn.2d 341, 347, 217 P.3d 1172 (2009). This Court has stated:

> Through stare decisis, the law has become a disciplined art-perhaps even a science-deriving balance, form and symmetry from this force which holds the components together. It makes for stability and permanence, and these, in turn, imply that a rule once declared is and shall be the law. Sta[r]e decisis likewise holds the courts of the land together, making them a system of justice, giving them unity and purpose, so that the decisions of the courts of last resort are held to be binding on all others.
>
> Without stare decisis, the law ceases to be a system; it becomes instead a formless mass of unrelated rules, policies, declarations and assertions-a kind of amorphous creed yielding to and wielded by them who administer it. Take away stare decisis, and what is left may have force, but it will not be law.

State ex rel. State Fin. Comm. v. Martin, 62 Wn.2d 645, 665-66, 384 P.2d 833 (1963).

Blake claims an incorrect analysis undermines *Cleppe*, which in turn compromises *Bradshaw*. Pet. at 11. Contrary to Blake's claim, the *Cleppe* Court utilized the proper test to determine whether the Legislature intended

former RCW 69.50.401(c)[3] to be a strict liability crime by analyzing the Legislature's intent. The questions in *Cleppe* were (1) whether the Legislature intended possession of a controlled substance to be a strict liability crime where the statute was silent on the subject, and (2) if that intent could be determined from the Legislature omitting a mens rea requirement from the final statute which had been present in the proposed model statute. 96 Wn.2d at 375, 379.

2. Strict liability offenses are permissible.

Legislatures have the authority to create strict liability crimes, and such crimes do not necessarily violate due process. *Lambert v. California*, 355 U.S. 225, 226, 78 S.Ct. 240, 2 L.Ed.2d 228 (1957). This Court has consistently applied that maxim. *State v. Anderson*, 141 Wn.2d 357, 361, 5 P.3d 1247 (2000); *State v. Rivas*, 126 Wn.2d 443, 452, 896 P.2d 57 (1995).

To discern whether the Legislature intended for a crime to be a strict liability crime, this Court must assess the Legislature's intent. *State v. Bash*, 130 Wn.2d 594, 604, 925 P.2d 978 (1996) (adopting factor test).[4] "[D]eciding whether a statute sets forth a strict liability crime is a statutory

[3] This statute has undergone a number of iterations. RCW 69.50.4013 now governs simple possession of a controlled substance.

[4] Although *Bash* adopted a factor test prior to *Bradshaw*, the *Bradshaw* Court did not apply the analysis to possession of a controlled substance.

construction question aimed at ascertaining legislative intent. The inquiry begins with the statute's language and legislative history." *Id*. at 604-05.

3. The relevant decisions were correctly made, and are not harmful.

In *Cleppe*, this Court noted that for three decades the Washington simple possession of a controlled substance statute had not required a mens rea element. 96 Wn.2d at 378. The Legislature had intentionally removed the intent requirement that had been present in an even earlier 1923 dangerous drug statute. *Id*.; *see* LAWS OF 1923, ch. 47, § 3. *Cleppe* also reviewed the legislative history of the proposed model possession of a controlled substance statute at issue in this case, and discerned that the original draft language asserted a mens rea element, before legislative action removed those words. 96 Wn.2d at 379; *see State v. Jackson*, 137 Wn.2d 712, 723, 976 P.2d 1229 (1999) (Legislature's omission of a provision of the Model Penal Code "was purposeful and evidenced its intent to reject" the language). This Court concluded that the prior statute's lack of a mens rea element and the deliberate omission of the mens rea in the current statute explained the Legislature's deliberate choice to make possession of a controlled substance a strict liability crime—distinct from the model Uniform Controlled Substances Act—in order to maintain

Washington's policy choice pertaining to drug offenders.[5] *Cleppe*, 96 Wn.2d at 379-80.

Bradshaw affirmed that decision in all respects, and this Court stated that it would not overrule *Cleppe* because it had decided that case correctly. In doing so, this Court described the legislative intent as "clear." *Bradshaw*, 152 Wn.2d at 537. Additionally, this Court gave a new and additional reason to support is earlier decision: The Legislature adopted the Court's interpretation by declining to add a mens rea requirement in the intervening 22 years. *Id*. at 534-35. The Court noted "[t]he Legislature's failure to amend [a criminal statute] in light of [an appellate opinion omitting an intent requirement] suggests a legislative intent to omit an intent requirement." *Id*. at 535 (quoting *State v. Edwards*, 84 Wn. App. 5, 12-13, 924 P.2d 397 (1996)). Although the Legislature had amended the statute seven times since this Court had determined the Legislature intended the crime to be a strict liability offense, the Legislature had not added a mens rea element. *Id.* at 533. The Legislature has amended the statute several more times since *Bradshaw*, and remains steadfast in not adding a mens rea requirement. *See* LAWS OF 2013, ch. 3, § 20; LAWS OF 2015, ch. 70 § 40; LAWS OF 2015, ch. 4, § 503; LAWS OF 2017, ch. 317, § 15. This more recent legislative

[5] As further indication of the Legislature's policy choice, it also reclassified the crime as a felony. *Cleppe*, 96 Wn.2d at 380.

history demonstrates that the Legislature still intends for the crime to be a crime of strict liability. Blake cannot demonstrate *Cleppe* or *Bradshaw* are incorrect.

Likewise, the decisions are also not harmful because the unwitting possession defense ameliorates the harshness of strict liability by permitting a defendant to excuse the otherwise criminal conduct and avoid an unjust conviction by proving by a preponderance of the evidence that he or she did not know the substance was in his or her possession or did not know the nature of the substance. *State v. Staley*, 123 Wn.2d 794, 799, 872 P.2d 502 (1994); *State v. Deer*, 175 Wn.2d 725, 735, 287 P.3d 539 (2012). The reasoning applied by the Minnesota Court of Appeals in *State v. Moser*, 884 N.W.2d 890 (Minn. Ct. App. 2016), is persuasive.

In *Moser*, the Minnesota Court of Appeals examined a substantive due process challenge to Minnesota's child sex solicitation statute, which made defendants strictly liable. 884 N.W.2d at 893. After engaging in much of the same analysis that Blake makes, the court held that the statute violated due process as applied to the defendant because it did not permit him to raise a mistake-of-age defense. *Id*. at 905-06. Critical to the analysis was that child solicitation was not a public welfare offense, it was an inchoate crime, and it was not reasonable to require a defendant who had contacted a minor only over the internet to verify the *actual* age of the

victim. *Id*. at 903-06. The Minnesota Legislature's action violated substantive due process under those circumstances. *Id*. To analogize to Washington's controlled substance offense, the affirmative defense "ameliorate[d] the harshness" of the otherwise strict liability crime. *Cleppe*, 96 Wn.2d at 381.

Although *Moser* is a Minnesota case, the statutory scheme is consistent with Washington's affirmative defense to prosecutions for rape and child rape. RCW 9A.44.030. In Washington, the crimes of rape and rape of a child do not contain a mental element. *State v. Chhom*, 128 Wn.2d 739, 743, 911 P.2d 1014 (1996); *State v. Joseph*, 3 Wn. App. 365, 374, 416 P.3d 738 (2018). It is also similar to the unwitting possession defense. The presence of the affirmative defense acts as a safety valve, which satisfies due process and permits an accused to successfully defend against otherwise unjust charges. *See Staley*, 123 Wn.2d at 799; *Deer*, 175 Wn.2d at 735. Thus, defendants in Washington prosecuted pursuant to the possession of a controlled substance statute are not harmed by the decisions in *Cleppe* and *Bradshaw* affirming that the Legislature intended the crime to be one of strict liability.

The State anticipates Blake will cite to the concurrence in *State v. A.M.*, 194 Wn.2d 33, 41, 449 P.3d 35 (2019) (McCloud, J., concurring) in her supplemental brief for the proposition that this Court erred in *Cleppe*

and *Bradshaw* by not applying the rule of lenity. But the rule of lenity does not apply to this situation because the possession of a controlled substance statute is not ambiguous, and the rule need not be applied as an "automatic, unconsidered reaction." *City of Seattle v. Winebrenner*, 167 Wn.2d 451, 468, 219 P.3d 686 (2009) (Madsen, J., concurring). The rule of lenity provides that this Court will interpret a statute in favor of the defendant absent legislative intent to the contrary. *State v. Jacobs*, 154 Wn.2d 596, 601, 115 P.3d 281 (2005). The rule "only applies when a penal statute is ambiguous and legislative intent is insufficient to clarify the ambiguity." *Matter of Charles*, 135 Wn.2d 239, 250 n.4, 955 P.2d 798 (1998). The rule does not preclude "ordinary statutory construction." *State v. Coria*, 146 Wn.2d 631, 639, 48 P.3d 980 (2002). The axiom that the rule of lenity only supplements statutory construction has historic roots:

> The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment.
>
> It is said, that notwithstanding this rule, the intention of the law maker must govern in the construction of penal, as well as other statutes. This is true. But this is not a new independent rule which subverts the old. It is a modification of the ancient maxim, and amounts to this, that though penal laws are to be construed strictly, they are not to be construed so strictly as to defeat the obvious intention of the legislature.

United States v. Wiltberger, 18 U.S. 76, 95-96, 5 L.Ed. 37 (1820).

Turning to the case at hand, the rule of lenity does not mandate a different outcome. RCW 69.50.4013 unambiguously does not contain a mens rea element. This Court in *Cleppe* and *Bradshaw* considered legislative history and intent because the test to determine whether the Legislature intended a strict liability crime requires an appellate court to look at such, absent an express provision. *Staples v. United States*, 511 U.S. 600, 604-06, 114 S.Ct. 1793, 129 L.Ed.2d 608 (1994) ("some indication of congressional intent, express or implied, is required to dispense with *mens rea* as an element of a crime"). This Court was not reviewing the statute because the defendants alleged it was ambiguous. The rule of lenity does not apply in this situation, where the statute is susceptible to only one reasonable construction and the legislative intent is clear.

B. RCW 69.50.4013 DOES NOT UNCONSTITUTIONALLY REQUIRE A DEFENDANT TO PROVE THEIR INNOCENCE

Blake contends the statute unconstitutionally requires a defendant to prove their innocence. But because knowledge is not an element of the crime, the unwitting possession affirmative defense does not shift the burden of proof to a defendant.

The elements the State must prove in a possession of controlled substance case are the fact of possession and the nature of the substance. *Deer*, 175 Wn.2d at 735. There is no mens rea element. *Bradshaw*,

152 Wn.2d at 531. The affirmative defense of unwitting possession permits a defendant to excuse otherwise criminal conduct by proving they: (1) did not know the substance was in their possession or (2) did not know the nature of the substance. *Staley*, 123 Wn.2d at 799; *Deer*, 175 Wn.2d at 735. Affirmative defenses that do not negate an element of the crime do not unconstitutionally shift the burden of proof. *Bradshaw*, 152 Wn.2d at 538; s*ee also State v. Sundberg*, 185 Wn.2d 147, 156, 370 P.3d 1 (2016) (State may comment on lack of corroborative evidence for unwitting possession defense in certain factual scenarios). This scheme is permissible in part because "generally, affirmative defenses are uniquely within the defendant's knowledge and ability to establish." *Deer*, 175 Wn.2d 725 (quoting *State v. Riker*, 123 Wn.2d 351, 367, 869 P.2d 43 (1994)).

The unwitting possession defense does not negate an element of possession of a controlled substance, so Blake properly bore the burden of proof associated with the defense. Blake had the unique ability to establish that she did not know the methamphetamine was present in her jean pocket, because such information was in her sole possession. Her testimony at trial was that she spent time and effort altering and customizing the jeans and she had not reached into the coin pocket. RP 76. Her strategy was, apparently, to have the finder of fact infer that if she had discovered the methamphetamine during the alteration process she would have removed it

at that point. Because the trial court made a finding that Blake was not credible, this strategy may have backfired. The trial court could infer she spent considerable time manipulating the pants and either discovered the methamphetamine or stored it in the pocket at a later time. At no point did the affirmative defense require her to disprove that she possessed methamphetamine. Blake was in the best position to establish she did not *know* she possessed methamphetamine, the trial court simply did not find her credible.

C. THE POSSESSION OF A CONTROLLED SUBSTANCE STATUTE DOES NOT VIOLATE DUE PROCESS

Blake's remaining contention is that the statute, though properly reflective of the Legislature's intent to create strict liability, nonetheless violates due process, and this Court should imply a mens rea element to solve the infirmity. Blake's authorities are distinguishable, and do not stand for the proposition that a criminal statute that does not require the State to prove mens rea violates due process.

The authority to define crimes rests firmly with the Legislature, although courts may find implied elements. *State v. Wadsworth*, 139 Wn.2d 724, 734, 991 P.2d 80 (2000); *State v. Miller*, 156 Wn.2d 23, 28, 123 P.3d 827 (2005). Specifically, the Legislature is responsible for defining the elements of a crime. *State v. Evans*, 154 Wn.2d 438, 447 n.2,

114 P.3d 627 (2005); *Wadsworth*, 139 Wn.2d at 734. Consequently, the Legislature enjoys the authority to create strict liability crimes. *Rivas*, 126 Wn.2d at 452. Strict liability crimes do not inherently violate due process. *Lambert*, 355 U.S. at 228; *State v. Schmeling*, 191 Wn. App. 795, 802, 365 P.3d 202 (2015) (rejecting due process challenge to possession of controlled substance statute). This Court has explicitly recognized that it has not adhered to the "suggestion from the United States Supreme Court in *Staples*" that a mental element should be present in statutes defining felony offenses. *Anderson*, 141 Wn.2d at 364-65. This recognition is also consistent with the Washington rape statutes, which are felony offenses.

Blake reasons that an innocent buyer of a car may be subject to liability if drugs are found inside. This is precisely the situation for which the affirmative defense is intended. The Legislature determined that the dangerous nature of addictive controlled substances requires forbidding certain acts without a mental state. This is a policy choice that the Legislature made, and because of the protection the affirmative defense provides against otherwise unjust convictions, due process is not violated. *See Moser*, 884 N.W.2d at 904.

Contrary to Blake's claim, possession of a controlled substance *is* a public welfare offense. Public welfare offenses: (1) regulate dangerous devices or products; (2) heighten the duties of those in control of the

particularly industries, trades, properties, or activities that affect public health, safety, or welfare; and (3) depend on no mental element but consist only of forbidden acts or omissions. *United States v. Int'l Minerals & Chem. Corp.*, 402 U.S. 558, 565, 91 S.Ct. 1697, 29 L.Ed.2d 178 (1971); *Morissette v. United States*, 342 U.S. 246, 254, 72 S.Ct. 240, 96 L.Ed. 288 (1952); *Bash*, 130 Wn.2d at 607. Controlled substances are generally recognized as dangerous products, prescribing physicians and authorized users or producers have heightened duties to control distribution, and the crime does not depend on a mental element, instead consisting only of the forbidden act. More importantly *Staples*, which Blake cites, specifically pointed at the Narcotic Act of 1914—which was intended to minimize the spread of addictive drugs—as an example of a public welfare offense. 511 U.S. at 606 (citing *United States v. Balint*, 258 U.S. 250, 42 S.Ct. 301, 66 L.Ed 604 (1922)).

Blake analogizes this case to *May v. Ryan*, 245 F. Supp. 3d 1145 (D. Ariz. 2017). However, while this proceeding was stayed pending this Court's decision in *A.M.*, *May* was overruled in part, which diminishes any persuasive value. *See May v. Ryan*, 766 Fed. Appx. 505 (9th Cir. 2019). Although the appellate court affirmed the decision on another ground, it specifically vacated the district court's judgment regarding the constitutionality of the Arizona child molestation statute. *Id*. at 506-07.

In *May*, the defendant claimed trial counsel was ineffective for failing to assert Arizona's recent changes to the child molestation statute were unconstitutional. *May*, 245 F. Supp. 3d at 1149. At the time of May's conviction, the statute no longer required the State to prove that an intentional touching of a child was committed with sexual intent. *Id*. at 1151. Instead, the defendant could assert an affirmative defense that the touching was not motivated by sexual intent. *Id*.

The court concluded the burden-shifting scheme violated due process. *Id*. at 1164. Due process did not permit "Arizona to remove the essential wrongfulness in child molestation and place the burden of disproving it upon people engaged in a wide range of acts." *Id*. The court identified two major concerns: first, Arizona had historically, since at least 1913, criminalized touching that was carried out with sexual intent. *Id*. at 1159. Still, the court noted that a legislature could transfer previously required elements of the crime to an affirmative defense, provided they did not go beyond "any constitutional or common sense minimum of wrongfulness," *and* where the element was not essential to separate wrongful conduct. *Id*. at 1162. However, the court reasoned sexual intent was intrinsic to the sex crime of child molestation. *Id*. Second, the statute criminalized a broad range of necessary and commonplace conduct such as "hygienic care, bathing, medical care, athletics, religious circumcision, and

all other occasions for touching private parts" unless the defendant could prove the act was not made with sexual intent. *Id*. at 1164.

Washington historically has treated possession of controlled substance as a strict liability crime, so the first rationale from *May* fails. *Cleppe*, 96 Wn.2d at 378. Second, Washington's possession of a controlled substance statute does not criminalize a broad range of necessary and commonplace conduct, and it certainly does not criminalize the innocent behavior of "possessing property." Pet. at 10.

A more apt comparison would be a scenario where Washington theoretically criminalized the possession of any "substances" but permitted an accused to raise the affirmative defense that the substance did not meet the definition of a "controlled substance." The nature of the substance makes the conduct wrongful in Washington, much like the nature of the touching made the conduct wrongful in *May*. That the nature of the substance is the "wrong" is why narcotics laws generally fall within the ambit of public welfare offenses. And the unwitting possession defense permits a defendant to successfully defend on the basis that they did not *know* the material they possessed was a controlled substance; it does not require the defendant to prove the material was not a controlled substance.

Blake also relies on *Staples*, 511 U.S. 600, to argue that due process is violated when statutory silence *alone* is permitted to rebut the common

law presumption of mens rea. The case did not address due process, although Blake cites it for support in her briefing. The Court concluded "the background rule of the common law favoring *mens rea* should govern interpretation" in that case because "[s]ilence does not suggest that Congress dispensed with *mens rea*." *Id*. at 619. The majority opinion does not undertake an analysis of legislative findings or history. *See id.* at *passim*. The dissent undertook that task and reached a different answer. *Id*. at 624-40 (Blackmun, J., dissenting). The majority emphasized its holding was narrow, and the reasoning depended on "commonsense evaluation of the nature of the particular device or substance … subjected to regulation and the expectations that individuals may legitimately have in dealing with the regulated items." *Id*. at 619. The fact that gun ownership is ubiquitous was critical to the analysis, and the statute in question criminalized the otherwise legal possession of guns that merely had certain characteristics of which the owner may be ignorant. *Id*.

In Washington, we have more than statutory silence. As discussed above, the entire point of *Cleppe* and *Bradshaw* was: (1) the statute itself was silent *and* (2) there was clear legislative intent to remove the proposed model statute's mens rea requirement to conform with *Washington* policy and history. And unlike gun ownership, controlled substances, in general, are not easily obtained absent a prescription. RCW 69.50.4013. Possession

of controlled substances is not commonplace, particularly with regard to methamphetamine, cocaine, heroin, and similar substances, unlike ownership of dogs, such that a person in possession of narcotics would not likely know they are regulated. *Bash*, 130 Wn.2d at 608. Any application of *Staples* is limited, and distinguishable.

Balint, 258 U.S. 250, arguably provides Blake even less support. As discussed, the Narcotics Act of 1914 involved dangerous drugs, which indicated it was a public welfare offense. *Staples*, 511 U.S. at 606. The Court affirmed Congress's decision to create a statute that was silent on mens rea: "Congress weighed the possible injustice of subjecting an innocent seller to a penalty against the evil of exposing innocent purchasers to danger from the drug, and concluded that the latter was the result preferably to be avoided." *Balint*, 258 U.S. at 254. Additionally, *Balint* noted that the question of whether strict liability crimes violate due process had previously been answered, and the answer was "no." *Id*. at 252 (citing *Shevlin-Carpenter Co. v. Minnesota*, 218 U.S. 57, 69, 70, 30 S.Ct. 663, 54 L.Ed. 930 (1910) ("such legislation may ... be harsh, but … this court cannot set aside legislation because it is harsh")).

Balint is consistent with more recent cases on the subject. Strict liability crimes do not inherently violate due process. *Lambert*, 355 U.S. 225 (Legislatures have wide latitude to exclude elements of

knowledge and intent). The United States Supreme Court has never articulated a general constitutional doctrine of mens rea. *Powell v. Texas*, 392 U.S. 514, 535, 88 S.Ct. 2145, 20 L.Ed.2d 1254 (1968) (doctrines of knowledge have always been considered the province of the States). Blake's authorities do not demonstrate RCW 69.50.4013, prohibiting possession of controlled substances without requiring a mens rea, violates due process.

VI. CONCLUSION

This Court has consistently affirmed that the Legislature intended RCW 69.50.4013 to establish a strict liability offense. Blake does not demonstrate that precedent is both incorrect and harmful. Similarly, the unwitting possession affirmative defense does not shift the burden to an accused to prove their innocence. Finally, because possession of a controlled substance is a public welfare offense and an affirmative defense exists, the Legislature's decision to define it as a strict liability crime does not violate due process. This Court should affirm the Court of Appeals.

Respectfully submitted this 22 day of March, 2020.

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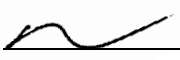

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. SHANNON BLAKE, Appellant.	NO. 96873-0 COA No. 35601-9-III CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on March 2, 2020, I e-mailed a copy of the Supplemental Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Thomas Kummerow and Richard Lichich
wapofficemail@washapp.org

3/2/2020	Spokane, WA	
(Date)	**(Place)**	**(Signature)**

SPOKANE COUNTY PROSECUTOR

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