

## **Deadly Weapon Enhancement Shot Down!**

**By: Monte E. Hester; Oct 2005**

As reported in State v. Gurske, filed August 25, 2005, No. 75156-1, a deadly weapon sentence enhancement was found to be improper and the matter was remanded for resentencing.

In this case a police officer, during an inventory search after an arrest for driving while license suspended, searched a backpack which was in the backseat of the automobile. Within the backpack a 9mm pistol, three grams of meth and the defendant's wallet were discovered. The facts stipulated to the trial judge indicated the backpack was within arm's reach of the driver (defendant). However, the backpack was not removable by the driver without first either exiting the car or moving into the passenger seat location.

RCW 9.94A.602 states a person is armed within the meaning of the statute if a weapon is easily accessible and readily available for use, either for offensive or defensive purposes. The reported case contains citations which support this conclusion as well as the court's statement that, "There must be a nexus between the defendant, the crime and the weapon and that mere proximity or constructive possession alone is insufficient to establish that he was armed."

The court in its holding, makes it clear that absent a showing beyond a reasonable doubt that a defendant was armed with a deadly weapon at the time of commission of the crime as explained in this case, it would be improper to apply a deadly weapon sentencing enhancement.

This case emphasizes the importance of creating a record that allows the court to scrutinize the factual relationship of a defendant to any weapon.

End

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