IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. JAMES AFENIR, Appellant.	No. 41311-6-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — James Michael Afenir appeals his conviction for making a space under his control available for the purpose of selling methamphetamine. RCW 69.53.010(1). Afenir asserts that the search of his apartment was unreasonable, he was unlawfully seized, he did not intelligently waive his *Miranda*[1] rights, he received ineffective assistance of counsel, the trial court erred in denying his motions to dismiss, and RCW 69.53.010(1) is unconstitutional as applied to his case.

We do not reach the merits of Afenir's unreasonable search and seizure and *Miranda* rights waiver arguments because he has either waived those challenges or failed to preserve them for our review. In addition, because Afenir does not present an argument on appeal as to why the

[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

trial court erred in denying his first motion to dismiss, and he has waived his challenge to the trial court's denial of his second motion to dismiss, we cannot address either assignment of error. We hold that Afenir received effective assistance of counsel, that the trial court did not err in denying his *Knapstad*[2] motion, and that RCW 69.53.010(1) is not unconstitutional as applied to Afenir. Accordingly, we affirm.

FACTS

On June 28, 2009, Corporal Jesse Winfield of the Port Angeles Police Department knocked on the front door of Afenir's one-bedroom apartment in Port Angeles, Washington, in search of Robert Beck.[3] Although Afenir was the only lessee of the apartment, he slept on the couch in the living room while Beck and Beck's girlfriend, Kim McCartney, slept in the bedroom. When Afenir answered the door, Winfield explained that he was looking for Beck. Afenir invited Winfield inside and gave the officer permission to look inside the apartment's bedroom and bathroom.

Corporal Winfield found and arrested Beck inside the apartment bathroom, which could be entered only through the bedroom. Beck admitted there was "a little . . . crystal [methamphetamine]" in the bedroom. Report of Proceedings (RP) at 98. Winfield applied for and received a telephonic warrant to search the apartment.

When police executed the search warrant, they found a police scanner, small plastic bags with methamphetamine residue, a plastic bag with a larger quantity of crystal methamphetamine,

[2] *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986); *see also* CrR 8.3(c).

[3] Corporal Winfield had arrested a woman six days before arriving at Afenir's apartment. Winfield found Beck's backpack in the woman's car. The backpack contained illegal drugs and prompted Winfield's search for Beck.

electronic scales with methamphetamine residue, a spoon, a knife, syringes, a possible cutting agent, a drug pipe, Aprazolan pills, and a notepad marked as "pay and owe records" in the bedroom where Beck and McCartney slept. Clerk's Papers (CP) at 26. Next to the couch in the living room where Afenir slept, the police found a "drug kit" containing pipes, syringes, scales, a spoon with methamphetamine residue, and a syringe loaded with methamphetamine. RP at 107.

Corporal Winfield asked Detective Clay Rife of the Port Angeles Police Department to interview Afenir. Afenir agreed to follow Rife outside to conduct a recorded interview. Afenir, who testified that he was not handcuffed, sat in the backseat of a patrol vehicle with the door open. Rife stood next to the vehicle. Rife read Afenir his *Miranda* rights and Afenir said he understood them. Afenir told Rife that everything in the bedroom belonged to Beck, and that he only entered the bedroom to use the bathroom. Afenir also told Rife he used methamphetamine for arthritic pain, "got some of the meth that he used from Mr. Beck," and that he knew that "Beck was selling methamphetamine out of the apartment." RP at 126-27. Last, Afenir said he did not accept any rental payments from either Beck or McCartney and that he did not pay for the methamphetamine he received from Beck. Rife did not specifically question Afenir about the items found near the couch.

On July 1, the State charged Afenir with violating RCW 69.53.010,[4] which prohibits a

[4] RCW 69.53.010(1) provides,

> It is unlawful for any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, to knowingly rent, lease, or make available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

person from making available the use of a space for unlawful drug-related purposes. Afenir moved to dismiss, arguing that the evidence was insufficient to prove beyond a reasonable doubt that Afenir rented the room to Beck for the sole purpose of conducting illegal drug activity. The trial court denied the motion.

On January 27, 2010, the trial court heard Afenir's *Knapstad* motion on the issue of "whether [Afenir] knowingly allowed use of his apartment for the purpose of 'delivering, selling . . . or giving away any controlled substance.'" CP at 25. The trial court denied the motion, distinguishing the "drug house" statute, RCW 69.50.402,[5] from RCW 69.53.010, because RCW 69.53.010 had no element of "maintaining" conduct. The trial court found that the evidence was sufficient to prove a prima facie case that Beck was dealing methamphetamine, and that, because the apartment was small and Afenir admitted he entered the bedroom to use the bathroom, Afenir knew that Beck was dealing drugs from the apartment. Thus, the trial court concluded that there was sufficient evidence to establish a prima facie case that Afenir was guilty of the crime charged.

The trial court held a CrR 3.5 hearing on the admissibility of Afenir's statements made to the police on Fifth Amendment voluntariness grounds. Detective Rife testified that he stood next to Afenir during the interview, did not have his weapon drawn, but could not remember whether Afenir was handcuffed at the time. Rife also could not recall whether he had told Afenir that he was not interested in Afenir for any criminal activity. Afenir testified that Rife assured him that

[5] RCW 69.50.402(f) provides that it is unlawful for any person

> [k]nowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

the police were at the apartment to arrest only Beck and that they would appreciate any information he could give them. The trial court found Afenir's statements admissible as voluntarily given because there was no evidence of coercion and Afenir had understood his *Miranda* rights.

Afenir waived his right to a jury trial. At a bench trial held on August 25, Afenir confirmed that he did not accept rental or utility payments from Beck or McCartney. Afenir testified that he did not give either person a key to the apartment and that if he left the apartment for any reason, they also had to leave. Afenir also testified that the bedroom door was never locked because he did not want to be blocked from the bathroom. Afenir testified that on the occasions when he entered the bedroom to use the bathroom, he noticed the couple kept the bedroom very neat and that Beck had a police scanner.

Afenir testified that at some point, Beck and McCartney stacked some of their belongings from the bedroom in the living room next to the couch because they were moving items into storage. Afenir did not know about the "drug kit" found next to the couch. Afenir further testified that he paid Beck in cash for the methamphetamine and that Beck would leave the apartment before returning with the drug. Last, Afenir testified that he did not know that Beck was dealing drugs from the bedroom and that he would not have asked Beck about it because the couple had been planning to move out of the apartment in two weeks.

After the State rested, Afenir moved again to dismiss for failure to make a prima facie case. Afenir argued that even if the State had proved Afenir had made available a space under his control from which Beck sold methamphetamine, the State could not prove either that Beck was a lessee or renter or that Afenir made the space available for the purpose of selling

methamphetamine. The State argued that the statute did not require the State to prove that Afenir made the space available for the specific purpose of delivering drugs. The trial court, relying on *State v. Sigman*, 118 Wn.2d 442, 826 P.2d 144 (1992), found that "knowingly make available" meant the same as "knowingly allow," and denied the motion. The trial court found that Afenir knew and allowed Beck to sell methamphetamine from the bedroom and found him guilty has charged. Afenir timely appeals.

DISCUSSION

Afenir assigns error to the trial court's findings that the search and seizure of his home was reasonable and that his statements to Detective Rife were admissible. Afenir also assigns error to the trial court's denial of his dismissal and *Knapstad* motions. Last, Afenir asserts that Detective Rife unlawfully seized him, he received ineffective assistance of counsel, and that RCW 69.53.010(1) is unconstitutional as applied to his case. We affirm.

Physical Evidence

For the first time on appeal, Afenir asserts that the initial police entry into his apartment violated constitutional protections against unreasonable searches and seizures. U.S. Const. amend. IV; Wash. Const. art. I, § 7. Specifically, Afenir argues that although the police conducted the search pursuant to a search warrant, because their initial entry was without warrant and no exigent circumstances existed, all the State's physical evidence seized was "fruit of the poisonous tree" and the trial court erred in admitting it. The State argues that because Afenir did not request a CrR 3.6 hearing to suppress the evidence and did not object to the admission of the physical evidence on these grounds at trial, he has waived the challenge for appeal. We agree with the State.

Generally, Afenir may not raise an issue for the first time on appeal unless it is a "manifest error affecting a constitutional right." RAP 2.5(a)(3). A defendant waives the right to challenge the admission of evidence gained in an illegal search or seizure by failing to move to suppress the evidence at trial. *See State v. Mierz*, 127 Wn.2d 460, 468, 901 P.2d 286 (1995). When a defendant fails to move to suppress the evidence, the trial court is not required to rule on the admissibility of such evidence and the record on appeal contains no decision, correct or otherwise, for our review. *See State v. Tarica*, 59 Wn. App. 368, 372-73, 798 P.2d 296 (1990), *overruled on other grounds by State v. McFarland*, 127 Wn.2d 322, 337, 899 P.2d 1251 (1995).

Here, Afenir did not request a CrR 3.6 hearing to suppress the physical evidence. Neither did Afenir object to the trial court admitting into evidence photographs of his apartment, the police scanner, the "drug kit" found next to the couch, a box filled with used syringes found outside the bedroom door, or the crime lab reports showing that a baggie in the bedroom and the syringe near the couch contained methamphetamine. Afenir objected to the relevance of a spoon and a glass pipe, both found under the couch with methamphetamine residue, and a set of electronic scales found on a nightstand near the apartment front entry door. Afenir also objected to a document listing items to be tested at the crime lab as lacking in foundation to business records. The trial court overruled these objections.

As to the physical evidence Afenir did not move to suppress at trial, we hold that he has not preserved those admissibility challenges for appeal. ER 103(a)(1); *Mierz*, 127 Wn.2d at 468; *McFarland*, 127 Wn.2d at 333. As to the physical evidence admitted over Afenir's relevancy and foundational objections, because his objections were not based on warrantless search and seizure grounds, the objections are insufficient to preserve those challenges. ER 103; *State v. Guloy*, 104

Wn.2d 412, 422, 705 P.2d 1182 (1985) ("A party may only assign error in the appellate court on the specific ground of the evidentiary objection made at trial."), *cert. denied*, 475 U.S. 1020 (1986).

We note that even if Afenir had preserved his warrantless search and seizure challenge, he consented to Corporal Winfield's initial entry of his apartment. A warrantless consensual search is valid if the consent is given voluntarily by a person with the authority to give such consent and the police limit the search to the scope of the consent given, here, a search for Beck. *State v. Cotten*, 75 Wn. App. 669, 678-80, 879 P.2d 971 (1994) (quoting *Illinois v. Rodriguez*, 497 U.S. 177, 181, 110 S. Ct. 2793, 111 L. Ed. 2d 148 (1990)), *review denied*, 126 Wn.2d 1004 (1995). Here, Afenir exercised his authority to invite Winfield into his living room and gave the officer permission to look for Beck inside the bedroom and bathroom. Nothing in the record indicates that Afenir attempted to limit or revoke his consent. Winfield's invited entry falls under the consent exception to the warrant requirement and Afenir waived any challenge that the initial warrantless entry was unlawful. *See State v. Raines*, 55 Wn. App. 459, 462-63, 778 P.2d 538 (1989) (a person voluntarily consents to police entry and impliedly waives his right to exclude the police where he does not expressly object to an officers' entry "to look around" and steps aside as if allowing them to enter), *review denied*, 113 Wn.2d 1036 (1990).

Seizure

Also for the first time on appeal, Afenir asserts that because the police did not have probable cause to seize him, Detective Rife unlawfully detained him inside the patrol vehicle in violation of his Fourth and Fourteenth Amendment rights. *See State v. Allen*, 138 Wn. App. 463, 469, 157 P.3d 893 (2007) ("'When an unconstitutional search or seizure occurs, all subsequently

uncovered evidence becomes fruit of the poisonous tree and must be suppressed.'" (quoting *State v. Ladson*, 138 Wn.2d 343, 359, 979 P.2d 833 (1999))). The State argues that because Afenir consented to the interview, there was no seizure and no constitutional protections were implicated. We hold that the consensual interview was lawful. Afenir has not shown a "manifest error affecting a constitutional right" occurred and, thus, may not raise this issue for the first time on appeal. RAP 2.5(a)(3).

Afenir bears the burden to prove a seizure occurred in violation of his constitutional rights. *State v. Harrington*, 167 Wn.2d 656, 664, 222 P.3d 92 (2009). A person is seized if, when in an objective view of all the circumstances, a reasonable person would not have felt free to leave, decline to answer questions, or terminate the encounter with police. *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980); *State v. O'Neill*, 148 Wn.2d 564, 594, 62 P.3d 489 (2003); *State v. Young*, 135 Wn.2d 498, 510-11, 957 P.2d 681 (1998). There is no seizure when police ask questions of an individual as long as the officers do not convey a message that compliance with their requests is required. *Florida v. Bostick*, 501 U.S. 429, 434, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991) (quoting *California v. Hodari D.*, 499 U.S. 621, 628, 111 S. Ct. 1547, 113 L. Ed. 2d 690 (1991)). In such a case, the encounter is consensual and no reasonable suspicion is required. *Bostick*, 501 U.S. at 434.

An encounter may lose its consensual nature and become a seizure for Fourth Amendment or article I, section 7 purposes if "'the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.'" *Bostick*, 501 U.S. at 434 (quoting *Terry v. Ohio*, 392 U.S. 1, 19 n.16, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). Examples of police showing authority include "'the threatening presence of several officers, the display of a weapon

by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.'" *Harrington*, 167 Wn.2d at 664 (internal quotation marks omitted) (quoting *Young*, 135 Wn.2d at 512).

Here, the record shows that the interview was consensual. *O'Neill*, 148 Wn.2d at 571 (unchallenged written findings are verities). Afenir expressly consented to be interviewed by Detective Rife and agreed to record the interview. Rife held a recorder in his hand during the

interview, stood next to but apart from Afenir, did not have a weapon drawn, and maintained a nonthreatening tone of voice. *Harrington*, 167 Wn.2d at 664; *O'Neill*, 148 Wn.2d at 594. Thus, nothing in the record supports a finding that Rife's demeanor or actions caused the consensual interview to become a "seizure" in violation of Afenir's constitutional rights. *Bostick*, 501 U.S. at 434.

Afenir argues that because both the State and the trial court acknowledged that he might have been in custody or at least "being held" in the back of the patrol vehicle at the time he was interviewed, he was "seized" for Fourth Amendment and article I, section 7 purposes. But on review we engage in an objective determination of whether *Detective Rife's* actions amounted to a seizure; we do not consider the State's or trial court's speculative opinions as to whether he was seized. *Bostick*, 501 U.S. at 434; *O'Neill*, 148 Wn.2d at 594. Accordingly, we hold that because the evidence of record shows that the interview was consensual and not a seizure, Afenir has not shown a "manifest error" and may not raise this issue for the first time on appeal. RAP 2.5(a)(3). We do not address his related arguments regarding statement suppression on "fruit of the poisonous tree" and Fourth Amendment grounds.

Self-Incriminating Statements

Afenir avers the trial court erred in admitting his statements to Detective Rife in violation of his Washington Constitution article I, section 9, and federal Fifth Amendment protections against self-incrimination. Specifically, Afenir argues that although he waived his *Miranda* rights voluntarily, Rife materially misrepresented the purpose of the interview and, thus. he could not have intelligently waived his rights. The sole issue heard by the trial court during Afenir's CrR 3.5 hearing was whether the trial court should suppress his statements on Fifth Amendment

voluntariness grounds. Thus, Afenir's claim that his waiver was unknowing and unintelligent is raised for the first time on appeal. RAP 2.5. But to preserve a *Miranda* waiver advisement issue for appeal, Afenir must have raised the issue at his CrR 3.5 hearing. *State v. Campos-Cerna*, 154 Wn. App. 702, 710, 226 P.3d 185, *review denied*, 169 Wn.2d 1021 (2010). Accordingly, as with Afenir's unreasonable search and seizure claims, Afenir has not preserved this challenge for appeal and we do not address it further. RAP 2.5.

Ineffective Assistance of Counsel

Next, Afenir asserts that his trial counsel's failure to object to the admissibility of physical evidence amounts to ineffective assistance of counsel. To establish ineffective assistance of counsel, Afenir must show that (1) his counsel's performance was deficient and (2) the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *McFarland*, 127 Wn.2d at 334-35. Counsel's performance is deficient when it falls below an objective standard of reasonableness. *State v. Stenson*, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997), *cert. denied*, 523 U.S. 1008 (1998). Prejudice would occur here if, but for his counsel's deficient performance, there is a reasonable probability that Afenir's sentence would have differed. *McFarland*, 127 Wn.2d at 335 (citing *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987)). "'A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" *Thomas*, 109 Wn.2d at 226 (emphasis omitted) (quoting *Strickland*, 466 U.S. at 694).

We presume trial counsel performed adequately and give "exceptional deference" to "strategic decisions." *State v. Goldberg*, 123 Wn. App. 848, 852, 99 P.3d 924 (2004) (citing *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002)). "'If trial counsel's conduct can be

characterized as legitimate trial strategy or tactics, it cannot serve as a basis for a claim that the defendant received ineffective assistance of counsel.'" *Golberg*, 123 Wn. App. at 852 (quoting *McNeal*, 145 Wn.2d at 362).

Here, as noted above, Afenir's trial counsel did not request a CrR 3.6 hearing to suppress physical evidence and did not object to the admission of several items of physical evidence. Counsel's argument at trial was that the State could not prove Afenir made the bedroom available for the purpose of Beck's selling or distributing drugs. RCW 69.53.010. Counsel relied on evidence showing that the bedroom was neatly kept, Afenir did not accept rental payments from either Beck or McCartney, Afenir did not give either person a key, neither Beck nor McCartney could remain in the apartment without Afenir present, and Beck would leave the apartment before returning with Afenir's methamphetamine to support this defense. Counsel presumably presented these facts to distinguish the present case from *Sigman*, where the defendant rented a house to a friend for eight months, visited a number of times, gave the friend a key, and the odor of growing marijuana was overwhelming inside the house. 118 Wn.2d at 445.

Counsel's trial strategy was consistent with his arguments for his motions to dismiss: that the fact finder must find that *Afenir's purpose* in allowing Beck to use the bedroom was to deliver a controlled substance in order to enter a guilty verdict. Thus, counsel's decision not to object to evidence supporting a finding that Beck was delivering drugs from the bedroom was tactical and strategic. Given the "exceptional deference" we afford counsel's strategic decisions, we hold that Afenir's trial counsel's choice of argument was legitimate and not deficient. *Golberg*, 123 Wn. App. at 852. In addition, in light of evidence that Afenir consented to the initial police entry into his apartment and that the police obtained a warrant before conducting a successful search of

Afenir's apartment, we hold that counsel's reasonable tactic cannot serve as a basis for Afenir's ineffective assistance of counsel claim. *Golberg*, 123 Wn. App. at 852 (quoting *McNeal*, 145 Wn.2d at 362). Afenir's claim fails.

Knapstad Motion

Next, Afenir argues that the trial court misinterpreted RCW 69.53.010(1), and if correctly interpreted, the evidence before the trial court was insufficient to make a prima facie case. *State v. Knapstad*, 107 Wn.2d 346, 352, 729 P.2d 48 (1986). Generally, we review issues of statutory interpretation and alleged errors of law de novo. *State v. Bunker*, 169 Wn.2d 571, 577-78, 238 P.3d 487 (2010) (citing *City of Spokane v. County of Spokane*, 158 Wn.2d 661, 672-73, 146 P.3d 893 (2006)); *State v. Lamb*, 163 Wn. App. 614, 625 n.7, 262 P.3d 89 (2011), *review granted*, No. 86603-1 (Wash. Mar. 6, 2012). We interpret statutes to give effect to the legislature's intent. *Bunker*, 169 Wn.2d at 577-78 (citing *Spokane*, 158 Wn.2d at 672-73). We begin by examining the plain language of the statute. *Bunker*, 169 Wn.2d at 578 (citing *In re Forfeiture of One 1970 Chevrolet Chevelle*, 166 Wn.2d 834, 838-39, 215 P.3d 166 (2009)). "'The plain meaning of a statute may be discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.'" *Bunker*, 169 Wn.2d 578 (internal quotation marks omitted) (quoting *Chadwick Farms Owners Ass'n v. FHC LLC*, 166 Wn.2d 178, 186, 207 P.3d 1251 (2009)). Further, "'[a]n act must be construed as a whole, considering all provisions in relation to one another and harmonizing all rather than rendering any superfluous.'" *Bunker*, 169 Wn.2d 578 (alteration in original) (quoting *State v. George*, 160 Wn.2d 727, 738, 158 P.3d 1169 (2007)).

First, we determine whether the trial court erred in interpreting RCW 69.53.010(1). As

relevant to this case, RCW 69.53.010(1) provides that it is unlawful for any person who has management or control over any room as a lessee to knowingly "make available for use, with or without compensation," the room "for the purpose of unlawfully . . . delivering, selling, storing, or giving away any controlled substance." Thus, the statute unambiguously requires the State to prove beyond a reasonable doubt that Afenir (1) had control (2) over a room (3) as a lessee, and that (4) he made the room available for use, with or without compensation, (5) for the purpose of unlawfully "delivering, selling, storing, or giving away" (6) any controlled substance. The trial court, finding that "knowingly make available" meant "knowingly allow," framed the issue as whether Afenir knew of "Beck's activities of allegedly selling or giving away methamphetamine within his apartment and did he allow it to continue." CP at 25; *Sigman*, 118 Wn.2d at 446-47.

Afenir argues that the State failed to prove that *his purpose* in making the bedroom available to Beck was so that Beck could deliver drugs from the bedroom. But a plain reading of the statute does not support his contention that the statute requires the State to prove any such element. RCW 69.53.010(2) provides a statutory defense:

> It shall be a defense for an owner, manager, or other person in control pursuant to subsection (1) of this section to, in good faith, notify a law enforcement agency of suspected drug activity pursuant to subsection (1) of this section, or to process an unlawful detainer action for drug-related activity against the tenant or occupant.

Read as a whole, RCW 69.53.010 provides that when the person in control of a space makes the space available to another person who then uses the space for illegal drug-related activities, he or she will not be found in violation of RCW 69.53.010(1) if he or she reports the drug-related activity to a law enforcement agency. Stated another way, the statute does not require that *Afenir's* purpose in making the bedroom available to Beck was so that Beck could distribute

drugs; it requires only that once the space is made available, Afenir does not knowingly allow Beck to conduct illegal drug activity from the bedroom. *See Sigman*, 118 Wn.2d at 446-47.

Second, we determine whether the trial court erred in denying Afenir's *Knapstad* motion. The trial court may dismiss a charge without prejudice when the State's pleadings fail to support a prima facie showing of all the elements of the crime charged. *State v. Snedden*, 112 Wn. App. 122, 127, 47 P.3d 184 (2002) (citing *Knapstad*, 107 Wn.2d at 352), *aff'd*, 149 Wn.2d 914, 73 P.3d 995 (2003). We review de novo a trial court's denial of a *Knapstad* motion and view the facts and all reasonable inferences in the light most favorable to the State. *State v. O'Meara*, 143 Wn. App. 638, 642, 180 P.3d 196 (2008) (citing *State v. Missieur*, 140 Wn. App. 181, 184, 165 P.3d 381 (2007)). We will affirm the trial court unless no rational fact finder could have found the essential elements of the crime beyond a reasonable doubt. *O'Meara*, 143 Wn. App. at 641 (citing *State v. Wilhelm*, 78 Wn. App. 188, 191, 896 P.2d 105 (1995)).

Here, the unchallenged facts provide that Afenir rented the small one-bedroom apartment and that he allowed Beck and McCartney to stay in the bedroom while he slept on a couch in the living room. The bathroom could be accessed only by walking through the bedroom. The police found a police scanner, drug paraphernalia with methamphetamine residue, electronic scales, and papers with writing indicating money owed and paid inside the bedroom. Afenir admitted that he took methamphetamine from Beck on a few occasions and that he knew Beck was "dealing methamphetamine." CP at 26. These facts clearly establish a prima facie case. *O'Meara*, 143 Wn. App. at 642 (citing *Missieur*, 140 Wn. App. at 184). Accordingly, the State sufficiently countered Afenir's claim that it did not establish a prima facie claim. *O'Meara*, 143 Wn. App. at 641 (citing *Wilhelm*, 78 Wn. App. at 191).

Motion to Dismiss

Next, Afenir asserts that the trial court erred in denying his motion to dismiss made after the State rested its case.[6] But we cannot review this assignment of error because Afenir "waived his challenge to the sufficiency of the [S]tate's case by putting on evidence in his own behalf after the court denied his motion to dismiss." *State v. Allan*, 88 Wn.2d 394, 396, 562 P.2d 632 (1977) (citing *Goodman v. Bethel Sch. Dist. No. 403*, 84 Wn.2d 120, 123, 524 P.2d 918 (1974); *State v. Mudge*, 69 Wn.2d 861, 862, 420 P.2d 863 (1966); *State v. Thach*, 5 Wn. App. 194, 200, 486 P.2d 1146, *review denied*, 79 Wn.2d 1012 (1971)).

RCW 69.53.010 Constitutionality, As Applied

Last, Afenir asserts that RCW 69.53.010(1) is unconstitutional as applied to his case because it punishes his "state of mind"—his "knowing"— rather than any culpable act. Afenir's argument lacks both factual and legal merit.

We presume that statutes are constitutional and Afenir bears the burden of overcoming this presumption. *State v. Jarvis*, 160 Wn. App. 111, 117, 246 P.3d 1280 (citing *State v. Thorne*, 129 Wn.2d 736, 769-70, 921 P.2d 514 (1996)). *review denied*, 171 Wn.2d 1029 (2011). Here, Afenir is correct that the State must prove, among other things, that he knew Beck conducted illegal drug-related activities in the bedroom. However, Afenir incorrectly asserts that RCW 69.53.010(1) lacks a culpable act requirement.

In RCW 69.53.010(1), the legislature legitimately criminalizes a person's failure to act.

[6] Although Afenir also assigns error to the trial court denying his December 16, 2009 motion to dismiss, he does not offer any argument in support of his assignment of error in his appellate brief. We do not review assignments of error that are unsupported by pertinent authority, references to the record, or meaningful analysis. RAP 10.3(6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Accordingly, we do not address whether the trial court erred in denying Afenir's December 16, 2009 motion to dismiss.

See, e.g., *State v. Eaton*, 168 Wn.2d 476, 482 n.2, 299 P.3d 704 (2010) (citing RCW 9A.76.030 (criminalizing refusal to summon aid for a peace officer); RCW 9A.84.020 (criminalizing failure to disperse)); *see also* RCW 9.69.100 (crime for eyewitness to fail to report violent crime against a child). Specifically, the statute criminalizes a person's failure to report to law enforcement a perpetrator conducting unlawful drug-related activities in a space the person controls and made available. RCW 69.53.010(1). That the failure to act is itself a culpable act is shown further by RCW 69.53.010(2), which provides a statutory defense to any person who reports such activity to a law enforcement agency. Afenir has failed to meet his burden to overcome the presumption that RCW 69.53.010(1) is constitutional and his claim fails.

Accordingly, we affirm Afenir's conviction for making a space under his control available for the purpose of selling methamphetamine. RCW 69.53.010(1).

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

I concur in result only:

ARMSTRONG, P.J.

I concur:

HUNT, J.