COA No. 33944-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Appellant,

v.

RODNEY CLIFFORD MENARD,

Respondent.

BRIEF OF RESPONDENT

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I. ASSIGNMENT OF ERROR

Rodney Clifford Menard makes no assignment of error.

II. COUNTER-STATEMENT OF THE CASE

As this appeal is from the granting of a *Knapstad* motion to dismiss, the facts are undisputed. For purposes of the motion, the State relied on the investigating detective's declaration of probable cause. (CP 1-3). The State also accepted the "limited" facts stated in defense counsel's supporting declaration: (CP 6, 13). :

Since the undisputed facts did not establish a prima facie case against him, the court entered an order of dismissal without prejudice. (CP 39). The State appealed. (CP 40).

III. ARGUMENT

In order to grant a *Knapstad* motion, the court must find there are no disputed facts and the undisputed facts do not establish a prima facie case of guilt. *State v. Knapstad*, 107 Wn.2d 346, 352, 729 P.2d 48 (1986). Those undisputed facts failed to do so and the court properly granted the motion.

Here, those facts show only that there were crime stopper phone calls complaining about traffic to Mr. Menard's residence; a solitary CI drug buy from another person at the house; items seized pursuant to a search warrant; and Mr. Menard's admissions. (CP

2). He admitted he was the property owner; he rented rooms to five persons and sometimes got meth in exchange for rent money; he admitted using the drug periodically and possessed drug pipes in his bedroom; He was aware the tenants were using meth but unaware they were selling drugs from the residence; and he tried to stop all the people coming to his house with no success. (*Id*.). Two renters in his residence indicated to police that at least 10-15 different people came by the house daily to use drugs. (*Id*.).

To prove Mr. Menard guilty of maintaining a drug dwelling under RCW 69.50.402(1)(f), the State must show (1) the drug activity was of a "continuing and recurring character" and (2) a substantial purpose of maintaining the premises is for the illegal drug activity." *State v. Ceglowski*, 103 Wn. App. 346, 352-53, 12 P.3d 160 (2000). The undisputed facts failed to establish the "substantial purpose" prong.

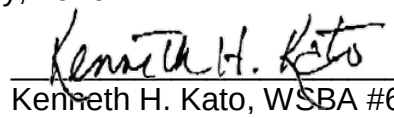
Adopting the reasoning applied to the federal crack house statute, the *Ceglowski* court noted the casual user does not fall under the prohibition because his house is not maintained for the purpose of using drugs but rather for the purpose of residing in it, the drug use simply being incidental to that purpose. 103 Wn.2d at 351 (quoting *United States v. Verners*, 53 F.3d 291, 296 (10th Cir.

1995). That is this case. All the State could show was that Mr. Menard was a casual user of drugs in the house where he had lived since he was five years old. (CP 6). Having failed to establish the "substantial purpose" requirement, the State did not make a prima facie case. The court properly granted Mr. Menard's *Knapstad* motion.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Menard respectfully urges this court to affirm the order of the trial court.

DATED this 19th day of July, 2016.



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CERTIFICATE OF SERVICE: I certify that on July 19, 2016, I sent a copy of the brief of appellant by USPS to Rodney Menard, 810 N. 26th Ave., Yakima, WA 98902; and by email, as agreed, on Tamara Hanlon at tamara.hanlon@co.yakima.wa.us.