

No. 40624-1-II

FILED
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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

V.

GB BROWN

REPLY BRIEF

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ORIGINAL

PM 11-7-10

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A. Argument in Reply

In its Brief of Respondent, the State makes a great deal of the fact that, according to Sergeant Rudloff's report, Mr. Brown stated he was "a provider of medical marijuana to several medical marijuana patients [sic]." Brief of Respondent, 2. According to the State, because Mr. Brown stipulated to the police reports in his bench trial, Mr. Brown's alleged admissions became undisputed facts. Because Mr. Brown "admitted to Sergeant Rudloff that he provided medical marijuana to three different people. . . [t]he facts of this case establish that the defendant was in fact a provider of marijuana to three different people at the same time."

The State's analysis is flawed both as a matter of fact and as a matter of law. First, as a matter of fact, the police report referenced by the State was attached as an appendix to the Findings of Fact and Conclusions of Law for Trial Without Jury. CP, 93 et. seq. Paragraphs 4 through 6 contain the totality of the trial court's findings as to Mr. Brown's pre-arrest statements. In addition, paragraph 5 evidences some negotiation about the stipulated facts. The paragraphs read:

4. During his conversation with the deputies Mr. Brown stated that he did possess marijuana and that he was a qualified provider of medical marijuana.

5. *According to the police report Deputy Rudloff stated that Mr. Brown further told the deputies said that the marijuana growing in the adjoined duplex residence was his.*

6. Mr. Brown told the deputies that he provided medical marijuana to the occupant of the adjoined duplex in exchange for Mr. Brown being allowed to grow his marijuana in his adjoined neighbor's residence."

CP, 93 (handwritten language in italics, underlining added for emphasis).

The trial court made no findings that Mr. Brown said he was the provider for three different people. The only person found by the trial court that Mr. Brown said he was a medical provider for was his neighbor in the adjoining duplex.

The handwritten changes to the findings of fact also highlight another factual contention. Clearly, the parties dispute what Mr. Brown told Sergeant Rudloff. Because the trial court granted the State's motion in limine to preclude the medical marijuana provider defense, the trial court did not have the opportunity to hear sworn testimony from both parties about the issue.

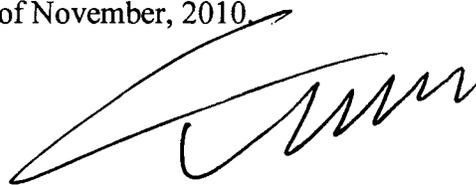
Second, the State's analysis is flawed as a matter of law. It has become standard practice in Washington for criminal defendants, having lost a dispositive pre-trial motion, to submit the case for a bench trial on stipulated facts in order to preserve the right to appeal. See State v. Tracy, 158 Wn.2d 683, 147 P.3d 559 (2006). The purpose of the stipulated facts trial was not to resolve all the disputed facts at trial. The purpose was to preserve the issues for appeal.

The factual and legal dispute also highlights the fundamental disagreement in this case. Mr. Brown had the burden of producing “at least some evidence” that he was a Qualified Provider. Tracy at 689. The State would have this Court believe that he was required to produce undisputed evidence. One of the primary purposes of a jury trial is to resolve disputed issues, including issues affecting the credibility of witnesses. If a jury believes that Mr. Brown was providing marijuana for more than one patient, then the jury will convict him. But, based upon its assessment of the credibility of the witnesses, the jury concludes that he was only providing marijuana for one patient, then the jury will acquit. It is neither the trial court’s role, nor the role of this Court, to substitute its assessment of the veracity of disputed evidence to resolve the case.

B. Conclusion

This case should be reversed and remanded for trial.

DATED this 9th day of November, 2010.

A handwritten signature in black ink, appearing to read 'T. Weaver', written over a horizontal line.

Thomas E. Weaver, WSBA #22488
Attorney for Defendant

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BY: *kw*

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)	Case No.: 09-1-01430-6
)	
Respondent,)	Court of Appeals No. 40624-1-II
)	
vs.)	AFFIDAVIT OF SERVICE
)	
GB BROWN,)	
)	
Defendant.)	

STATE OF WASHINGTON)
)
 COUNTY OF KITSAP)

THOMAS E. WEAVER, being first duly sworn on oath, does depose and state:

I am a resident of Kitsap County, am of legal age, not a party to the above-entitled action,
and competent to be a witness.

On November 9, 2010, I sent an original and a copy, postage prepaid, of the MOTION
FOR EXTENSION OF TIME FOR THE FILING OF THE REPLY BRIEF, and the REPLY
BRIEF, to the Washington State Court of Appeals, Division II, 950 Broadway St., Suite 300,
Tacoma, WA 98402.

ORIGINAL

1 On November 9, 2010, I sent a copy, postage prepaid, of the MOTION FOR
2 EXTENSION OF TIME FOR THE FILING OF THE REPLY BRIEF, and the REPLY BRIEF,
3 to the Thurston County Prosecutor's Office, 2000 Lakeridge Dr. SW, Bldg. 2, Olympia, WA
4 98502.

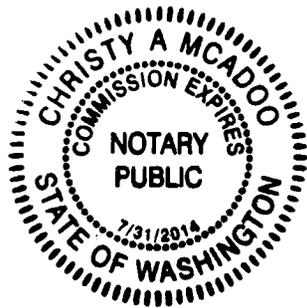
5 On November 9, 2010, I sent a copy, postage prepaid, of the MOTION FOR
6 EXTENSION OF TIME FOR THE FILING OF THE REPLY BRIEF, and the REPLY BRIEF,
7 to Mr. GB Brown, 4255 Lacey Blvd. SE, Lacey, WA 98503.

8
9 Dated this 9th day of November, 2010.



11
12 Thomas E. Weaver
13 WSBA #22488
14 Attorney for Defendant

15
16 SUBSCRIBED AND SWORN to before me this 9th day of November, 2010.



17
18 Christy A. McAdoo
19 NOTARY PUBLIC in and for
20 the State of Washington.
21 My commission expires: 07/31/2014