

FILED
Court of Appeals
Division II
State of Washington
9/5/2018 12:56 PM

NO. 51160-6-II

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

STATE OF WASHINGTON,

Respondent,

v.

LEONARD LANGDON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Gregory M. Gonzales, Judge

BRIEF OF APPELLANT

LISA E. TABBUT
Attorney for Appellant
P. O. Box 1319
Winthrop, WA 98862
(509) 996-3959

TABLE OF CONTENTS

	Page
A. ASSIGNMENT OF ERROR.....	1
The trial court erred by imposing a condition of community custody requiring Mr. Langdon to undergo a substance abuse evaluation and comply with treatment..	1
B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.....	1
Did the trial court err when it imposed a substance abuse evaluation as a condition of community custody without the statutory required finding that a substance used by Mr. Langdon contributed to the offense?.....	1
C. STATEMENT OF THE CASE.....	1
D. ARGUMENT.....	5
The trial court lacked lawful authority to impose a substance abuse evaluation and treatment condition of community custody.....	5
E. CONCLUSION.....	8
CERTIFICATE OF SERVICE.....	9

TABLE OF AUTHORITIES

	Page
Washington Supreme Court Cases	
<i>Kilian v. Atkinson</i> , 147 Wn.2d 16, 50 P.3d 638 (2002).....	6
<i>State v. Armendariz</i> , 160 Wn.2d 106, 156 P.3d 201 (2007)	5
<i>State v. Bahl</i> , 164 Wn.2d 739, 193 P.3d 678 (2008)	5
<i>State v. Keller</i> , 143 Wn.2d 267, 19 P.3d 1030 (2001)	6
Washington Court of Appeals Cases	
<i>State v. Jones</i> , 118 Wn. App. 199, 76 P.3d 258 (2003)	5
Statutes	
RCW 9.41.040.....	2
RCW 9.94A.030	5, 6
RCW 9.94A.607	6, 7
RCW 9.94A.703	5, 6

A. ASSIGNMENT OF ERROR

The trial court erred by imposing a condition of community custody requiring Mr. Langdon to undergo a substance abuse evaluation and comply with treatment.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Did the trial court err when it imposed a substance abuse evaluation as a condition of community custody without the statutory required finding that a substance used by Mr. Langdon contributed to the offense?

C. STATEMENT OF THE CASE

In October 2015, a police task force served a search warrant on Leonard Langdon's residence in rural Clark County. RP3¹ 243, 246-47, 252. Mr. Langdon lived in a 45-foot Weekend Warrior fifth wheel trailer with his girlfriend Tracy Wilson. RP5 569, 572; RP6 625.

The police seized several items to include a black Colt revolver, a Blow stunt gun, a glass pipe, and a small container. RP3 255-60; RP4 367-69.

¹ The record consists of seven volumes of verbatim. The specific volume number follows the "RP" (Report of Proceedings).

The police located the pipe and the container in the bedroom and the revolver and stunt gun in an upper cabinet in the seating area. RP3 247, 255, RP4 367-69.

Scrapings of residue from the pipe and container tested positive for methamphetamine. RP4 458, 464, 465-67.

Mr. Langdon's 2012 convictions for two counts of violating a domestic violence no-contact order for contacting his wife by phone made it illegal for him to possess firearms. RP5 578. Supplemental Designation of Clerk's Papers, Exhibits 3 and 4.²

The state charged Mr. Langdon with one count of possession of methamphetamine and two counts of unlawful possession of a firearm in the second degree. CP 1-2.

Pre-trial, Mr. Langdon challenged the search warrant for lack of probable cause. RP1 4-24; CP 3-26. The court denied the challenge. RP1 16-24.

At trial, Mr. Langdon denied using methamphetamine but testified his girlfriend Tracy used it occasionally. RP5 585, 603. A friend of

² See RCW 9.41.040(2)(a)(i)

the couple, Heidi Freeman, stayed at the trailer periodically. RP6 627-28.

Freeman also used methamphetamine. RP6 628.

Mr. Langdon recognized the revolver as belonging to his stepson, Logan Babbicock. RP5 575-76. Babbicock planned to use a rustic gun range near Mr. Langdon's home to target shoot. RP6 630. Mr. Langdon had no idea when or why Babbicock put the revolver in the trailer cabinet. RP5 578. Babbicock did not testify.

Mr. Langdon used the stunt gun, as a noise maker to keep the coyotes away from his cats. RP5 575.

Mr. Langdon's firearm expert, Mathew Noedel, testified the stunt gun was not a firearm as the law defines the term. RP5 532. Without extensive retooling, the stunt gun was incapable of firing a projectile. RP5 549.

Because the state had no evidence Mr. Langdon used methamphetamine, the state argued in closing that Langdon's constructive possession of the trailer and its contents gave him dominion and control of the methamphetamine. RP6 758-64. Mr. Langdon argued any possession of the methamphetamine residue was unwitting. RP6 793-95. The jury received an unwitting possession instruction. CP 78, Instruction 11; RP6 743-44.

The court instructed the jury it must be unanimous on at least one of the methamphetamine possessions – the pipe or the container – to convict Mr. Langdon of possession. CP 74, Instruction 7; RP6 742.

The jury, using the state’s theory of constructive possession, found Mr. Langdon guilty of possession of methamphetamine. CP 90.

The jury also found Mr. Langdon guilty of possessing the revolver but acquitted him of illegally possessing the stunt gun. CP 91-92.

At sentencing, no one suggested Mr. Langdon used methamphetamine or any drug. RP7 858-67. Rather, the state suggested Mr. Langdon should have a drug evaluation generally because of the general nature of the possession conviction as a drug offense. RP7 860.

The court sentenced Mr. Langdon to five months in jail plus 12 months of community custody. CP 99. The court did not find Mr. Langdon had a chemical dependency issue. CP 97; RP7 866-67. Yet, the court required Mr. Langdon to undergo a chemical dependency evaluation as a condition of community custody. CP 100.

Mr. Langdon timely appeals all portions of his judgment and sentence. CP 108.

D. ARGUMENT

The trial court lacked lawful authority to impose a substance abuse evaluation and treatment condition of community custody.

As a condition of community custody, the court ordered Mr. Langdon to undergo an evaluation for, and comply with, treatment for substance abuse. CP 100. Because the condition is not crime-related, was imposed without a statutory required finding, and is not supported by the record, the court must strike it from Mr. Langdon's judgment and sentence.

Mr. Langdon did not object to the substance abuse sentencing condition, but sentencing errors may be raised for the first time on appeal. *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008); *State v. Jones*, 118 Wn. App. 199, 204, 76 P.3d 258 (2003). Whether the trial court lacked statutory authority to impose a specific community custody condition is a question of law reviewed de novo. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007).

RCW 9.94A.703 sets out mandatory, waivable, and discretionary community custody conditions. Any conditions not expressly authorized by statute must be crime-related. RCW 9.94A.703(3)(f); RCW 9.94A.030(10). A "crime-related prohibition" is "an order of a court prohibiting conduct

that directly relates to the circumstances of the crime for which the offender has been convicted.” RCW 9.94A.703(3)(f); RCW 9.94A.030(10).

Before imposing a substance abuse evaluation condition of community custody, a trial court must first determine chemical dependency contributed to the offense.

[Where] the court finds that the offender has any chemical dependency that has contributed to his or her offense, the court may, as a condition of the sentence and subject to available resources, order the offender to participate in rehabilitative programs or otherwise to perform affirmative conduct reasonably related to the circumstances of the crime for which the offender has been convicted and reasonably necessary or beneficial to the offender and the community in rehabilitating the offender.

RCW 9.94A.607(1)(emphasis added in italics).

The goal of statutory construction is to carry out legislative intent. *Kilian v. Atkinson*, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). When the meaning of a statute is clear on its face, the appellate court assumes the legislature means exactly what it says, giving criminal statutes literal interpretation. *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001).

The court did not find substance abuse or chemical dependency contributed to Mr. Langdon’s conviction for possession of methamphetamine. At Judgment and Sentence Section 2.1, the court did not check this box:

[] The defendant has a chemical dependency that has contributed to the offense(s). RCW 9.94A.607.

CP 97; RP7 858-67.

Under the plain terms of RCW 9.94A.607(1), the court had to make such a finding before it could order Mr. Langdon to obtain a substance abuse evaluation and follow all treatment recommendations.

Here there was no evidence that substance abuse or chemical dependency played a role in possession of a residual amount of methamphetamine in the container or the pipe.

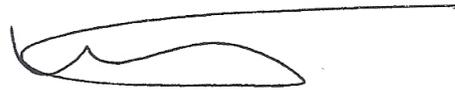
Mr. Langdon knew his girlfriend, Tracy, and a frequent guest, Heidi, used methamphetamine. RP5 603, 627. Mr. Langdon himself steadfastly denied using methamphetamine. RP5 585. The state produced no contrary evidence.

This court should order the substance abuse evaluation condition stricken from the judgment and sentence.

E. CONCLUSION

Mr. Langdon's case should be remanded to strike the chemical dependency community custody condition from the judgment and sentence.

Respectfully submitted September 5, 2018.

A handwritten signature in black ink, appearing to read 'LISA E. TABBUT', with a long horizontal line extending to the right.

LISA E. TABBUT/WSBA 21344
Attorney for Leonard Langdon

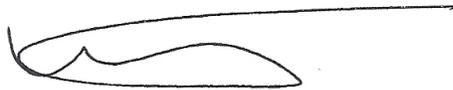
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares:

On today's date, I filed the Brief of Appellant to (1) Clark County Prosecutor's Office, at cntypa.generaldelivery@clark.wa.gov; (2) Rachel Rogers at rachael.rogers@clark.wa.gov; (3) the Court of Appeals, Division II; and (3) I mailed it to Leonard Langdon, 1814 Eaton Parkway, Battleground, WA 98604.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed September 5, 2018, in Winthrop, Washington.

A handwritten signature in black ink, appearing to read 'Lisa E. Tabbut', with a long horizontal line extending to the right.

Lisa E. Tabbut, WSBA No. 21344
Attorney for Leonard Langdon, Appellant

LAW OFFICE OF LISA E TABBUT

September 05, 2018 - 12:56 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51160-6
Appellate Court Case Title: State of Washington, Respondent v. Leonard D. Langdon, Appellant
Superior Court Case Number: 15-1-02089-7

The following documents have been uploaded:

- 511606_Briefs_20180905125534D2658768_6283.pdf
This File Contains:
Briefs - Appellants
The Original File Name was Leonard Langdon Brief of Appellant.pdf

A copy of the uploaded files will be sent to:

- CntyPA.GeneralDelivery@clark.wa.gov
- rachael.rogers@clark.wa.gov

Comments:

Sender Name: Lisa Tabbut - Email: ltabbutlaw@gmail.com

Address:

PO BOX 1319

WINTHROP, WA, 98862-3004

Phone: 877-856-9903

Note: The Filing Id is 20180905125534D2658768