

FILED
Court of Appeals
Division II
State of Washington
4/1/2020 10:20 AM

NO. 53455-0-II

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

DAVID ACE MIKEALS

Appellant.

RESPONDENT'S BRIEF

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I. ISSUE

1. DOES THE DRUG POSSESSION STATUTE, PURSUANT TO RCW 69.50.4013, VIOLATE DUE PROCESS UNDER THE FOURTEENTH AMENDMENT?

II. SHORT ANSWER

1. NO. THE DRUG POSSESSION STATUTE, PURSUANT TO RCW 69.50.4013, DOES NOT VIOLATE DUE PROCESS UNDER THE FOURTEENTH AMENDMENT.

III. FACTS

In light of the issue raised on appeal, the State agrees with the defendant's statement of the case.

IV. ARGUMENT

1. THE DRUG POSSESSION STATUTE, PURSUANT TO RCW 69.50.4013, DOES NOT VIOLATE DUE PROCESS UNDER THE FOURTEENTH AMENDMENT.

The legislature has the authority to create a crime without a mens rea element. State v. Anderson, 141 Wash.2d 357, 361 (2000). To determine whether the legislature did so, the courts consider the language and legislative history of a statute. State v. Bash, 130 Wash.2d 594, 604-605 (1996). "The legislative history of the mere possession statute is clear. The legislature omitted the 'knowingly or intentionally' language from the Uniform Controlled Substances Act." State v. Bradshaw, 152 Wash.2d 528, 537 (2004). The omission was intentional and a knowledge element should not be read into the statute. State v. Cleppe, 96 Wn.2d 373 (1981). Reviewing the issue a generation later, our court again concluded that Cleppe was correctly decided. Bradshaw, 152 Wash.2d at 528. Statutes are presumed constitutional. The challenger bears the heavy burden

of convincing the court that there is no reasonable doubt that the statute is unconstitutional. In re Welfare of A.W. & M.W., 182 Wash.2d 689, 701 (2015).

In State v. Schmeling, 191 Wash.App. 795 (2015), the defendant appealed his conviction under RCW 69.50.4013 for possession of a controlled substance and argued on appeal that the statute recognizing drug possession as a strict liability crime violated due process. Id. at 797. The appellate held that "[t]he Fourteenth Amendment to the United States Constitution provides that no state may deprive a person of liberty without due process of law. We hold that RCW 69.50.4013 does not violate due process even though it makes possession of drug residue a crime without requiring any culpable mental state." Id. at 800. "RCW 69.50.4013 does not violate due process even though it does not require the State to prove intent or knowledge to convict an offender of possession of a small amount of a controlled substance." Id. at 802.

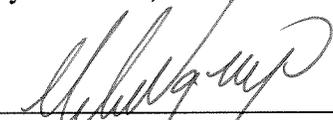
State v. Pittman, 2020 WL 1282499, is an unpublished opinion filed on or after March 1, 2013, that is not binding authority, but may be accorded such persuasive value as the court deems appropriate under GR 14.1. In Pittman, the defendant appealed his conviction for possession of a controlled substance and argued that the absence of a mens rea element renders the statute unconstitutional since the affirmative defense of unwitting possession shifts the burden of proof to the defendant. Id. The appellate court affirmed the defendant's decision because it is well-settled law that Washington legislature did not include a knowledge element in the unlawful possession statute and a knowledge element should not be read into the statute. Id.

Like Schmeling, the defendant's conviction for possession of a controlled substance under RCW 69.50.4013 should be affirmed. The Washington legislature did not include a mens rea element in the unlawful possession statute and the statute does not violate due process under the Fourteenth Amendment.

VI. CONCLUSION

The defendant's appeal should be denied because the unlawful possession statute does not violate due process under the Fourteenth Amendment.

Respectfully submitted this 26 day of March, 2020,



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CERTIFICATE OF SERVICE

I, Julie Dalton, do hereby certify that the opposing counsel listed below was served RESPONDENT'S BRIEF electronically via the Division II portal:

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

Signed at Kelso, Washington on April 1, 2020 .


Julie Dalton

COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

April 01, 2020 - 10:20 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53455-0
Appellate Court Case Title: State of Washington, Respondent v. David Ace Mikeals, Appellant
Superior Court Case Number: 17-1-01337-1

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