

**FILED**

OCT 04 2010

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 28884-6-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

EDDIE CORTEZ, APPELLANT

---

BRIEF OF RESPONDENT

---

Karen Horowitz  
Attorney for Respondent, State of Washington  
WSBA # 40513  
Grant County Prosecuting Attorney's Office  
P.O Box 37  
Ephrata, WA 98823-0037  
(509) 754-2011

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## **A. ASSIGNMENTS OF ERROR**

The Respondent, State of Washington, asserts that no error occurred in the trial and conviction of the Appellant and respectfully requests that his conviction be affirmed.

## **B. STATEMENT OF THE CASE**

The Appellant, Eddie Cortez, was found guilty at an adjudicatory hearing of Assault in the Fourth Degree under RCW 9A.36.041, Possession of a Controlled Substance Other Than Marijuana under RCW 69.50.4013, Resisting Arrest under RCW 9A.76.040, and Possession of 40 Grams or Less of Marijuana under RCW 69.50.4014. (CP 12)

On March 13, 2009 John Franklin was working as a school security officer at the Moses Lake High School in Moses Lake, WA. (CP 24) Mr. Franklin was viewing the surveillance camera system when he noticed two students outside in the school parking lot. (CP 24) He tracked the students using the camera system and became worried that the students, who were outside seated outside in a parked car, were not going to return to class. (CP 25) Mr. Franklin went out to the parking lot and approached the students. (CP 25)

Eddie Cortez was seated in the driver's seat of the vehicle. (CP 25) Riley Moe was next to him in the front passenger seat. (CP 25) Mr.

Franklin walked up to the passenger side of the vehicle. (CP 25) The front passenger window was partially open and Mr. Franklin could smell the odor of marijuana emanating from the vehicle. (CP 25)

Mr. Cortez looked at Mr. Franklin and turned on the vehicle. (CP 25) Mr. Franklin told Mr. Cortez and Mr. Moe that they were not going anywhere and asked Mr. Cortez to turn the vehicle off. (CP 25) Mr. Cortez did not turn the vehicle off. (CP 25) Mr. Franklin walked behind Mr. Cortez's vehicle to prevent Mr. Cortez from backing out of his parking space and leaving the school campus. (CP 25) While behind Mr. Cortez's vehicle, Mr. Franklin spoke in an authoritative manner and told Mr. Cortez to turn off his vehicle and that he was not going anywhere. (CP 25)

Mr. Cortez put his car into reverse and backed up, striking Mr. Franklin in the knee with his vehicle. (CP 25) Immediately after he was hit, Mr. Franklin loudly placed his hand on the trunk of Mr. Cortez's vehicle. (CP 25) Mr. Cortez pulled back into the parking space, turned his car off, exited the vehicle, and began to walk toward the school building. (CP 25-26)

Officer Ray Lopez of the Moses Lake Police Department was working at the Moses Lake High School as a school resource officer. (CP 26) He arrived in the school parking lot after having been called on the

radio by Mr. Franklin. (CP 26) Officer Lopez pursued Mr. Cortez as Mr. Cortez traversed the parking lot and went inside the school building. (CP 26) Officer Lopez caught up to Mr. Cortez inside a foyer leading to the boys' locker room. (CP 27)

Officer Lopez grabbed Mr. Cortez by the wrist and told Mr. Cortez that he was under arrest. (CP 27) Mr. Cortez pulled away and struggled with Officer Lopez. (CP 27) Mr. Cortez was eventually placed under arrest and was escorted out of the school building to a patrol car. (CP 27)

Officer Lopez and Mr. Franklin went out to the school parking lot and stood outside Mr. Cortez's vehicle. (CP 27) The windows to Mr. Cortez's vehicle were ajar and Officer Lopez was able to smell marijuana emanating from the vehicle. (CP 27) Officer Lopez and Mr. Franklin also observed green vegetable matter they believed to be marijuana in the center console of the vehicle. (CP 27)

Mr. Cortez's vehicle was impounded. (CP 27) Officer Lopez obtained a search warrant for Mr. Cortez's vehicle and completed the search with Detective Juan Rodriguez of the Moses Lake Police Department. (CP 27) Inside the car, Detective Rodriguez and Officer Lopez found documents with Mr. Cortez's name, green vegetable matter they believed to be marijuana, a homemade smoking device, and pills in a prescription bottle labeled as hydrocodone prescribed to Jamie Hampshire.

(CP 27) The pills and the green vegetable matter were later tested and confirmed to be hydrocodone and marijuana, respectively. (CP 28)

As part of the disposition, a total of six months of community supervision was ordered. (CP 15) Among the conditions of community supervision, the following terms were ordered:

“F. CURFEW to be set at the discretion of the Juvenile Department.” (CP 16)

“H. Respondent shall participate in counseling, outpatient substance abuse treatment programs, outpatient mental health programs, sex offender, and/or anger management classes, as Juvenile Department directs. Respondent shall cooperate fully.” (CP 16)

“J. Respondent shall refrain from using illegal drugs and alcohol and is subject to RANDOM URINALYSIS as directed by the Juvenile Department and shall fully cooperate.” (CP 16)

“M. Respondent shall reside in a placement approved by the Juvenile Department or approved by court order.” (CP 16)

### **C. STATEMENT OF THE ISSUES**

1. Where hydrocodone was discovered in a vehicle driven by Mr. Cortez, was there sufficient evidence to convict Mr. Cortez of

Possession of a Controlled Substance Other Than Marijuana under  
RCW 69.50.4013?

2. Did the trial court impose unlawful conditions of community supervision?

**D. ARGUMENT**

1. Where hydrocodone was discovered in a compartment on the driver's side door of a vehicle driven by Mr. Cortez, there was sufficient evidence to convict Mr. Cortez of Possession of a Controlled Substance Other Than Marijuana.

There was sufficient evidence to convict Mr. Cortez of Possession of a Controlled Substance Other Than Marijuana under RCW 69.50.4013.

When reviewing a sufficiency of the evidence challenge, the court considers whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have found essential elements of the crime beyond a reasonable doubt. *State v. Hepton*, 113 Wn. App. 673, 681, 54 P.3d 233 (2002); *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

To convict Mr. Cortez of Possession of a Controlled Substance Other Than Marijuana the State of Washington was required to prove that on or about March 13, 2009 Mr. Cortez possessed a controlled substance, hydrocodone, and that this act occurred in the State of Washington. *See*

RCW 69.50.4013. Possession may be actual or constructive to support a criminal charge. *State v. Callahan*, 77 Wn.2d 27, 459 P.2d 400 (1969). A person has actual possession when he or she has physical custody of the item and constructive possession if he or she has dominion and control over the item. *Id.* at 29.

Whether a person has dominion and control, and thus constructive possession, is determined by the “various indicia” of dominion and control, their cumulative effect, and the totality of the situation. *State v. Partin*, 88 Wn.2d 899, 567 P.2d 1136 (1977). The following factors may be considered to determine whether a person had constructive possession over an item. First, the trial court may consider whether the person had the ability to take actual possession of the substance. *See State v. McReynolds*, 117 Wn. App. 309, 341, 71 P.3d 663 (2003) (ability to take possession is “an aspect” of dominion and control). Second, the trial court may consider whether the person had the capacity to exclude others from possession of the substance. *See State v. Wilson*, 20 Wn.App. 592, 581 P.2d 592 (1978). Finally, the trial court may consider whether the person had dominion and control over the premises where the substance was located. *See State v. Olivarez*, 63 Wn.App. 484, 820 P.2d 66 (1991).

There was sufficient evidence to convict Mr. Cortez of Possession of a Controlled Substance Other Than Marijuana under RCW 69.50.4013.

The trial court found based on the testimony from Ms. Hause that the pills found in Mr. Cortez's vehicle were hydrocodone, a controlled substance. (RP 205, CP 28). During the search of Mr. Cortez's vehicle by Officer Lopez and Detective Rodriguez those pills were discovered in a compartment on the driver's side door. (RP 176) While inside the vehicle on the morning of March 13, 2009, Mr. Cortez had the ability to take actual possession of the hydrocodone pills. Further, he was in immediate proximity to the hydrocodone pills. Mr. Cortez had the ability to exclude others from taking possession of the hydrocodone pills; they were contained inside of his vehicle. The vehicle had been driven by Mr. Cortez on the morning of March 13, 2009. (CP 25) Officer Lopez and Detective Rodriguez found a number of documents with Mr. Cortez's name on them inside of the vehicle. (CP 27) Based on this evidence, Mr. Cortez had dominion and control over the vehicle where the hydrocodone pills were found. Taken together, these facts provide sufficient evidence to support Mr. Cortez's conviction for Possession of a Controlled Substance Other Than Marijuana under RCW 69.50.4013.

2. The trial court did not impose unlawful conditions of community supervision on Mr. Cortez.

The juvenile court did not exceed its authority by imposing certain community supervision conditions. Mr. Cortez first argues that condition

H, the class-program attendance and counseling provision, improperly delegates authority to his probation counselor. Second, Mr. Cortez contends that condition F, curfew, condition J, no alcohol or illegal drug use, and condition M, approved residential placement, are conditions unrelated to his offenses. The trial court acted within its authority when it imposed each of these conditions.

When a juvenile is adjudicated of an offense, a standard range disposition is determined according to RCW 13.40.0357. The standard range disposition for Mr. Cortez's offenses was "local sanctions," which may consist of one or more of the following: 0-30 days of confinement, 0-12 months of community supervision, 0-150 hours of community service, and a \$0-\$500 fine. RCW 13.40.0357. RCW 13.40.020(4) defines "community supervision" as an order of disposition by the court of an adjudicated youth not committed to the department or an order granting a deferred disposition. The statute continues and states that community supervision is an individualized program comprised of one or more of the following: (a) community-based sanctions; (b) community-based rehabilitation; (c) monitoring and reporting requirements; and (d) posting of a probation bond. "Community-based rehabilitation" is defined in RCW 13.40.020(1) as one or more of the following: employment; attendance of information classes; literacy classes; counseling, outpatient

substance abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, or other services; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district.

In his arguments regarding the improper delegation of authority to the probation counselor Mr. Cortez primarily relies on cases which involve the Sentencing Reform Act (SRA), not the Juvenile Justice Act (JJA). The differences, however, between the juvenile justice and adult criminal systems are well-defined in the law. *Monroe v. Soliz*, 132 Wn.2d 414, 419, 939 P.2d 205 (1997). One key distinction is that the goals of the juvenile sentencing system differ from those of the adult criminal system. *State v. J.S.*, 70 Wn. App. 659, 664, 855 P.2d 280 (1993) (“because the juvenile system focuses on twin goals of punishment and rehabilitation of juvenile offenders, it differs materially from the adult sentencing system in which punishment is the primary purpose”), quoting *State v. Rice*, 98 Wn.2d 384, 392-93, 655 P.2d 1145 (1982).

Juvenile courts may design a specialized program for juvenile offenders based on their individual needs. See *State v. J.H.*, 96 Wn. App. 167, 180-81, 978 P.2d 1121. They have broad discretion to tailor dispositions to meet the needs of juveniles and to achieve the rehabilitative

and accountability goals of the juvenile code. *State v. H.E.J.*, 102 Wn. App. 84, 87, 9 P.3d 835 (2000), *quoting J.H.*, 96 Wn. App. at 181. While under some circumstances courts may use decisions interpreting the SRA to interpret the JJA, “meaningful comparison of sentences under the Juvenile Justice Act and the SRA is impossible.” *State v. Miller*, 54 Wn. App. 763, 766, 776 P.2d 149 (1989).

In particular, it should be noted that the juvenile probation counselor is expected to be familiar with Mr. Cortez. The juvenile probation counselor has a special role and functions as the court’s liaison in dealing with the needs and demands placed upon a juvenile both before and after an adjudicatory hearing. Considering the statutory scheme and the court-probation counselor working relationship, there is not an improper delegation of authority involved here.

Mr. Cortez also has not shown that conditions unrelated to his offenses were improperly imposed by the trial court. First, community supervision includes monitoring and reporting requirements. RCW 13.40.020(4)(c). Reporting and monitoring requirements are defined as: “curfews; requirements to remain at home, school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer’s

supervision; and other conditions or limitations as the court may require which may not include confinement.” RCW 13.40.020(18). The curfew and residence conditions clearly fall within the monitoring requirements contemplated by the JJA. Second, under the SRA the court’s authority is limited to only allow conditions related to the offender’s crime. *See* RCW 9.94A.030(9). In contrast, the juvenile court has broad discretion to tailor dispositions to meet the goals of the JJA. *See H.E.J.*, 102 Wn. App. at 87. Urinalysis is used to monitor compliance with the requirement that Mr. Cortez not use illegal drugs or alcohol. The trial court did not err when it imposed this requirement of community supervision.

**E. CONCLUSION**

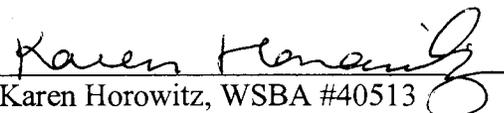
For the reasons set out above, the State respectfully requests that the Court affirm Mr. Cortez’s convictions and the disposition imposed by the trial court.

DATED: October 1, 2010

Respectfully submitted:

D. ANGUS LEE,

Prosecuting Attorney

  
Karen Horowitz, WSBA #40513  
Deputy Prosecuting Attorney



**FILED**

OCT 04 2010

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DIVISION III  
STATE OF WASHINGTON  
By: \_\_\_\_\_

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent.	)	No. 28884-6
	)	
v.	)	
	)	
EDDIE CORTEZ,	)	DECLARATION OF MAILING
	)	
Appellant.	)	
_____	)	

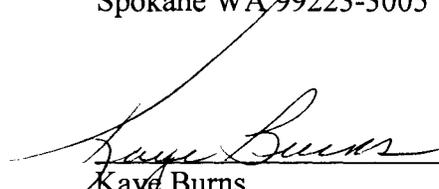
Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the Appellant and his attorney containing a copy of the Brief of Respondent in the above-entitled matter.

Eddie Cortez  
8649 Dorothy Street  
Moses Lake WA 98837

Susan Marie Gasch  
Gasch Law Office  
PO Box 30339  
Spokane WA 99223-3005

Dated: October 1, 2010



\_\_\_\_\_  
Kaye Burns

Declaration of Mailing.