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Feb 06, 2012
Court of Appeals
Division III
State of Washington

29885-0-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

SCOTT Q. SHUPE, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Andrew J. Metts
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INDEX

APPELLANT’S ASSIGNMENTS OF ERROR..... 1

ISSUES PRESENTED..... 1

STATEMENT OF THE CASE..... 1

ARGUMENT 2

 A. THE DEFENDANT WAS REQUIRED TO
 INCLUDE ASSIGNMENTS OF ERROR..... 2

 B. THE JURY DECIDED THAT THE
 DEFENDANT’S ATTEMPT TO CHANGE
 THE PLAIN MEANING OF RCW 69.51A.010
 WAS NOT CORRECT 3

 C. SINCE THE DEFENDANT ADMITTED
 THAT HE WAS GUILTY OF THE CHARGED
 CRIMES, THE DEFENDANT’S SEARCH
 WARRANT ISSUES WERE IRRELEVANT..... 7

CONCLUSION..... 9

TABLE OF AUTHORITIES

WASHINGTON CASES

STATE V. BROWN, -- P.3d --,
2012 WL 182164 (Div. 2, Jan. 24, 2012)..... 5

STATUTES

RCW 69.50.010..... 3
RCW 69.51.010(1)(d) 4
RCW 69.51A.010..... i, 3, 6, 8

COURT RULES

RAP 10.3(4) 2

I.

APPELLANT'S ASSIGNMENTS OF ERROR

1. The defendant has not included any assignments of error.

II.

ISSUES PRESENTED

- A. IS THE DEFENDANT REQUIRED TO INCLUDE ASSIGNMENTS OF ERROR IN HIS OPENING BRIEF?
- B. DID THE TRIAL COURT PROPERLY ALLOW THE DEFENDANT TO SUBMIT HIS INTERPRETATION OF RCW 69.51A.010(1)(d) TO THE JURY?
- C. WERE THE DEFENDANT'S SEARCH WARRANT CLAIMS RELEVANT TO THIS CASE IN LIGHT OF THE DEFENDANT'S CONFESSIONS IN OPEN COURT?

III.

STATEMENT OF THE CASE

For the purposes of this appeal only, the State accepts the defendant's Statement of the Case.

IV.

ARGUMENT

A. THE DEFENDANT WAS REQUIRED TO INCLUDE ASSIGNMENTS OF ERROR.

The form of this appeal presents the State with difficulties as it contains no “Assignments of Error” as required by RAP 10.3(4). It is not possible to determine, with certainty, exactly what issues the defendant is trying to raise in every instance. For example, even though the State exerts its best efforts to find the seminal point in each of the defendant’s “issues” sections, it is entirely possible for the defendant to respond to the State’s opening brief with allegations that the State is not addressing the exact issues raised by the defendant. This scenario is especially possible considering the large quantity of verbiage employed by the defendant and the lack of focus in some issues.

Assignments of Error are required by RAP 10.3(4). In order to prevent a never ending series of response briefs from the defendant claiming the State had not correctly addressed an area raised by the defendant, the State respectfully requests that the defendant’s opening brief be returned to the defendant for the addition of the required Assignments of Error. In the alternative, the State requests that the court restrict the defendant’s normally unfettered right to file response briefs.

B. THE JURY DECIDED THAT THE DEFENDANT'S ATTEMPT TO CHANGE THE PLAIN MEANING OF RCW 69.51A.010 WAS NOT CORRECT.

When stripped of all the bloviating, this case is about a single issue: the defendant's attempt to out "clever" the criminal justice system with a strained interpretation of RCW 69.51A.010, part of the "medical marijuana law".

Despite the defendant's protests to the contrary, the statute is not vague as it is used by this defendant. The statute in question contains the language: "one person at any one time." RCW 69.50.010. The defendant reads this statute in a manner that creates "floating" (and very agile) care provider relationships. In other words, according to the defendant's interpretation of the statute, he can be a designated provider for multiple patients, so long as he does not operate as a "provider" to more than one "patient" at one time. The support for this interpretation of the defendant's actions is found in the receipts from the "Change" and the defendant's testimony. The receipts from the "Change" dispensary go to the extreme of listing exactly what time the marijuana was dispensed in addition to the date. Presumably, the defendant thought that such time specifics would bolster his arguments that under the law he could service hundreds of "patients" consecutively. Conceptually, the defendant's

version of the law allowed him to instantly shift his “primary care” status from one “patient” to the next “patient” in line on a given day.

The defendant claims that RCW 69.51.010(1)(d) is vague. The State counters that a commonsense reading of the statute shows it is not vague at all.

The statute in question is in the definitional section of the Medical Marijuana statutes and states that a “designated provider” “Is the designated provider to only one patient at any one time.” RCW 69.51.010(1)(d). The defendant creates an ambiguity by a strained interpretation of the statute.

The defendant interprets the language “only one patient at any one time” in a way that allows the defendant to sell marijuana to hundreds of “patients.” The defendant interprets the language “at one time” to mean he can instantaneously move his provider status from one “patient” to the next and so legally (at least in the defendant’s mind) provide marijuana to well over 1,000 “patients.” At first blush, the defendant’s interpretation seems to make sense. However, an interpretation of a statute must be bi-laterally equal. In other words, the statute must “work” in both directions. In this case the forward direction would be the position of the defendant. However, under the defendant’s interpretation, no person selling marijuana could *ever* violate the statutes. All a person need do is to get a

form from more than one other person and play “musical chairs” in whatever form suits the situation best. In this case, the defendant used his position both to sell marijuana to many persons, but also to obtain and carry large amounts of marijuana by playing “musical chairs” with other providers and sales associates. Simply by slipping from one role to another, the defendant thought he could avoid any negative consequences for his “Change” store.

The State submits that the legislature would not draft a statute allowing a provider to shift from being the provider for one “patient” into the role of being the provider for another “patient” only seconds later. The defendant asserts that there is nothing in the statutes that provides a time constraint on the concept of “one person.” Looking at the statute as a positive defense, this might be so. But, it is not to be assumed that the legislature is “clueless” and drafted a “Medical Marijuana” bill that creates the results urged by the defendant. There would be no need for RCW 69.51A at all. The legislature could simply have passed a law saying if you have a valid doctor’s prescription, then you are free to obtain marijuana from whomever you please.

Under the very recent Division II case of *State v. Brown*, -- P.3d --, 2012 WL 182164 (Div. 2, Jan. 24, 2012), it is a question of fact whether the defendant supplied marijuana to only one person. *Id.* at pg. 3. Under

the holding in *Brown*, if the defendant presents a *prima facie* case for the defense of Medical Marijuana, the trial court should present that defense to the trier of fact. In *Brown* the trial court did not permit the trier of fact to find the facts on the issue of whether the defendant had acted as a designated provider to one or more than one recipient. *Id.*

The trial court in this case properly presented the jury with the factual questions such as whether the defendant in this case was the “designated provider” to one person at any one time. RP 530. The jury evaluated the evidence and testimony and concluded that the defendant had provided to more than one “patient” at any one time.

The illogic of the defendant’s interpretation of RCW 69.51A.010 is demonstrated when one asks how the police are supposed to enforce this statute. The State submits that the legislature would not pass such a bill, (placed in the criminal section of the statutes) that contains no method of enforcement. In order to prove that a provider had more than one “patient” at one time, the State would have to show that the charged provider gathered a number of persons in a room and supplied marijuana in such a fashion that all persons obtained their marijuana at precisely the same time. This seems an unlikely scenario, but in any other scenario, the defendant need simply argue that he did not have more than one “patient”

at a time, but rather, the defendant provided each “patient” with marijuana sequentially, with any sort of intervening time.

C. SINCE THE DEFENDANT ADMITTED THAT HE WAS GUILTY OF THE CHARGED CRIMES, THE DEFENDANT’S SEARCH WARRANT ISSUES WERE IRRELEVANT.

The defendant attacks the searches of various addresses, yet does not connect the items observed and seized with the charges of this case. The defendant appears to raise a number of issues centering on the propriety of the police searches of various addresses.

The reasoning behind the search issue claims does not appear to be relevant. As is clear in the record, the defendant does not contest the charges against him on the bases of improper search warrants. In fact, the defense counsel states in his closing arguments: "Mr. Shupe admits he possessed marijuana. Mr. Shupe admits he delivered marijuana. Mr. Shupe admits he manufactured it." RP 552. Because the defendant admitted to the charges against him, the State sees no reason to deal with the defendant's search warrant sufficiency issues as they have no relevance to the outcome of this case.

The defendant was so certain of his interpretation of "one person at a time" that he believed that the affirmative defense portion of RCW 69.51A provided the defendant with a "shield" that prevented the

State from pursuing the marijuana charges to conviction. Whether the defendant should have sought legal counsel prior to assuming the correctness of his positions and the opening of the "Change" "dispensary" is certainly debatable. However, the defendant's "instantaneous, floating" transfers of "primary care" status from one "patient" to the next ideas were rejected by the jury.

As noted by the defendant in his opening brief, the legislature passed RCW 69.51A in hopes that persons who could medically benefit from the use of marijuana could obtain, possess and use marijuana in a way that benefitted the person's existing medical condition(s). The legislature could have placed language in the statutes that provided for the establishment of marijuana dispensaries. The legislature did not do so. A fair reading of the legislative purpose and the language of the statutory provisions shows that the legislature had single patients in mind when promulgating the Medical Marijuana laws. The defendant has decided that he is smarter than the legislature and he feels he can outwit the legislature by inventing his "floating" care provider rationale. The defensive language of RCW 69.51A.010 was presented to the jury and they found that the defendant's theories were an improper application of the law. The jury rebuffed the use of RCW 69.51A.010 in this case by convicting the defendant as charged.

V.

CONCLUSION

For the reasons stated, the convictions of the defendant should be affirmed.

Dated this 2nd day of February, 2012.

STEVEN J. TUCKER
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Andrew J. Metts". The signature is written in a cursive style with a large initial "A".

Andrew J. Metts #19578
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Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,)
)
 Respondent,) NO. 29885-0-III
 v.)
)
SCOTT Q. SHUPE,)
)
 Appellant,)

I certify under penalty of perjury under the laws of the State of Washington, that on February 6, 2012, I mailed a copy of the Respondent's Brief in this matter, addressed to:

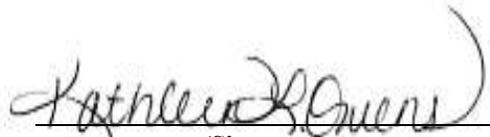
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2/6/2012
(Date)

Spokane, WA
(Place)


(Signature)