

FILED

JUN 11 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: *[Signature]*

30310-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

BRUCE L. AUSTIN, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Andrew J. Metts
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I.

APPELLANT'S ASSIGNMENTS OF ERROR

1. The trial court erred in imposing a condition of community custody that Mr. Austin not purchase or possess alcohol.

II.

ISSUES PRESENTED

1. Does RCW 9.94A.703 give trial courts authority to place conditions on defendants to prohibit the possession or purchase of alcohol?

III.

STATEMENT OF THE CASE

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

IV.

ARGUMENT

RCW 9.94A.703(3)(e) authorizes trial courts to place a community custody condition preventing the consumption of alcohol. The legislature did not enact language that authorizes trial courts to prohibit defendants from possessing or purchasing alcohol unless it is related to the crime in question.

In this particular case, Counts I and II involved allegations of using alcohol with minors in order to complete sexual acts. Counts III and IV involved

the possession of child pornography on a personal computer. There is no logical connection between alcohol and the possession of child pornography.

It can be suggested that the trial court, (this case being a bench trial), may have had the defendant's alleged actions of Counts I and II in mind when imposing the "no alcohol" conditions. In any event, Counts I and II were dismissed, thus removing any legal authority to impose conditions of no possession or purchasing of alcohol.

The State requests that this case be remanded to the trial court solely for the purpose of removing the conditions pertaining to possession and purchasing of alcohol and leaving the consumption of alcohol condition in place.

V.

CONCLUSION

For the reasons stated, the case should be remanded for the removal of the improper alcohol conditions.

Dated this 11th day of June, 2012.

STEVEN J. TUCKER
Prosecuting Attorney


Andrew J. Metts #9578
Deputy Prosecuting Attorney
Attorney for Respondent

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JUN 11 2012

DIVISION III

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON,)	
)	
Respondent,)	NO. 30310-1-III
v.)	
)	CERTIFICATE OF MAILING
BRUCE L. AUSTIN,)	
)	
Appellant,)	

I certify under penalty of perjury under the laws of the State of Washington, that on June 11, 2012, I e-mailed a copy of the Respondent's Brief in this matter, pursuant to the parties' agreement, to:

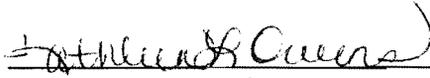
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191 Constantine Way
Aberdeen WA 98520

6/11/2012
(Date)

Spokane, WA
(Place)


(Signature)