

**FILED**

JUL 06 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
B: \_\_\_\_\_

No. 29736-5-III

COURT OF APPEALS, DIVISION THREE  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,  
*Respondent*

vs.

ERWIN W. HULL  
*Appellant*

---

**BRIEF OF APPELLANT**

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## I. INTRODUCTION

On January 12, 2010, pursuant to a search warrant, Grant County law enforcement officials searched Appellant Erwin W. Hull's residence. Under the house, in a room accessible through a trap door in a bedroom closet, officials discovered 11 marijuana plants. Hull was subsequently charged and convicted of manufacturing marijuana contrary to RCW 69.50.401(1).

Several errors, during both the pre-trial and trial phases, significantly prejudiced Hull and deprived him of a fair trial. First, the search warrant was not supported by probable cause because the only evidence of unlawful activity came from an anonymous tip that was not found to be reliable, and there was no corroborating evidence that indicated criminal activity was occurring. Second, despite making a *prima facie* showing of compliance, Hull was not allowed to assert the statutory affirmative defense set out in RCW 69.51A.040, which permits designated providers to manufacture and possess marijuana for its medical use by a qualifying patient. Finally, the evidence against Hull at the stipulated facts trial was insufficient to support his conviction, because the court did not find that Hull knew that his manufacture of marijuana was contrary to state law. Because of these errors, the judgment and sentence

should be vacated, the conviction reversed, and the case remanded for a new trial.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred in denying Appellant's Motion to Suppress. CP 69-72.

2. The trial court erred in granting the State's Motion in Limine to preclude Appellant's use of the medical marijuana designated provider affirmative defense. RP CR 44.

3. The trial court erred in finding that Appellant knowingly manufactured marijuana contrary to law. CP 81.

## **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether the trial court erred in denying Hull's Motion to Suppress when:

- (a) All of law enforcement's sources of information regarding criminal activity at 550 S. Grand Drive, Moses Lake, Washington, were either confidential or anonymous;
- (b) There was no evidence in the record that the anonymous and/or confidential sources were different persons;

- (c) The trial court found that there were indications of reliability for the DEA informant, but did not find that the DEA informant was reliable or that any of the other confidential sources were reliable;
- (d) Independent police investigation verified facts such as Appellant's name and address, his wife's name and address, and Appellant's clean criminal history; and
- (e) Detectives determined that Appellant's residence consistently used more power than comparable residences during the same time period, although the comparable residences had been upgraded to provide energy efficiency while Appellant's residence had not.

2. Whether the trial court erred in granting the State's Motion in Limine to preclude Appellant's presentation of the affirmative defense of designated medical marijuana provider when:

- (a) Hull only needed to make a threshold showing of sufficient evidence, not preponderance of the evidence, supporting the giving of the affirmative defense;
- (b) There was evidence that;
  - (1) Hull was over 18 years of age;
  - (2) Hull served as the designated provider to Callahan alone; and
  - (3) In March 2010, in response to charges of manufacturing marijuana, Hull presented to the State documentation of a designated provider authorization signed by Callahan,

as well as documentation that Callahan was authorized to use medical marijuana.

- (c) There was no evidence that Hull consumed any of the marijuana at issue.

3. Whether the trial court erred in finding that Hull “knowingly” manufactured marijuana contrary to state law when:

- (a) There was evidence that Hull believed he was entitled to assert the affirmative defense of medical marijuana designated provider; and
- (b) The court found that Hull knew he was growing marijuana, but did not make any specific finding that Hull knew the marijuana he was growing was illegal.

#### **IV. STATEMENT OF THE CASE**

##### *Pre-Charging Case History*

In April 2009, the Grant County Sherriff’s Department Interagency Narcotics Enforcement Team (“INET”) received two tips from an anonymous caller on the Washington State Patrol Marijuana Hotline. CP 14. The caller left two messages on the answering machine claiming that (1) a person named Erwin Hull lived at 550 S. Grand Drive in Moses Lake, Washington; (2) Hull was growing marijuana plants indoors in a dug out space

underneath his residence; and (3) there was a trap door in a bedroom closet leading to the dug out room. CP 14-15.

In the months following receipt of the anonymous calls, Detective Jeff Wentworth of INET determined that Erwin W. Hull resided at 550 S. Grand Drive, Moses Lake, Washington, and that Erwin and Jacqueline Hull owned the property (hereinafter referred to as the "Hull residence"). CP 15. Detective Wentworth also investigated the Hulls' power usage by comparing their energy consumption with comparable residences in the neighborhood. CP 15. Detective Wentworth determined that the Hull residence used approximately 6,751 more kilowatt hours than comparable households; however, Detective Wentworth also determined that the Hull residence had not undergone upgrades to its insulation and windows, unlike other residences used in the comparative study. CP 15-16. A criminal history check revealed that Erwin Hull had no known convictions, and that Jackie Hull had one conviction for Theft in the Third Degree. CP 37.

In July 2009, Detective Wentworth received a report from an agent in the Spokane Division of the Drug Enforcement Agency. CP 16. The report indicated that a confidential source who had done work for the agency in the past claimed that "Jackie and

Buster” of 550 S. Grand Drive, Moses Lake, Washington, were growing marijuana in their residence. CP 16. The confidential source claimed that he or she had been at the Hull residence during the first week of July 2009, had been shown a trap door in the floor of a bedroom closet that led to an underground area, and that “Jackie and Buster” had approximately 50 marijuana plants growing under bright lights in the underground area. CP 16.

Later that month, on July 30, 2009, the anonymous caller called the marijuana hotline again to check the status of his or her tips from April 2009. CP 16. The caller stated that he or she had again observed the room under the house, and it was still operational as of July 30, 2009. CP 16.

On August 4, 2009, Detective Wentworth applied for and received a search warrant to use a thermal imaging device on the Hull residence. CP 35. During execution of the warrant, Detective Wentworth did not observe any heat changes or differences between the Hull residence and comparable residences. CP 35.

Over five months later, on January 12, 2010, Detective Wentworth spoke with a citizen informant, who alleged the following:

1. He or she had known Jackie Hull for more than 20 years;
2. Jackie was known to struggle with a drug addiction;
3. Over six months prior, he or she had visited the Hull residence and had been shown a trap door in the closet floor of a bedroom; and
4. He or she had observed marijuana plants in different stages of growth in the space underneath the house.

CP 35-37. Detective Wentworth's affidavit did not disclose whether the citizen informant from January 2010 was the same confidential source identified by the DEA in July 2009. CP 35.

Detectives again conducted a comparative investigation of the Hulls' power usage and two comparable residences. CP 37. The officers discovered that for the year 2008, the Hulls spent on average \$130.00 more for power consumption than their neighbors, and in 2009, approximately \$550.00 more. CP 37.

On January 12, 2010, Detective Wentworth applied for and received a search warrant to enter the Hull residence and search for evidence of marijuana manufacturing. CP 3, 31, 32-39. Upon execution of the search warrant, Appellant Erwin W. Hull voluntarily responded to the officers' knock and complied with all orders. CP 3. In the southwest bedroom closet, Detective Wentworth observed a trapdoor in the floor, which opened into an underground room

where 11 marijuana plants were growing. CP 3. As a result of the officers' search, Hull was arrested and charged by information in Grant County, Washington, with one count of Manufacture of Marijuana, contrary to RCW 69.50.401(1). CP 1.

*Post-Charging Case History*

Pursuant to CrR 3.6, Hull filed a Motion to Suppress Evidence obtained under the search warrant on the basis that the warrant was not supported by probable cause. CP 11-12, 21-23, 48-51. An evidentiary hearing was held on December 9, 2010. CP 69; RP FTR 20.<sup>1</sup>

Following the hearing, the trial court entered formal findings of fact and conclusions of law. CP 69-72. The court found that the power usage at the Hulls' residence remained consistent between June 2009 and January 2010, but was also consistently higher than comparable residences. CP 70. The court also found that the anonymous phone tips from April and July 2009 did not rise to the level of probable cause; however, the court found that the information provided by the DEA informant in July 2009 was likely

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<sup>1</sup> Because there are different verbatim reports of proceedings with non-sequential numbering, I will refer to the volumes transcribed from FTR as "RP FTR" and the volumes transcribed by the Grant County Official Court Reporter, Tom Bartunek, as "RP CR."

reliable and may have been a sufficient basis for the issuance of a search warrant. CP 71. The trial court did not make any finding that the citizen informant from January 2010 was reliable. CP 69-72. Ultimately, the trial court denied Hull's Motion to Suppress. CP 71.

Prior to trial, the State brought a Motion in Limine to preclude Hull from asserting the affirmative defense set out in RCW 69.51A.040, which permits a designated provider to grow marijuana for a patient authorized to use medical marijuana. RP CR 8. Hull sought to admit evidence from Noel Callahan of Moses Lake, Washington, establishing that Hull was Callahan's designated provider for medical marijuana. RP CR 5. Hull's counsel had provided the State with documentation of the designated provider authorization in March 2010, but the documentation had not been provided to law enforcement before that time period. RP CR 6, 13.

Hull's designated provider authorization was signed by both Callahan and Hull on March 6, 2009, and indicated that Hull would grow medical marijuana for Callahan. RP CR 12. There was no expiration date on the authorization, although it terminated either upon the patient's written revocation or upon the patient's death. RP CR 12. Hull also provided a document titled "Documentation of

Medical Authorization to Possess for Medical Purposes,” which authorized Callahan to use medical marijuana as a patient. RP CR 12. The document was dated December 7, 2008, and expired on December 7, 2009. RP CR 12.

Following oral argument on January 6, 2011, the trial court granted the State’s Motion in Limine, explaining:

the structure of the statute would require the provider, such as Mr. Hull, to see documentation from the patient authorizing the patient to be a patient, and therefore authorizing someone to be a provider. And therefore Mr. Hull would be charged with knowledge, with notice that the authorization expires in December of '09. And finally, asserting this affirmative defense requires that at the time an inquiry is made by law enforcement, the defendant present documentation to law enforcement.

RP CR 44. Accordingly, Hull was not permitted to assert the affirmative defense of designated medical marijuana provider.

Immediately after the court’s ruling on this issue, Hull waived his right to a jury trial and proceeded to a stipulated facts bench trial.

CP 76; RP CR 48. Upon stipulation no testimony was admitted into evidence. RP CR 58.

On January 31, 2011, the Court entered its findings of fact, conclusions of law regarding the stipulated facts trial. CP 82.

Among other things, the court found that at “no time did Mr. Hull ever provide any documentation of any nature related to medical marijuana authorization to law enforcement, either of himself as a designated provider or of any person as an individual entitled to medical marijuana.” CR 83. In the end, the court held that Hull knowingly manufactured a controlled substance, Marijuana, and that he was guilty of the crime of Manufacture of Marijuana as charged. CP 83. The court sentenced Hull as a first time offender and imposed 30 days of jail, with credit for one day served and the balance of 29 days converted into community service. CP 88; RP FTR 75.

Hull now timely appeals his conviction for manufacturing marijuana. CP 104.

## **V. ARGUMENT**

### **A. THE TRIAL COURT ERRED IN DENYING HULL'S MOTION TO SUPPRESS**

The Fourth Amendment to the United States Constitution guarantees the right of the people to be secure in their persons, homes, papers, and effects against unreasonable searches and seizures. The due process

Among other things, the court found that at “no time did Mr. Hull ever provide any documentation of any nature related to medical marijuana authorization to law enforcement, either of himself as a designated provider or of any person as an individual entitled to medical marijuana.” CR 83. In the end, the court held that Hull knowingly manufactured a controlled substance, Marijuana, and that he was guilty of the crime of Manufacture of Marijuana as charged. CP 83. The court sentenced Hull as a first time offender and imposed 30 days of jail, with credit for one day served and the balance of 29 days converted into community service. CP 88; RP FTR 75.

Hull now timely appeals his conviction for manufacturing marijuana. CP 104.

## **V. ARGUMENT**

### **A. THE TRIAL COURT ERRED IN DENYING HULL'S MOTION TO SUPPRESS BECAUSE**

The Fourth Amendment to the United States Constitution guarantees the right of the people to be secure in their persons, homes, papers, and effects against unreasonable searches and seizures. The due process

clause of the Fourteenth Amendment extends this right to protect against intrusions by state governments. Mapp v. Ohio, 367 U.S. 643 (1960). The federal constitution, however, only establishes the minimum level of protection for individual rights. State v. Chrisman, 100 Wn.2d 814, 817, 676 P.2d 419 (1984).

"It is by now axiomatic that article I, section 7 provides greater protection to an individual's right of privacy than that guaranteed by the Fourth Amendment." State v. Parker, 139 W.2d 486, 493, 987 P.2d 73 (1999). The Washington Constitution has consistently provided greater protection of individual rights than its federal counterpart. See State v. Ladson, 138 Wn.2d 343, 979 P.2d 833 (1999); State v. Ferrier, 136 Wn.2d 103, 111, 960 P.2d 927 (1998). In addition, the Washington State Supreme Court "has held that the home receives heightened constitutional protection." State v. Kull, 155 Wash.2d 80, 84, 118 P.3d 307 (2005).

A search warrant to enter and arrest a person in his home must be supported by a law enforcement officer's affidavit demonstrating that there is probable cause to

believe that a criminal offense has been committed and that evidence of that offense is located in a particular place in the home. CrR 2.3. A supporting affidavit must recite the underlying facts and circumstances upon which a warrant can be based; mere conclusions of the affiant that there are reasonable grounds for a search and seizure are not sufficient. State v. Patterson, 83 Wn.2d 49, 52-53, 515 P.2d 496 (1973). Although the facts set forth need not be sufficient to support a verdict of guilty beyond a reasonable doubt, they must establish something more than mere suspicion or possibility of criminal activity. Id.

A determination of whether a search warrant was supported by probable cause involves questions of both fact and law. State v. Vasquez, 109 Wn. App. 310, 318, 34 P.3d 1255 (2001). Appellate courts review challenged findings of fact for substantial evidence and review *de novo* the legal question of whether the facts support a finding of probable cause. Id. Unchallenged findings of fact are verities on appeal. State v. Acrey, 148 Wn.2d 738, 745, 64 P.3d 594 (2003).

To establish probable cause based on an informant's tip, the affidavit must demonstrate the basis for the informant's information and the basis for the officer's conclusion that the informant was credit (the two prongs of the Aguilar-Spinelli test). State v. Vickers, 148, Wn.2d 91, 112, 59 P.3d 58 (2002). Any deficiency in one or both prongs may be cured by independent police investigation that corroborates the informant's tip. Id. Probable cause is not established if the independent investigation merely verifies innocuous details, commonly known facts, or easily predictable events. State v. Kennedy, 72 Wn. App. 244, 249, 864 P.2d 410 (1993).

In Hull's case, there was not sufficient probable cause for the search warrant. First, the bulk of the information known to law enforcement came from the reports of confidential "sources" who claimed to have visited the residence five months prior. All of the sources were either anonymous or confidential. In addition, there was no indication in the record whether the two anonymous telephone calls to the marijuana hotline, the DEA confidential source, and the confidential informant with whom Detective Wentworth spoke on January 12, 2010, were four different individuals or one person. Furthermore, the trial court only found

that the DEA informant was potentially a reliable source of information, and the court found that his or her report alone may have been (although notably the court did not hold) sufficient to establish probable cause. CP 71. Accordingly, at least three, and likely all four, sources were deficient and required corroboration by independent police investigation.

Second, the “corroborating” investigation by police merely verified innocuous details, commonly known facts, or easily predictable events. Kennedy, 72 Wn. App. at 249. For example, the offices were able to verify that Hull and his wife owned 550 S. Grand Drive, Moses Lake, Washington, that they had lived there for approximately three years, that Hull did not have any criminal background and Jackie Hull had one conviction of Theft in the Third Degree, and that thermal imaging of the home showed no abnormal heat distributions. Furthermore, the assertion that additional anonymous tips, which in and of themselves are deficient, constitute independent, corroborative police work, ignores the deficiencies in those sources of information. For purposes of corroboration, those sources should not have been considered, and certainly with not additional information as to the sources’ identity and reliability.

Finally, the observation that Hull's used more power than their neighbors was not corroborating evidence of criminal activity. Detective Wentworth noted that the Hull residence had not received updates to its insulation and heating units, which could have easily have explained their increased usage of power. Additionally, the trial court's finding that the Hull's usage was consistent over a long period of time could be indicative of innocent, as well as criminal activity. No attempt was made to show that the Hull's usage corresponded with a particular type or size of grow operation.

Given the innocuous nature of the "corroborating" evidence used to bolster the anonymous and/or confidential reports, there simply were not sufficient facts and circumstances supporting probable cause that Hull was engaged in criminal activity at his residence. The trial court should have granted Hull's Motion to Suppress.

**B. THE TRIAL COURT ERRED IN GRANTING THE STATE'S MOTION IN LIMINE TO PRECLUDE THE USE OF THE STATUTORY AFFIRMATIVE DEFENSE**

In general, a trial court must instruct on a party's theory of the case if the law and the evidence support it; the failure to do so is

reversible error. State v. May, 100 Wn. App. 478, 482, 997 P.2d 956 (citing State v. Birdwell, 6 Wn. App. 284, 297, 492 P.2d 249, review denied, 80 Wn.2d 1009, cert. denied, 409 U.S. 973, 93 S.Ct. 346, 34 L.Ed.2d 237 (1972)), review denied, 142 Wn.2d 1004, 11 P.3d 825 (2000).

Defendants have the right to present a defense. State v. Thomas, 123 Wn. App. 771, 778, 98 P.3d 1258 (2004), review denied, 154 Wn.2d 1026, 120 P.3d 73 (2005). A defendant raising an affirmative defense must offer sufficient admissible evidence to justify giving an instruction on the defense. State v. Jones, 121 Wn.2d 220, 237, 850 P.2d 495 (1993). In evaluating whether the evidence is sufficient to support such an instruction, the trial court must interpret the evidence most strongly in favor of the defendant. May, 100 Wn. App. at 482, 997 P.2d 956.

Under Washington's Medical Use of Marijuana Act (hereinafter the "Act"), patients and designated providers who meet the Act's requirements have an affirmative defense against charges of manufacturing or possessing marijuana. RCW 69.51A.040; see also State v. Otis, 151 Wn. App. 572, 213 P.3d 613 (2009). In order to assert the statutory affirmative defense in a criminal

prosecution for manufacturing marijuana, a defendant must make a threshold showing that there is sufficient evidence to create a question of fact for the jury, a lower standard than that required at trial. Otis, 151 Wn. App. at 578. At trial, the defendant must prove the affirmative defense by a preponderance of the evidence. Id.

1. *The evidence presented by Hull at the motion hearing was sufficient to create a question of fact for the jury*

Prior to June 2010, to qualify as a designated provider, and thus, to qualify for the affirmative defense set out in RCW 69.51A.040, a person was required to meet the following conditions:

- (1) Be eighteen years of age or older;
- (2) Abide by the prohibition against consuming marijuana obtained for the personal medical use of the patient for whom the individual is acting as a designated provider;
- (3) Only serve as the designated provider for one patient at a time; and
- (4) Present valid documentation to any law enforcement official who questions the provider regarding his possession or manufacture of marijuana by providing:

- (a) a statement signed by a qualifying patient's physician or a copy of the qualifying patient's pertinent medical records that, in the physician's professional opinion, the patient may benefit from the medical use of marijuana;
- (b) proof of identity, such as a Washington state driver's license; and
- (c) a writing in which the qualifying patient has designated the person as his or her designated provider.

RCW 69.51A.010; RCW 69.51A.040. By definition, a "qualifying patient" is a person who, among other things, has been diagnosed with a terminal or debilitating medical condition. RCW 69.51A.010(4).

During the motion hearing on January 5 and 6, 2011, there was evidence before the court that:

- (4) Hull was over 18 years of age;
- (5) Hull served as the designated provider to Callahan alone; and
- (6) In March 2010, in response to charges of manufacturing marijuana, Hull presented to the State documentation of a designated provider authorization signed by Callahan, as well as documentation that Callahan was authorized to use medical marijuana.

There was no evidence that Hull consumed any of the marijuana at issue. In addition, although State's counsel indicated that the investigating law enforcement officers intended to testify at trial that Hull admitted he was growing marijuana for his deceased father and that he did not have documentation of his designated provider status, defense counsel also indicated that Hull intended to testify at trial that he did not make the statements attributed to him by the officers. RP CR 13. Given the facts before the court at the time of the motion hearing, there was sufficient evidence that Hull was in compliance with the requirements of the Act—he may not have proved by a preponderance of the evidence the affirmative defense to the court, but that was not his burden at that time. Any factual issues that were of concern to the court, such as when Hull provided documentation to law enforcement of his status or the identity of the patient for whom Hull was serving as a designated provider, were questions of fact that should have been properly submitted to a jury. Because the court precluded Hull from asserting the statutory affirmative defense at trial, Hull was not able to present his theory of the case to a jury; and subsequently, he waived his constitutional right to a jury trial. The trial court's refusal

to permit Hull to present the affirmative defense was reversible error. See May, 100 Wn. App. at 482.

C. THE TRIAL COURT ERRED IN FINDING THAT HULL  
"KNOWINGLY" MANUFACTURED MARIJUANA  
CONTRARY TO STATE LAW

Under RCW 69.50.401(a), it is it is unlawful for any person to manufacture a controlled substance. Although marijuana is a schedule I controlled substance, any person who qualifies as a designated provider for a patient authorized to use medical marijuana may lawfully manufacture marijuana for the patient's medical use. RCW 69.50.204(c)(22); RCW 69.51A.005.

Although the statutory offense of manufacturing marijuana does not explicitly have a "knowledge" element, offenses involving moral turpitude are considered mala in se offenses for which guilty knowledge is deemed a nonstatutory element. See, e.g., State v. Hartzog, 26 Wn. App. 576, 592-93, 615 P.2d 480 (1980), rev'd in part on other grounds, 96 Wn.2d 383, 635 P.2d 694 (1981). For example, one of the essential elements of *delivery* of a controlled substance is knowledge that the substance being delivered is a

controlled substance. See State v. Boyer, 91 Wn.2d 342, 344, 588 P.2d 1151 (1979). “Without the mental element of knowledge, even a postal carrier would be guilty of a crime for the innocent delivery of a package that in fact contained illegal drugs. Such a result was not intended by the legislature.” State v. Warnick, 121 Wn. App. 737, 743, 90 P.3d 1105 (2004) (citing to Boyer, 91 Wn.2d at 344).

As discussed in the preceding section, there is evidence in the record that Hull, relying on his status as a designated provider for a qualifying patient, did not know that his possession and manufacture of marijuana was unlawful. In other words, while Hull knew that he was growing marijuana, he did not know that the marijuana he was growing was illegal. Even if Hull was not entitled to the statutory affirmative defense because, as the trial court held, he was not in compliance with the Act, his belief that his actions were lawful under the statute negates his knowledge of any criminal wrongdoing. See RP CR 44. Moreover, while the court found that Hull knowingly grew marijuana, the court did not make any finding that Hull knew his actions were in violation of the law. For this reason, the trial court erred in finding that Hull “knowingly” manufactured marijuana contrary to law.

## **VI. CONCLUSION**

Hull respectfully requests that this Court find that prejudicial errors were committed below such that his convictions ought to be reversed and his case remanded for further proceedings. First, the evidence against Hull was obtained using a search warrant that was not supported by probable cause. The anonymous and confidential sources of information which formed the sole basis for direct allegations of criminal activity were not reliable, and were not corroborated by independent police work. Most of the information gathered by law enforcement verified innocuous facts, and innocent explanations for the Hull's higher levels of power usage were not rebutted by any sort of analysis of the increased usage levels. Accordingly, Appellant's Motion to Suppress should have been granted and all evidence obtained as a result suppressed.

Second, Hull was precluded from asserting the affirmative defense of medical marijuana designated provider, notwithstanding the fact that he presented sufficient evidence establishing compliance with Washington's Medical Use of Marijuana Act requirements. Because he was not allowed to present his theory of the case to the jury, Hull's constitutional rights were violated.

Finally, the evidence presented at the stipulated facts trial was legally insufficient to support a finding that Hull committed manufacture of marijuana. The State failed to prove that Hull knowingly manufactured marijuana contrary to law. These errors significantly prejudiced Hull's defense, depriving him of a fair trial and a full opportunity to challenge the State's evidence against him. Hull's judgment and sentence should be vacated, his conviction reversed, and the case remanded for a new trial.

Respectfully submitted this 5<sup>th</sup> day of July, 2011.



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**CERTIFICATE OF MAILING**

I certify that on July 5, 2011, I mailed a true and correct copy of the foregoing Brief of Appellant by depositing the same in the United States mail, postage prepaid, addressed as follows:

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