

FILED
Feb 27, 2014
Court of Appeals
Division III
State of Washington

NO. 31607-6-III
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

JASON ALLEN FRENCH,

Defendant/Appellant.

APPELLANT'S REPLY BRIEF,

Dennis W. Morgan WSBA #5286
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ARGUMENT

The State's argument concerning the imposition of HIV testing cannot be accepted. The State relies upon unpublished opinions in support of its proposition that HIV testing is appropriate in Jason Allen French's case.

The issue of HIV testing has recently become prevalent.

The State's argument is based upon conjecture and speculation as to what the trial court would have done if there had been any evidence presented that hypodermic needles were involved with this particular offense. There is a complete lack of testimony that there were any hypodermic needles used during the times that methamphetamine was being used.

The interpretation to be given to the statute revolves around the phrase "associated with." The Legislature has not defined the phrase. Therefore, the common dictionary meaning of that phrase should be utilized in rendering an opinion as to the meaning of RCW 70.24.340(1)(c). *See: State v. Paulson*, 131 Wn. App. 579, 586, 128 P.3d 133 (2006).

The word "associated" is the past tense of the word "associate." It has several distinct meanings, including:

1. to connect or bring into relation **2.** to join **3.** to unite; combine **4.** to enter into union; unite. ... **10.** anything usually accompanying or associated with another **Syn. 1.** link. ...

WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE (1996 ed.)

The word "with" on the other hand is a preposition. It is defined, in part, as:

... **1.** accompanied by; accompanying **2.** in some particular relation to (esp. implying interaction, company, association, conjunction, or connection) ... **4.** ... by the use of; using ... **14.** at the same time as or immediately after; upon ...; **16.** in proximity to

WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE (1996 ed.)

Mr. French asserts that the correct interpretation of the phrase "associated with" means that the drug and the hypodermic syringe must at least be in proximity with one another to indicate potential actual usage.

Mr. French otherwise relies upon the argument contained in his original brief.

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DATED this 27th day of February, 2014.

Respectfully submitted,

s/Dennis W. Morgan

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NO. 31607-6-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)
) BENTON COUNTY
 Plaintiff,) NO. 11 1 00260 1
 Respondent,)
) **CERTIFICATE**
 v.) **OF SERVICE**
)
 JASON ALLEN FRENCH,)
)
 Defendant,)
 Appellant.)
)

I certify under penalty of perjury under the laws of the State of Washington that on this 27th day of February, 2014, I caused a true and correct copy of the and *APPELLANT'S REPLY BRIEF* to be served on:

RENEE S. TOWNSLEY, CLERK
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E-FILE

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s/Dennis W. Morgan

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