

FILED

JUL 25 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 337006

BENTON COUNTY SUPERIOR COURT NO. 14-1-01265-2

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TIMOTHY GARLDAND KENDALL,

Appellant.

APPELLANT'S RESPONSE BRIEF

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A. ARGUMENT

1. ***The evidence was insufficient to sustain a conviction for delivery of methamphetamine***

In the instant case the State was required to prove beyond a reasonable doubt that the substance delivered was methamphetamine under the law of the case doctrine. *State v. Hudlow*, 182 Wn. App. 266, 285, 331 P.3d. 90 (2014), citing, *State v. Hickman*, 135 Wn.2d 97, 102, 954 P.2d 900 (1998); 07/22/2015 RP 10.

Again, Ms Inman's testimony clearly indicates she did not believe the substance she was provided with to be methamphetamine:

Q: What does it look like?

A: It's not powdery. It's crystalline and it's hard.

07/20/2015 RP 24.

Q: Can you tell the jury if this item that the defendant was giving you was definitely methamphetamine?

A: To be honest, I'm not sure. It was really powdery and didn't look like regular crystal meth.

07/20/2015 RP 24.

Q: I'm Sorry. What drug did you think you were using, doing?

A: Well, I thought I was doing methamphetamine until it made me really, really tired and I couldn't comprehend anything.

07/20/2015 RP 25.

Q: Do you have any reason to believe Mr. Kendall gave you anything beside methamphetamine, something in addition to the methamphetamine?

A: I knew.

Q: What do you think it was?

A: To be honest I'm not sure. I never fell asleep on methamphetamine before. It was real powdery.

07/20/2015 RP 40.

The testimony provided by the toxicologist did not necessarily resolve the issues presented by Ms. Inman's testimony. There were no controlled substances detected in Ms. Inman's blood. 07/20/2015 RP 85. This finding indicates that there was no recent use – within the last 15 hours- of methamphetamine. 07/20/2015 RP 87-88. If Ms. Inman had been using methamphetamine provided by Mr. Kendall on the trip home there would have been methamphetamine in her blood given the timeline provided by Ms. Sklerov.

Further, the drug screening that was performed on the urine sample indicated there was amphetamine and methamphetamine detected. 07/20/2015 RP 86. Methamphetamine and amphetamine have different chemical compositions. See Random House Dictionary 70, 1209 (2d ed. 1987). Pursuant to the express definitions found in RCW 69.50.206(d)(1) and (2), these substances are considered as two different Schedule II controlled substances. Ms. Sklerov indicated the reason for amphetamine could be that it is the metabolite that the body produces from methamphetamine and that it is not a

separate drug. 07/202015 RP 89. However, they are clearly different substances under RCW 69.50.206 which lists both substances individually and differently. Additionally, the existence of methamphetamine in Ms. Inman's urine does not equate to a timeline of when she may have ingested methamphetamine 07/20/2015 RP 88 & 91.

The State presents that Ms. Inman's statements about why she would testify that the drug looked different are easily explained. It must be because the defendant added something to the methamphetamine. Respondent's Brief at 7-8. This assertion is not supported by the toxicology screen on Ms. Inman's blood and urine which indicated the absence of any other substances. 07/20/2015 RP 85. This issue is not as easily explained away as the State would suggest.

The inference that Ms. Inman could not have provided the methamphetamine for herself because she did not have the financial means belies the fact that she had been a heavy and frequent methamphetamine user for years and would have been responsible for procuring her own methamphetamine to support her habit. The inference that Ms. Inman exchanged sex for methamphetamine does not appear to be reasonable in light of Ms. Inman's repeated statements to the contrary.

Given Ms. Inman's testimony that based on her experience as a heavy and frequent methamphetamine user that the particular substance provided to

her by Mr. Kendall did not have the same appearance or effect of methamphetamine, combined with her testimony that based on those experiences the substance clearly was not methamphetamine it is clear that circumstantial evidence presented was not sufficient to convict Mr. Kendall of delivery of methamphetamine.

B. CONCLUSION

Based on the forgoing, Mr. Kendall respectfully requests that this Court reverse his conviction for delivery of methamphetamine.

July 22, 2016

Respectfully submitted,
TROMBLEY LAW PLLC.



Michelle Trombley
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PROOF OF SERVICE

I, Michelle Trombley, being over the age of 18, hereby declare that on the 20 day of July, 2016, I caused a true and correct copy of the Apellant's Response Brief on Div. III Case No. 337006 to be served on the following in the manner indicated below:

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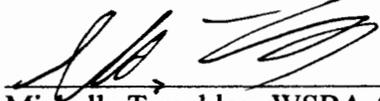
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I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Dated this 22 day of July, 2016

By: 
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