NO. 77281-9

SUPREME COURT

OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

KENDRA LYNN WATT, Appellant

ANSWER TO PETITION FOR REVIEW

ANDY MILLER
Prosecuting Attorney
for Benton County

TERRY J. BLOOR, Deputy
Prosecuting Attorney
BAR NO. 9044
OFC ID 91004

7122 West Okanogan Place
BLDG. A
Kennewick WA 99336
(509)735-3591

TABLE OF CONTENTS

TABLE OF AUTHORITIES i

STATEMENT OF THE CASE 1

ARGUMENT 7

TABLE OF AUTHORITIES

CASES:

Crawford v. Washington,
541 U.S. ____(2004) 7, 11

STATEMENT OF CASE

On May 31, 2001, Robert Savage contacted Detective Rick Runge of the Tri-Cities Metro Drug Task Force (Metro) about a methamphetamine lab at the residence of the petitioner, Kendra Watt, and her husband James at 402 Abbott in Richland (RP[1] 13-14, 254-255). The petitioner, James, and three daughters were living at the residence on Abbott (RP 16-17, 52, 103, 105). A niece, Ashley, also either lived at the Abbott residence or visited frequently (RP 17, 52, 112).

Savage was acquainted with both the petitioner and her husband James (RP 12, 20). Before contacting Detective Runge, Savage had observed James Watt cooking methamphetamine in his garage on at least two occasions (RP 14, 19, 254-555). The petitioner was not in the garage during Savage's second visit, although Savage had observed her in the garage when methamphetamine was being cooked

---

1 Unless otherwise specified, RP refers to the March 18-20, 2002, verbatim report of proceedings of the petitioner's jury trial.

the first time (RP 20, 35, 42, 44-45, 50). However Ashley, who was approximately fourteen, was present in the garage on the second occasion methamphetamine was being manufactured, as was another adult male (RP 17, 19). During the second visit, Watt told Savage that he needed Toluene to finish the last batch of methamphetamine (RP 14).

Savage contacted Detective Runge because he was concerned about Ashley's involvement in the methamphetamine manufacture process, cleaning utensils. Savage himself had lost two nieces in a methamphetamine lab fire (RP 15, 17, 42). Savage told Detective Runge that he knew an individual that was manufacturing methamphetamine in a garage with children present, that they were preparing to cook another batch but couldn't get Toluene, and that they had asked him where they might be able to get some (RP 225). Detective Runge asked Savage if he would be able to introduce an undercover detective to provide Toluene in exchange for

finished narcotics (RP 225). Savage told Detective Runge that he would check into it, but subsequently informed the detective that the defendant had already purchased five-gallons of Toluene from the Standard Paint store in Richland (RP 225). Detective Runge's independent investigation confirmed that a female meeting the petitioner's description and driving a vehicle seen at the petitioner's residence had in fact purchased five-gallons of Toluene from that store (RP 95-98, 227-228).

Savage did not request or receive any money or favors from Detective Runge or police in exchange for the information which he provided (RP 17-18, 224). His motivation for contacting the police was his concern for the children (RP 18).

Detective Runge applied for and obtained a search warrant for the petitioner's residence at 402 Abbott (RP 228). Metro officers executed the warrant on June 1, 2001 (RP 51-52, 228). Items

found in the master bedroom included a black purse which contained two plastic baggies of methamphetamine and dominion papers for the petitioner, scales commonly used to measure narcotics, glass pipes, and receipts for items used in the production of methamphetamine such as HEET, lithium batteries, coffee filters, Toluene, dry ice, denatured alcohol, a coffee grinder, muriatic acid, and pseudoephedrine (RP 53-55, 60-65, 194-195, 204-205, 243-248). Additional methamphetamine and baggies also were found in a safe in the bedroom (RP 66-72, 206). The petitioner also had a video surveillance camera set up allowing them to monitor the front exterior of their residence from their bedroom (RP 78).

The distinctive chemical odor associated with the methamphetamine manufacturing process was immediately noticeable when officers entered the Watts' garage (RP 230-231). The garage had been vented with tubing, apparently to relieve the

buildup of the chemical fumes (RP 123-130, 233). In fact the tubing tested positive for the presence of methamphetamine (RP 149-150, 233).

Numerous items used in methamphetamine production were found in the garage. These included solvents, muriatic acid, tubing, a funnel with residue, extracted ephedrine, scales, a coffee grinder, coffee filters with methamphetamine residue, lithium batteries, lye, Coleman fuel, and water softener salt (RP 130-135, 137-144, 148-149).

A five-gallon container of Toluene was also found in the garage, consistent with the defendant's purchase of Toluene at the paint store (RP 156, 233-234). Although, anhydrous ammonia was not found, James Watt subsequently told Detective Runge that he manufactured the anhydrous ammonia himself (RP 249-250).

The petitioner was charged by amended information with Count I: Unlawful Manufacture of a Controlled Substance, Methamphetamine, with Notice

of a Child Present on the Premises During Manufacture, Count II: Unlawful Possession of a Controlled Substance, Methamphetamine, and Count III: Criminal Mistreatment in the Second Degree (CP 174-175).

The petitioner's husband, James Watt, was also charged with manufacturing methamphetamine with children present, criminal mistreatment in the second degree, and possession of methamphetamine. He subsequently plead guilty to manufacturing methamphetamine and criminal mistreatment in the second degree (Ex. 83).

At trial, the State admitted pages one and seven of James Watt's seven-page Statement of Defendant on Plea of Guilty to establish that he had admitted to making methamphetamine in the detached garage, and that while the children weren't present while he was making the methamphetamine, they did live on the premises (RP 299, 314-317; Ex. 83). On page one, the statement was redacted to omit a reference to Watt's being

charged with unlawful possession of a controlled substance. That reference had been lined out in the original statement. A reference to James Watt making methamphetamine for his wife was redacted on page seven (RP 295; Ex. 83). The trial court held that the statement was admissible as a statement against interest (RP 10-11).

The petitioner was found guilty as charged (CP 6-13, 115-118). The conviction was affirmed by the Court of Appeals and the Washington State Supreme Court. The United States Supreme Court remanded the case to this court for a determination of the effect of *Crawford v. Washington*.

ARGUMENT:

***Crawford v. Washington* would bar use of Mr. Watt's statement on plea of guilty. However, since the petitioner's defense was that she was unaware of, and did not participate in, a methamphetamine lab, any error in admitting her husband's plea of guilty that he had a methamphetamine lab was**

harmless.

It is important to recognize what the petitioner's defense is. The petitioner did not challenge the fact that there was a methamphetamine lab at her residence. She did not argue that there was a benign explanation for the extracted ephedrine, muriatic acid, lithium batteries, coffee filters with residue, tubing, lye, funnels, denatured alcohol, HEET, and dry ice. Rather her defense was that she had no knowledge of such items.

If the petitioner had claimed the extracted ephedrine, muriatic acid, etc. did not constitute a methamphetamine lab, her husband's statement may have had some impact. If she had claimed that methamphetamine was not produced at her residence, again, her husband's plea may have had some impact. However, the above items proved beyond any doubt that there was a methamphetamine lab at the defendant's residence. Her husband's plea merely confirmed that fact. The petitioner's defense was

that she was unaware of the lab and did not participate in it. Therefore, admission of Mr. Watt's plea of guilty had no impact on this defense. Any error was harmless.

The same can be said regarding the statement of Mr. Watt to Detective. Runge that he makes his own anhydrous ammonia. However, admission of this statement had no bearing on the trial. The petitioner's defense was that she was unaware of her husband's methamphetamine lab, not that he did not have one. The fact that the petitioner's husband operated a methamphetamine lab at their residence is consistent with her defense.

It may help to review the appellant's statement argument in response to this point. In her reply brief to the United States Supreme Court the appellant stated,

> Mrs. Watt maintained she had no knowledge of the husband manufacturing methamphetamine. That her husband manufactured the drug in the garage area which was an area she was not allowed into. Testimony at trial revealed that the garage was locked and then that Mr. Watt had a room locked off within the

> garage. Mrs. Watt and other family members were not allowed into the garage or the locked area of the garage. (Appellant's Reply Brief 1-2).

That is a good summary of the appellant's argument at trial. The appellant claimed she had no knowledge her husband was cooking methamphetamine. Her husband's guilty plea had no bearing on that defense.

The defense was easily overcome by the following evidence:

- The petitioner was in the garage when methamphetamine was being cooked. (RP 25).
- The petitioner bought toluene, exactly when that very chemical was needed to complete the methamphetamine cooking process. (RP 95-98, 227-228).
- The odor from the garage was obvious. (RP 230-231).
- The petitioner was clearly in possession of methamphetamine. (RP 53-55, 194-195, 204-206).
- The petitioner had monitors in her residence which could alert the occupants to the presence of the police. (RP 77-78)

The petitioner's defense theory was that she

had no knowledge of any methamphetamine lab in her garage. She was able to present that theory without any limitations or difficulties. The fact that her husband plead guilty to cooking methamphetamine at the residence was consistent with her theory and had no bearing on the defense.

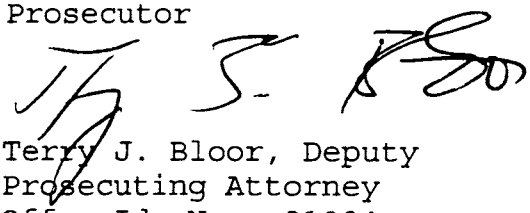
If this case is retried, neither the prosecution case or the defense case will change. The prosecution will still present overwhelming, and uncontested, evidence that there was a methamphetamine lab at the residence. The petitioner knew of the methamphetamine lab; she was present when methamphetamine was being cooked. She assisted in it by purchasing a key chemical. The defense case will again argue that the evidence is insufficient to prove she acted as an accomplice.

Both sides had a trial on these facts and theories. The petitioner had a fair trial. The evidence which would not be admissible as a result of *Crawford v. Washington*, has no impact on her

defense and only gilded the lilly in proving the presence of a methamphetamine lab. The State strongly requests the Court affirm the conviction.

Respectfully Submitted,

ANDY K. MILLER
Prosecutor



Terry J. Bloor, Deputy
Prosecuting Attorney
Offc. Id. No: 91004
BAR NO. 9044