

68031-5

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NO. 68031-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JEFFREY C. WOODS,

Appellant.

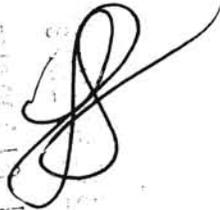
ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAGIT COUNTY

The Honorable Susan K. Cook, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY¹

THE TRIAL COURT IMPOSED UNAUTHORIZED
COMMUNITY CONDITIONS.

The trial court imposed the following community custody condition in Jeffrey Woods' sentence: "Do not possess or consume alcohol and do not frequent establishments where alcohol is the chief commodity for sale." CP 166 (condition 1). Agreeing the trial court had statutory authority to prohibit consumption of alcohol, Woods contends the court lacked authority to prohibit possession of alcohol because the prohibition was not crime-related. Brief of Appellant (BOA) at 17-19. Because alcohol did not contribute to his crimes, Woods also challenges the prohibition on frequenting taverns, bars, nightclubs, liquor stores, and other businesses which chiefly sell alcohol. BOA at 19.

In response, the State maintains Woods' testimony that he drank beer earlier in the evening "is an adequate basis to include the prohibited conduct condition to prevent Woods from *consuming* alcohol and going to bars." Respondent's Brief (RB) at 26 (emphasis added). The State also asserts "here the trial court actually ordered he 'not consume alcohol and do not frequent establishments where alcohol is the chief commodity for sale.' CP 166."

¹ Woods rests on arguments 1, 2 and 3 as presented in the Brief of Appellant.

The State has missed or ignored Woods' argument. Woods challenges the prohibition on *possession* of alcohol. Not consumption. RCW 9.94A.703(3)(e) authorizes the court to prohibit consumption of alcohol.

In addition to missing the argument, the State misquotes the challenged condition by leaving out the prohibition on alcohol possession. It is the ban on possession that Woods challenges.

By ordering Woods to not possess alcohol or frequent establishments where alcohol is the primary item for sale, the court has imposed prohibitions. Prohibitions are permissible as long as they are "crime-related." RCW 9.94A.703(3)(f); see State v. Cordero, ___ Wn. App. ___, 284 P.3d 773, 784 (2012) ("Given the absence of any evidence that Mr. Cordero's crime was gang related, the trial court had no tenable grounds for imposing the gang-related prohibitions[.]").

Woods contends that despite his testimony about consuming beer during the hours leading up to the crimes, results of a hospital urinalysis indicated otherwise. BOA at 17-19. The State counters, asserting "a careful review of the transcript shows that Woods did not say the medical records showed he had not consumed alcohol. RB at 26. What follows is a careful review of the prosecutor's cross-examination of Woods:

Q. Okay. And have you heard Dr. Swenson testify yesterday your urine was checked for drugs; is that right?

A: Yeah. Well, I guess they got my urine out of the catheter while they started giving me fluids. My body functions were shutting down.

Q: They checked your urine. And isn't it correct that you were zero for alcohol?

[Defense counsel]: Objection, Your Honor. I don't think Mr. Woods has testified that he has personal knowledge of this.

[Prosecutor]: Your Honor, this is impeachment. He's testified he drank several beers. This indicates he had no alcohol in his system. He indicated he is familiar with these records.

[Court]: Overruled.

[Prosecutor]: Is that what that indicates? That means you can answer.

A: It says I was out of body fluids. I had been drinking all day.

2RP 108.²

When considered in this full context, it is evident the urine test did not reveal the existence of alcohol. The State asserts that in addition to Woods' insistence he had been drinking beer, the trial court properly included the challenged community custody conditions "because the

² In fairness, the trial prosecutor was trying to prove Woods possessed methamphetamine, one of the charged crimes. CP 2 (count III).

officer had earlier observed Woods acting intoxicated[.]" and because "the blood test was taken hours after the initial altercation." RB at 24.

Officer Eaton did testify that when he briefly encountered Woods during his initial routine pass through the motel parking lot, "I believed he was intoxicated." 1RP 42. Eaton returned to the motel nearly an hour later in response to a dispatch. 1RP 40, 45-46. As Eaton approached Woods, "it was like he was looking straight through me. There was no response like you would normally if you had just spoken to someone." 1RP 46.

Use of the term "intoxicated" is not exclusive to being under the influence of alcohol. See, e.g., State v. Conklin, 79 Wn.2d 805, 807, 489 P.2d 1130 (1971) ("Intoxication' includes that produced by drugs."); State v. Gilcrist, 15 Wn. App. 892, 894, 552 P.2d 690, 692 (1976) ("[W]hen a person drinks intoxicating beverages or takes drugs for other than medicinal purposes he is voluntarily intoxicated and this type of intoxication is no defense to a crime requiring no specific intent."). Furthermore, although Eaton had close contact with Woods during their affray, he did not testify he smelled the odor of beer or other alcohol drinks. In addition, Woods' hospital record indicated that his history, which was primarily obtained from police officers, "revealed an altered mental status[.]" 1RP 101-02 Therefore, the fact Eaton testified he

believed Woods was "intoxicated" does not add support to the challenged alcohol-related community custody conditions here.

As far as the amount of time that elapsed between the incident and the urine test, Officer Vollens testified he arrived at the motel at about 3:10 a.m. 1RP 112. By then Eaton was fighting with Woods. 1RP 113-14. Once the incident ended and Woods was detained, Vollens drove him to the hospital, which he testified was "just right next door pretty much." 1RP 124.

The hospital records showed Woods arrived at about 3:30 a.m. 1RP 106. He remained there for about three and one-half hours. 1RP 107. The record does not indicate when during his hospital stay Woods provided the urine sample. But it does not support the State's assertion that the urine test "was taken hours after the initial altercation[.]"

Because analysis of the sample revealed amphetamine, the emergency room doctor diagnosed Woods with methamphetamine abuse. 1RP 103-04. The doctor said nothing about alcohol in the urine.

For these reasons, Woods urges this Court to reject the State's claims and to order community custody condition (1) stricken except for its prohibition on alcohol consumption.

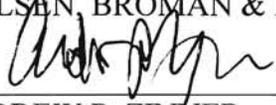
B. CONCLUSION

For the reasons cited herein and in his Brief of Appellant, Woods asks this Court to reverse his malicious mischief conviction and order the challenged community custody conditions stricken.

DATED this 19 day of October, 2012.

Respectfully submitted,

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DIVISION ONE

STATE OF WASHINGTON)	
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Respondent,)	
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v.)	COA NO. 68031-5-1
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JEFFREY WOODS,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 19TH DAY OF OCTOBER 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] SKAGIT COUNTY PROSECUTOR'S OFFICE
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- [X] JEFFREY WOODS
P.O. BOX 218
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10/19/12 11:21


SIGNED IN SEATTLE WASHINGTON, THIS 19TH DAY OF OCTOBER 2012.

x *Patrick Mayovsky*