

NO. 42844-0-II

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

STATE OF WASHINGTON,

Respondent,

v.

TAWANA DAVIS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 11-1-00248-7

SUPPLEMENTAL BRIEF OF RESPONDENT

RUSSELL D. HAUGE
Prosecuting Attorney

RANDALL AVERY SUTTON
Deputy Prosecuting Attorney

614 Division Street
Port Orchard, WA 98366
(360) 337-7174

SERVICE

Jordan McCabe
P.O. Box 46668
Seattle, WA 98146
jordan.mccabe@yahoo.com

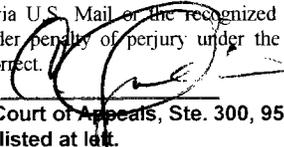
This brief was served, as stated below, via U.S. Mail or the recognized system of interoffice communications. I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED July 8, 2013, Port Orchard, WA 
Original AND ONE COPY filed at the Court of Appeals, Ste. 300, 950 Broadway, Tacoma WA 98402; Copy to counsel listed at left.

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I. COUNTERSTATEMENT OF THE ISSUE

Whether the evidence was sufficient to show that Davis allowed “someone else” to use her room to deliver methamphetamine?

II. STATEMENT OF THE CASE

The State relies upon the statement of the case set forth in its original brief.

III. ARGUMENT

THE EVIDENCE WAS SUFFICIENT TO SHOW THAT DAVIS ALLOWED “SOMEONE ELSE” TO USE HER ROOM TO DELIVER METHAMPHETAMINE.

Davis was charged and convicted under RCW 69.53.010(1):

It is unlawful for any person who has under his or her ... control any ... room, space, or enclosure as ... an owner, lessee [or] employee ... to knowingly ... make available for use, with or without compensation, the ... room, space, or enclosure for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away any controlled substance under chapter 69.50 RCW....

The question presented is whether the statute requires Davis to have “allowed *someone else* to use the property under their control to store, manufacture, sell, or deliver [or give away] drugs.” Order Requesting Supplemental Briefing (Jun. 27, 2013) (emphasis the Court’s).

The State has found no authority directly on point. However, in *State v. Fernandez*, 89 Wn. App. 292, 948 P.2d 872 (1997), the Court considered

similar language found in RCW 69.50.402(1), which provides:

(1) It is unlawful for any person:

* * *

(f) Knowingly to keep or maintain any ... place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances... .

The Court concluded that the phrase “resorted to” requires a showing that persons other than the defendant made use of the place. *Fernandez*, 89 Wn. App. at 299. The State is hard-pressed to rationally distinguish the phrase “make available for use” in a different manner in the present statute.

The next question, then is whether there was evidence from which the jury could conclude that Davis made her room available to others for the requisite purposes.¹ The evidence showed that after his second purchase in the room, White delivered a small amount of meth to Davis’s boyfriend, who was in the room at the time. 3RP 415. Davis also told Detective Musselwhite at the time of her arrest that she was “working together” and selling methamphetamine with her boyfriend. 3RP 248, 276. This evidence presents a basis for the jury to conclude that Davis allowed others to use her room for the purpose of delivering methamphetamine.

¹ The motel manager testified that Davis’s room rent was deducted from her salary, which would qualify her as a “lessee” as well as an employee of the motel. 2RP 195.

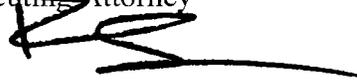
IV. CONCLUSION

For the foregoing reasons, and those set forth in the State's original brief, Davis's conviction and sentence should be affirmed.

DATED July 8, 2013.

Respectfully submitted,

RUSSELL D. HAUGE
Prosecuting Attorney



RANDALL AVERY SUTTON
WSBA No. 27858
Deputy Prosecuting Attorney

KITSAP COUNTY PROSECUTOR

July 08, 2013 - 3:41 PM

Transmittal Letter

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jordan.mccabe@yahoo.com