

Date: Feb. 18, 2014

From: Applicant  
To: Richard Parsons

Re: State v. Dolan Bench Trial -- Closing Argument

Good morning, Your Honor. The State would like to give its closing argument for the prosecution against Mr. Bruce Dolan. Mr. Dolan is charged with simple possession of methamphetamine, otherwise known as "meth," and marijuana; possession with intent to distribute meth and marijuana, and conspiracy to distribute meth and marijuana. The State will now address each charge with evidence and arguments establishing proof beyond a reasonable doubt for each of Mr. Dolan's charges.

**1. Possession of meth and marijuana is provable beyond a reasonable doubt.**

Under Columbia Penal code § 840, it shall be unlawful for any person knowingly to possess a controlled substance. A person acts with knowledge with respect to the nature of his conduct or the attendant circumstances if he is aware that his conduct is of the nature of the circumstances, or he is aware of a high probability of the existence of such circumstances. Controlled substances include *marijuana* and *methamphetamine*, the substances in this case.

In JONES, the Columbia Supreme Court listed the common elements of drug possession offenses as being: 1) a specified controlled substance in a sufficient quantity and in a usable form; 2) possession, which may be physical or constructive, exclusive or joint; and 3) knowledge of the fact of possession and of the illegal character of the substance. These elements must be proven beyond a reasonable doubt.

**(a) Whether there was a specified quantity in a usable form of meth and marijuana**

To support its prosecution, the state has called in several witnesses who have in one way or another dealt in controlled substances through Mr. Dolan. Mr. Mack stated that Ms. Rogers, Mr. Gardner, Mr. Cord and he himself were supplied by Mr. Dolan. Examination of Rodney Mack lines 25-28. The existence of the first element for possession--a specified controlled substance--can be proven by the language used by each witness.

As to meth, Mr. Mack bought one-quarter pound of meth at a time. Ms. Rogers stated that her brother got one-half ounce to one-ounce quantities of meth from Mr. Mack, who got it from Mr. Dolan. Ms. Rogers herself bought 12-14 ounces of meth from Mr. Dolan. Mr. Cord bought "maybe a couple pounds of" meth per month from Mr. Dolan.

Other witnesses stated some quantity of marijuana. Ms. Black stated that she retrieved an ounce of marijuana and one-quarter pound of meth that Mr. Cord picked up from Mr. Dolan. B. J. Atwood, a defective with the Columbia DEA, found 73 pounds of marijuana on Mr. Dolan's property in six large garbage bags.

From the evidence above, it can be proven that there were specified controlled substances in a sufficient quantity and in a usable form since the witnesses purchased them for personal use.

Commented [BH1]: "has been proved" more persuasive?

Commented [BH2]: Issue statements should be argumentative, consistent with the goal of oral argument

(b) Whether there was possession

As to possession by Mr. Dolan, Detective B. J. Atwood found 40 grams of meth in an ammunition can alongside a driveway 150 yards from Mr. Dolan's house. Atwood also found 73 pounds of marijuana buried on Mr. Dolan's property. Possession may be physical or constructive. The 73 pounds buried on Mr. Dolan's property is clearly physical possession. The 40 grams alongside the driveway is constructive, if not physical, since it was located close enough to his property to impute possession on Mr. Dolan. Moreover, there was meth laid out in a line next to a snort tube and a baggie containing meth residue. 150 yards from his house is not far enough to excuse the fact that Mr. Dolan would not have seen it.

The state has met its burden of proving beyond a reasonable doubt as to possession of meth and marijuana by Mr. Dolan.

(c)(1) Whether Mr. Dolan had knowledge of possession of the substances

Mr. Dolan denies being aware of the drugs. However, under CPC 840, knowledge is imputed on a person if he is aware of possession or he is aware of a high probability of possession.

As to the meth, there is a high likelihood that he was aware of possessing it because it was only 150 yards away from his house in an ammunition can and laid out in a line. Mr. Dolan was found to possess 12 firearms, and the fact that meth was within ammunition cans is evidence that Mr. Dolan was aware of possessing meth since he would have ammunition for his firearms. Furthermore, one-quarter pound of meth was inside his vehicle. More was found in his house along with other drug paraphernalia.

Regarding the marijuana, it was found in 6 large black garbage bags inside a locked 55-gallon drum, buried on Mr. Dolan's property. Within the drum was a PVC pipe containing marijuana, the pipe being locked with a padlock. More marijuana was found in his house along with other drug paraphernalia. The key to the padlock was found in Mr. Dolan's home. When asked about the key, although Mr. Mack testified about how Mr. Dolan's told him that he buried the drugs on his property, Mr. Dolan could not explain it other than that he thought it was Mr. Gardner and his sister hiding it and leaving the key in his home for convenience. The fact that the key was still found inside Mr. Dolan's home shows that he at least had inquiry notice of a lock. If he was suspicious of Mr. Gardner, he could have asked him. Furthermore, possession may be joint or exclusive. Even if Mr. Dolan thought it was Mr. Gardner's drums on his property, he would have joint possession and knowledge of such possession.

The state has met its burden of proving beyond a reasonable doubt as to knowledge of possession of meth and marijuana by Mr. Dolan.

(c)(2) Whether there was had knowledge of illegal character of the substances

Mr. Dolan stated that he "of course" knew that marijuana was illegal. He also stated that one would "have to be pretty stupid not to know" that possession of meth is illegal. He said he does not consider himself stupid. These statements show that Mr. Dolan knew the illegal character of meth and marijuana.

The above prove beyond resonable doubt all the elements of possession of meth and marijuana, and Mr. Dolan should be convicted of his first charge of possession.

## **2. Possession with intent to distribute meth and marijuana is provable beyond a reasonable doubt.**

Commented [BH3]: "has been proven"

Since the state has proven the elements of possession, Mr. Dolan's second charge requires the additional element of intent in order to convict for possession with intent to distribute.

Under JONES, intent to distribute may be established by circumstantial evidence, including thing such as quantity and purity, as well as presence of firearms, cash, packaging material, or other distribution paraphernalia. A firearm is generally considered a tool of the trade for drug dealers and can be evidence of intent to distribute if the circumstances so warrant. In JONES, an unloaded rifle and shotgun in a trunk was held not to be tools of the drug trade because it was found along with other camping gear as if the defendant was out camping or hunting with the weapon.

Intent to distribute may also be inferred solely from possessing a large quantity of drugs. Quantity and purity combined were insufficient to support a reaosnable inference of intent to distribute. Thus, additional circumstance consistent with intent to distribute was required. Courts look to additional circumstances or evidence consistent with intent to distribute narcotics. The following have been found to be sufficient to establish intent:

- Under OJEDA (cited in JONES), intent to distribute could be drawn from possession of 7.1 kg of 88-91% pure meth.
- In WHITE (cited in JONES), 7.54 g alone was insufficient to convict for possession with intent to distribute, although 5 g was enough, where additional circumstantial evidence supported a conviction, where the cocaine was packaged in multiple packages, and the defendant had wired a large amount of cash and had a revolver.

On the other hand, the following have been found to be insufficient to establish intent:

- In FRANKLIN (cited in JONES), 35 grams of 42% pure cocaine alone was insufficient to infer intent to distribute because it was not packaged for resale, nor did the defenanant have a large amount of unexplained cash or other distribution paraphernalia.
- Under JONES, 47% pure meth, standing alone, is not sufficient to prove beyond resonable doubt of intent to distribute it.

Therefore, the state intends to show circumstantial evidence surrounding Mr. Dolan's possession of meth and marijuana.

### **Circumstantial evidence surrounding intent**

Detective Atwood's investigation turned up meth, marijuana, drug records, cash, and drug paraphernalia from Mr. Dolan's house pursuant to a search warrant. There, he seized 12 firearms (4 handguns and 8 long guns). All 12 firearms were manufactured outside of Columbia. This numerous amount of weapons and the fact that it was made not to be easily traceable do not point to the enthusiasm of a mere hunter or collector. Mr. Dolan undoubtedly kept this many firearms as a "tool of the drug trade," where dealing in illegal or dangerous activities requires means to coerce or protect oneself.

The marijuana was stored in garbage bags as well as a PVC pipe, which had finely manicured or processed marijuana. There was also a can of meth and a baggie with meth residue and a rubber band around it, suggesting distribution in a packaged form of it. Witnesses who have dealt with Mr. Dolan also testified that they bought in increments of, for example, "one-quarter pound at a time," "two ounces of [meth] at a time from defendant," "an ounce of marijuana and one-quarter pound of [meth] . . . picked up from defendant," and "\$4,200 for one-quarter pound of [meth from defendant]." These quantities suggest distribution in a packaged, quantized form.

Furthermore, Detective Atwood testified that 40 g of meth and 73 pounds of marijuana seized from Mr. Dolan's property would "absolutely not" be for personal use. Ms. Kahler, a chemist with the Columbia DEA, testified that the meth seized had a purity of 40%, which is beyond the usual range of 10-15% as Detective Atwood said.

Given the high purity, compartmentalized storage distribution, and unexpectedly large quantity of firearms, it justifies the inference that the large amount of meth and marijuana "are for distribution and not for personal use" (JONES).

With the above evidence, the state has proven beyond a reasonable doubt that Mr. Dolan had intent to distribute meth and marijuana.

### **3. Conspiracy to distribute meth and marijuana is provable beyond a reasonable doubt.**

To support a conspiracy conviction, the government must show beyond a reasonable doubt that 1) a conspiracy existed for an illegal purpose, 2) the defendant knew of the conspiracy, and 3) the defendant knowingly joined in it. JONES.

#### **(a) Whether a conspiracy existed for an illegal purpose**

Mr. Dolan had a close-knit group of friends and neighbors, who bought and/or resold meth and marijuana from Mr. Dolan. A conspiracy generally requires agreement between two or more persons with the intent to enter into such an agreement with the intent to achieve the same criminal objective. In this case, there were several people in the group of friends and neighbors. An agreement may be implied by conduct, which can be shown by the fact that they had a system of chain of distribution wherein participants would purchase from Mr. Dolan and then resell it. The objective was to buy from Mr. Dolan, then distribute it.

Therefore, a conspiracy existed.

#### **(b) Whether defendant knew of the conspiracy**

According to Mr. Mack, Mr. Dolan "used his friends to actually distribute the drugs."

Mr. Bram testified that Mr. Dolan "didn't do retail" and referred him to Mr. Gardner. If Mr. Dolan "didn't do retail," it implies that he had another way of distributing the drugs--namely the conspiracy with his inside group.

Mr. Dolan undoubtedly knew of the conspiracy based on the evidence.

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Commented [BH5]: This is implied by (c)

(c) Whether defendant knowingly joined in the conspiracy

A simple agreement between a buyer and seller to exchange something of value for a drug cannot alone constitute a conspiracy because such an agreement is itself the substantive crime. HACH. A court may look beyond the lack of explicit agreements and direct evidence. Instead it may look to circumstantial evidence that tends to establish the conspiracy to distribute. In HACH, the Columbia Supreme Court found four factors in HACH that are particularly salient in determining whether a conspiracy existed, and whether a defendant knowingly participated in it: 1) the length of affiliation, 2) the established method of payment, 3) the extent to which transactions were standardized, and 4) the demonstrated level of mutual trust.

Commented [BH6]: Should have combined this with part (a)

Length of affiliation

Mr. Mack testified that Mr. Dolan and he were in a business relationship whereby Mr. Dolan would sell Mr. Mack meth and marijuana, and Mr. Mack would then resell. This relationship persisted for over 2 years--from June of 2008 to September or October 2010. Mr. Mack also called Mr. Dolan by a nickname "Dolly," indicating the level of familiarity between him and Mr. Dolan.

Mr. Cord had a similar business relationship from June of 2009 to December of 2010. He bought a couple pounds of meth a month, meaning he had transacted with Mr. Dolan approximately 18 times for approximately 36 pounds.

Tacking on the two periods (there are others who dealt with Mr. Dolan within this time period) amounts to a significant amount of time of about 2.5 years.

Established method of payment

Mr. Dolan strictly wanted cash only, nothing large than \$20 bills. This is an established method of payment that was enforced in every transaction.

Extent to which transactions were standardized

Mr. Dolan was known by his clients about his strict and rigid transaction arrangements. Mr. Dolan wanted cash only, nothing large than \$20 bills, and absolutely no negotiation on price was allowed. He had a "take it or leave it" policy. The transactions would take place only at his house or in Tama and the casino.

The fact that his clients knew of the strict policy shows the great extent to which Mr. Dolan wanted to standardize the transactions.

Level of mutual trust

Some of the transactions were allowed to take place only Mr. Dolan's house, indicating a level of trust. According to Mr. Mack, "a couple of us could buy at his house, but others would have to meet [at the casino]." Mr. Cord bought the drugs "always at [Mr. Dolan's] house," or he would have to meet at the casino. Mr. Cord has known Mr. Dolan since high school. This shows that Mr. Dolan had trust between his closer acquaintances, and he did tend to deal among his friends and their friends.

There is additional evidence of trust involved. Ms. Rogers called Mr. Dolan at his residence three times. Although it may be because Ms. Rogers knew Mr. Dolan through her boyfriend, or perhaps it is because her brother was a paraplegic, the fact that a customer knew his phone number shows a level of mutual trust. It shows that Mr. Dolan was willing to compromise his security to make the transaction convenient for his customer.

Mr. Dolan referred Mr. Bram to Mr. Gardner, indicating a level of client service and retention, as well as trust among clients and other distributors. Indeed, the quality of service despite the rigid rules led to continued patronage and purchase from Mr. Dolan by several clients.

These arrangements advanced all parties' interests--the seller had a limited number (two places) of established places to distribute the drugs, and the buyers also had convenient ways to access them.

#### Conclusion as to conspiracy to distribute

Taking together the four factors of 2.5-year-long affiliation, established method of cash payment, standardized transactions, and demonstrated level of mutual trust, it is clear beyond a reasonable doubt that Mr. Dolan knowingly joined in the conspiracy to distribute meth and marijuana.

Since the state has shown beyond a reasonable doubt that 1) a conspiracy existed for an illegal purpose, 2) Mr. Dolan knew of the conspiracy, and 3) Mr. Dolan knowingly joined in it, a conviction of conspiracy to distribute meth and marijuana is supported by the evidence.

#### Final conclusion

In conclusion, Your Honor, the defendant Mr. Dolan is guilty of the charges of possession of meth and marijuana, possession with intent to distribute meth and marijuana, and conspiracy to distribute meth and marijuana because the evidence offered by the state has proven beyond reasonable doubt that each element of the offenses have been met.