

Friday, October 10, 2008

Why plead guilty when pleading innocent is not much more risky?

Â Photo from website of U.S. District Court (W.D. Mi.).Â Most people in my neck of the woods go to court without a lawyer for non-jailable criminal matters. However, even non-jailable convictions can come back to haunt people. For instance, a conviction for possessing a pot pipe is deportable for non-U.S. citizens, with no exceptions that I know of. Those with security clearances will also want to watch out. Moreover, today's non-jailable conviction can lead to harsher sentences for any future convictions. Â This week, I had two trials for non-jailable criminal matters. The first trial was in Virginia,Â for making a loaded handgun recklessly available for the use of a minor under fourteen years old. We lost the trial, but my client has the option to appeal for a de novo Circuit Court bench trial. Consequently, the District Court trial was a dry run to be all the more prepared for what the prosecutor and cops will do at any retrial on appeal. The trial also gave me a chance to have my first trial against this particular county prosecutor. Â My second non-jailableÂ trial this weekÂ was a MarylandÂ marijuana pot pipe prosecution. In Maryland, a first-time drug paraphernalia conviction is punishable only by a fine up to \$500 and court costs of under \$100. However, I had one judge several months ago who was convinced he had the authority to place my client on supervised probation for first-time drug paraphernalia possession, and to order drug treatment, in apparent consideration that he had not ordered my client to pay the full statutory maximum fine.Â The judge disregarded my insistence that my client refused to agree to probation and would pay the maximum fine instead. We successfully appealed. Â In any event, a second-time drug paraphernalia possession in Maryland carries up to two years in jail. That is enough reason to hire counsel for one's first paraphernalia possessionÂ charge. Â In this week's drug paraphernalia trial. I lost my motion to suppress the stop of my client's car. Over my objection,Â the stopping police officer claimed my client's speed was excessive and testified to the results of his speedometer pace of my client's car,Â even though the officerÂ did not have his speedometer calibration documentation with him. I lost my motion to suppress the search of my client's car, even though the judge's basis for allowing the search seemed only to have been on testimony of a "faint" odor of marijuana coming from my client's car. Â One officer testified that he found a pipe and cigarette butt in my client's car. The prosecutor then told the judge he had no further questions for his last of three witnesses, and moved into evidence a bag containing the pipe and cigarette butt, and a chemist's report saying the pipe had not been tested and a confirmation of marijuana in the cigarette butt.Â As I always do, I went to the trouble of having the court and the prosecution receive my timely demand that no chemist report come into evidence without the testimony of the drug chemist. I was hired in the nick of time to meet the five-day filing deadlineÂ for such a demand.Â When the prosecutor showed me the consolidated exhibit, I told him: "Please follow the law by removing the chemist's report, because I filed the chemist demand on time, five days before trial." Instead, the prosecutor proceeded to tell the judge he thought my deadline for filing the chemist demandÂ was fifteen days, under the prosecutor's reasoning that five days was not sufficient notice to the prosecutor to obtain the chemist's presence. Â I replied: "Judge, here is the statutory provision showing a five-day filing deadline. The legislature has spoken. Â The judge then agreed that the deadline was five days, and that he was granting my motion. I then said I was making a motion for judgment of acquittal. The judge replied that he had already granted it, which is curious, because he did not give the prosecutor a chance to argue against such a motion beforeÂ acquitting my client.Â It was an acquittal nonetheless in a trial that had not been going my way until then.Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00

Some statutes read that the burden is on the prosecutor to produce the report five (5) days before hearing or trial even without a request by the defense. Congratulations on a win. Here's a warrior's victory yell -- ooh-rah --- good job! Keep on blogging ---

Sincerely,

Glen R. Graham

Tulsa Criminal Attorney

Anonymous on Oct 10 2008, 17:57

Thanks, Glen, for your reply and kind words. In this instance, the prosecutor timely served a copy of the certificate of drug analysis. This means the prosecutor had plenty of time to know the chemist's name and location, to have subpoenaed the chemist, but did not. Have a great week. Jon

Anonymous on Oct 14 2008, 07:49