

When Rearraignment Doesn't Really Change the Charge

By: Lance M. Hester; 2008

Mr. Eaton was charged with possessing drugs. In a nutshell, here are the significant facts:

- Arraigned on possessing amphetamine,
- Re-arraigned on possessing cocaine (instead of amphetamine),
- Hung jury,
- Re-arraigned (mistake by prosecutor at case scheduling conference) on possessing amphetamine (rather than cocaine),
- Found guilty of possessing cocaine.

See, State v. Eaton, Washington Supreme Court Opinion, docket 78970-3.

A majority of the Supreme Court of the State of Washington affirmed his conviction, which, as dissenting Justice Sanders noted, had the effect of, "...essentially holding his rearraignment was of no significance to the charges pending against Eaton... ."

In light of the most recent Recuenco opinion, the Eaton case could be seen as somewhat of a surprise. While discussing firearm sentencing enhancements, the Recuenco court emphasized the importance of the charging documents serving to notify the defendant that for which he must prepare for trial. See, State v. Recuenco, 180 P.3d 1276 (2008). In fact, in Recuenco, the court held the notice was insufficient when the charging document specified the defendant was charged with a "deadly weapon" enhancement but the trial court found only a "firearm" enhancement applied to the facts of the case. And the Recuenco court accordingly went on to base this part of its holding on both the state and federal constitutions.

On the other hand, in the Eaton matter the court ignored this rationale when dealing with elements of the offence itself (rather than the firearm enhancements relevant to the Recuenco matter). The majority opinion in Eaton, focused on the following:

Although there was a "arraignment" on the "original" information, this procedure did not resurrect the original information or result in amending the amended information back to the original charge. State v. Navone, 180 Wash.121, 123-24, 39 P.2d 384 (1934) (once the State formally amends the information, the new information stands in lieu of the original, which is deemed quashed, abandoned, or superseded). Thus, the amended information replaced the

original information and operated as the effective information upon which the defendant was tried.

Eaton at 3-4.

The Eaton court went on to hold that following a mistrial a defendant generally does not need to be rearraigned when there is a subsequent trial. However, this rationale did not address the fact that Eaton was rearraigned for his subsequent trial.

At some point in defending Mr. Eaton, counsel appears to have voiced her objection to the arraignment. It also appears that although the trial court gave Eaton an opportunity to continue the matter due to any confusion it may have brought, the state never engaged in a second re-arraignment to make matters clear. The court simply stated the amended information from the original trial would stand, but, again, never caused Eaton to be properly arraigned on cocaine charges for his second trial.

It is well settled that in our system of criminal jurisprudence a defendant has a right to be informed of all charges he will face at trial. It is equally axiomatic that the state must prove each and every element of the charged offense.

Eaton, however, shows us that despite his most recent arraignment being on amphetamine possession charges; it was acceptable for the jury to convict on cocaine possession charges. The opinion is troubling:

Following a mistrial, the defendant generally need not be rearraigned at a subsequent trial. State v Whelchel, 97 Wn. App. 813, 819, 988 P.2d 20 (1999) (rearraignment not necessary when case is remanded for new trial). While the "rearraignment" in this case could have caused confusion as defense counsel noted, it did not alter the fact that the only existing, effective information charged the defendant with possession of cocaine. Because the trial court recognized the rearraignment error, clarified that the defendant was charged with possession of cocaine pursuant to the amended information, and offered the defendant a continuance, the defendant had constitutionally adequate notice of the crime with which he was charged.

CONCLUSION

Eaton was tried and convicted of the charge contained in the amended information, possession of cocaine, and he does not claim to have been misled by the unnecessary "rearraignment" on an uncharged crime.

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