71810-0

No. 71810-0-I

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COURT OF APPEALS

STATE OF WASHINGTON

DIVISION ONE

— — — — — — — — — — —

STATE OF WASHINGTON,

Plaintiff,

vs.

MARVIN KRONA,

Appellant/Defendant

On Appeal from Snohomish County, Superior Court, No. 13-1-01765-7

— — — — — — — — — — —

STATEMENT OF ADDITIONAL GROUNDS

— — — — — — — — — — —

Marvin Krona
Appellant, Pro se
PO Box 888
Monroe WA 98272

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I - IDENTITY OF PARTY

Marvin Krona, Appellant, pro se, submits this Statement of Additional Grounds and Argument on appeal from the judgment and decision identified in Part 2.

II - DECISION BELOW

The judgment of guilty rendered in the matter of State of Washington v. Marvin Krona, Snohomish County Superior Court No. 13-1-01765-7.

III - FACTS RELEVANT ON APPEAL

On the night of 13 July 2013, at approximately 7:00 p.m., James Grout witnessed an Oldsmobile damage his fence at the location of 26327 Florance Acres Rd., Monroe, Washington 98272. [RP, vol-I, pg. 59].

Mr. Grout was unable to identify who the driver of the vehicle was at the time of the accident. (id.)

After watching the vehicle drive away into the back yard of the Krona residence, Mr. Grout then went inside his own house, grabbed his hat, coat and car keys "because I couldn't get up there fast enough on foot with my disability. So I went and got my car and drove up there . . . . (id., at 60-61; ln 24-25, and 1-2).

After driving to the Krona residence and engaging in a conversation with one of Marvin Krona's brothers Mr. Grout then returned home to place a phone call to the Snohomish County 9-1-1 dispatch office.

BY his own admission, 15 - 20 minutes elapsed between the time Mr. Grout witnessed the Oldsmobile strike his cyclone fence, and the placing of the 9-1-1 call.

Sometime later, Deputies Johnson, Navarro, and Koziol arrived on the scene. Individual accounts vary as to the exact time these officers made contact with Krona; however, the communication and dispatch log report [CAD, Defendant's exhibit #28] states that deputies "detained" Krona at precisely 20:14 hours [8:14 p.m.].

All three deputies testisfied that as they approach the gray Oldsmobile, the door was open and they "could hear the door chimes." RP, vol-I, pg 115, ln 12 - Navarro; RP, vol-II, pg 28, ln 20-21 -Koziol.

Deputies further testify that each of them individually witnessed the keys to the vehicle to be in the ignition and turned to the "ON" position. Each Deputy continued to testify that the dash-board's ignition lights were on, but that the engine was

not running. [RP at vol-II, pg 28, ln 20 - 24].

Deputy Koziol also testified that the door chimes continued "from our first point of contact until we turned off the keys, 15 seconds." [RP at vol-II, pg 29, ln 4-5].

Each deputy provided further testimony that they observed several beer cans in the vehicle - some empty, some full. [Id., at pg 30, ln 7-10].

After taking Krona into custody, they transport him to Providence Everett Hospital for a blood draw.

During omnibus, Krona informed the State that his defense was that he had consumed alcohol only at the residence that resulted in his being intoxicated.

During trial, the State presented no evidence with regard to establishing that Krona did not consume alcohol at the residence prior to the arrival of the deputies.

Deputy Navarro testified that the reasons they took photographs was: "Because of the beer cans in the vehicle, the ignition position on the vehicle, and the damage from the vehicle that was consistant with the fence." [RP at vol-I, pg 48, ln 19-21].

IV - STATEMENT OF THE CASE

(1) In order to obtain a conviction for DUI under RCW 46.61.502, the deputies and the prosecutor knew that it was essential to establish that the ignition in the vehicle was in the "ON" position at the time of the deputies arrival in order to establish a nexus between physical control and physical operation.

All three deputies then provided "groomed" testimony that each, individually and in conjunction with eachother, witnessed the key was in the ignition and in the on position, which further resulted in the dash-lights being illuminated, even though the engine was not running.

Unfortunately, their conjoined fabrications fall under the weight of the truth regarding all automotive ignition systems. That is,

If the door is ajar and the key is in the ignition in the "OFF" position, then the warning chimes will continue until one of three (3) events occur:

(i) The door is closed;

(ii) The key is removed from the ignition;

(iii) The key is turned to the "ON" position.

This fundamental and universal truth of automotive

engineering establishes two incontrovertible facts: (1) As all officers testified they heard the door chimes as they approached the Oldsmobile, the key had to be in the "off" position; and (2) the Prosecutor presented testimony that was known, or should have been known to be fabricated.

As the testimony being presented was both material, and directly relevant to an essential element of the offense being charged, due process requires that Krona be granted a new trial without the misleading testimony.

Secondly, RCW 46.61.502(3)(a) places the burden on the defendant to establish the defense that "the driver's blood alcohol concentration test results were affected by the consumption of alcohol between the time of driving and the time of the test". State v. Crediford, 130 Wn 2d 747, 759, 927 P2d 1129 (1996). The language is not materially different from that already found to be unconstitutional in Crediford.

V - ASSIGNMENTS OF ERROR

(a) IS DUE PROCESS VIOLATED WHEN A CONVICTION IS OBTAINED THROUGH THE KNOWING PRESENTATION OF FALSE EVIDENCE?

(b) DOES RCW 46.61.502(3)(a) UNCONSTITUTIONALLY PLACE THE BURDEN OF PROOF ON THE DEFENDNAT?

VI - ARGUMENT

(a) IS DUE PROCESS VIOLATED WHEN A CONVICTION IS OBTAINED THROUGH THE KNOWING PRESENTATION OF FALSE EVIDENCE?

Under Brady v. Maryland, 373 U.S. 83, 87, (1963), a defendant's right to due process is violated when the prosecution suppresses material evidence favorable to the defendant. In re Hachney, 169 Wn App 1, ¶ 46, 288 P3d 619 (2012, Div-2).

In essence, due process exists to ensure that one is fairly treated. Fuentes v. Shevin, 407 U.S. 67, 92 S. ct. 1983 (1972). Substantive due process puts limits on what government can do regardless of the procedures they employ. (See Washington v. Harper, 494 U.S. 210, 221-22 (1990).

The Supreme Court, in Brady, [373 U.S. at 86] explained [with regards to the concept of Due Process]: "It is a requirement that cannot be deemed satisfied by mere notice and hearing if a state has contrived a conviction through the pretense of a trial which in truth is but used as a means of depriving a defendant of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured." [Internal citations and quotation marks omitted].

In the matter presently being presented, the record clearly and incontrovertibly establishes the prevarication of facts. More importantly, the conduct is made even more egregious by the manner in which the testimony was so carefully groomed to support the allegations charged. The demonstration of the truth of this claim does not require any

expert of automotive design and engineering, but can be verified by a careful review of the testimony presented, and tested against the functioning of one's own automobile.

Our own Supreme Court has extended the duty of the prosecutor's "duty to learn of of any favorable evidence known to others acting on the government's behalf. . . , including the police." In re Stenson, 174 Wn 2d 474, ¶ 17, 276 P3d 286 (2012) [Internal citations and quotations omitted]. And specifically rejected the State's invitation to adopt a rule that the State "should not be held accountable under Bagley and Brady for evidence known only to police investigators and not to the prosecutor".

The question presented is whether due process can permit the use of perjured testimony in obtaining a conviction. The rule is that where a defendant has been deprived "of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured", due process requires reversal. See Stensen, supra.

Because the record clearly establishes the presentation of testimony by police that was clearly and incontrovertibly "groomed" prevarications of fact, due process requires that the convictions of all charges be reversed.

(b) DOES RCW 46.61.502(3)(a) UNCONSTITUTIONALLY PLACE THE BURDEN OF PROOF ON THE DEFENDANT?

RCW 46.61.502(3)(a), provides in relevant part:

"It is an affirmative defense to a violation of subsection (1)(a) of this section, which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving...."

The language contained in section (3)(a) is not materially distinguishable from that already found unconstitutional in State v. Crediford, 130 Wn 2d 747, 927 P2d 1129 (1996). There, the Supreme Court stated that "[a]lthough this portion of the statute indicates that it is a defense to the offense created in RCW 46.61.502 that the driver's blood alcohol concentration test results were affected by the consumption of alcohol between the time of driving and the time of the test, it places the burden on the defendant to establish the defense by a preponderance of the evidence. This requirement flies in the face of the well-established principle that every person accused of a crime is constitutionally endowed with an overriding presumption of innocence, a presumption that extends to every element of the charged offense." [Internal citations and quotation marks omitted].

The Crediford court went on to state that "[i]t also runs counter to the constitutional requirement that the prosecution must prove every element of its case beyond a reason-

reasonable doubt." [citing In re Winship, 397 U.S. 358, 363 (1970). "In our view, because RCW 46.61.502(3) requires a defendant to disprove a necessary element of the offense, thus effectively placing the burden on that defendant to prove his or her innocence, it is violative of the Due Process Clause of the United States Constitution." Crediford, supra.

In the facts of the matter presently being reviewed, the State required that Krona affirmatively prove that the measurement of blood alcohol content was the result of alcohol consumed prior to his arrest and testing, because there was no possible way the state could prove that defendant did not consume alcohol between the time that the 9-1-1 call was received [approximately 7:15] and Krona was taken into custody [approximately 8:15 P.M. according to the CAD report].

Assuming, arguendo, that Krona was the person operating the vehicle when it struck Mr. Grouts fence at about 7:00 p.m. All of the Deputies testified that contact with the defendant was not made until about 8:00 p.m. [Times vary by as much as ten minutes in the deputies' reports]. Without regard to whose report of events or testimony we review, the state can present no evidence to oppose defendant's claim that he consumed alcohol during that thirty-minute to sixty-minute window prior to the deputies arriving at the scene.

Nonetheless, because the state affirmatively required Krona to prove that he consumed a sufficient quantity of

alcohol after 7:00 p.m. but prior to his arrest, to sufficiently affect the test results of his blood alcohol content, the State was relieved of its duty to prove every element of the crime beyond a reasonable doubt.

VI - CONCLUSIONS

Based upon the foregoing facts and arguments, Krona asks this court for all of the following relief:

(1) Reverse and vacated the Driving While license suspended or revoked charge based upon the knowing presentation of perjured testimony;

(2) Declare that RCW 46.61.502(3)(a) is unconstitutional under the same reasoning as that provided in Crediford; and,

(3) Reverse and vacate with prejudice Krona's conviction for Driving under the influence because the State cannot establish that Krona did not consume alcohol between the hours of 7:oo p.m. and 8:00 p.m.

Date: 11-29-14

Marvin Krona
Appellant, pro se

list of exbits - Defendants exhibits. pictures of driveway, boarder trees and kitchen window No. 13, 14, 15, 16
Defendants Exibit-A D.O.C. Appeals panel decision dated February 13, 2014

Insufficient Evidence

Rose testified volume 1 page 88, line 17-20 "Krona was slumped over towards passenger side of grey oldsmobile." Grey Oldsmobile was traveling north away from cyclone fence, which means driver side of the car would be next to the boarder trees. (Exhit No. 13) Rose ~~states~~ she was looking out the window shown in (Exhibit no. 16). On page 89 volume 1 line 13 Rose Marquiss states she viewed the Oldsmobile for 3 minutes. Page 93 line 4 volume 1 Rose states she seen the ~~vehicle~~ Oldsmobile for 10 feet. Page 102 volume 1 line 1-17 Rose testified she seen the Oldsmobile 2 seconds. Volume 1 page 105 line 25 through page 106 line 9 Rose talks about getting rid of the defendant. Page 107 line 8 Rose states again wanting to get rid of the headache. 1st volume page 58 line 16-20 Grant said Oldsmobile was driving fast.

Grout seen speeding Oldsmobile hit the fence but did not ~~see the driver~~ recognize the driver (Volume 1 page 60 lines 2-3). Rose seen the car for 10 feet through boarder trees, but did not see the car hit the fence or come ~~off~~ a public road. Rose claims she identified the driver of the Oldsmobile, ~~standing~~ when she was in her Kitchen looking out a window which has a shelf with plants blocking her view along with boarder trees at least 40 feet away. Rose also stedes defendant was slumped over looking away from her to the passenger side of the Oldsmobile. (Exhibit no. 16 boarder trees and Kitchen window). Rose is confused wether she seen the Oldsmobile for 2 minutes or 2 seconds. The Oldsmobile would have to be traveling less than 1 mile per her for Rose to witness it for 2 minutes. If Rose did have a clear without boarder trees she might have been able to see the back of the defendants neck from 40 feet away. Rose also stated she wanted to get rid of the defendant, which shows she is bias. This is clearly insufficient evidence and I am asking the court to dismiss all 3 charges. O.M.I., ~~DWLS 1st~~ DWLS 1st, and felony harassment.

In (Volume 1 page 137 line 6 through page 138 line 18) officer Navarro states that defendant was arrested immediately after contact. Navarro states that the time was 8:14 PM. In (Volume 1 page 85 lines 13-16) Rose states she seen the Oldsmobile between 6-7 pm. In (Volume 2 page 121 lines 21-22) Prosecutor Stemler states, "Sometime around 5:00-6:00" you didn't leave that house that day?" Stemler was trying to get defendant to admit driving the Oldsmobile between 5-6 PM, which shows that the 1st 911 call happened at no later than 6 PM! In (Volume 2 pages 121 lines 21 through page 122 line 16) defendant states his father has hit the fence in the same spot prior to this incident. In (Volume 2 page 20 line 17 through page 21 line 18) Adam Krona testifies to Harvey Krona driving the Oldsmobile and hitting Grants fence in the same spot. If Rose had any real chance of identifying the defendant from 40 feet away ~~a~~ there is still no proven fact beyond a reasonable doubt that the driver of the car was intoxicated, at the time of Grants fence being hit or at the time the driver was in her view of only 10 feet of travel. ~~All states witnesses~~ Rose and Grant testify that the car traveled past them between 6-7 PM. Officer Navarro testified

the time of arrest was immediately after contact with deferdant. That was 8:14 PM (Volume 1 page 137 line 6 through page 138 line 18) There is a time span of 1¼ hours to 2¼ hours after time of impact to fence. Stenker is trying to show that the Oldsmobile was gone between 5-6 PM (volume 2 page 121 lines 21-22) which means the time lapse was at minimal 2½ hours from impact of Grout's fence to the contact of the deferdant. In (Volume 2 page 105 line 24 through page 106 line 16) the defendant testifies to drinking a fifth of vodka while looking through the front window of his home at a vehicle in his driveway. Defendant had been put in a posisition to prove to the state that he had drunk alcohol after the alleged charge of Grout's fence being hit in the time span of at least 2¼ hours. The defendant having to prove his innocense in a court of law clearly violates his constitutional rights. State vs. Crediford (1996)

On page 4-5 of defendant's counsel's brief it states that Krona lived at the end of an easment that ran through Grouts property. That is incorrect. Grout has nothing to do with the driveway. The driveway belongs to the Krona's and Grouts fence is 3 feet 7 inches on Krona's property. Rose Marquiss and family are suppose to be driving through Grouts property to enter their property. Rose and her family uses Krona's driveway which is wrong. The Survey which shows proof of this was discussed with defendants trial attourney Linda Coburn. Coburn would not bring it in as evidence. Roses property on the north side has a fence 10 feet onto Krona's property which she refused to move when defendant ask her to. Grout and Rose wanted to get rid of defendant because of property line issues. Linda Coburn failed to stick up for defendant by denying him to enter Survey as evidence at trial.

In volume 1 page 23 lines 17-20 Stemler said the dad Harvey Krona called 911. This is the call Linda Coburn refused to let defendant enter as evidence. Defendant and his mother Deena Krona both listened to this 911 call and let Coburn and her investigator Know

that this 911 call did not come from Harvey Krona but was defendants brother Marty Krona ~~that~~ pretending to be the father Harvey Krona. Defendant ask ~~the~~ Linda Coburn to get a voice recognition and enter the 911 call as evidence. Coburn refused. This is the 911 call that proves ~~the~~ Grouts fence was hit between 5-6 PM at least 2¼ hours before contact of the defendant. Coburn failed to stand up for the defendant by not allowing this 911 call.

In (Volume 1 page 36 lines 3-7) Judge Bowden give an option for Coburn to continue the trial. In (volume 1 page 37 line 23-25) Coburn refused the continuance. In (volume 1 page 40 lines 2-5 the defendant asked to continue the trial because the defendant wanted the 911 call to be brought up in trial. Defendant was completely confused over all the bifurcate proceedings talk and all all issues being argued on the day of the trial. Defendant was not made aware of any of this stuff from Coburn until trial day. In (volume 1 page 40 lines 6-14 Judge Bowden would not allow me a continuance after offering a continuance to Coburn moments prior.

In defendants counsel's brief page 27 said that Krona's threats were used by the state throughout the trial to establish Krona's dangerousness and propensity. ~~This statement~~ This caused Jury to be bias on all charges

April 3 2014 Sentencing page 15 line 6-9 Judge Bowden said If ordered for treatment that entailed loss of liberty, I would give you day for day. Gere Romero and McDonaugh C.C.O.'s ordered me to the union Gospel Mission which is live in treatment. Defendant stayed 4.5 months until he was asked to leave because of making a scene about his cell phone being stolen. Defendant is asking for credit of time spent their. Linda Coburn again failed to support defendant when she did not present defendants treatment at sentencing.

Defendant is claiming insufficient counsel before, during, and after trial.

Signed this 29th day of November 2014

MARVIN KRONA 908843

Exhit A

STATE OF WASHINGTON

DEPARTMENT OF CORRECTIONS

P.O. BOX 41100 • Olympia, Washington 98504-1100

APPEALS PANEL DECISION

FROM: DOC Appeals Panel

TO: KRONA, MARVIN **DOC #:** 908843 **Date:** February 13, 2014

On JANUARY 14, 2014, you were either sanctioned to 1-3 days of confinement or a hearing was conducted for violations of your conditions of supervision/custody.

On JANUARY 22, 2014, your appeal was received in which you requested a review of a sanction or decision of the Hearing Officer. You specifically appealed:

☐ A decision based on a procedural issue
☒ A decision based on a jurisdictional issue
☐ A sanction imposed that was not reasonably related to:
- Your crime of conviction
- The violation you committed
- Your risk of reoffending
- The safety of the community

AND THEREFORE

The decision is to:

☒ Affirm the process and decision.
☐ Modify the sanction as stated below.
☐ Remand for a hearing. You will be notified of the hearing date.
☐ Reverse and vacate the process.

Comments: In your appeal you state that you should not have been violated because you had never been told that you were required to participate in the UGM treatment program while livin there. A review of the chronological record totally contridicts your position. It is clear that you had, in fact, been told emphatically numerous times that you were required to participate in the UGM programming.

Court of Appeals

IN THE ~~SUPERIOR COURT~~ OF THE STATE OF WASHINGTON
~~IN AND FOR THE COUNTY OF~~ Division One

State of Washington,
Plaintiff,

v.

Marvin Krona,
Defendant.

NO. 71810-0-I

DECLARATION OF MAILING

I, Marvin Krona, hereby declare:

1. I am over the age of eighteen years and I am competent to testify herein.

2. On the below date, I caused to be placed in the U.S. Mail, first class postage prepaid, 3 envelope(s) addressed to the below-listed individual(s):

Snohomish Co. Pros.
3000 Rockefeller Ave
Everett WA 98201

Ms. Amy Rivera
Asst. Appellate Proj.
1511 3rd Ave, Suite 701
Seattle WA 98101

Division One
One Union Square
600 University Street
Seattle WA 98101-4170

DECLARATION OF MAILING

3. I am a prisoner confined in the state of Washington Department of Corrections ("DOC"), housed at the Monroe Correctional Complex ("MCC"), P.O. Box 888, Monroe, WA 98272, where I mailed the said envelope(s) in accordance with DOC and MCC Policy 450.100 and 590.500. The said mailing was witnessed by one or more correctional staff. The envelope contained a true and correct copy of the below-listed documents:

1. Statement of Additional Grounds
2. _____
3. _____
4. _____
5. _____
6. _____

4. I invoke the "Mail Box Rule" set forth in GR-3.1—the above listed documents are considered filed on the date that I deposited them into DOC's legal mail system.

5. I hereby declare under pain and penalty of perjury, under the laws of state of Washington, that the foregoing declaration is true and accurate to the best of my ability.

DATED this 21 day of November, 2014.

_____

(Print) Marvin Irons

908843, *Pro se.*

DOC# 908843, Unit C617 2

Monroe Correctional Complex

(Street address) _____

P.O. Box 888

Monroe, WA 98272