

SUPERIOR COURT OF THE STATE OF WASHINGTON

KING COUNTY

THE STATE OF WASHINGTON,
Plaintiff,

Vs.

WARREN E. BELL JR.
Defendant.

NO: 12-1-05054 -2 KNT
COA: 70358-7-1

**STATEMENT OF ADDITIONAL
GROUND RAP 10.10**

~~FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 MAY 19 AM 11:37~~

COMES NOW THE DEFENDANT, above - name Pro Se Appellant submits his additional grounds to address issues , raised in the Appellante Appeal. A Statement of Additional Grounds for review to identify and discuss those matters which ,Defendant believes have not been adequalty addressed by the brief filed by the Defendant /Appellant's counsel of records.

A. INTRODUCTION

The right to assistance of counsel is guaranteed by the Sixth and Fourteenth Amendments, to the United States Constitution. This right to assistance of counsel has long been understood to include a "right to Effective Assistance of Counsel" *SEE . McMann V. Richardson*, 397 U.S. 759, 771, n. 14, 90 S. Ct. 1441 1449, 25 L. Ed. 2d 763 (1970). Absent the effective assistance of counsel "A serious risk of unjust inflicts the trial itself". *Cuyler V. Sullivan*, 446 U.S. 335, 343, 100 S. Ct. 1708, 1715, 64 L. Ed. 2d. 333 (1980). A defendant is constitutionally entitled to have effective counsel acting in the role of an advocate. *SEE, Anders v. California*, 386, U.S. 738, 743, 87 S. Ct. 1396, 1399, 18 L. Ed. 2d 493 (1967). The right to be represented by counsel is by far the most important of a defendant's constitutional rights because it affects the ability of a defendant to assert a myriad of other rights. As justice Sutherland explained in *Powell v. Alabama*, 287 U.S. 45, 53, S Ct. 55, 77 L Ed. 158 (1932).

THE LEGAL STANDARD

The United States Supreme Court in *Strickland v. Washington*, 466 U.S 688, 104 S Ct. 2052, 80 L. Ed. 2d 674 (1984). established the federal standard for determining whether an attorney rendered reasonably effective assistance of counsel. The Strickland test is the proper test under state law to gauge the effectiveness of

counsel . Pursant to that test , appellant must show that counsel's performance was deficient. Counsel {Mary E. Ramsey WSBA #10705 } , made errors so serious that counsel was not functioning as the Defendants Advocate guaranteed the defendant by the Sixth Amendment.

Second [Counsel Ramsey] Deficient Performance and Errors were so Prejudicial as to deprive the appellant of a fair trial , as in Strickland v. Washington , 466 U. S. 687 , 104 S. Ct. at 2064. Counsel failed completely to subject the prosecution's case to "Meaningful Adversarial Testing" . In more words [she] completely fail to challenge the prosecution's entire case.

B. STATEMENT OF CASE

1. On March -1 -2013 , a hearing was Continued Unspecified , On this date defense counsel [Ramsey] argued the nature of a witness statement . [Doctor Larry Kadeg] of vally Medical Center { er } , A medical doctor specializing in medical injuries . During motion in limine , appellant Mr. Bell moved to present the testimony of the states witness [Doctor Larry Kadeg] The doctor's statement were the material that would provided the basis of the defendant's excludet evidence , his testimony during the case in chief is related to the evidence he preformed on the states witness [MS. BELL]. and was not challenged by defense counsel. and what defense counsel did not presented to the lower court by some appropriate method. Dr. Kadeg prior statements to defense counsel is the performace of the act that would be inconsistent with the evidence given at trial. The in limine motion was made at a time before trial , when the trial judge could determine the evidentiary

statements in its appropriate context.

Defendant has a constitutional right under the Confrontation Clause to cross examine witnesses, and it was counsel's error to excessively limit cross-examination she failed to exercise "skill, judgement, and diligence of a reasonably competent defense attorney especially when it concerned a witness's bias, prejudice, or motive for testifying. Merritt v. People 842 P.2d 162 (Colo. 1992). Instead counsel Ramsey rested on the premise that no such showing was necessary. It was not enough to assume that counsel precipitated in appellant case. she offered no defense, no attempt was made, opportunity to do so was given.

The Sixth Amendment provides, in pertinent part:

"In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

2. Sixth Amendment, Confrontation Clause Violation, relates to preventing the admission of prior statements and observations of Dr. Larry Kadeg. Defendant had no opportunity to challenge the credibility of Dr. Kadeg and cross-examine the witness prior statements. The right to confront and cross-examine witness also applies to physical evidence. The trial Court denied the defense ample opportunity to cross-examine [Dr. Larry Kadeg]. the trial court had wide latitude. to place reasonable limits on cross-examination based on for example, harrassment prejudice, Confusion of the Issues, the Witness's safety, The court put an unduly prejudice on the defendant by the court opinion regarding the

credibility , weight , or sufficiency of the evidence.

STATEMENT OF CLAIMS OF ERROR

1. The court erroneously excluded evidence offered by the defense. As a condition precedent to challenging the exclusion of proffered testimony (SEE Evid. Code, ~ 354.) Evidence Code section 354 subdivision (a) , requires the proponent make known to the court the ' substance , purpose , and relevance of the excluded evidence (People v. Ramos (1997) 15 Cal. 4th 1133, 1178.)

A. Appellant contends that the trial Court denied him his rights to confront the

witness testimony by refusing to allow defense counsel to impeach the prosecution's key witness with prior statement that were inconsistent with his trial testimony.

B. Defendant / Appellant contends that the trial court violated his Sixth Amendment Confrontation rights regarding the witness testimony

C. The trial court abused its discretion in admitting inflammatory , prejudicial evidence.

D. The cumulative effect of the trial court's error violated Defendant / Appellant's rights to a fair trial and warrants a new trial.

E. Counsel provided ineffective assistance by failing to raise the issue argued on appeal.

C. INEFFECTIVE ASSISTANCE

Defendant / Appellant allege that defense counsel rendered ineffective assistance of counsel due in part to her failure to argue defendants case , The Sixty

Amendment guarantees the right to effective assistance of counsel. United States V. Cronic. 466 US . 468 . 656 , 1045 S. Ct 2039 , 80 L. Ed. 2d 657 (1984). Defense counsel was required as a matter of law to cross - examin all witnesses ,Attorney Ramsey did not provied effective assistance of counsel , she failed to examin the nature and and cause of the witness , testimony .

The prosecutor maintained an open file policy which gave defense counsel access to all of the evidence in the KENT County Prosecutor's files , including notes from the interviews with [Doctor KADEG] .

Because of this open file policy Defense counsel did not file a pre - trial motion for discovery of possible exculpatory evidence . testimony that would impeached the significant portions of the witness's prior statements at trial .The doctor changed his testimony at trial , from what he had initaly related to the state ,

Based on [Dr. Kadeg] prior testimony , Defendant raised a directed claim that his conviction was invalid .

Counsel Ramsey did not provied effective assistance of counsel , she failed to examine Dr. Kadge about his prior statement on direct , counsel failure to do so was deficient performance juries are often swayed by evidence ,from a witness prior statement . Competent Counsel would use a prior statement to impeach the witness, statement made in Limine concerning possible evidence. The jury would have the opportunity to fully examine the statements during deliberation . A competent counsel would have requested a limited instruction that informed the jury of the limited purpose for which it could use the impeachment evidence.

Defense counsel decisions were not based upon legitimate trial strategy, Defense counsel's Ramsey strategic choices were not a reasonable one's.

In this case Appellant was on trial for Assault , Harrasment -DV. and his defense

rested on the jury believing his testimony, There was no reasonable Tactical reason not to admit the prior statement from { Dr. Kadge }, on direct examination .

In this circumstance, there was legitimate tactical reason for defense counsel to offer a jury instruction, limiting the jury's consideration of the credibility of the witnesses prior statements.

In light of the circumstance's and nature of this case defense counsel's deficient performance prejudiced the appellant..

D. A Due process Claim Can Be Raised on Appeal Based On an Evidence Code Section 352 Objection in the Trial Court

In *People v. Partida* (2005) 37 Cal. 4th 428 the court held that even in the absence of a Federal due process objection at trial, on appeal a defendant still could "argue that the asserted error in overruling trial objection had the legal consequence of violating Due Process." (Id. at 431.) "[W]hether that error violated due process is a question of law for the reviewing court [.]" (Id. at 437.) The reasoning in *Partida* should equally apply to the erroneous exclusion of evidence that has the legal consequence of violating a defendant's due process right to present a defense.


Appellate issues, raises a question of law based on "Undisputed Facts". Despite a unfair trial and a lawful conviction, Appellants sixth amendment rights has been violated entitling him to relief. Defendants has been denied due process of the law under the Fourteenth Amendment.

E. CONCLUSION

For the reason above and in the Brief of Appellant, Mr. Warren E Bell ask this Court to reverse and dismiss his convictions for Assault - DV , Felony Harrassment -DV Because the Appellant Mr. Bell did not receive Effective Assistance of Counsel guaranteed by the Federal and State Constitution .

Dated 16th day of MAY 2014

Respectfully Submitted



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DECLARATION OF FILING AND MAILING OR DELIVERY

CASE NO: 12 - 1- 05054-2-KNT

COURT OF APPEALS NO: 70358 7 I

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the date below , the original document to which this declaration is affixed / attached was mailed with first-class postage prepaid or otherwise caused to be delivered to the **Court of Appeals - Division One** under **Case No. 70358-7-I.**

Court of Appeals
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SEATTLE , WA 98101

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DATE : MAY 17, 2014