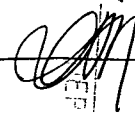


STATE of WASH.
Respondant
v.
JOEL KISSLER
Appellant

STATEMENT of
Additional
Grounds for
REVIEW

N^o 44589-1-11



FILED
COUNT OF APPEALS
DIVISION II
2014 JAN 14 PM 1:13
STATE OF WASHINGTON
DEPUTY

1. Due Process Adignit Counsel
2. Due Process Surprise Discovery
3. UNTenable Judicial Decission

Cases Cited

ST. v. BURRI 89 Wad (1976)

ST. v. McDONALD 143 Wad (2001)

IN RE. DAVIS 152 Wad (2004)

ST. v. WALKINS 71 Wapp. Div. 4 (1993)

ST. v. TEEMS 89 Wapp. Div. 3 (1997)

ST. v. BROOKS 149 Wapp 373, Div. 2 (2009)

ST. v. KIPP 171 Wapp. Div. 2 (2012)

C.R. 3.3 4.7A

On Feb. 4, 2013 Judge Bryan Chusheoff issued an order stating "Mr Kissler can proceed to TRIAL without benefit of standby counsel". see Order Continuing Trial. Mr Kibbie was not available for TRIAL the next day due to another comitment. Previously a CONTINUANCE had been granted, due in part, to Mr. Kibbie's unavailability. see Order Granting CONTINUANCE Nov. 27, 2012. D.P.A. Mr Nelson also stated, on Feb 4, that he had an upcoming VACATION. Mr. Nelson had previously requested a CONTINUANCE as a result of a conflicting VACATION R.P. Oct. 4, 2012 pg. 1.

By Feb 4, there had already been 5 CONTINUANCES. I had objected to all of them. I'd also moved for dismissal citing these delays.

Was it now right to ask me to choose to request a con-

- FINANCE, OR PROCEED WITHOUT
STANDBY COUNSEL?

I should not have been put
in the position to choose between
A timely TRIAL OR ASSISTANCE OF
STANDBY COUNSEL. ST. V TEEMS
89 WAPP DIV 3 (1997).

Although standby counsel is
NOT A CONSTITUTIONAL REQUIRE-
-MENT, ONCE APPOINTED HAD A
REASONABLE EXPECTATION OF MR.
KIBBLE'S ASSISTANCE. ST. V. McDONALD
143 WAD. (2001). STANDBY COUNSEL
MUST BE AVAILABLE TO REPRESENT
THE ACCUSED ON A MOMENT'S NOTICE.
ALSO, IN RE. DAVIS 152 WAD. (2004).
ST. V. WALKINS 71 WAPP DIV. 1 (1993)

THE EXACT REASON FOR JUDGE
CHUSHCOFF'S RULING WAS NOT STATED.
IT'S CLEAR THE MOTIVATING FACTOR
WAS CONCERN FOR A SPEEDY TRIAL.
THIS MAY EXPLAIN THE RULING BUT
DOSH'T JUSTIFY IT. THIS ALSO DEMEN-
-STRATES THE PREVIOUS DELAYS
PREJUDICED ME. AS A RESULT I WAS
DENIED A FAIR AND SPEEDY TRIAL.

On the day of TRIAL Feb. 5, 2013 D.P.A. MR Nelson Told the court he planned to present evidence of FIREARM AND drug tests. I informed the court that I had just LEARNED of this the day before. I also told the court there was NO MENTION of ANY tests, OR future, tests, in the ORDER of Discovery dated JAN. 17, 2013. Also the tests had just BEEN done see W.S.P CRIME LAB REPORT dated JAN. 31, 2013. Judge Nelson's RESPONSE upon hearing this was "SORRY, LET ME DEAL WITH your clothing" R.P. Vol 1 pgs. 11, 12.

MR. Nelson then explained "As FAR AS the omnibus ORDER goes, that's probably just AN OVERSIGHT on my part to NOT write in LAB testing to be completed" He then went into A Long and somewhat RAMBLING AND confusing explanation, in effect saying that I should HAVE KNOWN what he was planning to do. He went on to say "I CAN'T SAY FOR CERTAIN about the drugs"

but said he had put the FIREARM TESTING ON THE RECORD, R.P. Vol 2 pgs 14, 15

According to both the ORAL AND WRITTEN RECORD OF JAN. 17, 2013 THERE IS ABSOLUTELY NO MENTION OF WITNESS, DRUG, OR FIREARM TESTS. MR. NELSON WAS CLEARLY MISTAKEN.^① THIS VIOLATES C.R. 4.7A.

I requested the court not allow the SURPRISE DRUG AND FIREARM TESTS be presented as evidence. Judge Nelson DENIED my request, AND STATED "OKAY, WELL THE COURT IS NOT GOING TO GRANT THE RELIEF YOU REQUEST, WHICH IS TO SUPPRESS IT DO TO YOUR NOT BEING AWARE THAT THE TESTS WERE NOT GOING FORWARD, OR WOULD BE GOING FORWARD" R.P. Vol 2 pgs 15, 16. Judge

① ON DEC. 27, 2012 ANOTHER D.P.A., GRANT BLINN, REQUESTED A CONTINUANCE FOR FIREARM TESTING. THE ORDER GRANTING THE CONTINUANCE HAD BEEN SIGNED BY BRYCE NELSON HOWEVER MR. NELSON WAS NOT PRESENT IN COURT THAT DAY.

Nelson's statement clearly acknowledges that I wasn't aware of the tests.

To my surprise, I wasn't informed that I had the right to independently do testing. Judge Nelson, instead, asked me if "I would stipulate to what the substances are". I responded saying "No I'm not going to stipulate I have no idea what they were". R.P. vol 1 pg. 16.

Judge Nelson went on to ask if I would like to stipulate to numerous other things that I had not previously been informed would be presented as evidence. At this point I felt I was being pressured by the court to do so.

Later the same day Mr. Nelson announced he was planning to present witnesses. I informed the court "I wasn't aware there were going to be any witnesses". Judge Nelson replied "These are pre-trial matters that were

handled by another Judge,
And you can bring them up if
it's NECESSARY to do so LATER ON"
I THEN informed the court "I
NEVER got a witness List." RP Vol 1 pg 23

Judge RAISED The question
As to when the court had RECEIVED
WITNESS NAMES, SEVERAL DATES WERE
MENTIONED. The court clerk SAID
some had BEEN FILED THAT MORNING.
MR. Nelson Apologized saying
"SORRY" The court responded by
Telling him "THAT'S OKAY". MR Nelson
offered Apologies AND EXCUSES
FOR LATE DISCOVERY VIOLATIONS, AND THE
COURT'S RESPONSE APPEARED TO CON-
-DONE THEM.

MR Nelson Addressed my not
RECEIVING A witness List AND DIS-
-COVERY by SAYING "I believe my
LEGAL ASSISTANT AT LEAST attempted
to Route witness lists AND discovery
to the defendant in the jail". He
went on to say standby counsel
had BEEN ROUTED A witness List.
STANDBY COUNSEL WASN'T PRESENT so he

couldn't respond to this. Mr Nelson then said "Obviously it's a little complicated when he's pro-se and he's in custody". I responded by saying "They could have given them to me any time in court, too. Mr Kibbie never mentioned it to me either". Judge Nelson said "Okay, All Right". R.P. Vol 1 pgs 26, 27. Once again Judge Nelson choose not to address the admitted violations of discovery.

Again I brought up the surprise witness and discovery. The court responded by saying "Okay, and these are pretrial matters that are points for you to bring up, I guess, in any appeals that you might need to bring, unless you have any specific relief you're asking me for at this time". I said "Just that they not be admitted" Judge Nelson's response was "Well, I have no legal grounds to limit the witness offered by the state". R.P. Vol 1 pg 28. The court was incorrect in this statement.

The state introduced surprise evidence and witnesses on the day of trial, denying my due process and in violation of C.R. 4.7A. ST. v. BURRI 87 Wad (1976). ST. v. BROOKS 149 Wapp. 373, Div. 2 (2009).

Claiming lapses of memory and other excuses, including putting their responsibility on me by saying I should have somehow known what the state planned to do. Mr. Nelson saying he was "sorry" for the late witness list does not absolve the state of its responsibility.

This was dumped on me at the last minute, and compounded by the fact I was pro-se, and without standby counsel. I was prejudiced and denied my constitutional right to due process.

Judge Nelson was presented with undisputed violations of discovery. Initially she attempted to avoid the issue. "Sorry, let me deal with your clothing". R.P. Vol. 2 pg. 12. Later Judge Nelson claimed she didn't have authority to address the issue. "I have no legal grounds to limit the witness"

Finally Judge Nelson informed me
"These ARE pretrial matters that
ARE points for you to bring up,
I guess, in ANY Appeals you might
NEED to bring". R.P. Vol 1 pg 28. VIOLATIONS
of DISCOVERY REQUIRE A CURE.

ST. v. Kipp 171 Wapp. Div 2 (2012).

The courts approaches addressing
this were untenable and manifestly
unreasonable. There were multiple
options available to the court. Judge
Nelson's refusal to utilize any of
these resulted in denying me my
Federal and State Constitutional
right to due process. This requires
dismissal. Thank you.

Respectfully Submitted

Joel Wissler