

NO. 64729-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

GABRIEL STANLEY,

Appellant.

REC'D
SEP 08 2010
King County Prosecutor
Appellate Unit

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Mary Roberts, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

STANLEY WAS DENIED HIS SIXTH AMENDMENT RIGHT TO CONFRONT A KEY WITNESS AGAINST HIM.

The deputy prosecuting attorney who tried the case recognized that the mere fact Johnson had been charged with a criminal offense was insufficient to demonstrate his strong bias in seeing that Stanley took the fall. The trial deputy joined in the motion to allow questioning on Johnson's probationary status, recognizing his status "weighs heavily in his bias" 1RP 26. Now that such a position is clearly harmful to the State, a different prosecutor downplays this evidence as unimportant and "of little use." Brief of Respondent, at 8.

Specifically, the State now argues that because jurors knew Johnson was motivated to avoid a conviction, Stanley had no right to impeach him with his desire to avoid violation of his probation. In other words, so long as there is evidence of one potential bias, the defendant cannot complain about the exclusion of another potential bias. According to the State, the fact Johnson faced a criminal charge, unlike the prosecution witness in Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974),

distinguishes that seminal decision to the point of irrelevance. See Brief of Respondent, at 7-9.

But Davis is not so narrow and holds, “The partiality of a witness is subject to exploration at trial, and is ‘always relevant as discrediting the witness and affecting the weight of his testimony.’” Davis v. Alaska, 415 U.S. at 316 (quoting 3A J. Wigmore, Evidence sec. 940, p. 775 (Chadbourn rev. 1970)). That Johnson had also been charged with the robbery was insufficient to provide jurors with a full and accurate assessment of his motives. Jurors were specifically instructed to presume Johnson not guilty despite the charge against him. CP 13. And counsel for Johnson was able to use this presumption of innocence to his advantage, telling jurors they should not question Johnson’s credibility solely because he had been charged with a crime because to do so would be inconsistent with the presumption. 2RP 81-82. Such an argument would have been impossible had jurors known about Johnson’s strong motivation to avoid revocation of his probation. The trial deputy had it right – Johnson’s probation weighed heavily in his bias.

The State also asks this Court to find the violation of Stanley’s right to confront the witnesses against him harmless

beyond a reasonable doubt. See Brief of Respondent, at 10-12. The State points out that Mueller was confident by the time of trial that Stanley was the culprit. BOR, at 11. But he was apparently equally confident in his identification of *Johnson* shortly after the robbery. See 1RP 82-85, 90; 2RP 24-25. The State also points to Stanley's "inflamed knuckles." BOR, at 11. Yet, photos of his knuckles fail to demonstrate these injuries. Exhibits 16-17. Ironically, in arguing harmless error, the State relies in large part on Johnson's testimony against Stanley. BOR, at 11 (pointing out that according to Johnson, Stanley initiated the conflict, Stanley assaulted Mueller, Stanley stole Mueller's wallet and keys, and Stanley hid clothing and the wallet in a bush). The State's own argument underscores the critical importance of Johnson's testimony.

The court's violation of Stanley's right to fully cross-examine and challenge Johnson was not harmless error. Johnson was an important witness at trial. As in Davis, "[t]he accuracy and truthfulness of [his] testimony were key elements in the State's case against petitioner." Davis, 415 U.S. at 317. With full knowledge of Johnson's bias and motive to lie, it is unlikely jurors would have been convinced beyond a reasonable doubt that

Stanley was the instigator and main participant and therefore guilty of robbery. The State cannot show otherwise.

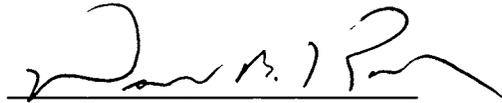
B. CONCLUSION

For the reasons discussed in Stanley's opening brief and above, his conviction should be reversed and his case remanded for a new trial in which he can fully exercise his right to cross-examine and confront the witnesses against him.

DATED this 8th day of September, 2010.

Respectfully submitted,

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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

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| STATE OF WASHINGTON, |) | |
| |) | |
| Respondent, |) | |
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| v. |) | COA NO. 64729-6-I |
| |) | |
| GABRIEL STANLEY, |) | |
| |) | |
| Appellant. |) | |

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 8TH DAY OF SEPTEMBER, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] GABRIEL STANLEY
15409 9TH AVENUE S. #3
BURIEN, WA 98166

SIGNED IN SEATTLE WASHINGTON, THIS 8TH DAY OF SEPTEMBER, 2010.

x *Patrick Mayovsky*