

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
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**COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I**

STATE OF WASHINGTON,
Respondent,
v.
BARUTI HOPSON
Appellant.

No. 66957-5-I
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW
RAP 10 10

I, Baruti Hopson, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

ADDITIONAL GROUND 1

**ABUSED DISCRETION
IMPROPER EVIDENCE OF SONG LYRICS ADMITTED**

The Trial Court erred when the State was permitted to bring forth my song lyrics as evidence during cross examination of the defense. The act of permitting the State to use the song lyrics as evidence was very prejudicial. My song lyrics were not written about the State's witness, the song lyrics had nothing to do with the actual trial, and were not legal for the State to use as evidence.

I was made by the Trial Court after refusal by myself and also objection to the use of the song lyrics as evidence by the defense counsel to read my song lyrics one line at a time, being subject to questioning about what each line meant in between reading each line aloud in the presence of the jury. The evidence was not proper and was a blatant violation of my Constitutional First Amendment rights. This misconduct clearly damaged my defense and led to my Constitutional Fourteenth Amendment rights being stripped from me immediately during trial. The nature of the song lyrics could only have been used to try and prove character being that they had nothing to do with the State's witness J.S. or anything to do with what I stood trial for, being that no matter what I was going to be convicted of at least 2nd degree promoting prostitution which was the lesser included. I was on trial defending myself against the age of the State's witness J.S. and not whether or not I was guilty of promoting prostitution because no matter what I was going to be found guilty of promoting prostitution in the 2nd degree at the least. The song lyrics were improper and should not have been admitted into the trial.

State v. Oden, 113 Wn.App. 1036 (2006)

(Oden's artwork is clearly protected by the First Amendment. See e.g., *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 569, 115 Sup. Ct. 2338, 132 L. Ed. 487 (1995) (Noting that examples of painting, music, poetry, are unquestionably shielded.)

Upon review of the record the Court will vividly see the prosecutorial misconduct being aided by an abused discretion of the Trial Court.

My song lyrics were admitted as evidence during trial, allowed into the jury box, into the deliberation room, and also used against me during closing argument where the Trial Court permitted the State to make further mention of my the song lyrics to the jury.

The record will show during the colloquy on January 25, 2011 page 3-8 the discussion on the admission of my song lyrics.

The defense counsel made an objection to the foundation and relevance of the song lyrics and also the untimely disclosure of exhibits 35 and 36. The Trial Court made reference to *WARREN, 165 Wn.2d 17, 195 P.3d 940* where song lyrics were allowed into the trial because the lyrics could be interpreted to have involved one of the victims and was probative because the song lyrics showed Warren's state of mind toward the victim in that case and was affirmed by the Court of Appeals.

My song lyrics unlike Warren's song lyrics had nothing to do with the State's witness J.S., and were not relevant and did not show any state of mind or feelings toward J.S., making the song lyrics illegal to use as evidence. The Trial Court during colloquy on January 25, 2011 page 5 of the record said the song lyrics were only testimonial and would not be published to the jury because they were song lyrics that J.S. committed

to memory and wrote down or were written down by someone else and were not lyrics that I wrote out, but the Trial Court did allow my song lyrics into the jury box and also into the deliberation room.

The Trial Court admitted the song lyrics because I did not deny the fact that the song lyrics were lyrics that I wrote. However, the song lyrics were still not relevant to this trial in any way.

The defense counsel also objected to the untimely disclosure of exhibits 35 and 36. The song lyrics did not come about until the last day of testimony in this trial. The objection was not properly addressed by the Trial Court who told the defense counsel that he had time to interview J.S., and to see what she was going to testify and also that J.S. testified on the stand that the defendant does write rap lyrics. The Trial Court said that the use of the song lyrics was only to confront the defendant with the testimony that J.S. had already given about how the defendant did rap lyrics and the State would be presenting the exact lyrics J.S. said that the defendant wrote. But during testimony J.S. did not say any of these song lyrics, apparently the State enquired of these song lyrics after her testimony was finished and wrote them down after she told them to him and the next day the State presented these lyrics to the Trial Court who admitted the lyrics. The admittance of these song lyrics is a late disclosure and discovery violation according to CR 26 and is an abuse of discretion.

ADDITIONAL GROUND 2

ABUSED DISCRETION DEFENSE EVIDENCE EXCLUDED

I would like the Court to focus on defense evidence not admitted into defense direct, the first being exhibit 25.

During the pretrial motion the Trial Court excluded exhibit 25, stating that it was only a trespass notice, issued by a police officer, and was not a governmental document, and could not be used as a defense pertaining to who a person believed another person to be. There was a fairly long discussion about exhibit 25, which was definitely on the record but was mysteriously not included into the verbatim version of the transcripts I was given. If the Court would obtain the audio transcripts it would show the record of that discussion during the pretrial motion. During the trial exhibit 25 was admitted into the jury box as evidence during cross examination of detective Guyer, but was not admitted as evidence into the jury box as a part of the defense, based on untenable reasoning, which was crucial for the defense. The Trial Court also excluded exhibit 31 as well as exhibit 25, and only admitted exhibit 32 into the jury box and into the jury deliberation room as defense evidence.

The exclusion of exhibits 25 and 31 was untenable, being that they were proof of the State's witness J.S. misrepresenting her total identity to me,

as well as government officials, along with her testimony telling the jury that I drove and accompanied her to the Everett Municipal Courthouse, where she was charged and pled guilty to theft, and sentenced as an adult, after already spending three days in the Snohomish County Adult Jail, which is the contents of exhibit 31. Exhibit 25 which was also excluded from the jury box and deliberation room as evidence was a trespass notice, signed, dated and issued to the State's witness J.S. by an officer of the Bellevue Police Department. The trespass notice was issued to J.S. approximately two weeks after I met her, and did bare the alias name and birth date that J.S. testified to giving me upon meeting me. After seeing the trespass notice just hours after it was issued, it became as a reassurance of who I knew her to be. The record will show that on January 25, 2011 the Trial Court did not admit exhibit 25 which was the trespass notice stating, "It's not even a governmental document". It is in fact a governmental document and its exclusion is an abuse of discretion.

BLACK'S LAW DICTIONARY

Public service: 2. Government Employment; work performed for or on behalf of the government.[cases: officers and public employees.

Police: The governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime.

Governing document: A document that defines of organized an organization or grants or establishes its authority.

There was no tenable reason according to Fed. Evid. Rules 401 and 402 that either of these documents should have been excluded from my defense in any way.

RULE 103(a): Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected,

The act of excluding my evidence clearly tainted the jury's view of the defense and prejudiced my trial and is a definite abuse of discretion.

The err of excluding my evidence was not harmless, and did affect my substantial Fourteenth Amendment right to a fair trial by not allowing a proper defense.

ADDITIONAL GROUND 3

ABUSED DISCRETION / PROSECUTORIAL MISCONDUCT VIOLATION OF WASHINGTON EVIDENCE RULE 610

The Trial Court permitted testimonial evidence of religious beliefs.

This testimony was not relevant to the trial and was highly prejudicial, and is the reason why Washington Evidence Rule 610 forbids the use of religious or spiritual beliefs.

The record will show the questioning of the defense by the State about whether or not I quoted scripture to J.S. or attempted to teach her about the bible during cross examination of the defense page 147, line 15-25 and page 148, line 1-2, and questioning during the State's direct of J.S. about

religious belief and reading and opinions of the bible page 132, line 1-25 and page 133, line 1-3.

This questioning of the defense by the State and also the testimony of J.S. was very prejudicial and Washington Evidence Rule 610 does not permit this type of evidence because of its sensitive nature and effect that it can have on a lay jury.

I am sure that the defense counsel was not aware of Wa. Evid. Rule 610 and that is the reason this testimony and questioning was not objected to.

State v. Fisher, 165 Wn.2d 727; 202 P.3d 937; (2009)
(Defense counsel's failure to object to the prosecutorial misconduct at trial constitutes waiver on appeal unless the misconduct is so flagrant and ill-intentioned that it evinces an enduring and resulting prejudice incurable by a jury instruction.)

The act of permitting the State to use such evidence was an abuse of discretion and was prosecutorial misconduct for the State to resort to the use of religious belief as evidence.

ADDITIONAL GROUND 4

PROSECUTORIAL MISCONDUCT IMPROPER EVIDENCE OF SONG LYRICS

The use of my song lyrics as evidence was a blatant disregard of my First and Fourteenth Amendment rights as a United States Citizen.

The song lyrics had no probative value in this trial, nor were they relevant to the charge I stood trial for.

There was a lesser included of 2nd degree promoting prostitution in the jury instructions, so no matter what I would have been convicted of at least 2nd degree promoting prostitution, making any attempt of the State to try and prove to the jury that I was a “pimp” totally irrelevant.

My trial was not about whether or not I was a “pimp”, because again, I would have been convicted of at least 2nd degree promoting prostitution. My trial was about the age of J.S. and her use of an alias. The use of my song lyrics was an unprofessional sideshow that led the jury to convict me against the weight of the evidence. The only way my song lyrics could have been relevant to this trial is if the lyrics would have talked about J.S. directly, or about being with under aged young women or girls.

WARREN, 165 Wn.2d 17, 195 P.3d 940 (2008)

(A criminal defendant’s testimony about his or her relationship with the victim may be impeached with song lyrics written by the defendant after the crime was committed *if* the jury could infer that the lyrics reflect the way the defendant felt about the victim at an earlier time.)

If the State would have stayed the course of the trial’s true purpose

I would have had a very good chance at showing the jury that J.S. truly misrepresented her identity, not only to myself but was successful in misrepresenting her identity to local government authorities as well.

I would have been able to show the jury not just with verbal declaration, but with hard evidence, as well as the testimony of J.S. as to how she

successfully passed for an adult in the Snohomish County Adult Jail for three days undetected by police, correctional guards, the Everett Municipal Court Judge, and probation office workers.

The State's questioning and comments about my song lyrics only diverted the jury from focusing on the true purpose of the trial, which was the age of J.S. and her use of an alias identity as opposed to whether or not I was a pimp, because there was no way I would have left that courtroom without being convicted of some form of promoting prostitution. The evidence of my song lyrics presented to the jury by the State was illegal, or false and against 404b, and ultimately prejudicial to the defense, and the State was aware of the fact that the use of my song lyrics as evidence was improper.

Napue v. Illinois, 360 U.S. 264, 269 (1959)

(The principal that the State may not knowingly use false evidence does not cease to apply because the false testimony goes only to the credibility of the witness.)

I respectfully ask the court to not allow this manner of plain disregard that the State has shown me concerning its duties and also my right according to United States Constitutional Law of not only using improper evidence and tainting my jury, but continuing to the end of my trial with the misconduct by elaborating further during closing argument about my song lyrics that were improper for the State to use as evidence during this trial in the first place.

RPC 3.4(e)

A lawyer shall not:

(In trial, allude to any other matter that the lawyer does not reasonably believe that is relevant or that will not be supported by admissible evidence,)

This is an example of flagrant disrespect for the rules that the State must follow in order to lawfully convict an accused.

The Due Process Clause prohibits the government from using false evidence to obtain a conviction, even if the State would claim to not have known the using of such evidence to have been illegal.

Throughout the United States history of civilized criminal trials it has always been unacceptable under any circumstance for the State to furnish improper or illegal evidence prejudicial to a trial.

Improper evidence used by the State against me during cross examination and again during closing argument created a prejudice that far outweighed the weight of any proper evidence against the defense. There was a lesser included in the jury instruction of 2nd degree promoting prostitution as a result of the evidence that the defense brought forth, and the State wanted to keep the jury from focusing on my evidence. If the State had not improperly used my song lyrics as evidence during cross examination and again during closing argument I would have had a very good chance of defending myself against promoting commercial sexual abuse of a minor, and would have been found guilty of 2nd degree promoting prostitution.

In cases where the defendant wrote song lyrics about a specific crime or a victim of that crime, song lyrics might be admissible. However, in my case the song lyrics used against me had nothing to do with the State's witness or any specific crime I stood trial for.

The record will show the improper use of my song lyrics during cross examination page 107, line 17-page 115, and also during closing argument on page 43, line 3-23 and again on page 44, line 18-19.

My song lyrics should not have been admitted as evidence against me for any reason under Fed. Evid. Rule 404b, the lyrics were irrelevant because the State did not have to prove that I was guilty of promoting prostitution.

State v. Lepage, 231 F.3d 488 (9th Cir. 2000)
(Reversing conviction where the State knowingly used false testimony.)

ADDITIONAL GROUND 5

PROSECUTORIAL MISCONDUCT IMPROPER COMMENTING ON EVIDENCE

The State improperly commented on the evidence appealing to the sympathy of the jury as to the sensitive nature of the trial.

During the State's opening statement, closing argument and also during the State's rebuttal argument, the State commented of his personal feelings on the evidence as to how the State's witness J.S. looked, referring to her as to look under the age of eighteen. These comments were no less than

personal opinion because the evidence I brought forth, as well as the testimony of J.S. was proof of her successfully representing herself as an adult on numerous occasions to civilians, as well as government authorities. It was improper prosecutorial misconduct for the State to comment on how old he felt J.S. looked, knowing as a deputy prosecutor he was to act impartially and allow the jury to decide that issue and not attempt to sway the jury to feel how he felt.

The record will show the State's improper comments on the evidence in the State's opening statements page 10, line 18-22. The improper comment was objected to by the defense counsel, and overruled by the Trial Court who stated, "I think he can say what he believes they will gather from the evidence. It is not his opinion."

The Trial Court's ruling on the comment was an abuse of discretion.

The State attempted to clean up his improper comment on the evidence after the defense objection to the comment on the evidence stating, "The evidence will show". The State did not say "The evidence will show" before he made the comment.

The State also knew that the jury was lay and could easily interpret that the comment was the personal feeling or opinion of the State, and also that it is for the jury to decide what it takes or does not take from the evidence, and that the comment was improper.

With an okay from the Trial Court to comment personal opinion on the evidence, the State commented further about how he felt J.S. looked concerning age during the State's closing argument. The record will show the commenting on page 38, line 24-25, and again on page 39, line 1-3. The State again commented further about how he felt J.S. looked concerning age during the State's rebuttal argument, the record will show the improper personal opinionating of the evidence on page 62, line 1-6. The State again commented about his personal feelings of the evidence during the State's rebuttal argument, the record will show the commenting vividly on page 44, line 18-19. The act of the state commenting personal feeling about the evidence was highly prejudicial and damaging to the defense, and did affect my Constitutional Fourteenth Amendment Due Process right to a fair trial.

State of Washington v. Monday No.827362 (2011) (quoting State v. Yates, 161 Wn.2d 714, 774, 168 P.3d 359 (2007) (quoting McKenzie, 157Wn.2d at 52 (quoting Brown, 132 Wn.2d at 561). (Generally the prosecutor's improper comments are prejudicial only where there is a substantial likelihood the misconduct affected the jury's verdict.)

ADDITIONAL GROUND 6

CONVICTION AGAINST THE EVIDENCE

I would like to address the wrongful convictions of the three counts of rape of a child in the 3rd degree, that were clearly against the weight of

the evidence brought before the jury during trial.

As officers of the King County Superior Court, the jury was ordered by the jury instructions they received to find me not guilty if during the testimony of J.S. she stated that the defendant believed her to be at least sixteen years of age or older, which J.S. did testify to during the State's direct as well as during the cross examination by the defense.

The defense put in a motion to dismiss these three charges, the Trial Court erroneously denied this motion which is an abuse of the Trial Court's discretion. The jury was prejudiced against the defense, and convicted me out of passion overlooking the evidence brought before them during trial.

Simpson v. Union Oil Co., 411 F.2d 897 (9th Cir. 1969)

(The Trial Judge has a responsibility to weight the evidence and to set aside the jury's verdict, when in his conscientious opinion the verdict is contrary to the evidence.)

It is more probable than not that the Trial Court's denial of this motion to dismiss these charges affected the jury's decision of guilt or innocence, but there were a number of errors that took place during this trial that had the same affect on the jury's decision making and the outcome of the verdicts they reached, such errs were the use of my song lyrics, the improper evidence of religious beliefs, the improper commenting on the evidence of how old the State felt J.S. to look, the improper testimony of how J.S. was told by another young lady who worked as a prostitute that

she might be pregnant with my child, and the improper argument of the State appealing to the sympathy of the jury of how J.S. will remember what she has done and will be mentally damaged for the rest of her life and that it was my fault, these were all acts incurable by jury instructions. All of these errs I now bring to the Court of Appeals were damaging to the defense and did affect the jury's decision of guilt or innocence in this trial.

THOMPSON, 72Wn.App. at 543 (citing James v. Robeck, 79 Wn.2d 864, 490 P.2d 334 (1998)) (If a verdict is supported by substantial evidence, we then determine whether the verdict was animated by passion or prejudice. Before passion or prejudice can justify a reduction of a jury's verdict, it must be of such manifest clarity that it is unmistakable.)

United States v. Sayesitty, 107 F.3d 1405, 1411-12 (9th Cir. 1969) (We will reverse for plain error only if error was obvious, affected substantial rights and a miscarriage of justice would otherwise result.)

CrR 7.5(a)(7)

(a) Grounds for new trial.

The court on motion of a defendant may grant a new trial for any one of the following causes when it affirmatively appears that a substantial right of the defendant was materially affected:

(7) That the verdict or decision is contrary to law and the evidence;

If I were tried fairly I would have only been convicted of 2nd degree promoting prostitution and would not have been found guilty of a twenty-six and a half year prison sentence, and there would never have been slanderous third degree rape of a child convictions published about me in the Seattle Weekly and Seattle Times newspapers as well as the internet, and also on the Washington's Most Wanted television show.

I ask the Court of Appeals to grant a dismissal with prejudice, for the reason of the Trial Court's abuse of its discretion which was highly prejudicial, and for the State's acts of prosecutorial misconduct and a breach of the duties it has sworn to uphold.

A mistrial and remand for new trial would only give the State an opportunity to clean up its act, and would only be further prejudice allowed in favor of the State to be able to find benefit in its own mistake. Dismissal with prejudice would be the proper remedy for the substantial prejudice to my defense in this trial.

Respectfully submitted,

Date: _____ Signature: _____

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

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STATE OF WASHINGTON
2011 NOV - 7 AM 11:09

STATE OF WASHINGTON
Plaintiff,
v.
BARUTI HORSON
Petitioner,

Case No. 66957-5-I

DECLARATION OF MAILING

I, BARUTI HORSON [name], declare that, on 11/2/2011 [date], I deposited the foregoing [list of document/s]: STATEMENT of ADDITIONAL GROUNDS.

or a copy thereof, in the internal mail system of :

COYOTE RIDGE CORRECTIONAL CENTER [name of institution]

and made arrangements for postage, addressed to each of the following:

<u>Nielsen, Broman & Koch PLLC</u>	<u>Prosecuting Attorney</u>	<u>Court of Appeals Division I</u>
<u>1908 East Madison St.</u>	<u>Daniel T. Satterberg</u>	<u>Clerk: Richard D. Jackson</u>
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	<u>516 Third Avenue</u>	<u>Seattle, Washington 98101-1176</u>
	<u>Seattle, Washington 98104</u>	

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED at CONNELL, Washington [city, State] on this 2 day of November, 2011.

[Signature]
[signature]