

FILED
COURT OF APPEALS DIV
STATE OF WASHINGTON
2012 APR 11 PM 4:01

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
FOR DIVISION 1

Johnnie L. Laly, Jr.)
Petitioner,)

vs.)

State of Washington)
Respondent)

Case No.: 67615-6-1

STATEMENT OF ADDITIONAL
GROUNDS, PURSUANT TO
RAP 10.10

I, Johnnie L. Laly Jr., have received and reviewed the opening brief prepared by my attorney by my attorney. Summarized below are the additional grounds for review that not addressed in the 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

Ineffective Counsel

- I. No possible tactical justification for: Ineffective counsel.
 - 1. Defendant's attorney did admit at sentencing his own ineffectiveness. Attorney was wrong to save his objections until closing argument. it was at that point "too late" damage had been done.

2. He displayed horrible judgment in his objections in which led to jury hearing information in which was impeachment evidence that was used as substantive evidence by prosecutor.

CASE LAW: Williams v Woodford, Nos 99-99018, 00-99001 (9th Cir. 2/2/2005)

[19] Without explanation or tactical justification, Williams trial counsel failed to object to this violation of his client's constitutional rights, even though he later acknowledged that he was aware of applicable California law prohibiting the practice and that he could have made a meritorious objection.

II. Counsel was ineffective in failing to prevent the jury from hearing the impeachment evidence as substantive.

CASE LAW: Lockhart v Tehune, 243 F.3d 1130, 250 F.3d 1223 (9th Cir. 03/14/2001)

[46] Without evidence of the Cooper killing, the prosecution's case against Lockhart for the May 31, 1990, shooting would have been significantly weaker.

The appellate court's decision that Lockhart did not meet his burden was contrary to clearly establishing federal law.

Extrinsic Evidence

III. Counsel committed reversible error in failing to prevent jury's from hearing the impeachment evidence as substantive.

CASE LAW: Halicki Films, LLC v. Carroll Shelby Int., Inc. 547 F.3d 1213, 89.U.SP.Q2d 1001 (9th Cir. 11/12/2008)

[52] Where parties dispute the meaning of contractual language, "the first question to be decided is to whether disputed language is "reasonable susceptible" to the

interpretation urged by the party. If not, the case is over. *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 132 Cal. Rptr. 2d 151, 157 (Cal.Ct App. 2003). When deciding this question, the trial court must provisionally receive any proffered extrinsic evidence with is relevant to show whether the contract is reasonably susceptible of a particular meaning...[I]t is reversible error for a trial court to refuse to consider such extrinsic evidence on the basis of the trial court's own conclusion that the language of the contract appears to be clear and unambiguous on its face.

IV. Impeachment evidence was employed by prosecutor as substantive evidence, without objection by defense attorney Swaby.

CASE LAW: *Lee v. United States*, 343 U.S. 747, 757. The States argument that Farr's informant status was rendered cumulative by his impeachment at trial is contradicted by record. Neither witness called to impeach Farr gave evidence directly relevant to Farr's part in Bank's prosecution. The impeaching witness, moreover, were themselves impeached, as the prosecution stressed on summation. Further, the Prosecution turned to its advantage remaining impeachment evidence by suggesting the Farr's admission of drug use demonstrated his openness and honesty. Pp. 26-31 (Same as w/ the victims previous statements and recantment.

Additional Ground 2

Prosecutor Misconduct

I. Prosecutor improperly referred to inadmissible acts, that were solely admissible to impeach victim's credibility.

CASE LAW: *United States v. Brown*, 327.F.3d 867 (9th Cir. 2003)

[33] Prosecutorial Statements to which the defendant objects are reviewed for “harmless error.” While comments for which no objection is made are reviewed for plain error. *United States v. De Cruz*, 82 F.3d 856, (9th Cir. 1996); *United States v. Sanchez*, 176 F.3d 1214, 1218 (9th Cir. 1996) When reviewing harmless error, we must determine whether allegedly improper behavior, considered in the context of the entire trial, including the conduct of defense counsel, affected the jury’s ability to judge the evidence fairly. *Id.* At 862 (quoting *United States v. Edicott*, 803 F.2d 506, 513 (9th Cir. 1986) We must also look to “the substance of the curative instruction and the closeness of the case.” *Id.* An error prejudices the substantial rights of a defendant when it affects the outcome of the proceedings. *United States v. Fuchs*, 218 F.3d 957, 962 (9th Cir. 2000) (internal quotation marks and citation omitted.)

[34] The prosecution’s closing arguments relied on evidence of other bad acts.

II. Prosecutor stated defendant was currently in jail during closing (Improper closing by prosecutor)

CASE LAW: *United States v. Rodriguez* 159 F3d 881 (9th Cir 1999)

II. Prosecutor “attempted” to sway recant testimony of defense witness (victim) by showing defendant letters and phone calls made from jail ***My case/complaint with WSBA file: 11-01610*** In which Prosecutor admits to doing so, also admitted at sentencing proving Prosecutor misconduct even further. In which creates cumulative acts by Prosecutor Simmons of Malicious prosecution i.e. Prosecutor Misconduct.

CASE LAW: *United States v. Francis*, 170 F.3d 546 (6th Cir. 1991) Cumulative acts of prosecutorial misconduct.

In Conclusion:

At the end of the day the prosecutor in defendants case was also Malicious for failing to ensure that impeachment evidence was not employed a substantive evidence of guilt. As a prosecutor for the State of Washington his interest should be in making sure that the defendant in the case received a fair trial.

Additional Ground 3

Speedy trial violation

- I. Defendant's right to speedy trial under the law was violated absent a factual finding by court. (Case was continued numerous times w/out formal hearing.

CASE LAW: United States v. Medina, 524 F.3d 974 (9th Cor. 04/29/2008)

[42] We review the court's interpretation and application of the speedy trial act de novo, and review the district court's finding of facts for clear error. United States v. Martinez, 369 F.3d 1076, 1084 (9th Cir. 2004) The burden of proving that the trial has not commenced "within the time limit required by section 3161 (c) as extended by section 316 (h)" generally lies with the defendant. 3162 (a) (2.) We review the district court's decision to dismiss an indictment under the Speedy Trial Act without prejudice for an abuse of discretion. See Taylor, 487 U.S. at 343-44. A court abuses its discretion if it "failed to consider all factors relevant to the choice" and the "factors it did rely on were unsupported by factual findings or evidence in the record (Id. at 344

[66]

[5] District courts may fulfill their Speedy Trial Act responsibilities by adopting stipulated factual findings which establish valid bases for Speedy Trial Act

continuances”) We conclude that the district court did not err in excluding the delay from October 18, 2004 through January 10, 2005 because it granted a continuance meeting the criteria in 3161 (h)(8) for that period.

NOTE: (Many continuances were granted in defendant’s case w/out Attorney and defendant present.)

Absence of prompt disposition violated defendants 6th Amendment Rights.

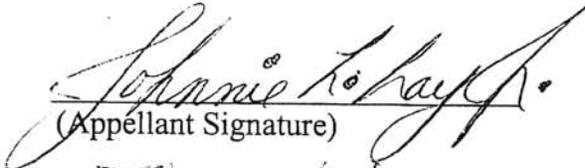
II. Prompt disposition of defendant’s case was absent.

CASE LAW: United States v. Tinklenberg, No. 09-1498 U.S. 05/26/2011

[24] The speedy trial Act of 1974, 18 U.S.C.3161 et seq. provides that “any case in which a plea of not guilty is entered, the trial...shall commence within 70 days “from the later of (1) the “filing date” of the information or indictment or (2) the defendants initial appearance before a judicial officer (i.e., the arraignment) 3161 (c) (1) The Act goes on to list a set of exclusions from the 70 day period, including “delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of such motion.” 3161 (h) (1) (D) (2006 ed., Supp.III (emphasis added)

If there are additional grounds, a brief summary is attached to this statement.

DATED this 11th day of April, 20 12


(Appellant Signature)

Johnnie L. Lay Jr.
(Appellant's Printed Name)

Stafford Creek Correction Center
191 Constantine Way, Unit# H4
Aberdeen, Washington 98520

Secure Logon

- Portal Logon: AccessTo Gateway
- Portal Logon: Boeing Partners Network

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Location	Everett, WA
Virtual Office/Telecommute? <u>(Things you should know about Virtual Office)</u>	Virtual Work Not Available
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Program	Propulsion
Occupation Title	Engr Product Lifecycle Mgmt
Skills Management Title	Engineering Release
Job Classification	6D2FN1
Job Type	Non-Management
Experience Level	Entry
Exemption Status	Nonexempt
Union	No
Security Clearance Required? <u>(Security Clearance definitions)</u>	No Security Clearance Required
Work Eligibility Required?	Yes
US Person Status Required?	Yes
Export Control Required?	Yes
Relocation Money Available? <u>(Things you should know about relocation benefits)</u>	No
Date Posted	04/10/2012
Closing Date <u>(Things you should know about closing dates)</u>	04/18/2012

Position Description

Assists with activities to gather and document product requirements relevant to certification, configuration, data and data management and engineering processes. Assists with plans and processes to ensure products meet technical, data, regulatory and company requirements and to maintain configuration control. Gathers data to assist in monitoring adherence to regulatory, data configuration and contractual requirements; assists with audits and reviews to ensure products meet requirements. Provides assistance relevant to certification plans, integrated process architecture infrastructures, process models, product structure definitions and/or data requirements/data management processes. Works under supervision.

Competencies

General

[-] Build Positive Relationships
Tries to build effective working relationships with fellow work group members. Asks for and provides information to clarify situations. Tries to expand on original ideas, enhances others' ideas, and contributes own ideas about the issues at hand. Places higher priority on work group goals rather than on own goals. Seeks agreement from fellow work group members to support ideas; explains value of actions. Establishes good interpersonal relationships by helping people in work group feel valued, appreciated, and included in discussions (enhances self-esteem, empathizes, involves, discloses, supports).

[-] Communication
Makes an effort to clarify purpose and importance; stresses major points; follows a logical sequence. Tries to keep the audience engaged through use of

techniques such as analogies, illustrations, humor, an appealing style, body language, and voice inflection. With guidance from others frames messages in line with audience experience, background, and expectations; tries to use terms, examples, and analogies that are meaningful to the audience. Occasionally seeks input from audience; checks understanding; tries to present message in different ways to enhance understanding. Uses syntax, pace, volume, diction, and mechanics appropriate to the media being used. Interprets messages from others and responds appropriately; at times requires guidance from others on how to respond.

[-] Customer Focus

Understands customers and their needs and considers such factors in the completion of day-to-day job tasks and responsibilities; supports more experienced employees as required to develop and sustain productive customer relationships; uses available information to understand customer related circumstances, problems, and needs; considers how day-to-day actions will affect customers; responds quickly to help more experienced employees meet customer needs and resolve problems.

[-] Quality Orientation

Follows established procedures for completing work tasks within own work group. Watches over job processes, tasks, and work products to ensure freedom from errors, omissions, or defects. Usually initiates action to correct routine quality problems.

Technical

[-] Analytical Skills

Skill and ability to: collect, organize, synthesize, and analyze data; summarize findings; develop conclusions and recommendations from appropriate data sources.

[-] Configuration/Data Mgmt

Basic knowledge of drawing/data systems (e.g., "used on" drawings, part relationships, product data management) and configuration management principles and processes (e.g., part number control, revision level, naming conventions, product identification numbering systems).

Basic Qualifications For Consideration

Do you have experience in configuration and/or data management?

Typical Education/Experience

AA degree in related discipline.

Other Job related information

Responsible for releasing Engineering product definition data. Working under guidance, validate and release engineering work packages in PDM, DIRRECT, ENOVIA, BOGART, DIOL, SDT, EAMR database, and release Production Memos. Unders guidance research and resolve data discrepancies and coordinate corrective action with engineering.

*** Please note that depending on the specific position, you may be required to pass additional medical tests, credit checks, and/or other requirements. These additional items are required for the Company to comply with various laws and regulatory rules.***

Every job requisition has specific and unique requirements listed under 'Description', 'Competencies', and 'Education'. Applicants will increase their opportunities for consideration by demonstrating compatibility with these requirements in their resumes.

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 67615-6
v.)	
)	
JOHNNIE L. LAY, JR.,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, ANN JOYCE, STATE THAT ON THE 11TH DAY OF APRIL, 2012, I CAUSED THE ORIGINAL **STATEMENT OF ADDITIONAL GROUNDS PURSUANT TO RAP 10.10** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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--	-------------------	-------------------------------------

SIGNED IN SEATTLE, WASHINGTON THIS 11TH DAY OF APRIL, 2012.

x *Ann Joyce* _____

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