

NO. 69716-1-I

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

STATE OF WASHINGTON,

Respondent,

v.

LAURANCE ANTHONI,

Appellant.

FILED
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
2014 FEB 19 PM 4:03

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

The Honorable Mary Yu, Canova, Judge

REPLY BRIEF OF APPELLANT / CROSS RESPONDENT

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United States v. Langford

946 F.2d 798 (11th Cir. (1991)

cert. denied, 503 U.S. 960, 112 S.Ct. 1562, 118 L.Ed.2d 209 (1992) 1, 2, 3

A. ARGUMENT IN RESPONSE TO STATE'S CROSS APPEAL

THIS TRIAL COURT CORRECTLY DISMISSED COUNTS 4, 5, & 6 AS MULTIPlicitOUS OF COUNT 3.

On cross appeal, the State claims the trial court erred in dismissing counts 4, 5 & 6 as multiplicitous of count 3. Brief of Respondent (BOR) at 17-22. According to the State, it is clear the legislature intended to allow convictions for multiple counts of securities fraud based on the sale of a single security to a conglomerate of buyers, with the proper number of allowable counts apparently being based on the number of people in the conglomerate rather than the specific details of the transaction. The State is wrong. This Court should affirm the dismissal of counts 4, 5 & 6.

The seminal case on multiplicity in the context of securities fraud like that at issue here is United States v. Langford, 946 F.2d 798 (11th Cir. (1991), cert. denied, 503 U.S. 960, 112 S.Ct. 1562, 118 L.Ed.2d 209 (1992). In Langford, the defendant was charged with securities fraud relating to false statements made in several different documents related to a single purchase of securities. 946 F.2d at 800. The court said that “[t]o avoid the vices of multiplicity in securities fraud cases, each count of the indictment must be based on a separate purchase or sale of securities and each count must specify a false statement of material fact-not a full-blown scheme to defraud-in connection with that purchase or sale.” 946 F.2d at

804 (emphasis added). Because the indictment in that case did not allege that each document “contained a specific material misstatement” and was “in conjunction with separate purchase or sale transactions,” the court held that the indictment was multiplicitous. Id.

As discussed in detail in the opening brief, counts 3-6 involve Anthone's plans to develop "Eden Estates" into several buildable lots with financial assistance from four investors; D. Bhuller (count 3), B. Singh (count 4), H. Mangat (count 5) and S. Singh (count 6). Brief of Appellant (BOA) at 5-9, Appendix B. Under Langford, in order to convict Anthone of these counts the State had to prove for each a "separate purchase or sales of securities and . . . a false statement of [or omission of a] material fact . . . in connection with that purchase or sale." 946 F.2d at 804 (emphasis added). It failed to do so.

To the contrary, counts 3-6 all involved a single security, Ex. 16, the "JOINT VENTURE AGREEMENT" signed by Anthone and the others on June 1, 2004. See BOA at Appendix B. On this basis alone the State's evidence failed to meet the Langford criteria for separate convictions because there is only a single security involved.

As for any evidence of a false statement of, or omission of, a material fact in the context of the Eden Estates joint venture agreement, the State presented the testimony of only two of the four investors, D.

Bhuller and B. Singh. 6RP 59-169. Contrary to the State's claim on appeal, these witnesses testified Anthone explained to all the investors at the same meeting how he intended to use their money (permitting fees, excavation, roads & sewers), and that he had not yet applied for the building permits but expected it would only take about six months to obtain them. 6RP 76, 88, 155, 165. To the extent Anthone's failure to reveal he was in arrears on his payments for the property, was not a registered contractor or that he only planned to use 15% of their investment towards the Eden Estates project constitute omissions of material facts, the State failed to prove a separate omission in connection with the sale of a separate security for each separate count, as required under Langford. 946 F.2d at 804. Rather, to the extent any false statements or omission of material facts were made to the four investors, they were made at the same time. As such, if Anthone committed securities fraud in relation to the Eden Estates project, it was a single crime, not four, and the trial's court's order dismissing all but count 3 as multiplicitous should be affirmed.

B. CONCLUSION

For the reasons stated here and in the opening brief, this Court should firm the dismissal of counts 4, 5 & 6, reverse all of Anthon's convictions except for Count 8, strike the restitution ordered for all counts except Count 8, and remand for resentencing.

DATED this 19th day of February 2014

Respectfully submitted,

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| Respondent, |) | |
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| |) | |
| LAURANCE ANTHONE, |) | |
| |) | |
| 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 19TH DAY OF FEBRUARY 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT / CROSS RESPONDENT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] LAURANCE ANTHONE
DOC NO. 362562
REYNOLD WORK RELEASE
410 4TH AVENUE
SEATTLE, WA 98104

SIGNED IN SEATTLE WASHINGTON, THIS 19TH DAY OF FEBRUARY 2014.

X *Patrick Mayovsky*

REC'D

FEB 20 2014
King County Prosecutor
Appellate Unit

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