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COURT OF APPEALS
DIVISION II

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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON
BY [Signature]
DEPUTY

STATE OF WASHINGTON,)
)
 Respondent,)
)
 v.)
)
 Scott Eugene Ridgley,)
)
 Appellant.)

No. 35061-1-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW
RAP 10 10

I, Scott E. Ridgley, 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

please see pages 1 through 5

~~Additional Ground 2 =~~

CERTIFICATE OF SERVICE
I certify that I mailed
1 copies of Statement
to M. Walden
& O. Parklund
Date 3/27/07 Signed [Signature]

Additional Ground #1

Ineffective Assistance Of Counsel

The sixth Amendment to the United States Constitution guarantees that "In all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense." U.S. Const. Amend. VI similarly, Article I, Section 22 of the Washington State Constitution declares that "In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel..." Wash. Const. Article I, Section 22. The right to counsel is the right to the effective assistance of counsel. *Strickland v. Washington*, 446 U.S. 668, 686, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984) (quoting *McMann v. Richardson*, 397 U.S. 759 at 771 n.14, 90 S.Ct. 1441, 25 L.Ed. 2d 763 (1970)).

Defense counsel must employ "such skill and knowledge as will render the trial a reliable adversarial testing process." *State v. Lopez*, 107 Wn.App. 270 at 275, 27 p.3d 237 (2001). Counsel's performance is evaluated against the entire record. *Lopez*, at 275

The test for ineffective assistance of counsel consists of two prongs: (1) Defense counsel's performance was deficient, and (2) this deficiency prejudiced the defendant. *State v. Holm*, 91 Wn.App. 429, 957 p.2d 1278 (1998), citing *Strickland*, supra. The defendant must show a reasonable probability that but for counsel's errors, the result of the proceeding would have been different. *Holm*, supra. at 1281

To establish deficient performance, a defendant must demonstrate that counsel's representation fell below an objective standard of reasonableness based on consideration of all the circumstances. *State v. Brabley*, 141 Wn.2d 731, 10 p.3d 358 (2000). To prevail on the prejudice prong of the test for ineffective assistance of counsel, an appellant must show that "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceedings would have been different." *State v. Saunders*, 91 Wn.App. 575 at 578, 958 p.2d 364 (1998). A reasonable probability is a probability sufficient to undermine confidence in the outcome. *In re Fleming*, 142 Wn.2d 853 at 866, 16 p.3d 610 (2001) A claim of ineffective assistance is reviewed de novo. *Statr v. S.M.*, 100 Wn.App. 401 at 409, 996 p.2d 1111 (2000)

Although counsel's performance is presumed to be adequate, the presumption is overcome if no legitimate tactic explains counsel's conduct. Here counsel was deficient when he did not move to suppress evidence. "As a normal rule defense counsel brings such a motion anytime there may be a question as to the validity of a search and subsequent seizure" [*Washington v. Tarica*, 59 Wash.App. 368, 798 p.2d 296 (Wa.App. 10/01/1990)]

Article I Section 7 of the Washington State Constitution provides that "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." Wash. Const. Article I, Section 7. The fourth Amendment to the Federal Constitution provides

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV.

A violation of Article I, Section 7 or of the fourth Amendment may be raised for the first time on appeal if it is a manifest error affecting a constitutional right. RAP 2.5(a)(3); State V. McFarland, 127 Wn.2d 322 at 334, 899 p.2d 1251 (1995); State V. Holmes, 135 Wn. App. 588 at 592, 145 p.3d 1241 (2006); State V. Littlefair, 129 Wn. App. 330 at 338, 119 p.3d 359 (2005); State V. Contreras, 92 Wn App. 307 at 313-314, 966 p.2d 915 (1998).

Here counsel was deficient in not bringing a 3.6 motion to suppress evidence. "As a normal rule, defense counsel brings such a motion anytime there may be a question as to the validity of a search and subsequent seizure" [Washington V. Tarica, 59 Wash App. 368, 798 p.2d 296 (Wa App. 10/01/1990)]

A)

Defense counsel should have moved to suppress evidence seized and the fruits of an unlawful traffic stop. Because the officer testified the actual reason for the stop was not to enforce the traffic code but rather to conduct a criminal investigation, it would conclude that the stop was made under an unconstitutional pretext and this seized evidence should have been suppressed had there been a 3.6 hearing. Officer Adkissons' "SOLE" purpose in stopping the vehicle was to identify who was driving RP 19 at 22. Deputy Adkissons' actions were unconstitutional under the fourth Amendment and under Article I, Section 7. Therefore, defense counsel's performance fell below an objective standard of reasonableness because he failed to move to suppress evidence critical to the state's case. Without the evidence, the state would have been unable to proceed. Because of this, there was no legitimate strategic or tactical reason involved in defense counsel's failure to request a hearing pursuant to CrR 3.6

B)

Defense counsel's deficient performance prejudiced appellant because a motion to suppress would have been granted and would have terminated the prosecution.

To prevail on the prejudice prong of the test for ineffective assistance of counsel, an appellant must show that

[T]here is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.

State V. Doogan, 82 Wn. App. 187 at 189, 917 p.2d 155 (1996), quoting State V. Thomas, 109 Wn.2d 222, 226, 743 p.2d 816 (1987)

In this case, as outlined above, the deputy failed to provide or demonstrate there any grounds to stop the vehicle other than the "SOLE" purpose to identify its driver. A motion to suppress would likely have succeeded. Because "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different," Saunders, at 578, confidence in the outcome is undermined. In re Fleming, at 866. The conviction must be reversed and the case remanded for a new trial. Fleming, supra.

Additional Ground #2

(Constitutional Right To A Fair Trial)

A trial judge advocating on behalf of one party to a dispute denies "DUE PROCESS OF LAW". See, e.g., *Figueroa Ruiz Delgado*, 359 F.2d 718 (1st Cir. (1966)); *Giles V. City of Prattville*, 556 F. Supp. 612 (M.D. Ala. 1983)

The due process clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. It guarantees to every defendant a trial before a fair and impartial judge. The law requires more than an impartial judge; it requires the judge to appear to be impartial. The function of the judge is to serve as a judicial impartiality.

The neutral role of the court was compromised, or blurred with the prosecutor's role, when the judge advised the prosecutor, in the presence of his witness, on how to get around hearsay statements being made by the state witness, RP 15 at 2

Here, the judge advised the state on how to overcome the hearsay testimony being given by the deputy. These comments made, or given, by the judge were prejudicial to the appellant. For these reasons given above the conviction must be reversed and the case remanded for a new trial.

Additional Ground #3

(Improper Jury Instruction's)

Jury instruction #7 and instruction #11 counterdicts the other. Jury instruction #7 states as follows; To convict the defendant of attempting to elude a pursuing police vehicle as charge, each of the following elements of the crim must be proved beyond a reasonable doubt:

- (1) that on or about the 8 th day of October, 2005, the defendant drove a motor vehicle;
- (2) that the defendant was given a visual or audible signal to stop by a uniformed police officer by hand, voice, emergency light or siren;
- (3) that the signaling police officer's vehicle was equipped with lights and siren;
- (4) that the defendant wilfully failed or refused to immediately bring the vehicle to a stop after being signaled to stop;
- (5) that while attempting to elude a pursuing police vehicle, the defendant drove his vehicle in a reckless manner;
- (6) that the acts occurred in the state of Washington.

If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.

On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

Jury Instruction #11 State's;

Evidence has been presented that the defendant committed acts of Attempting to Elude a Pursuing Police Vehicle on multiple occasions. To convict the defendant of Attempting to Elude a Pursuing Police Vehicle one particular act of Attempting to Elude a Pursuing Police Vehicle must be proved beyond a reasonable doubt, and you must unanimously agree as to which act has been proved. You need not unanimously agree that the defendant committed all the acts of Attempting to Elude a Pursuing Police Vehicle.

These two instruction's ambiguous of each other, they are liable to more than one interpretation to what acts need or, need not, be proved? One, #7, states all the elements must be met in order to find guilt. # 11 tell's the jury :you need not unanimously agree that the defendant committed all the acts ? these instructions relieve the state of its burden to find guilt, that counsel should of challenge this as well.

For these reasons the conviction must be reversed and the case remanded for a new trial.

Additional Ground #4

Abuse of Discretion by the trial court,

The trial judge let the states witness give hearsay statements, statements that were baised on information from a "TIP". The states witness gave testimoney about A tip. That this tip or information was the bases for stoping the vehicle. The officer offered into evidence this Tip to prove the truth of the matter at trial, RP 13 at 6,14 ; RP 16 at 17

For these reasons the conviction must be reversed and the case remanded for a new trial.

Additional Ground # 5

(Pretextual Traffic Stop)

In State V. Ladson, the state supreme court held that " Pretextual Traffic Stops Violate because they are seizures absent the 'Authority of Law' which a warrent would bring. " A pretextual traffic stop is one in which " the police are pulling over a citizen, not to inforce the code, but to conduct a criminal investigation unrelated to the driving.

Here, the officer had some vague information that had not demonstrated some " Indicia of Reliability" that would provide the officer the grounds to stop a person in there vehicle. The traffic stop was a violation of Artcle 1, Section 7 of our state constitution because it was a warrantless seizure, State V. Ladson, 138 Wn. 2d 343, 358, 979 P.2d 833 (1999). The essence of the traffic stop was not to enforce the traffic code, but to investigate suspicions unrelated to driving. The "sole" reason for this stop was in the officers own words RP 19 at 22; I felt that i needed to stop the vehicle to identify who was driving it.

Therefore at the moment the officer activated his emergency equipment to stop the vehicle he was absent The 'Authority of Law',no traffic code had been violated to establish some reasonable ,articulable,grounds to stop the vehicle.

For these reasons given above the conviction must be reversed and the case remanded for a new trial.

Dated this day 03/18/07

SCOTT EUGENE RIDGLEY#263697

Scott Ridgley