

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

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DIVISION II
07 OCT - 11 PM 1998
STATE OF WASHINGTON
BY SW
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STATE OF WASHINGTON,
Respondent,
v.
RONNIE J. ARCHIBALD
Appellant.

)
) No. 36101-9-II
)
) STATEMENT OF ADDITIONAL
) GROUNDS FOR REVIEW
)

I, Ronnie J. Archibald, have received and reviewed the opening brief prepared by my Attorney. Summerized 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

I claim that the trial court erred in not giving the "missing evidence" instruction. Such an instruction informs the jury that where evidence that would naturally be a part of the case is within control of whose interest it would naturally be to produce it, and that party fails to do so, the jury may draw an adverse inference from that failure. State v. Blair, 117 Wn.2d 479, 485-86, 816 P.2d 718(1991) citing State v. Davis, 73 Wn.2d 271, 276, 438 P.2d 185(1968)

The missing evidence in question is the DNA evidence that was testified about by Mary-Anne Christine Murray, 7RP at 376, and by Officer Mell on direct, 7RP at 415, And again by same witness under cross-examination. 7RP at 427-28.

Prejudice generally exists where there is a reasonable probability the outcome of the preceeding would have differed had the evidence been present. In Re Personal Restraint of Benn, 134 Wn.2d 868, 916, 952 P.2d 116(1998)(citing) Bagley, 473 US at 682

1 The centrality of the evidence to the case and its
2 importance to the case and its importance in establishing
3 the elements of the crime or the motive or the intent of
4 the defendant; the probative value and reliability of the
5 substitute or secondary evidence; the nature and probable
6 weight of factual inferences or other demonstrations and
7 kinds of allegedly lost to the accused; the probable eff-
8 ect on the jury from absence of the evidence, including
9 unfounded speculation and bias that might result to the
10 defendant if adequate presentation of the case requires
11 explanation about the missing evidence. U.S. v. Tercero,
12 640 F.2d 190, 192-93(9th Cir. 1980).

13 It necessarily follows that if the omitted evidence
14 creates a reasonable doubt that did not exist otherwise,
15 constitutional error has been committed. This means that
16 the omission must be evaluated in the context of the en-
17 tire record. If there is no reasonable doubt about guilt
18 whether or not the additional evidence is considered,
19 there is no justification for a new trial. On the other
20 hand, if the verdict is already of questionable validity
21 additional evidence might be sufficient to create a reas-
22 onable doubt.

23 I submit that the record shows that there was testi-
24 mony that there was evidence taken in order to corroborate
25 the alleged victims claims against the defendant. Yet none
26 of that evidence that was collected was ever presented by
27 the State in whose interest it would have naturally been to
28 produce it to fully corroborate S.W.'s claims. Furthermore
being that this was a factor in a crime of a sexual nature
in which the alleged victim testified and gave statements
to the fact that I supposedly on numerous instances left
DNA evidence during the assault, "there exists a reasona-
ble possibility that the missing evidence would have affe-
cted the defendants ability to present a defense." Vaster,
99 Wash. 2d at 52.

1
2 ADDITIONAL GROUND 2

3 Also, I submit, that due process was impeded by way
4 of prosecutorial misconduct. This Court has held that it
5 is misconduct for a prosecutor to express a personal belief
6 about the credibility of a witness, State v. Dhaliwal, 150
7 Wn.2d 559, 577-78 P.3d 432(2003)(citng) State v. Reed, 102
8 Wn.2d 140, 145, 684 P.2d 699(1984)

9 As to S.W.'s credibility the prosecutor during closing
10 arguement stated, "Shannon Wilkins statements are clearly
11 reasonable. They are clearly consistant." This is merely
12 the prosecutors own opinion of S.W.'s credibility seeing
13 that many times during the trail she was shown to have made
14 many inconsistant statements. This was simply the prosecut-
15 ors personal endorsement of S.W.'s statements as credible.

16 Prosecutorial misconduct arose again when improper
17 testimony disguised as closing argument to give the jury
18 inflammatory information deprived Archibald of his right to
19 have his guilt or innocence judged by the jury alone.

20 At 7RP at 497, the prosecutor stated "I submit to you
21 that that letter is evidence of the defendants own conscio-
22 usness of guilt. The defendant himself felt he was guilty."
23 At 527 stated, " The defendant chose to commit those crimes
24 "

25 Prosecutorial misconduct requires a new trial only
26 when there is a substantial likelihood that the misconduct
27 affected the jury's verdict. State v. Copeland, 89 Wn.App.
28 492, 496, 949 P.2d 458(1998). The defendant bears the bur-
den of establishing that the challenged conduct was both
improper and prejudicial. Echevarria, 71 Wn.App. at 597.

As stated, I, the defendant, submit that comment made
during closing argument were in places testimony, personal
opinion of witness's credibility, and inflammatory informa-
tion given to the jury to take judgment of innocence or
guilt out of the hands of the jury so that they would come

1 back with guilty verdicts even of lesser included charges.

2 Such opinions given by the prosecutor, "invade the jur-
3 y's independent determination of the facts and violate the
4 defendants constitutional right. State v. Carlin, 40 Wn.App.
5 698, 701, 700 P.2d 323(1985)

6 CONCLUSION

7 The missing evidence instruction added to the improper
8 misconduct of the prosecutor further comprimised my right to
9 a fair trial. This Court should, upon consideration of the
10 merits, reverse my convictions and remand for a new trial.

11 DATED this 2nd day of October, 2007

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14
15 Respectfully Submitted,

16 

17 Ronnie J. Archibald
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IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
AT DIVISION II

COURT OF APPEALS
STATE OF WASHINGTON
07 OCT - 16 2007
BY DEPUTY

RONNIE ARCHIBALD
Appellant,
vs.

STATE OF WASHINGTON
Respondent.

PROOF OF SERVICE

I, RONNIE ARCHIBALD, pro se, do declare that on the 2 day of OCTOBER, 2007. I have served the enclosed STATEMENT OF ADDITIONAL GROUNDS

on ever other person required to be served, by presenting an envelope to state prison officials at the Clallam Bay Corrections Center, containing the above documents for U.S. mailing properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

COURT OF APPEALS
DIVISION II
950 BROADWAY # 300
TACOMA WA

I declare under penalty of perjury under the laws of the State of Washington, pursuant to RCW 9A.72.085, and the laws of the United States, pursuant to Title 28 U.S.C. § 1746, that the forgoing is true and correct.

Executed on this 2ND day of OCTOBER, 2007.

CERTIFICATE OF MAILING
I certify that I mailed
1 copies of SAG
brief to K. Proctor
& C. Glinka
10/9/07 SW
Date Signed

R. Archibald
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