

COURT OF APPEALS  
DIVISION II

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No. 37350-5-II

STATE OF WASHINGTON  
BY *[Signature]*  
DEPUTY

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

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW J. GALVIN,

Appellant.

ON APPEAL FROM THE  
SUPERIOR COURT OF THE STATE OF WASHINGTON,  
PIERCE COUNTY

The Honorable Katherine M. Stolz and John R. Hickman, Judges

APPELLANT'S OPENING BRIEF

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*RM 12-15-08*

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A. ASSIGNMENTS OF ERROR

1. Matthew Galvin's Sixth Amendment and Article 1, § 22, rights to a fair and impartial jury were violated when the bias of a juror was revealed and the court failed to dismiss the jurors and order a mistrial.

2. Galvin did not receive effective assistance of counsel.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. An impartial jury is essential to a fair trial. After the jury had begun deliberations in this case, one of the jurors disclosed that she had been the victim of an identity theft crime in the same county and had learned that the very same prosecutor who was prosecuting Galvin was going to be the prosecutor going after the man believed to be guilty of having victimized the juror. The juror conveyed this information to all of the other jurors before a verdict was reported to the court and before all of the jurors had made their decision about what verdict to render.

Were Galvin's rights to a fair and impartial jury violated by the court's failure to dismiss the jurors and declare a mistrial in light of this information?

2. Further was counsel ineffective in failing to move for a mistrial in order to ensure his client received a fair and impartial trial?

C. STATEMENT OF THE CASE

1. Procedural Facts

Appellant Matthew J. Galvin was charged by information with malicious mischief in the first degree. CP 1; RCW 9A.48.070(1)(a).

After motions before the Honorable Katherine Stolz on November

28 and December 11, 2007, and the Honorable John Hickman on January 7, 2008, trial was held before Judge Hickman on January 22-25, 2008, after which a jury convicted Galvin as charged. CP 40; 1RP 1, 2RP 1, 3RP 1, 4RP 1.<sup>1</sup>

On February 8, 2008, Judge Hickman imposed a standard-range sentence. CP 47-57; SRP 1-12.

Galvin appealed and this pleading follows. CP 58..

2. Testimony at trial

On October 8, 2007, Jessica<sup>2</sup> Galvin invited her brother, Matthew, to come stay the night with her and her boyfriend, Paul Harris, in a duplex she and Harris rented. RP 120-25. Jessica told Harris about it in a phone call when he was on his way home and Harris was unhappy about it, because he did not want Matthew to stay. RP 125-26. Harris ultimately agreed to allow it “[a]fter some tugging and fighting.” RP 126. When Harris got home, Matthew was not yet there, but Matthew arrived a few minutes later. RP 127.

Harris said a fight broke out when Harris told Matthew to leave because of what Harris called “[b]latant disrespect for someone that’s trying to help a guy out.” RP 127. Harris claimed that Matthew told

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<sup>1</sup>The verbatim report of proceedings consists of 8 volumes, which will be referred to as follows:

November 28, 2007, as “1RP;”  
December 11, 2007, as “2RP;”  
January 7, 2008, as “3RP;”  
the four volumes containing the trial of January 22-25, 2008, as “RP;”  
sentencing on February 8, 2008, as “4RP.”

<sup>2</sup>Because Jessica and Matthew Galvin share the same name, they will be referred to by their first names with no intention of disrespect.

Jessica to shut up and was using a tone of voice with her that Harris did not like. RP 127. Harris also said that he and Jessica were getting ready to go to bed and did not want “no craziness or something,” but Matthew did not want to sleep. RP 127.

On cross-examination, Harris admitted that in fact, it was the disrespect Harris thought Matthew was showing Harris, not Jessica, that concerned Harris, making him angry and upset with Matthew. RP 138-39.

Harris said Matthew looked at him like he was crazy when Harris told him to go to sleep. RP 128. They were in a computer room and Harris said there were a lot of breakable things in there so Harris went into the kitchen, pointed the door and said, “[I]leave.” RP 128. On cross-examination, Harris admitted that he swore at Matthew and told him to get the “f” out of his house. RP 139. Harris also admitted he was yelling at Matthew by this time. RP 140. Harris was unhappy with Jessica, too, because she was not supporting Harris in telling Matthew to leave and did not think Matthew was acting inappropriately or needed to leave. RP 141.

By that time, Harris conceded, he had already decided that he would physically remove Matthew from the house if Matthew did not leave. RP 142.

According to Harris, once in the kitchen, Matthew “swung” on Harris, without really connecting. RP 128. Harris then “defended” himself, “controlled” Matthew in the kitchen and told Jessica to go get the phone. RP 129. Jessica refused so Harris “got up off” Matthew and went to go get the phone to call police, at which point Matthew got up and “took off.” RP 129.

Harris said he and Jessica went to the front door and Harris went outside, where Matthew “continued to see what he could do to hurt” Harris. RP 130. Harris and Matthew “scrambled” for a minute, with Matthew grabbing the back of Harris’ shirt and trying to fight Harris until Harris managed to get back in the house. RP 130, 146. At that point, Harris heard a “[c]rash, boom, bang” and saw a 4 x 4 post coming through the front of his wall. RP 130. Harris went outside and saw Matthew’s truck “peeling off” and heading to the road. RP 130. Harris’ truck was against the front of the house. RP 131.

An officer who reported to the house several hours later testified that he saw damage to the pole supporting the front porch and a Nissan pickup truck with front end damage which the officer thought was “consistent” with striking the pole. RP 91-98. That officer, Pierce County Sheriff’s Department deputy Andrew Finley, said he saw “sliding” marks which were 6-10 feet long, along with some marks in the grass leading from the back of the pickup to the street. RP 100, 109. When Finley arrived, the Nissan truck was not next to the house or the post, but had instead already been moved back by Harris. RP 109-11.

Finley was told that there was another vehicle involved and it had “either rammed or slightly forced” the Nissan truck into the house, then reversed, “spun out backwards” and driven away. RP 101. Finley admitted, however, that he was never told by Harris or Jessica that they had not, in fact, seen the accident and were just guessing what happened. RP 102.

Finley said that, although he knows how to take measurements of

skid marks and there were formulas that can be used to try to gauge speed, direction of impact and distance traveled, he made no measurements and conducted no such evaluations in this case. RP 108. He also never looked at the skid marks during the day and never took close up photographs of the tread marks. RP 108. He said there were differences in the levels of investigation for various accidents and that no such investigation would be done for a crime such as this one. RP 114-16.

Although Finley admitted that he could have called the traffic unit to have them determine exactly what had taken place, he said it would not likely have occurred and he had made a judgment about what kind of resources he was going to commit to this type of case. RP 117-18.

Harris had his truck repaired and it cost \$3,100. RP 132-33. He did all the repairs to the house himself and bought materials for that but did not keep track of how much he spent. RP 100, 135.

Jessica did not really cooperate with Harris' efforts to report the incident to the police, to the point where an officer told her she needed to be quiet or she would go to jail. RP 147. Although Harris tried to deny he had a "conflict" with Jessica about that he ultimately admitted telling her repeatedly she needed to be quiet. RP 147-48. He also admitted swearing at her about it at some point. RP 147-48.

Matthew Galvin testified that "everything was cool" that night until he saw that Harris had a pot pipe in his hand and asked Harris if he could have some. RP 164. Harris said no, because it was his "last bowl." RP 164. A little bit later, Matthew and his sister were playing with the new dog and laughing when Harris came back to where they were and

Matthew said it would be “really nice” if he could “hit that,” meaning the pipe Harris still had. RP 165.

Harris flipped, ripping his shirt off and acting like he wanted to fight. RP 165. Matthew was “stunned” but after a moment, ripped off his own shirt, acting like “[w]hat’s your problem.” RP 165-66. Harris then started punching Matthew, hard, and they somehow ended up in the kitchen, where Harris choked Matthew in a headlock. RP 166, 176.

When Harris got Matthew out the door, Matthew had not yet landed even a single punch. RP 166. It was only when they got outside that Matthew managed to start punching. RP 166. Matthew said that, after he was on the front porch, he did not immediately leave because Harris was still yelling at him and Matthew wanted to talk to his sister alone but Harris would not allow it. RP 177.

At that point, Harris said, “F\* \* \* this. I’m going to get my gun,” going inside the house and slamming the door. RP 166, 176.

Matthew knew Harris had a gun and was very scared, so he jumped into his truck, started it up and put it in gear, intending to drive away. RP 167. By accident, he put his truck into drive rather than reverse. RP 167. He had only just bought the truck and was, obviously, in a hurry. RP 167. The truck was an automatic and it was the first one he had driven with the shift on the column. RP 178.

Matthew said he hit the accelerator “hard” because he was trying to get out of there fast. RP 179. He was afraid that he was going to get shot. RP 168. He knew Harris slept with the gun next to his bed and it would have taken “one second” for Harris to grab his gun and shoot him. RP

168. Harris was really intoxicated that night, as was Jessica. RP 168-69, 171. Indeed, Matthew was sure that Harris would not have acted that way if he had been sober, but Harris was “like crazy drunk,” “belligerent drunk.” RP 171.

Matthew suffered bruising around his eyes and cuts from Harris’ assault. RP 167. In contrast, the next day, Matthew saw no injuries on Harris when Matthew went back to the house. RP 167. When he got there, Matthew was shocked to see the damage to the house because, while he knew that he had hit Harris’ truck by accident he had not had any idea that it went into the house. RP 167.

Harris initially denied that the argument started because Matthew was asking to share Harris’ marijuana. RP 142. Harris admitted that Matthew had said “something along those lines” but claimed that Harris did not have drugs and Matthew was just assuming that he had. RP 143-44. Harris also initially said that Matthew had not asked several times for marijuana. RP 143. A few moments later, however, Harris said that someone doing so “[i]n a negative way” would be disrespectful and that was how he “took” what was going on between him and Matthew that night. RP 143-44. Harris ultimately said that he thought it was disrespectful for Matthew to call him names for not sharing his pot. RP 143-44. Harris nevertheless claimed that he was not under the influence of marijuana when the incident occurred and insisted Matthew had not seen him with any drugs that night. RP 144.

On cross-examination, Harris admitted that what he meant when he said he “controlled” Matthew in the kitchen was that he had Matthew in a

choke hold in the kitchen, with Harris' arm wrapped around Matthew's neck while trying to "disable" Matthew from moving. RP 145-46. Harris also ultimately admitted, on cross-examination, that, before Matthew left and got into his truck and took off, Harris said something about going to go get his "f'ing gun" to make Matthew leave. RP 149. He claimed that had occurred, however, prior to the fight on the porch. RP 149.

Deputy Finley admitted that Harris never said anything about being injured in a fight with Matthew, and Finley noted no injuries on Harris at all. RP 105. Finley did notice injuries on Galvin, whom Finley saw about 18 hours after Finley went to the house. RP 106. Galvin had bruises and scratches on his face. RP 107. Harris claimed he had a "couple nicks" on his cheek and a lump on his head as a result of the fight, but admitted that it would be fair to say he "basically beat the crap out of" Matthew. RP 144.

D. ARGUMENT

MR. GALVIN'S RIGHTS TO A FAIR AND IMPARTIAL JURY WERE VIOLATED WHEN THE COURT FAILED TO DECLARE A MISTRIAL AFTER A JUROR'S BIAS WAS REVEALED AND THE JURY PANEL WAS TAINTED BY THAT BIAS; COUNSEL WAS INEFFECTIVE

Both the state and federal constitutions guarantee the accused in a criminal case the right to a fair and impartial jury. Sixth Amend.; 14<sup>th</sup> Amend.; Art. 1, § 22; Duncan v. Louisiana, 391 U.S. 145, 149, 88 S. Ct. 1444, 20 L. Ed. 2d 491 (1968); see State v. Gonzales, 111 Wn. App. 276, 277, 45 P.3d 205 (2002), review denied, 148 Wn.2d 1012 (2003). As a result, before trial, prospective jurors are questioned in order to determine if they are actually or impliedly biased. See Cheney v. Grunewald, 55 Wn.

App. 807, 810, 780 P.2d 1332 (1989). The purpose is to ensure the defendant's rights and guarantee that no biased juror decides the defendant's fate. See id.

Indeed, under RCW 2.36.110, it is the "duty of a judge" to excuse any juror who has manifested unfitness by, *inter alia*, "reason of bias [or] prejudice." CrR 6.5 provides the court with such authority. See State v. Elmore, 155 Wn.2d 758, 769, 123 P.3d 72 (2005). Bias may stem from having a relationship with either party. See id.; see also, RCW 4.44.170(2) (defining actual bias for jurors).

Where there is bias which has tainted the entire jury, the court should grant a motion for mistrial, and failure to do so amounts to an abuse of discretion. See, e.g., State v. Greiff, 141 Wn.2d 910, 921, 10 P.3d 390 (2000).

In this case, the trial court failed in its duties to Mr. Galvin, because it failed to exercise its authority under CrR 6.5 to dismiss a biased juror and indeed the entire, tainted jury panel, by ordering a mistrial once a juror's bias was revealed. In addition, counsel was ineffective.

a. Relevant facts

After the jury had deliberated, when they indicated they had reached a verdict, they also indicated that there was a "disclosure" of information they had to tell the court. RP 235. The court told the parties that a juror had just disclosed that she was a victim in a case which was pending in Pierce County and had received notice, in the previous day's mail, that the prosecutor who would be handling her case was going to be the very same prosecutor who was handling the case against Mr. Galvin.

RP 235. The court initially stated its belief the issue had “no bearing” on the case because the jury was “well into their deliberations” when the letter was received. RP 236. The court said the issue could be “moot,” depending upon what verdict the jury had rendered. RP 236.

At that point, the prosecutor told the court she had not sent any letters out but what had probably occurred was that a victim’s advocate had sent an “automatically generated” letter. RP 236. The prosecutor stated she had “real concerns,” because the juror had the letter yesterday and had deliberated on the case after receiving the letter. RP 236. Counsel then said he thought they needed to ask the juror about the issue, and the court agreed. RP 236.

The juror was brought into court and the judge stated the understanding of the parties that she had received a letter indicating the prosecutor in this case was going to be the prosecutor in the case in which the juror was a victim. RP 237. The court also noted that the juror had indicated in initial voir dire that she had not had any contact with that prosecutor prior to this situation. RP 237. The court then asked if the letter she had received had affected her deliberations “in any way.” RP 237.

The juror, Juror 8, responded that she had arrived at her decision the day before and had not “had doubts or swayed from that.” RP 237. She said she had received the letter after making that decision, when she had arrived home after the previous day’s deliberations. RP 237-38. The case in which the juror was involved was an identity theft case, which the prosecutor said had “a hundred potential victims.” RP 238. Counsel then

asked the juror if, even though it did not sway her opinion, the juror thought it made a difference on how she argued or presented her views to the other jurors. RP 239. The juror responded, “[n]o.” RP 239.

The juror admitted, however, that she had disclosed to the other jurors that she had received this letter. RP 239. She claimed they had not had any reaction. RP 239. A moment later, the juror said that the other jurors had just a “small world kind of a thing” reaction. RP 240. The juror stated her belief that “nobody cared.” RP 240.

With the juror sent back to the jury room, the prosecutor told the court she thought the problem was not just that the juror had gotten the letter but that she had shared the information with the other jurors. RP 240-41. The prosecutor could not see how the verdict could be “anything but tainted” because it looked like the prosecutor was “having improper contact.” RP 241. She stated she was “real uncomfortable” with the situation and thought they needed to question all of the jurors. RP 241.

Counsel stated that he was not sure it was necessary to abandon the jury, but agreed that questioning each juror seemed appropriate. RP 241-42. He also stated that he thought that, if all the jurors came in and said it made “no difference” to them, he did not think he would ask for a mistrial. RP 242. The court said it would not grant a mistrial if the jurors said it had no impact on them. RP 242.

Each juror was brought out and asked about the issue. RP 243-261. The judge asked Juror 1 if the letter had affected her ability to make a “fair and impartial decision or deliberation in this case,” and that juror said, “[n]o, not at all.” RP 244. She said her reaction was that it was “a

strange coincidence” but she had not noticed if anyone else had a different reaction. RP 244.

Juror 2 said that he or she had only found out about the issue when the court had called in Juror 8 for questioning that morning and “the others went to talking and told me that it happened.” RP 245. The juror said he or she had not heard anything prior to that and had already reached a verdict before that time. RP 245-46.

Juror 3 had heard the disclosure from Juror 8 but said it had no effect on his deliberations because he had already reached a verdict. RP 246-47. He also said the only reactions of others seemed to be “that’s a small world kind of,” and “[t]hat’s interesting.” RP 247.

Juror 4 said he or she did not “comprehend” the meaning of the information until “the very end,” after he or she had already decided on how to vote on the verdict. RP 248-49. The juror admitted hearing the information before rendering a verdict but said he or she “didn’t understand” much about it at that time. RP 249.

Juror 5 admitted hearing the disclosure before he or she had reached a verdict but claimed that it had not influenced his or her “ability to make a fair and impartial decision regarding this case.” RP 250. The juror thought it was “amazing” that the same prosecutor would be appointed to both cases but again said the information had no role in his or her decision. RP 251.

Juror 6 heard the information but said she had reached a decision before that time and the disclosure had not affected her opinion regarding the case. RP 252. She did not hear other jurors relying on it in the

deliberations. RP 253.

Juror 7 heard the disclosure but had already reached a decision and said the information did not affect that decision but had just caused “kind of a small world” reaction. RP 253-54. Juror 7 did not hear it discussed during deliberations. RP 254.

Juror 9 heard the information after having reached a decision and thought it was “interesting” but said it did not change or affect that decision. RP 255.

At the time Juror 10 heard the information, Juror 10 was still trying to decide. RP 256. The juror nevertheless claimed the disclosure did not “influence” the decision-making process. RP 256. That juror thought it was not really part of the deliberations and said his or her reaction was that it did not “pertain to” the juror’s duty. RP 257.

Juror 11 had already reached his or her conclusion when the information was disclosed and said it had no influence on that decision. RP 259.

Juror 12 heard the disclosure before having reached a verdict but claimed not to have given any “consideration” to the information during deliberations. RP 260. Juror 12 did not think anyone else had talked about it in light of guilt or innocence. RP 260.

After all of the jurors were questioned and removed from the room, the prosecutor told the court she was still concerned, because she did not think it had ever happened before and did not know what the result would be if it was raised on appeal. RP 261. Counsel then said he had no argument to make. RP 251. The court said it was not going to “do

anything” but accept the verdict. RP 261. The court was satisfied the information had no effect on the jurors, because many of them had already reached their verdict when the information was disclosed. RP 262. The court said it did not believe the situation rose to the level of requiring a mistrial, although recognizing that “there are those who would potentially disagree with” that belief. RP 262. The court then accepted the verdict of guilty. RP 262.

b. The court should have granted a mistrial and counsel was ineffective

The court abused its discretion in failing to dismiss Juror 8 and, indeed, the entire jury, once the relationship between Juror 8 and the trial prosecutor was discovered and the jury tainted by that information. Further, counsel was ineffective in failing to move for a mistrial.

First, the trial court abused its discretion in failing to dismiss Juror 8 and the entire jury once the relationship between that juror and the trial prosecutor came to light. Actual or implied bias is a recognized basis for dismissing a juror from engaging in deliberations in a criminal case. See State v. Cho, 108 Wn. App. 315, 324, 30 P.3d 496 (2001). RCW 4.44.180 provides that, when a juror has certain relationships with a party, there is a bias implied in law which supports removing them from serving in a particular case. One of those grounds is if the juror is “standing in relation” as a “master-servant,” “attorney-client” or similar link. RCW 4.44.180(2).

While Washington courts appear not to have addressed this issue, state and federal courts have recognized the inherent bias which may arise

when there is in effect an attorney-client relationship between the prosecutor and a juror. See e.g., Celestine v. Blackburn, 750 F.2d 353, 360-61 (5<sup>th</sup> Cir. 1984), cert. denied, 472 U.S. 1022 (1985) (recognizing the appearance of juror bias if the juror is represented by the prosecutor in an unrelated matter); State v. Jaster, 690 N.W.2d 213 (N.D. 2004) (prosecutor represented juror on estates not yet closed); Fugate v. Kentucky, 993 S.W.2d 931, 938 (Ky. 1999) (bias based both on former and current representation); Terrell v. State, 26 Ark. App. 8, 13, 759 S.W.2d 46 (1988) (noting it was proper to have a juror removed for cause who was represented by the prosecutor in a pending civil case).

Further, in this state, there is a unique relationship between the prosecutor and the victim in a criminal case. Our Legislature proposed - and the voters overwhelmingly adopted - a victim's rights amendment to the constitution, with the intent of giving crime victims rights in criminal prosecutions and encouraging them to work closely with prosecutors in such cases. See State v. Gentry, 125 Wn.2d 570, 624, 888 P.2d 1105, cert. denied, 516 U.S. 843 (1995). That constitutional amendment added Article I, § 35, which provides victims with "a meaningful role in the criminal justice system" and "basic and fundamental rights," which include:

[T]he right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered.

Even more extensive rights to be heard, present and informed are granted by statute, in RCW 7.69.030. It is the prosecutor who retains the duty to

facilitate these rights, even going so far as to speak on behalf of victims at proceedings if the victims so desire. See, e.g., State v. Carreno-Maldonado, 135 Wn. App. 77, 86, 143 P.3d 343 (2006).

Thus, the relationship between a prosecutor and a victim in this state is uniquely close. Prosecutors are required to have regular contact with victims, to include victims in the trial and prosecution process, to keep them informed and even speak on their behalf. The relationship is therefore very personal and indeed, more akin to an attorney-client situation than before the passage of the constitutional amendment.

As a result, where, as here, it comes to light that a juror deciding the fate of a defendant in a criminal case is a victim who will be working with the very same prosecutor prosecuting the defendant, that juror clearly has a bias in favor of the prosecution. She will be depending upon that prosecutor for information, access and assistance in vindicating her rights. She will be cooperating with and working with that prosecutor. And she will have a close relationship with the same prosecutor who is asking her to enter a judgment of conviction against the defendant.

Regardless whether the juror declares a belief that this will not affect her decision-making process, the fact of the unique relationship and the respective roles of victim/prosecutor clearly create an implied bias that renders it impossible for the defendant to receive his constitutionally protected right to an unbiased jury. Further, because this biased juror participated in the jury deliberations *after* becoming aware that the very same prosecutor would be *her* prosecutor, the entire jury panel was tainted because of Juror 8's participation and the potential influence that

participation had. See State v. Boiko, 138 Wn. App. 256, 156 P.3d 934, 940 (2007).

The trial court erred in failing to dismiss the entire jury by way of mistrial as a result. A mistrial should be granted when there is a serious trial irregularity which does not involve cumulative evidence and cannot be cured by instruction to the jury. See Greiff, 141 Wn.2d at 921. A court abuses its discretion in failing to grant a mistrial when no reasonable person would take the view adopted by the trial court and there is a substantial likelihood the jurors' verdict was affected. Id., quoting, State v. Castellanos, 132 Wn.2d 94, 97, 935 P.2d 1353 (1997).

Here, there is more than a substantial likelihood the irregularity affected the verdict. The only issue in the case was which side the jury would believe. Either the jury would accept the prosecutor's theory that Galvin had *not* accidentally driven his truck into Harris' or it would accept the defense that Galvin *had* accidentally done so. The "irregularity" of having a juror predisposed to find in the prosecutor's favor would obviously directly affect that determination.

Finally, counsel was ineffective in failing to request a mistrial. Both the state and federal constitutions guarantee the accused the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Hendrickson, 129 Wn.2d 61, 77-78, 917 P.2d 563 (1996); Sixth Amend.; Art. I, § 22. Counsel is ineffective if, despite a strong presumption of effectiveness, his performance is deficient and that deficiency prejudiced the defendant. Hendrickson, 129 Wn.2d at 78. Failure to move for a mistrial when a

defendant is entitled to one can be seen as just such deficient performance. There could be no strategic reason to fail to move for a mistrial when the result of failing to do so is, as occurred here, a violation of your client's rights to a fair and impartial jury. This Court should so hold and should reverse.

E. CONCLUSION

Because Mr. Galvin's rights to a fair and impartial jury were violated, the court erred in failing to declare a mistrial and dismiss the tainted jury. In addition, counsel was ineffective. For these reasons, this Court should reverse.

DATED this 15<sup>th</sup> day of December, 2008.

Respectfully submitted,



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CERTIFICATE OF SERVICE BY MAIL

Under penalty of perjury under the laws of the State of Washington, I hereby declare that I sent a true and correct copy of the attached Appellant's Opening Brief to opposing counsel and to appellant by depositing the same in the United States Mail, first class postage pre-paid, as follows:

to Ms. Kathleen Proctor, Esq., Pierce County Prosecutor's Office, 946 County City Building, 930 Tacoma Ave. S., Tacoma, Washington, 98402;

to Mr. Matthew Galvin, c/o Jessica Galvin, 8224 - 59<sup>th</sup> Ave., Puyallup, WA. 98371.

DATED this 15<sup>th</sup> day of December, 2008.

  
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