COURT OF APPEALS
DIVISION II
OCTOBER 11
STATE OF WASHINGTON
BY

NO. 38258-0-II

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

STATE OF WASHINGTON,

Plaintiff,

vs.

DYLAN YEATES,

Defendant.

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

The Honorable John Wulle, Judge

Clark County Cause No. 07-1-00767-9

BRIEF OF DEFENDANT DYLAN YEATES

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II. ASSIGNMENT OF ERROR

The trial court erred in giving Jury Instruction No. 18, the "Uncontrollable Circumstances" affirmative defense to the charge of Bail Jumping.

III. STATEMENT OF THE CASE

On or about April 26, 2007, at approximately 11:00 a.m., Defendant, Dylan Yeates, was pulled over by Vancouver Police Officer Corporal Greg Zimmerman at 19th Street and Kauffman Avenue for failing to signal for a right hand turn two blocks earlier. RP-55, 56. Yeates had just picked up two other individuals who were riding as passengers in the back seat. RP-55, 57. At trial, Cpl. Zimmerman could not recall where the passengers were seated, nor could he recall whether the vehicle was a two-door or four-door. RP-58. When Cpl. Zimmerman ran a check on Yeates' licence, he was informed that Yeates' license was suspended in the third degree. RP-57. Yeates was arrested and his vehicle was searched incident to arrest. RP-50, 60. The Yeates vehicle was not registered to Dylan Yeates, but rather to Peter and Brenda Yeates. RP-50.

During the search, Cpl. Zimmerman found a compact CD player -type case which contained two digital scales, empty baggies, and a wadded

up, empty plastic baggy containing a light colored crystal substance residue, all of which he associated with drug transactions and drug use. RP - 60–64. Cpl Zimmerman field tested the crystal substance and obtained a positive result for methamphetamine. RP-64. At trial, the Defense stipulated to the positive laboratory test of the substance for methamphetamine and asserted the defense of "Unwitting Possession". RP 67, 226.

As the Clark County prosecution progressed, due to confusion, Yeates missed a court hearing, a warrant was issued, and he was charged with the additional count of Bail Jumping. RP- 189-191. 198, 199.

After a total of approximately 11 court appearances, five continuances, and 15 months of delay, the matter proceeded to trial on July 21, 2008 on one count of Possession of a Controlled Substance – Methamphetamine; one count of [1]Driving While License Suspended or Revoked Third Degree; one count of Unlawful Use of Drug Paraphernalia; and one count of Bail Jumping. RP-16, 172.

With regard to Bail Jumping, Yeates testified that he left the court on the morning his January 7, 2008 trial date was set with the impression that this would be his only required future appearance. RP-173, 194, 199, 201, 202, 203. 204. Yeates further testified that he could have come to court,

1 The Driving While License Suspended or Revoked count was dismissed at the beginning of trial due to lack of evidence. RP-38.

but did not due to in-court confusion and revision regarding the dates on his scheduling order, the remarks of his attorney that he would not be available for the assigned trial date, and his preoccupation with his hospitalization and illness. RP-174, 175, 203. He admitted, however, that he could have come to court and was not prevented from doing so due to hospitalization or illness. RP-189, 190, 191, 198. Yeates testified that he returned to court to quash the warrant and to resume the process as soon as his attorney was available. RP-176, 177, 183.

At the close of evidence, the State requested the statutory "uncontrollable circumstances" instruction pursuant to RCW 9A 76.170(2) regarding the Bail Jumping charge. RP-177, 178. Yeates did not raise the "uncontrollable circumstances" defense and objected to it being offered. RP-178, 205, 206, 207. In support of the objection, Yeates' attorney expressed the concern that there was no evidence to support the affirmative defense, that it was superfluous, and the it would give the jury the false impression that the statutory defense was the only one available for the charge of Bail Jumping. RP-205, 206, 207.

Over the objection of the Defense, the court gave Jury Instruction No. 18A:

> It is a defense to a charge of bail jumping that uncontrollable circumstances prevented the person from appearing and

> that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement to appear and that the person appeared as soon as such circumstances ceased to exist. The Defendant has the burden of proving this defense by a preponderance of the evidence.
>
> "Uncontrollable Circumstances" means an act of nature such as flood, earthquake or fire, or a medical condition that requires immediate hospitalization or treatment or an act of man such as an automobile accident or threats of death, forcible sexual attack or substantial bodily injury in the immediate future for which there is not time for a complaint to the authorities and not time or opportunity to resort to the courts.

RP-218, 219, Jury Instruction No. 18A.

At closing, the state argued that the Bail Jumping statute imposed "some pretty strict liability" on a criminal defendant to appear in court. RP-233. The State was further able to argue that

> one of the things that it tells us how strict that liability is, is the fact that there is - there are some circumstances the law acknowledges the existence or the occurrence of the impossibility. And in this definition of uncontrolled circumstances when you read them, that - that gives you an idea of what the law in Washington says about how compelling this obligation to appear in court is.
>
> You get excused for things like a flood, an earthquake, a fire, an automobile accident, imminent threat - immediate bodily injury, sexual attack. In other words, you've got to be under

> some pretty serious duress - a medical condition that requires immediate hospitalization. You've got to be under some pretty serious duress or some pretty serious disability in order to excuse not showing up in court in the State of Washington. And the burden is on the Defendant.

RP-233 (emphasis added).

Yeates was found not guilty of Possession of a Controlled Substance; not guilty of Unlawful use of Drug Paraphernalia, the Driving While License Suspended or Revoked was dismissed at the beginning of trial; and he was found guilty of Bail Jumping. RP-251-253.

Yeates appeals his guilty finding on the Bail Jumping charge based upon the court giving the instruction on the affirmative defense to the charge, which he did not request and to which he objected.

IV. ISSUE

Whether the court erred in giving the affirmative defense jury instruction to the charge of Bail Jumping.

V. ARGUMENT

The court erred in giving the affirmative defense instruction to the charge of Bail Jumping.

As a general rule, a criminal defendant has the right to "broadly control his own defense". *State v. Jones*, 99 Wn.2d 735 (1983), 664 P.2d

1216. A defendant's right to raise or waive the defense of insanity should be no different from a defendant's right to assert or waive other defenses like alibi or self defense". *State v. McSorley*, 128 Wn. App. 598, 604, 116 P.3d 431 (2005), citing *Jones*.

Jones was a Washington State Supreme Court case which reversed a finding of not guilty by reason of insanity, and commitment, based upon an insanity defense imposed upon the defendant against his will. The *Jones* court said that "courts do not impose [affirmative] defenses on unwilling defendants". *McSorley* at 604, quoting *Jones*. The *Jones* court further stated that courts should not "force any defense on a defendant in a criminal case". *Jones* at 740. "[N]either the State nor the trial court may compel a defendant to raise or rely upon [an affirmative defense]". *McSorley* at 605.

An instructional error is presumed to be prejudicial and requires a new trial unless it affirmatively appears to be harmless. *State v. Wanrow*, 88 Wn.2d 221, 237, 559 P.2d 548 (1977) (quoting *State v. Golladay*, 78 Wn.2d 121, 139, 470 P.2d 191 (1970). Where an instructional error has occurred, a new trial is required because it is impossible to determine whether the jury's verdict was affected by the error. *State v. Zwicker, 105 Wn.2d 228, 243*, 713 P.2d 1101 (1986).

By imposing the statutory affirmative defense of "uncontrollable circumstances" upon the Mr. Yeates, when he did not assert or argue such

a defense, and did not request such an instruction, the trial court dictated to Mr. Yeates the theory of his case, and allowed the State to argue that he was unable to demonstrate the kind of uncontrollable circumstances required to prove himself innocent, shifting the burden of proof to Mr. Yeates thereby. Jury Instruction No. 18A served no other purpose in Mr. Yeates' trial and it is impossible to determine whether the erroneous jury instruction affected the jury's verdict.

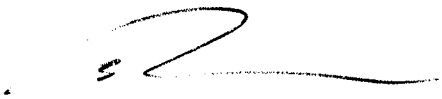
Such an error, being of constitutional magnitude, is prejudicial and only ordering a new trial on the Bail Jumping charge may remedy the error. Only at a new trial with proper instructions may Mr. Yeates properly present his chosen defense and obtain a just result, free of an improper affirmative defense being imposed upon him.

VI. CONCLUSION

The trial court erred in giving an affirmative defense instruction at the request of the State, and over Mr. Yeates' objection. As such, the trial court dictated to the defendant his defense and deprived him of the constitutional right to present his defense as he saw fit. For the foregoing reasons, Mr. Yeates requests that the Judgment and Sentence in this matter be vacated with regard to the Bail Jumping conviction and that this matter be remanded for a new trial on that charge.

DATED this 8 day of December, 2008.

Respectfully submitted,



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WASHINGTON STATE COURT OF APPEALS
DIVISION II

STATE OF WASHINGTON, Plaintiff and Respondent, v. DYLAN YEATES, Defendant and Appellant.	**Court of Appeals No. 38258-0-II** **Superior Court No. 07-1-00767-9** DECLARATION OF MAILING

STATE OF WASHINGTON)
) ss.
COUNTY OF CLARK)

THE UNDERSIGNED, states that on the 8th day of December, 2008, declarant deposited into the mail of the United States of America, a properly stamped envelope directed to Philip A. Meyers, Clark County Prosecutor, PO Box 5000, Vancouver, WA 98666; and that said envelope contained the following: Brief of Defendant Dylan Yeates and Declaration of Mailing.

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 8 day of December, 2008.

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STATE OF WASHINGTON
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WASHINGTON STATE COURT OF APPEALS
DIVISION II

STATE OF WASHINGTON, Plaintiff and Respondent, v. DYLAN YEATES, Defendant and Appellant.	**Court of Appeals No. 38258-0-II** **Superior Court No. 07-1-00767-9** AMENDED DECLARATION OF MAILING

STATE OF WASHINGTON)
) ss.
COUNTY OF CLARK)

THE UNDERSIGNED, states that on the 8th day of December, 2008, declarant deposited into the mail of the United States of America, a properly stamped envelope directed to Philip A. Meyers, Clark County Prosecutor, PO Box 5000, Vancouver, WA 98666; Dylan Yeates, 1615 SE 115th Court, Vancouver, WA 98664; and that said envelope contained the following: Brief of Defendant Dylan Yeates and Declaration of Mailing.

I DECLARE UNDER PENALTY OF PERJURY OF THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 11 day of December, 2008.

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