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NO. 40006-5-II

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

STATE OF WASHINGTON

RESPONDANT,

v.

DAMIEN DARNELL HARRIS

APPELLANT,

COURT OF APPEALS
DIVISION II
FILED IN PM 1:21
STATE OF WASHINGTON
BY *cm*
DEPUTY

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

STATEMENT OF ADDITIONAL GROUNDS

DAMIEN D. HARRIS

APPELLANT,

Clallam Bay Corrections Cen.
1830 Eaglecrest Way.
Clallam Bay, WA 98326.

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CUMULATIVE ERROR:

Applies when there are several errors at the trial court level; but none alone is sufficient to warrant reversal. (St. V. Hodges) 118 Wn. App 668,673-74,77 P.3d 375 (2003)

1. Appellant argues cumulative error.

INTRODUCTION:

Defendant Harris challenges his convictions in case # 09-1-00301-1 with this statement of additional grounds. Defendant Harris's right to due process and his 6th amendment rights were violated. Harris did not receive a fair trial and was convicted of double jepordy.

Additional Ground # 1

PROSECUTOR MISCONDUCT/VINDICTIVE:

Defendant contends that the prosecutor:

1. Failed to give defense the names of the 3 or more people lead in organized crime and persons in Solicit/Murder.
2. Discovery Violation; Nick Taylor Letter/ Tamez search 09.
3. States comments on defense "silence" on an explanation to delivery charges in its closing statement. (SEE St. v. Knapp No. 36098-5 (2009) and St. v. Venegas No. 37828-1 (2010).
4. Violation of Er RULE 404 (b); bringing up defendants past drug charges, investigations, witness statements, and any other items in past to assume guilt.
5. Knowingly eliciting false testimony from Det. Lundquist about his warrant of safety deposit box phonecall. Prosecutor had phone calls of actual recordings when "conceal items in it before law enforcement can find them." It was never said in call. (SEE SU v. FILION 335 F3d.(2003)2nd Cir)
6. Adding a lifetime no-contact order of Adrian Morris out of spite, when Morris was neither a victim or witness, but gave victims life, and witnesses 10 years.

Additional Ground # 2

INSUFFICIENT CHARGING INFORMATION:

The state failed to name its 3 or more people led by defendant in the leading organized crime and who was solicited in the Murder charge, prior to trial violating defendants due process.

The state named its 3 or more people only in its opening statements. With so many people or witnesses missing, or on states witness list and not testifying, the defense was left to guess which people were coming to testify, what 3 people the state was using in trial all the way up till trial started and opening statements began. Failing the defense to prepare a defense. " SURELY TO ENSURE DUE PROCESS, THE NOTICE OF THE CHARGE AND ALL ESSENTIAL FACTS FOR WHICH THE DEFENDANT WILL BE CHARGED OR TRIED ON, MUST BE LOGICALLY GIVEN AT SOME POINT PRIOR TO THE OPENING STATEMENT AT TRIAL." (SEE St. v. McCarty 140 Wn. 2d. 420 425, 998 P2d. 296 (2000). U.S. Const. Amend. VI requires that in all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation..... Const. Art. I sec 22 (amend X) Further states that in criminal prosecutions, the accused shall have the right to demand the nature and cause against him, Therefore an accused has a protected right, under our State and Federal charters, to be informed of the criminal charge against him so he will be able to prepare and mount a

Additional Ground # 2 Continued

defense at trial.(See St. v. Bergerson 105 Wn. 2d. 1, 18, 711, P2d. 1000 (1985).

Every element (material) of the charge, along with all essential facts, must be put forth with clarity. Cr. R 2.1 (a) (1); St. v. Kjorsvik, 117 Wn. 2d. 93,97,812 P2d. 86 (1991). Also see St. v. Vangerpen 125, Wn. 2d. at 787 (FAIR NOTICE).

FOOTNOTES;

Both the original charging information nor amended information named the 3 or more people lead, or who was solicited/murder.

Additional Ground # 3

MISSING WITNESSES:

| | | |
|---------------|-------------------|-----------------|
| Austin Slater | Jim Wentzel | Laura Garcia |
| Steve Perra | Suzzette Stephens | SA Chamroeun |
| Kyle Brinton | Christiana Lamono | Marcus Matthews |
| Corey Scott | Richard Winkle | Scott Uchida |

NOTE:

Corey Scott was on state witness list.

Scott Uchida was ordered no contact in judgement and sentence.
Scott Uchida was not a witness or victim or co-defendant.

Missing witnesses testimony read into record by detectives and defendant never got to cross-examine. Trial Judge let it in for furtherance of conspiracy and defendant was never charged for it and there was never an agreement. Defendant not knowing if what was told to police was true or not.

Additional Ground # 4

DISCOVERY VIOLATION:

Prosecutor committed misconduct by not turning over discovery related to the "Nick Taylor" letter and search warrant on Tamez Emerald address in May 2009. None of the items were given to defendant.

This caught defense by surprise and failed us to prepare for it.

Additional Ground # 5

INSUFFICIENT EVIDENCE-LEADING ORGANIZED CRIME:

Defendant contends there was no evidence that he managed, supervised, directed, financed, or organized, INTENTIONALLY, 3 or more people to engage in a pattern of criminal profiteering, other than trying to bail out of jail. The state contends that the organized crime started in January 2008, as the information charges, meaning that Boyer's testimony as to driving in October, November, December 2007, is false. Temica Tamez only went and picked up belongings and money which she knew nothing about. Adrian Morris was only to help bail. Kathy Kruse was only dealing with the Maintaining a Dwelling, which is not on list for predicate offenses. Watkins testified he cooked crack for Harris a couple (2) times and we got high. These are isolated events and had defendant not gone to jail none of these persons were under my direction. Boyer's testimony was there was no boss, No agreement, nor did Harris instruct Boyer to band together with anyone. Defendant never gave drugs to sell to Boyer nor did he or anyone else give money to Harris. (See St. v. Barnes 85 Wn. App. 638; 932 P2d. 669; (1997). AND ALSO SEE St. v. Strohm 75 Wn. App. 301; 879 P 2d. 962 (1994). None of this adds to Organized Crime.

Additional Ground # 6

INSUFFICIENT EVIDENCE- SOLICITATION MURDER:

Defendant contends that there was reasonable doubt in the solicitation of murder and that trial court abused its discretion in finding defendant guilty with the inconsistent testimony of Boyer, Simmons, and Bennet. And Boyer's motives and Simmons willingness to do whatever Boyer said.

ADDITIONAL GROUND # 7

Abuse of discretion:

- (1). Trial Court erred in not giving defendant credit for time served during the time of 4/18/2008 to 8/29/2008. Defendant was arrested 4/18/08 and was held on a D.O.C. DOSA Hold and new charges. On 5/12/08, DOC revoked DOSA at hearing, but stated that DOSA revoke time would not START until Thurston county charges were completed, and defendant was returned to D.O.C custody. The hearing officer stated that 14 months was left on revoke and once in D.O.C custody, defendant will start 14 months prior to any county time. On 8/29/08 Trial Judge Pomeroy herself released defendant back to D.O.C pending trial. Defendant reached D.O.C on 9/2/08 and DOSA revoke started. The revoke time D.O.C calculated was 9/2/08 to 11/07/09. (14 months). After being released to D.O.C. on 9/2/08, defendant returned to Thurston county on 2/17/09 and stayed until sentencing on 11/19/09. Defendant was released from D.O.C in custody of Thurston on 11/7/09, then sentenced on 11/19/2009. Defendant started DOSA revoke on 9/2/08 to 11/7/2009. By law defendant should get credit from 4/18/08 to 8/29/08, and 11/7/09 to 11/19/09.

(NOTE): Trial Judge Pomeroy released Defendant on 8/29/08 on personal recognance, and is on record and in file.

Additional Ground # 7 (CONT)

ABUSE OF DISCRETION:

(2). Trial Court abused its discretion by letting in testimony of missing witnesses through Detectives testifying. Mr. Harris did not get to cross-examine nor see if any of this was said or not. The defense contends misconduct on the state and investigators. Mr. Harris was never charged with conspriacy nor agreed with any of the missing people to do anything. If it was not let in for the truth, (their testimony) then why was it let in.

Additional Ground # 8

NO-CONTACT ORDER:

A no-contact order was placed on defendant for Adrian Morris and he never testified or pled to Murder or Leading Organized crime charges. No evidence tied him to me and he (Morris) received a sentence for charges he got on his own. Nothing tied defendant to morris crimes. The trial court errored in handing down order because judge didnt consider if it was necessary to put a LIFE TIME no-contact order on Morris to serve the States purpose. (SEE RE: Personal Restraint Petition of Rainey NO. 81244-6 Court of Appeals Div. II (2010).

Also: Scott Uchida never was mentioned or testified, what was the states purpose in ordering a no-contact order.

The state ordered Morris Lifetime order out of revenge.

Footnote:

Trial court provided no reason for lifetime no-contact order on Morris, who was not a victim, and Trial court did not address parameters of the order under the "reasonably necessary" standard; 9-0.

Additional Ground #9

MONEY LAUNDERING:

Defendant contends that there is no evidence defendant lead Temica Tamez in either of the money laundering charges: (1) on the money taken from Kruse's apartment, Tamez did not knowingly or with specific intent to commit a felony, money launder, she only complied with defendant's request to get his things out of the apartment since Kruse threw defendant belongings outside. (2) the money laundering charge from the bank was an illegal search and seizure with no probable cause.

Tamez had no knowledge of money in either the bank or Kruse house, or where it came from. So defendant could not have lead Tamez in an ongoing enterprise of organized crime if she knew nothing of the sort. So those are isolated events and should not contend to a ongoing criminal profiteering drug enterprise as the state contends.

Defendant did not intentionally commit money laundering at Kruse house, only sent Tamez to go there to get things that Kruse had on the streets.

There is no nexus connecting Tamez to criminal enterprise that was an isolated event. Had defendant not gone to jail, Tamez would have not been a part of nothing.

Additional Ground # 10

6th amend. Right to confront informant:

Defendant's 6th amendment right to confront the confidential Informant who introduced state Ex. #108, to the police was violated under the Washington State Constitution and the United States Constitution. Defendant contends that Det. Renschler testified that "letter" had looked similar to defendant's writing and that the letter asked the informant to do things, making the letter testimonial as it was read in court. The process on how Detective Renschler got the letter and if in fact said informant gave him said letter, whether out of plea agreement or not, is the question defendant has the right to confront the confidential informant on cross-examine. Defendant's right to confront witnesses was violated by admissions of 3 "certificates of analysis" showing the results of the forensic analysis performed on the seized substances. The certificates were sworn to before a notary public by analysts at the State Laboratory Institute of the Massachusetts Department of Public Health, as required under Massachusetts law. (SEE Melendez-diaz v. Massachusetts, 130 S ct. 2527. U.S. Supreme Court No. 07-591 (2009)). The Supreme Court of the United States Held that: The states use of Sylvia's statement violated the confrontation clause, because, where testimonial statements are at issue

Additional Ground # 10 (cont)

the only indicium of reliability sufficient to satisfy constitutional demands: is the one the constitution actually prescribes; CONFRONTATION (SEE CRAWFORD V. WASHINGTON, No. 02-9410 (2004) U.S. Supreme Court).

Where the state's case depends on an informant's testimony, (process of how Det. Renschler got letter) and/or (the testimony of "letter" itself), it is obligated to disclose any information it has (or can obtain) regarding his or her credibility. (Benn v. Lambert, 283 F.3d at 1054.) This obligation ties into the defendant's right, under the Sixth Amendment and Wash. Cont. art. 1, § 22, to cross-examine the informant. (Davis v. Alaska, 415 U.S. 308, 315-17 (1974). SEE ALSO State v. McDaniel, 83 Wn. App. 179, 186-87, 920 P 2d. 1218 (1996)(witness' lies in civil case about her drug use were admissible, under the Sixth amendment, to cross examine her in criminal trial-" the defense was entitled to explore the possibility that, given Graham's admitted willingness to lie under oath when it suited her purposes before, she may have been doing it again in the criminal prosecution, for whatever reasons might serve her purposes there.").

Additional Ground # 10 (cont)

Thus, it is the State's obligation to obtain and disclose information about an informant's misconduct as an informant, his/her own exposure to criminal charges his/her history as an informant, his/her corrections' files, and any other information that would show his/her dishonesty and past lying. (Benn v. Lambert, 283 F 3d at 1054-58; U.S. v. Brumel-Alvarez, 991 F.2d 1452, 1457-64 (9th cir. 1993)). Past lying includes past examples of blaming someone else for committing his or her own crimes. (SEE Carriger v. Stewart, 132 F.3d 463, 479 (9th Cir. 19-97)(exculpatory evidence that informant had "a long history known to state authorities, of violence, lying to police, and trying to pin his crimes on others"). "[E]vidence of what a witness received from the Government for past services and might therefore expect in the future is "highly relevant to the question of his potential bias and interest" (SEE U.S. v. Edwardo-Franco, 885 F.2d 1002, 1010(2nd Cir-1989), quoting U.S. v. Leja, 568 F.2d 493, 499 (6th Cir. 1977)). Similarly, evidence that a witness has pending charges is evidence of bias. (SEE Davis v. Alaska, supra; Scully v. U.S. , 564 A.2d 1161, 1165(D.C. App. 1989); U.S. v. Lankford, 955 F.2d 1545, 1548-49 (11th Cir. 1992); Burr v. Sullivan, 618 F2d. 583, 587-88 (9th Cir. 1980).

Additional Ground # 10 (cont)

Finally, apart from the State's obligations to disclose, the defense too has obligations under the Sixth Amendment and Wash. Const. art. 1, § 22, to investigate the case (and informant) thoroughly and to learn of possible impeachment evidence. (SEE generally State v. Ray, -116, Wn.2d. 531,549,806 P.2d 1220 (1991); State v. Jury, 19, Wn. App. 256, 263, 576 P.2d 1302 (1978).

NOTE:

Scott Uchida, is Confidential Informant who gave police State ex. 108. The state did not call him, or place him on their witness list. State only placed him on no-contact list at sentencing. Defense found this out after trial.

Det. Renschler's (Supplemental Officer's Report)-Dated April, 27th 2009, case # 08-109 TNT,) State that informant called him, he then went to see informant at Jail, informant provided him letter, and discussed a conversation (informant) had with Defendant, and then requested some consideration in his charges pending truthful testimony on the states behalf. And Scott Uchida got a plea deal even though he did not testify. Defense never got to see deal.

Additional Ground # 11

Illegal Search Warrant: (Tamez Residence, Emerald St. 5/9/08).

Defendant contends there was no probable cause for warrant to search Tamez residence. No evidence of crime in phone call recorded from 5/5/08. There was no evidence on phone that Harris told Tamez that letter in phone call was asking to commit a crime or tamper with witnesses. Defendant contends warrant is invalid and used "fruits of the poisonous tree" in reference to the \$25,000 from illegal search on deposit box.

Argument :

Defendant contends that there was reasonable doubt in the solicitation of murder and that the trial judge abused its discretion finding the defendant guilty. Boyer's, Bennett's and Simmon's testimony were inconsistent and also different from Paula Howells. Boyer said the letter said "I got \$5,000 to take Cyrus out".(CP line 23-24 pg 1182). And Boyer said the top of letter said "Justin".(CP line 5 pg 1233) and (CP line 18 pg 1233) Bennett said the letter said " 5 racks on Cyrus". (CP line 4 pg 542) Bennett also said the letter said "Mikey" on it and did not have the words "take Cyrus out" (CP line 8-23 pg 557) Simmon's said she couldnt remember and assumed the letter said Justin. (CP line pg pg 635) and (CP line 12-24 pg 658 and line 1 pg 659, and line 19 pg 664) Now Paula Howell said Boyer said the letter said "Mikey" on top. (CP line 21-22 pg 1293 and line 23 pg 1294 and line 10 pg 1295 and line 24-25 pg 1295 and line 1 pg 1296) Nathan Brooks testified Boyer was going to lie on Harris (CP line 10-14 pg 1275) Simmons also testified she would lie to help her friend out to police. Bennett and Simmons only came forward after Boyer's september arrest and only at his direction. Mr. Boyer told Detective Renschler a falsehood about Harris dealing at Ryland Fitzpatrick's (CP line 5 pg 958 and line 9 pg 956) Lenny Hamilton testified Boyer would try to be down for any one. (CP line 16-18 pg 487 and line 22-25 pg 491) And this

letter to "KILL" is missing. There is plenty doubt there. Trial Judge ruled it beleived Boyer, Bennet and Simmons even though Simmons told police the 45 highpoint was hers and would do anything to help Boyer and lie to police to help friends out. (CP line 1 pg 663 and line 6-8 pg 665 and line 20-23 pg 665) There is no evidence that Harris lead Morris or directed him to do anything but bail him out of jail. Boyer testified that there was no leader, no agreement, no sharing or giving Harris profits, or Harris giving Boyer or Morris drugs to sell for him, or that we sold drugs together or Harris told any of them to band together. (CP line 4 pg 1121 and line 7 and 9 and 20 pg 1157, and line 21 pg 1157) In fact Boyer had his own friends and circle. Temica only picked up my things and put her name on my account for me not a on going enterprise. That was a isolated event. Had I not went to jail she would never been a part of nothing. I bought my Chrysler newyorker between October 14th and 21st. so boyer never drove me around with me working full time. Boyer was wanted from april 2007 till his arrest in January 2008. So he was not doing no driving. The same police who testified were the same police going to Simmons house looking for Boyer. Not one person seen Boyer drive me around except Simmons and Bennett. And no one seen this letter or heard

anything about killing Cyrus. Only Simmons and Bennett. Boyer only drove me on April 18th 2008, because I asked him to, not because it was his job. Both Boyer and Shipman testified I pulled sack of cocaine out on my lap and gave it to Cyrus, without passing it to Boyer. Cocaine gets into your system just from touching it, no matter if you keep reaching into a sack to get it or pass it off to Boyer to pass it. All this talk of a letter to kill and passing crack is a story Boyer made up to get off the numerous charges he had. The police gave him a deal of the century. Getting Cyrus to change his testimony was BOYER'S idea told to me so I would bail him out of jail. (SEE DEFENDANTS ALLOCUTION AT SENTENCING, CP line 17-20 pg 29)

There was never a letter to "kill", only a letter asking what's up with the __. __. (C.I.) to see if Boyer told Cyrus to go change his statement like Boyer said he would make him do. Maintaining a dwelling for drug purposes does not appear on list of predicates for Organized crime. Watkins was never under direction of defendant, he asked to cook up coke to get high. Marcus Matthews denied giving Boyer the highpoint gun. Hamilton testified on how Boyer felt that he had to do something to Cyrus not have Lenny do it. Hamilton only said they talked in general about the hate for snitches. Again no one saw or even heard of a letter to kill until after Boyer was charged in September 2008

drug and weapon charges. With the police misconduct of Detective Lundquist's mis-stated facts on search warrant for safe deposit box, his possible finding and putting back together the bryco handgun, (In which Tamez testified was in pieces and Fred Doughty's interveiw of Lundquist in which he states gun was in pieces;SEE defense motions for new trials I and II.) And now his declaration to Prosecutor Scott Jackson in January 2011 that phone call, in question on warrant was never recorded, all this put to gether will render any one person reasonable doubt.

CONCLUSION:

Defendant contends with all missing witnesses and the report of Fred Doughty, the testimony of Tamez that gun was in pieces, the mis-stated facts on search warrant and the denial of the franks hearing, the conflicting testimony of Boyer, Simmons and Bennett, the prosecutor misconduct, the 6th amendment right to confront informant Scott Uchida, the 4th amendment violation search of safe deposit box, should render doubt and give defendant new trial. Det. Lundquist's illegal search warrant and all other search warrants used with the \$25,000, should be voided as fruits off the poisonous tree. Convictions in this case should be reversed and remanded back to trial.