

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II

2012 SEP -6 AM 11:43

STATE OF WASHINGTON

No. 42425-8-1P

DEPUTY

STATE OF WASHINGTON )  
)  
Respondent, )  
)  
v. )  
)  
Jeffrey A Strickland )  
(your name) )  
)  
Appellant. )

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, Jeffrey A. Strickland, 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

Cumulative Error. The trial court made several related mistakes from the improper joining of the 2 defendant's, A 4 month continuance for the prosecution to develop evidence that was never developed, denying me a continuance for my expert on human perception and memory, solely for the purpose of not severing the trial's, and giving the Jury a faulty instruction on my behalf. The state offered no evidence of accomplice liability on my part. All of these mistakes denied me a fair trial.

Additional Ground 2

Actual Innocence. I am actually innocent. The only evidence offered against me at trial was from 2 intoxicated individual's who not only gave testimony that contradicted there own testimony but they also contradicted each other's testimony. This un-reliable testimony should not be enough to maintain a conviction.

If there are additional grounds, a brief summary is attached to this statement.

Date: 09-04-2012

Signature: Jeff Strickland

## Prosecutorial misconduct.

Did the prosecution commit extreme misconduct by inviting the triar of fact to hear and consider exculpatory hearsay out-of-court statements made by a non-testifying defendant (defendant Verby), against the interests of defendant Strickland, thereby intentionally denying defendant Strickland his 6th amendment right to confrontation?

The State brought forth in it's motion to join and memorandum of authorities (CP 22) that the following 3 things must take place in order to insure both defendant Strickland and defendant Verby recieved a fair trial. 1) defendant Verby's out-of-court statements made against the interest of defendant Strickland, must be free of implicating defendant Strickland by name. 2) The state must also redact the statement in such a way that there will be nothing from which the jury "could readily conclude the defendant (Strickland) was involved in the "we's" of the co-defendant's statements, 3) must be accompanied by a jury instruction for the jury not to use the statement against the other defendant.

out of those 3 things the only 1 that happened was the prosecution redacting defendant Strickland's name from defendant Verby's statements.

The prosecution brought in such statements of defendant Verby's through the testimony of detective Laur that 1) "I never saw or touched a gun", 2) "I never pulled the trigger", 3) "I didn't do anything wrong, ask the little mexican guy", 4) "I want to make a deal", 5) "I never had a

gun only a taser", and (b) "I didn't shoot anyone, and if there was a gun I got rid of it."

All of these statements are exculpatory in nature, none of them discuss the behavior that defendant Verby did participate in, only what he did not do. The only reasonable conclusion from these statements would be that defendant Verby was professing his innocence and that defendant Strickland was the guilty party. This is a violation of ER-801(d)(2) as discussed in STATE V. VARNES, 107 Wash. App. 1049, 34 P.3d 241 (2001) "Such out-of-court statements made by a non-testifying party are only admissible if offered against, not in favor of, that party."

The prosecution used defendant Verby's out-of-court statements against defendant Strickland. The introduction of these out-of-court statements and the absence of a proper limiting instruction to the jury gave the prosecution free reign to argue in his closing statement "The evidence circumstantial is he (defendant Verby) gave the gun to Jeffrey Strickland. Verby simple."

However the state never established a transfer of any object between defendant Strickland and defendant Verby. 2 victims and a witness watched this assault unfold none of them testified to an alleged transfer of a fire arm.

The state presented 2 separate cases to the jury and then

tyed them together with hearsay out-of-court statements. This was clearly prejudicial to defendant Strickland, because he was not able to refute these statements as they were never testified to by defendant Kerby. Without these out-of-court statements it's un-reasonable to assume a jury would have been able to tie these 2 stories together. As there is no evidence of accomplice behavior on the part of defendant Strickland it is likely he could have been found not guilty. This case should be reversed and remanded for a new trial.

Jeff Strickland  
Jeffrey A Strickland

This 4th day of September 2012

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2012 OCT 30 PM 12: 50

STATE OF WASHINGTON

BY  ~~assistance~~  
DEPUTY  
Issue 1. Inafective ~~assistance~~ of counsel:  
Issue 2. Judicial misconduct:  
Issue 3. Prosecutorial misconduct:

Facts of the Issue's

During the cross examination of one of the victims in this case the honorable judge Gordon Godfrey sent the jury out of the court room, at this time judge Godfrey informed the state and the defense that he had been observing the prosecution (Gerald Fuller) shaking his head yes and no to the gestions being asked to the victims. The prosecution claimed he had no idea that he was doing this. The court decided that since he had been watching the situation transpire for for at least 10 minutes and no jury memeber had seen this occure that it was compleatly harmless. However since the jury did not know this was going on they don't know that there was a possibility that some of those answer's were directed by the prosecution. Wether these head shakes were intentional or not there is a real possibilty that this affected the testamony in trial. This is a major issue as only the victims testamony tied me to this case as a defendant.

Relife Sought

This is a clear cut situation. We cant know what damage was done by these head shakes. This should have been decalaired a miss trial. Since that did not happen this case should be reversed and remanded for a new trial.