COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. Isaiah Newton, Appellant.	No, 44022-9-II Statement of Additional Grounds for Review

I, Isaiah Newton, 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

A. Did the Prosecutor commit flagrant and prejudicial misconduct by questioning defendant's witnesses' about phone-calls she did not know nor had knowledge of, but was had to make a false report to officer Hannity, that when Newton had come to the door she told not to come in because his mom told him not to come over in his state?

B. It was not the questions themselves that were improper but failure to prove the statements without extrinsic evidence when the witness denies the statements. A person being tried on a criminal charge can be convicted only by evidence not by innuendo?

Argument

The Sixth Amendment to the United States Constitution grant criminal defendants the right to confront and cross examine witnesses 5 AK. Tegland 258 (2) at 315. If the witness denies the prior

statement, extrinsic evidence of the statement is admissible unless it concerns a collateral matter. Infact, as Tegland points out, it may be error for the prosecutor not to introduce extrinsic evidence. If foundation questions are asked and the witness denies making the inconsistent statement, there may be error under particular circumstances if the cross-examiner does not later introduce extrinsic evidence of the statement.

If the rule were otherwise, cross-examiner could be abused by making insinuations about statements that the witness did not infact make and the jury could be misled into thinking that the statements allegedly attributable to the witness were evidence. A person being tried on a criminal charge can be convicted only by evidence not by innuendo. A prosucutor's impeachment of a witness by referring to extrinsic evidence that is never introduced may violate a defendant's right to confrontation. State v Babich, 68 Wn. App. 438, 445-46, 842 P.2d 1053 (1993). When a prosecutor is telling the jury that the defendants witness has a motive to lie poison the jury mind to believe the testimony of the IV officers over the testimony from the defendants witness when extrinsic evidence was never introduce just innuendo from State's main witness.

The many instances of prosecutor misconduct violated Newton's right to due process and right to a fair trial. A jury maybe inclined to give weight to the prosecutor's opinion in assessing the credibility of witnesses, instead of making the independent judgment of credibility to which the defendant is entitled. U.S. v McCoy, 771 F.2d 1207, 1211 (9th Cir. 1985); U.S. v. Young, 470 U.S. 1, 18-19, 84 L.Ed.2d 1, 105 S.Ct. 1038 (1985). Here in Newton's case, was chaulk full of vouching and the use of David Price persistent perjury. RP IV 424. The government may not vouch for the credibility of it's witness. United States v. Simtob, 901 F.2d 799, 805 (9th Cir 1990). The cumulative misconduct by the State

misusing the infer intent to commit a crime from unlawful instruction. Persistent misconduct of vouching and using known perjury caused prejudice and was flagrant and ill-intentioned an instruction from the court would not be able to fix this. The fact using known perjury causes prejudice that demands a new trial. In re Pers. Restraint of Glassman, 175 Wn.2d 696, 710 (2012); Berger v. United States, 295 U.S. 78, 89, 55 S.Ct. 629, 79 L.Ed. 1314 (1935). The prosecutor owes a duty to defendants to see that their rights to a constitutionally fair trial are not violated. Mr. Newton's Burglary conviction should be reversed and the charge dismissed because of cumulative trial error.

C. Did the prosecutor knowingly present perjury to the jury by allowing the State's witness, David Price, to take the stand when she know that he made a false statement to officers report taken of him at the crime scene, about a broken window when extrinsic evidence shows clearly the window had not been broken?

Argument

Did the Prosecutor knowingly present perjury to the jury. Perjury consists of making a materially false statement which the witnesses know to be false under an oath required or authorized by law. An unqualified statement of something that the witnesses did not know to be true is equivalent to a false statement. If the false statement is made in an official proceeding, opinion testimony from a law enforcement officer is especially likely to influence the jury. State v. Barr, 123 Wn. App. 373, 384, 98 P.3d 518 (2004). It is fundamentally unfair for a prosecutor to knowingly present perjury to the jury.

Here, when David Price told the jury that the window was broke out when evidence shows it was not broke. RP IV 424. And when officer Waddell take the stand and told the jury that he seen a broke window was perjury that exhibits show the window not broke. CP 11, 12; RP II 174.

The due process clause entitles defendants in criminal cases to fundamentally fair procedures. It is fundamentally unfair for a prosecutor to knowingly present perjury to the jury, over forty years ago the Supreme Court made clear that a conviction obtained through the use of false evidence, known to be such by representatives of the State must fall under the Fourteeth Amendment. The same result obtains when the State although not soliciting false evidence allows it to go uncorrected when it appears. The court explained that this principle does not cease to apply merely because the false testimony goes only to the credibility of the witness, rather a lie is a lie no matter what its subject. Because the use of known lies to get a conviction deprives a defendant of his Constitutional Right to Due Process of Law.

The conviction must be reverse if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. U.S. v LaPage, 231 F.3d 488 (9th Cir. 2000). All perjury pollutes a trial, making it hard for jurors to see the truth no lawyer, whether prosecutor or defense counsel civil or criminal, may not knowingly present lies to a jury and then sit idly by while opposing counsel struggles to contain this pollution of the trial. It is the presentation

of false evidence by the State that offend the constitution, not merely subornation of perjury. Napue, 360 U.S. at 269. A State knowingly use false evidence including false testimony to obtain a tainted conviction. Phillips v. Woodford, 267 F.3d 966, 984-85 (9th Cir. 2001) "It is well settled that the presentation of false evidence and false testimony violates due process," citing Napue, 360 U.S. at 269. If the State knows that evidence is false and allows its presentation to the jury the trial has been infected with constitutional error a drop of ink cannot be removed from a glass of milk. citing Krulewitch v. U.S., 336 U.S. 440, 453.

Additional Ground 2

Mr. Newton went to his mom house believing that God has healed his wheelchair-bound mom. At the time under influence of drugs, and showed-up outside her bedroom window being loud that when Ms. Williams gave Mr. Newton the consent to enter through her bedroom window. If the Tacoma Police would have asked Ms. Williams about Newton entering into the house' She would have told the officers she had given him permission to enter, therefore, because this question was never asked the trial court abused it's discretion and violated Newton's constitutional right to due process.

Argument

Did the trial court deny Newton's constitutional right to due process when Newton's mother told him to come in through the bedroom window the State failed to prove Newton's entry into her room's window was unlawful. It is the consent

or lack of consent of the residence possessor not the State's or Court's consent or lack of consent that drives the burglary statute's definition of a person who is not then licensed, invited or otherwise privileged to so enter or remain in a building, so when Ms. Williams and Ms. Cooper told the prosecutor they did not tell me that I unvited or unlawful enter into the house that denied me my Due Process that requires the State to prove unlawful element beyond a reasonable doubt. State v. Wilson, 136 Wn. App. 596, 609, 150 P.3d 144 (2007).

A criminal defendant may only be convicted if the State proves every element of the crime beyond a reasonable doubt. U.S. Const. amend. XIV, Art. I, § 3, 22. Blakely v. Washington, 542 U.S. 296, 300-01, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004); Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000); In re Winship, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368 (1970) On a challenge to the sufficiency of the evidence, this Court should reverse a conviction when, after viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could have found all the essential element of the offense beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Drum, 168 Wn.2d 23, 34-35, 225 P.3d 237 (2010). So when Ms. Williams taken the stand and told the court that she invited her son into the house. RP II 99-100. A lawful entry even one accompanied by nefarious intent is not by itself a burglary, unlawful presence, and criminal intent must coincide for a burglary to occur. State v. Allen, 127 Wn. App. 125, 137, 110 P.3d 849 (2005). So if consent was given by Ms. Williams at the window how can the State

take that away from Ms. Williams get a right to change her mind if she told Newton not to come to the house over the telephone, it is what was said at her window that should count.

The State's interpretation, ie. that an otherwise lawful entry or remaining becomes unlawful if accompanied by the necessary criminal intent persuasive for two reasons. First, such interpretation nullifies the statutory requirement of enters or remains unlawfully. Once the necessary criminal intent is found then the entry, of necessity, would be unlawful. The Legislature is presumed not to engage in unnecessary or meaningless acts and a statute must be interpreted so no part is rendered superfluous or insignificant. State v. Wanrow, 88 Wn. 2d 221, 228, 559 P.2d 548 (1977). Second, if such an interpretation is adopted, any crime committed indoors would of necessity, also constitute some degree of burglary. For example, every shoplifter would be guilty of burglary. Although the modern statutory definition of burglary has little in common with its common law ancestor. State v. Bergeron, 105 Wn. 2d 1, 5, 711 P.2d 1000 (1985), the legistature does not appear to have intended such a result when it drafted the current burglary statutes with the requirement of enters or remains unlawfully. A change in legislative intent is presumed when a material change is made in a statute. State v. Baxter, 45 Wn. App. 533, 540, 726 P.2d 1247 (1986).

The addition of the element unlawful in the present statutory definition of burglary was intended to prevent an individual where entry was as a matter of right by

invintation or privileged from being convicted of burglary in the first degree.

Here in this case, the State concedes the victim invited Newton in for limited purpose to make sure her son was alright and not burglarize the premises. State v. Corcoran 82 Wash. 44, 143 P. 453 (1914). More importantly, the State ignores the fact that rarely does one consent to having a crime perpetrated against him or her. If the State's view is followed it leads to the conclusion that any time a person commits a crime in a house or building, then he or she has, of necessity exceeded the scope of consent and has remained unlawfully. Therefore, in construing RCW 9A.52.010 C3, and .020(1) together a person who commits a crime within a dwelling may not be convicted of First Degree Burglary unless there are sufficient fact from which to infer independently that the entry or remaining was unlawfully uninvited or otherwise without consent. State v. Collins, 48 Wn.App. 95, 737 P.2d 1050; State v. Allen, 127 Wn.App. 125, 137, 110 P.3d 849 (2005). Mr. Newton's burglary conviction should be reversed and dismissed.

Dated this 14 day of April, 2013.

// Isaiah Newton

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