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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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NO: 49244-0-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,
Respondent,

V.S.

CHARLES S. LONGSHORE, III
Appellant.

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STATEMENT OF ADDITIONAL GROUNDS

Charles S. Longshore #332121
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520
360/537-1800
Appellant.

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B.1 Assignment of Error

1. The Trial court Erred when it Denied Defendants Motion to dismiss under CrR 8.3(b) Because it Applied the wrong Burden of proof, For Motions involving the violation of Attorney-Client privledge by the State.

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B.2 Issues pertaining to Assignment of Error

1. Does a trial court error by placing the burden of proof on a criminal Defendant in the context of a CrR 8.3(b) Motion to Dismiss, thats based on the states invasion and photo-copying of Attorney-client priviledged confidential notes? When the State is the only one that knows what its done with the privet information? When its impossible to isolate prejudice?

2. Should there be a presumption of prejudice and the State be required to prove beyond a resonable doubt that no prejudice has accured to the criminal Defendants Rights to a fair trial, when the State violates the Attorney-Client priviledge by invading and photo-copying Attorney-Client priviledge notes related to the case?

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C. Argument

1. The Trial Court Erred when it Denied Defendants Motion to dismiss under CrR 8.3(b), Because it Applied the wrong Burden of proof, For Motions involving the violation of Attorney-Clients privledge by the state.

Prejudice Presumed:

A criminal defendants sixth Amendment right to the Assistence of counsel includes the right to confer privetly with counsel. State intrusion into a privet conversation between a defendant and defence counsel is a blatant violation of a foundational right. State v. Fuentes, 179 wn. 2d 808, 318 P. 3d 257 (2014) A Goverments eavesdropping on privileged communication between a criminal defendant and defense counsel is "presomed to be prejudical" to the defendant Id. The Fuentes Court also held: The presumption May be rebutted if the State proves beyond a reasonable doubt that the eavesdropping was not prejudical. Id.

Specifically, Fuentes court said" we now turn to the question of the burden of proof in such a situation and hold that the State has the Burden to show beyond a reasonable doubt that the defendant was not prejudiced" citing State v. Granacki and State v. Stannish as there supporting reasons.. The Fuentes court further held: "we must hold the State to the highest burden of proof to ensure that it is protected" Id.

For example, the State argued that the defendant should have the burden to show prejudice when the information is not communicated to the prosecuter. The Fuentes court in striking down this argument said" The State is the party that improperly intruded on attorney client communication and it must be proved its wrongful actions did not resault in prejudice to the defendant. Further, the defendant is hardly in a position to show prejudice when only the state knows what was done with the information

learned from the eaves dropping. The proper standard must apply is proof beyond a resonable doubt with the burden on the state" Id.

In the case at bar, The Lead Detective Calvin Moran was contacted by the Mason County Jail to observe drawings on a wall of the cell, that Mr. Longshore was alledged to have drawn because they may be relevant to his investigation and the case. The Mason County Jail made this call to detectives after Mr. Longshore was transferred to the Washington correction center.

Subsequently, Detective Moran was on his way out of the building when the Jail staff notified him of property Mr. Longshore left behind that he couldnt take to prison. Detective Moran began photo copying everything contained in the brown bag.. (1) Item was Labled at the top of letter "Questions For Attorney" followed by numbered questions.. These items Later was provided to Defence counsel Brett Purtzer and all other co-defendants attorneys.. Mr. Purtzer immediately recognized the document in question and filed a Motion to compell the Authority of the search that the police had to obtain these documents.

Later, Mr. Longshore through pro se files a Motion to Dismiss, his supporting declaration, defence counsels declarations, and all the documents seized then and since by the police.

On April 19, 2016. The trial court conducted a full hearing on the matter. Mr. Longshore sought clarification as to the burden of proof. Because the State Argues Mr. Longshore has the burden, but cites State v. Fuentes appellate courts decision. However, the supreme court took up the issue and settled the matter. Mr. Longshore stated in part:

"we now turn to the burden of proof in such a situation where the attorney-client privledge may have been violated we hold that the State has the burden of proof see RP 20-21

Instead of addressing the issue, the court directed Mr. Longshore to present his Argument, Authority and what he believes the burden of proof is." see RP 21

Subsequently, on July 1, 2016 the court entered its oral ruling on the record. In so stated:

"The standard of review for dismissal is under CrR 8.3(b), is the "defendant" must show arbitrary action or governmental misconduct and prejudice that affected the right to a fair trial". see RP 126

Without written findings of Fact and Conclusions of law. Its next to impossible to determin what they are.. At a minimum its clear based on the current record that detective Moran photo-copied these documents and gave them to the prosecuter, who later turned them over to defence counsel. The record is unclear as to whether any specific findings such as a "purposeful, without justification or was egregious".. Conduct in conducting the search..

For example In State v. Garza, 99 Wn. App. 291, 994 P.2d 868 (2000) criminal defendants sought dismissal, claiming that the Jail officials seizure and examination of their legal documents violated their right to effective assistence of counsel, The Garza court held: "if Jail security concerns do not justify the intrusion, there should be a presumption of prejudice" Id.

Here, Mr. Longshore and staff already searched the property. But after Mr. Longshore's departure, the detectives was called and a subsequent search was conducted. Wherefor, the only inference that can be drawn is this was a search by law enforcement for prosecuter purposes.. Not one based on Jail security.. As the Jail staff had already searched the property prior to taken Mr. Longshore to prison. Importantly, this search was conducted on June 22, 2012. Just weeks after Mr. Longshores Arrest, Therefor, Mr. Longshore was a pre-trial detainee, being sent to prison on a boarder-Aggreement Given the Jails security and housing needs. Therefor, this search by

detective moran conclusively establishes the search not to be for Jail security reasons but for investigative reasons, to support the crimes Mr. Longshore is being housed for.

In United States v. Cohen, 796 F.2d 20, 27 (2d Cir. 1986) the Second Circuit Court of appeals was faced with a similar situation. For Example the Cohen Court held:

"In this case it is plain that no institutional need is being served. Were it a "prison" official that initiated the search of Barrs cell, established decisional law holds that the search would not be subject to constitutional challange, regardless of whether security needs could justify it. But here the search was initiated by the prosecution solely to obtain information for a superseding indictment. In our view, this kind of search of a prisoners cell falls outside the rationale of the decided cases. Barr, retains a fourth Amendment right". Id

While certainly Mr. Longshore maintains the search and seizure on June 22, 2012 by Detective Moran to be a fourth Amendment violation. Without waiving this issue, the search and seizure also constituted the violation of the sixth Amendment and Article 1 ss 22 of the U.S and State constitution. Because, at least 1 item was Labled "Questions For Attorney" and contained a numbered decription of questions specifically involving this case and was actually used between defence counsel and Mr. Longshore in confidence. See Affadavit of Mr. Puntzer and Mr. Longshore.

In State v. Perrow, 156 Wn. App. 322, 231 P.3d 853 (2010) the court of Appeals held:

"Washington Rev. Code ss 5.60.060(2)(a) washington Attorney-client priviledge, Applies to communication and advice between an Attorney and client and extends

To documents that contain a privileged communication. It Applies to any information generated by a request For legal advice." Id

"The eight part Dietz test guides courts in determining if an attorney-client relationship exists, (1) The client must have sought legal Advice, (2) the legal Advise must have been saught from an Attorney, (3) The communication must have been made to obtain legal Advice, (4) The communication must have been made in confidence, (5) the communication must have been made by the client, (6) the client must wish to have protect His identity, (7) The client must wish to protect information from disclosure and (8) The protection MUST not have been waived". Id

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All of which are supported here in this case. While perrow was at home and maintained slighlty more privacy rights. the right to the Sixth Amendments effective Assistence of counsel and Attorney-client priviledge is not waived because a person is incarcerated.

Prejudice:

In united States v. Irwin, 612 F.2d 1182, (9th cir. 1980) our ninth circuit court of appeals held:

"prejudice can manifest itself in several ways. It resaults when evidence gained through the interference is used against the defendant at trial. It can also resault from the prosecuters use of confidential information pertaining to defense Plans and strategy from governmental influence which destroys the defendants confidence in his attorney, and from other actions designed to give the prosecution an unfair advantage at trial. Id at 1187

As So Many of our Courts in this State have said "Dismissal is the sole adequate remedy when the State intercepts privlege communications between an attorney and client. It is not possible to isolate the prejudice resulting from the intrusion" State v. Perrow 156 Wn. App. 322, 271 P.3d 853 (2010)

For example In State v. Granacki, 90 Wn. App. 598, 959 P.2d 667 (1998) the Chief investigator officer witch was allowed to sit at counsels table for the state, walked over to defence table and read the legal pad containing counsels notes. An evidentary hearing was held where the court later dismissed the charges.

In so the court held:

"The right to have the assistence of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial. For that reason the court held that where the State intrudes on the defendants right to effective representation by intercepting privileged communications between an attorney and his client, the only adequate remedy is dismissal... Id.

State v. Granacki, is informative on this vary case. Because, theres a big difference between the two case's.

For Example, in the case at bar, the lead detective mr. Moran actually took and photo-copied confidential Notes Labled "Questions For Attorney" and gave them to the prosecuter. This Fact is undisputible. While in Grancki, the lead detective testified he only read his name on the notes at counsels Table. Whether the notes are authored by the client for his Attorney, or by the Attorney for his client is of no consequence. The Sixth

Amendment and Article 1 SS 22 of Washington State Constitution and RCW 5.60.060(2)(a) ~~Because~~ Applied, "Any kind of intrusion into Attorney-client documents violates the defendants rights to effective assistence of counsel". State v. Willis, 64 Wn. App. 634, 640, 825 P.2d 357 (1982); State v. Granacki, 90 Wn. App. 598, 959, P.2d 667 (1998); State v. Perrow, 156 Wash. App. 322, 237, P.3d 853 (2010); State v. Garza, 99 Wn. App. 291, 994 P.2d 868 (2000). see Also State v. Cory, 62 Wn.2d 371, 376, 382 P.2d 1019 (1963) (quoting Glasser v. United States, 315 U.S. 60, 76, 62 S.Ct. 457, 467, 86 L.Ed. 2d 680 (1942).

In sum, "No conviction can stand, no matter how overwhelming the evidence of guilt; if the accused is denied the effective assistence of counsel" State v. Cory, 62 Wn.2d 371, 376, 382 P.2d 1019 (1963). As such, in such a situation, where a invasion of privet attorney client communication has accured by the state. The court must hold, the State to the highest burden of proof beyond a reasonable doubt, that the rights of the accused to a fair trial has suffered no prejudice. Further, this court must declare that a presumption of prejudice must be presumed! Because the defendant is hardly in a position to show prejudice when only the State knows what its done with the protected information its obtained.

D. Conclusion

For the above reasons this court should dismiss the charges with prejudice, because the record does not establish that the State has proved beyond a reasonable doubt that Mr. Longshores rights to a fair trial has not suffered prejudice. Further, the court should hold there to be a presumption of prejudice in such situations, and the State bears the burden to prove beyond a resonable doubt no prejudice has accured. and/or order such other relief it deems just in the premises.

Ch L

Charles S. Longshore, III
FNC16
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520

Dated This 8th day of June 2017

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GR. 3.1

Court of Appeals, Div II
Attn: Honrable Clerk
950 Broadway, Ste 300
Tacoma, WA 98402-4454.

June 8, 2017

Re: State v. Longshore No. 49244-0-II

Dear Court Clerk:

Enclosed please find My Statement of Additional Grounds in the above entitled case to be filed.

Vary truly yours,

CLL

Charles S. Longshore #332121
FNC16
Stafford Creek Corr. Ctr
191 Constantine way
Aberdeen, WA 98520

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STATE OF WASHINGTON