

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II

2017 SEP -1 AM 10:06

STATE OF WASHINGTON )  
Respondent, )  
V. )  
Joel M. Krebs )

COA No. 49396-9-II  
State of Additional  
Grounds For Review  
BY ced  
DEPUTY

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
GRAYS HARBOR COUNTY

STATEMENT OF ADDITIONAL GROUND (RAP.10.10)

Joel M. Krebs  
D.O.C.#393156  
1301 N. Ephrata  
P.O. Box 769  
Connell, Washington 99326  
Coyote Ridge Corrections Center

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON                    )  
                  Respondent,            )  
  )  
                  V.                        )  
  )  
Joel M. Krebs                            )  
  )  
  )

COA No. 49396-9-II  
Statement of Additional  
Grounds For Review

My name is Joel Michael Krebs, D.O.C. #393156 Date Of Birth, October 3rd 1997. On July 27th, 2016 the life as I knew it ceased to exist. I had graduated High School a month prior and had been enrolled with a Full Scholarship to the college of my dreams. Universal Technical Institute in Phoenix Arizona. My family and I thank you for taking the time to read, and rule upon this case. There are Grave unconstitutional errors in this case that deprived me from a Fair and Impartial Trial.

GROUND ONE  
Insufficiency of Evidence  
To Support a Material Element  
Of The Crime

Taking the Alleged Victims own Testimony at Trial, a rationale trier of fact can not prove Rape in the second degree by reason of Mental Incapacitation or Physical Helplessness. The Prosecutions entire theory of guilt relies upon the "victim" being Unconscious when the act of Sexual Intercourse began. The Alleged Victim's testimony states as follows: "Joel came back in and then forced himself inside of me, it was very painful , he was very violently angry about it." VRP Pgs. 54,55 Lines 24-25, 1-10. This is her version of how the Intercourse Started, She describes me coming into the room, engaging in intercourse, and even describes how it felt. Furthermore describing my Demeanor at the time. She further states: "I screamed, was crying , and asking him to stop, and then saying it was hurting and he kept going." VRP 55, 1-10. On Cross Examination, Defense Counsel asks:

"Is it true that you told Investigator Delia that you them no, stop?"

Answer: "Yes"

"Is it also true that you told investigator Delia that you told Joel to stop and screamed at him it was hurting?"

Answer: "Yes" VRP Pgs 72,73

Physcial Helplessness:

"A person is Physically helpless when the person is unconscious or for any other reason is Unable to communicate unwillingness to act."

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

MENTAL INCAPACITATION:

"Mental Incapacity is a condition existing at the time of the offense that prevents a person from understanding the nature or consequences of the act of sexual intercourse, whether that condition is produced by illness, defect, the influence of a substance or by some other cause."

Nowhere in the alleged victim's testimony does she that she came to after the act had begun as it relates to Joël Krebs "I screamed, was crying, and asking him to stop." VRP Pg. 55 She states that she is clearly expressing her non-consent.

Rape in the third degree is defined as follows:

"A person commits the crime of rape in the third degree when he or she engages in sexual intercourse with another person not married to him or her when the other person did not consent to the sexual intercourse, and such lack of consent was clearly expressed by the other person's words or conduct."

The alleged victim clearly stated that she "screamed, was crying, and asking him to stop." Then saying "It was hurting and he kept going." VRP Pgs 54-55

She is stating in her own testimony at trial that she clearly expressed her lack of consent. Counsel argues this in her brief as well. I respectfully ask this court to dismiss the charge of rape in the second degree by Physical Helplessness or Mental Incapacitation and re-mand for Trial limited to the charge of Rape in the third degree.

GROUND 2  
PROSECUTORIAL MISCONDUCT

The U.S. Constitution states that I have a right to trial by a fair and impartial Jury. The Prosecution Prejudiced the Mind's of the Juror's by referring un-truthfully to their witness's testimony. Stating in Closing Arguments that "Shianne talked about coming to when the defendant was on top of her, and inside of her, again, she wasn't conscious when it started." Nowhere in the alleged victim's testimony does she say this. "It is improper for a Prosecutor to make factual statements in Closing Argument which have no basis in the evidence presented in the case." United States V. Rios 611 F.2d 1335, 1342-43 (10th Cir. 1979)

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

In this case there was a multitude of abuse and misconduct by the Prosecution. "The Prosecutor may not attack the defendant's theory of the case with comments regarding the defense attorney's role in representing the defendant." State V. Reed, 102, Wn.2d 140,143,684 P.2d 699 (1984). Bell V. State 614s. W.2d 122 (tex.1981) "Reference to defense attorney's duty to "see that his client get's off." Example: "Defense counsel got up here just a minute ago and told you he has another way out." "He's trying to get him out of this case." VRP Pg.217 22-25 This refers directly with State V. Reed, and Bell V. State. The Prosecutor's Misconduct was Highly Prejudicial, tainted the mind's of the Juror's and deprived me from a constitutionally fair and impartial Trial. State V. Charlton 90 Wn.2d 657,664-65, 585 P.2d 142 (1978) "(I)t is incumbent upon the Public Prosecutor as a quasijudicial officer, to seek a verdict free of prejudice and based upon reason. (T)he Prosecutor, in the interest of Justice, must act impartially, and his trial behavior must be worthy of the position he holds. Prosecutorial Misconduct may deprive the defendant of a fair Trial. And only a fair trial is a Constitutional Trial. (I)f Prosecutors are permitted to convict guilty defendants by improper, unfair means, then we are but a moment away from the time when prosecutor's will convict innocent defendant's by unfair means." Stated in Counsel's Initial brief are many other Abuse and Misconduct's by the Prosecution.

"(T)he Prosecutor's duty is to ensure a verdict free of Prejudice and based on reason." State V. Claflin 38 Wn. App. 847,850, 690, P.2d 1186(1984)

I ask this court, in the unlikely event the case is not remanded for trial on the charge of Rape in the third degree, to view all of the Misconduct by the prosecution as a whole, and to re-mand for re-trial of the original charge.

GROUND 3  
TRIAL COURT JUDGES ABUSE OF DISCRETION  
IN ALLOWING OPINION TESTIMONY OF (VICODIN)

The Prosecution relies upon unconsciousness when the act of Sexual Intercourse started, based on voluntary intoxication of Alcohol. Belating Mental Incapacity or Physical Helplessness. The blood draw results from the Washington State Patrol Toxicology Labratory contain No positive findings of All known drugs.

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

Any and all mention of drugs is, and was, pure speculation. It's only purpose in this trial was to prejudice the mind's of the juror's as a false underlying means of Mental Incapacitation or Physical Helplessness. Allowing this testimony into the Trial violated my Constitutional right to a fair and impartial Trial and prejudiced the Jury against the defense, with no evidence to support the states claim.

In the interview of the alleged victim conducted by the defense, She stated she did not believe she was drugged. "They aren't smart enough for that." in State V. Mee Hui Kim 134 Wash. App. 27, (2006) The Court excluded evidence and argument about date-rape drugs "because there was no evidence that Kim was given a date-rape drug and the testimony was speculative." Counsel stalks about this on Pgs. 30-35 of the initial Brief. This Court should so hold that al testimony relating to drugs was and is highly prejudicial, and procluded me from a fair and impartial Trial, and re-mand for re-trial.

GROUND 4

UNCONSTITUTIONAL LEGAL FINANCIAL  
OBLIGATIONS

The Financial Obligations imposed by the Trial Court offend the Eighth Amendment's excessive fines clause, Inflicting Cruel and unusual punishment imposing Legal Financial Obligations in violation of due process, and a hearing to determine an ability to pay. I cannot pay, and because there was not a hearing to determine this fact, the Sentence imposed by the Trial Court was beyond statutory authority, invalid on it's face. The Trial Court did find that I was indigent, and could not afford the cost of defense against this charge. The Trial Court Appointed Counsel at public expense, until hiring of a private Attorney of whom I am still in debt with as well. Indigency to this date has not changed, as I was appointed Appelate Counsel as well, and have remained in custody from the time these Financial Obligations were imposed. Upon release, finding a Job as a Felon is hard, let alone a Felon with a Heinous crime as such as this. Imposing these Legal Financial Obligations is not only an unconstitutional hardship but imposed without proper Due Process in establishing an ability to pay. I respectfully ask this Court to dismiss these Legal Financial Obligations in light of the above.

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

Please review all of these issues combined with Defense Counsel's Brief and view as a whole to see the severe Prejudice, Insufficient evidence, and Misconduct of the Prosecution that prejudiced me from receiving a fair and impartial Trial, and re-mand for re-trial limited to the charge of Rape in the third degree.

Appellate Counsel addressed the majority of these issues in the Initial Brief. This is an addition to them, things that I saw at Trial and in the Transcripts. My family and I thank you for taking the time to read, and consider this voice.

Sincerely,

Joel M. Krebs #393156



8-25-2017

I Joel M. Krebs does say and depose these documents to be True and Correct under penalty of perjury pursuant to RCW 9A.72.085 title 28 U.S.C. (1746).

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II

2017 SEP -1 AM 10:06

PROOF OF SERVICE

STATE OF WASHINGTON

I Joel M. Krebs, the Defendant in this action, make the following in accordance with GR 3.1:

BY \_\_\_\_\_  
DEPUTY

I Joel M. Krebs, declare that, on August 25th, 2017 I deposited the foregoing Statement Of Additional Grounds (RAP.10.10), or copy thereof, in the Internal Mail System of Coyote Ridge Correction Center, and made arrangements for postage Addressed to:

Court Of Appeals Division II  
Of the State Of Washington  
950 Broadway STE. 300  
Tacoma, Washington 98402-3694

I declare under penalty of Perjury under the laws of the State Of Washington that the foregoing is true and correct.

DATED at CONNELL, WASHINGTON on August 25th, 2017

SIGNED:



Joel M. Krebs

8-25-2017