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DIVISION II

2017 APR 18 AM 11:09

STATE OF WASHINGTON

BY _____
DEPUTY

NO. 49481-7-II

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

STATE OF WASHINGTON
RESPONDENT

V.

RICHARD WAYNE BLAIR
APPELLANT

STATEMENT OF ADDITIONAL GROUNDS
RAP 10.10

CERTIFICATE OF MAILING
I certify that I mailed
1 copies of SAG
brief to to M. Hyer
& C. Glenski
4/20/17 SW
Date Signed

RICHARD WAYNE BLAIR
#947837 EH5
CLALLAM BAY CORR CTR.
1830 EAGLE CREST WAY
CLALLAM BAY WA. 98326

THE APPELLANTS SIXTH AND FOURTEENTH AMENDMENT RIGHT TO A FAIR TRIAL WERE VIOLATED WHEN THE TRIAL JUDGE ALLOWED THE PROSECUTOR TO CHANGE JUROR NO. 38 OUT FOR JUROR NO. 9 AFTER THE STATE ALREADY USED THEIR SECOND PEREMPTORY CHALLENGE ON JUROR NO. 9 AND HAD ALREADY EXERCISED ALL SIX PEREMPTORY CHALLENGES AT THIS POINT OF THE JURY SELECTION

ALL CRIMINAL DEFENDANTS HAVE A CONSTITUTIONAL RIGHT TO A FAIR TRIAL UNDER THE SIXTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, AND ARTICLE 1 § 22 OF THE WASHINGTON STATE CONSTITUTION GUARANTEE CRIMINAL DEFENDANTS A RIGHT TO TRIAL BY A IMPARTIAL JURY.

IN ALL PROSECUTIONS FOR OFFENSES PUNISHABLE BY IMPRISONMENT IN A PENITENTIARY BOTH PARTIES ARE ENTITLED TO SIX PEREMPTORY CHALLENGES. (CrR 6.4 (e)(1)) IN RCW 4.44.210 IT SETS FORTH THE PROCEDURE FOR PEREMPTORY CHALLENGES. ACCORDING TO THIS STATUTE, EACH PARTY MAY CHALLENGE JURORS ALTERNATELY UNTIL THE NUMBER OF CHALLENGES HAVE BEEN EXHAUSTED. A TRIAL COURT MUST FOLLOW

THE ORDER OF OPERATIONS NUMERICALLY BY STARTING AT JUROR ONE, AND GOING ON TO JUROR TWO, JUROR THREE, AND SET FORTH AND NOT AS THE TRIAL JUDGE SAID. RCP 246 AT 21, 22, 23. IF THIS WAS THE CASE, THEN IN THIS INSTANT CASE, THE TRIAL JUDGE SHOULD OF STATED THIS ON RECORD BEFORE JURY VOIR DIRE HAD ACCURED. THERE HAS BEEN A PRIMA FACIE SHOWING OF PURPOSEFUL DISCRIMINATION WHEN THE TRIAL JUDGE ALLOWED THE PROSECUTOR TO GO BACK AND CHANGE THEIR SHEET AND JUROR NO. 38 FOR JUROR NO. 9. RCP 246 AT 1, 2, 3, WHEN THE STATE HAD ALREADY EXERCISED ALL SIX OF THEIR PEREMPTORY CHALLENGES AT THIS POINT OF JURY SELECTION. RCP 245 AT 19, 20. THE DEFENDANT HAD EXCUSED FIVE JURORS AND WAS GOING TO WAIVE HIS LAST ONE FOR JUROR NO. 38. RCP 245 AT 23, 24, WHEN THE PROSECUTOR KNEW THAT JUROR NO. 38 WAS GOING TO BE THE TWELFTH JUROR ON APPELLANTS PANEL. THE PROSECUTOR KNEW THAT JUROR NO. 38 HAD PRIOR CONVICTIONS RCP 54 AT 23, 24, 25 AND RCP 55 AT 1, 2, 3, 4, SO THE STATE MOVE FOR A SIDE BAR RCP AT 14 TO 22 TO UNSTRICK JUROR NO. 9. DEFENSE COUNSEL OBJECTED RCP 246 AT 7, RCP 247 AT 14, 15, 16, 17.

WHEN THE PROSECUTOR WENT BACK TO CHANGE THEIR PEREMPTORY CHALLENGE TO DESMISS JURY VENIREMEMBER MR. KNOWLES, THE ONLY JURY MEMBER OF THE VENIRE WITH A CRIMINAL RECORD, AND WHEN DEFENSE COUNSELOR OBJECTED, THIS IN LIGHT ESTABLISHED A PRIMA FACIE CASE OF DISCRIMINATION. RCP 248 AT 1, 2, 3, 4. THE PRIMA FACIE CASE WAS EASILY MADE BECAUSE THE PROSECUTOR STEREOTYPE AND SINGLED THIS JUROR OUT (AT SIDE BAR) MAKING IT ABUNDANTLY CLEAR THAT HE DID SO ON THE GROUNDS THAT BECAUSE OF HIS RECORD HE WOULD HAVE A DIFFERENT VIEW POINT FROM THE REST OF THE VENIRE. THE TRIAL JUDGE APPROPREATELY ALLOWED THE PROSECUTOR TO GO BACK AND CHANGE OUT JUROR NO. 38 FOR JUROR NO. 9. RCP 246 AT 9, 10, 11, 12, 13. THE APPELLANT HAS A FOURTEENTH AMENDMENT EQUAL PROTECTION GUARANTY, BUT ALSO THE JURY PROTECTIONS CONTAINED IN ARTICLE 1 § 21 OF OUR STATES CONSTITUTION, AND IN THIS CASE THE APPELLANTS HAS BEEN VIOLATED. COURTS HAVE CONSISTENTLY RECOGNIZED PEREMPTORY CHALLENGES AS INTEGRAL TO FOR-CAUSE AND PEREMPTORY CHALLENGES AS PART RIGHT TO FAIR TRIAL AND IMPARTIAL JURY UNDER FEDERAL SIXTH AMENDMENT AND ARTICLE 1 § 21 AND § 22 OF OUR CONSTITUTION.

A MAN OR WOMAN WHO HAS HAD THEIR RIGHTS RESTORED SHALL NOT BE EXCLUDED FROM JURY SERVICE IN OUR STATE ON ACCOUNT OF RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, OR ECONOMIC STATUS. TO BE FREE FROM ACTUAL BIAS, A JUROR MUST BE ABLE TO (1) SET ASIDE PERSONAL BELIEFS, OPINIONS, OR VALUES INSOFAR AS IS NECESSARY TO FOLLOW THE LAW AND DECIDE THE CASE FAIRLY, AND JUROR NO. 38 MR. KNOWLES SAID HE WOULD IF PICK AS A JUROR. RCP PAGES 64, 65, 66. REVERSAL IS WARRANTED ON APPEAL BECAUSE THE TRIAL JUDGE (1) ACTED IN BAD FAITH BY ALLOWING THE STATE TO RE-DO JUROR NO. 38 FOR JUROR NO. 9, AFTER THE STATE HAD ALREADY EXCUSED JUROR NO. 9 FROM JURY SELECTION. COURTS IN OUR STATE HAS RECOGNIZED BATSON V. KENTUCKY, 476 U.S. 79, 106 S.CT. 1712, 90 L.ED. 2d 69 (1986) WHEN IT COMES TO RACIAL DISCRIMINATION. NOW THE QUESTION TO THIS COURT IS CAN BATSON BE LOOKED AT AND REINTERPRETED IN APPELLANTS CASE THAT REGARDLESS OF THE COLOR OF A JUROR, IF A JUROR HAS A PAST CRIMINAL RECORD, AND HAS THEIR CONSTITUTIONAL RIGHTS RESTORED TO BE A JUROR, AND THE PROSECUTOR USES A PEREMPTORY CHALLENGE ON THAT JUROR DOES THIS SHOW A PRIMA FACIE DISCRIMINATION BY STEREOTYPING THAT JUROR? JURORS MAY NOT BE DISMISSED

SIMPLY BECAUSE THEY HAVE PAST CRIMINAL RECORDS. THEN THE NEXT QUESTION TO THIS COURT CAN THE PROSECUTOR GO BACK AND CHANGE OUT A JUROR THEY ALREADY USED A PERMPTORY CHALLENGE ON AFTER THEY HAVE EXERCISED ALL SIX OF THEIR PERMPTORY CHALLENGES?

IN CONCLUSIONS THE APPELLANT RESPECTFULLY REQUEST THAT A NEW TRIAL IS WARRANTED BASED UPON THE ABOVE FOREGOING REASONS.

DATED THIS 15TH DAY OF APRIL 2011

RESPECTFULLY SUBMITTED,

RICHARD W. BLAIR

RICHARD W. BLAIR
#947837 E145
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TACOMA WA. 98402

RE: NO. 49481-7-II

DEAR MR. BYRNE:

PLEASE FIND ENCLOSED APPELLANTS STATEMENT OF ADDITIONAL GROUNDS RAP 10.10. I HAVE SENT A COPY TO MY ATTORNEY CATHERINE E. GLENDLE.

PLEASE KEEP ME UP TO DATE ON MY CASE & THANK YOU FOR YOUR TIME, AND HELP.

SINCERELY,

Richard W. Blair

RICHARD W. BLAIR #947837 EH5
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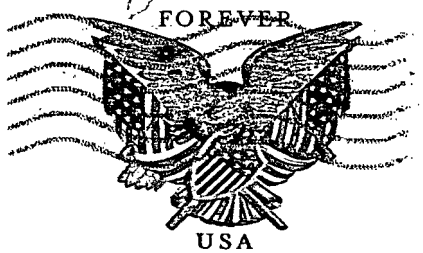

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