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Court of Appeals
Division II
State of Washington
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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,
Respondent,

v.

FORREST EUGENE AMOS,
Appellant.

) No. 50400-6-II

) STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, Forrest Eugene Amos, 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 ONE

The trial court erred by denying Amos the right to be tried in Grays Harbor County, which is where the charged offenses of forgery and criminal impersonation 1° were actually committed.

Article I, section 22 of the Washington Constitution provides that: "[i]n criminal prosecutions the accused shall have the right . . . to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed." (Emphasis added). See also, CrR 5.1.

Proper venue is not an element of the crime. *State v. Rockl*, 130 Wn.App.

293, 297, 122 P.3d 759 (2005). Rather, it is a constitutional right that is waived if not asserted in a timely fashion. *Id.* A decision denying a change of venue will be disturbed only for an abuse of discretion. *Id.* A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. **State v. Powell**, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

Amos claims that the trial court's decision denying his right to be charged in the proper county (i.e., venue) is unreasonable and based on untenable reasons. RP at 71-73 (06/07/2017). This is because none of the elements of either the forgery or the criminal impersonation 1^o offenses were committed in Lewis County, yet Amos was charged therein. The State attempted to argue that venue was proper in Lewis County because a single element of the forgery offenses was committed therein when he "passed off as ture" the documents alleged to have been forged. Amos asserts that all elements of the forgery offenses were actually committed in Grays Harbor County, which is where he made the documents, signed them in front of a Notary and placed them in the mail. This is when the forgery offenses were completed. To claim otherwise would be absurd and allow the essential elements of forgery to be separated from each other, effectually eliminating the required correlation between each of the elements. The forgery offenses charged in this case were completed when Amos made the documents, signed them and then placed them in the mail. These acts also included the "passed off" element relied upon by the State because GR 3.1(c) (the prison mailbox rule) considers the date the documents were filed to be the same date the documents were mailed from the prison. This occurred in Grays Harbor County.

With regard to the criminal impersonation 1^o offenses, the State

acknowledged that those crimes all occurred in Grays Harbor County. RP at 72 (06/07/2017). However, they argued that judicial economy should allow them to be tried in Lewis County. Amos asserts that his constitutional right is not so flimsy that it can be trumped by simply claiming "judicial economy." Especially when the other forgery offenses are, at best, loosely based in Lewis County if GR 3.1(c) is not going to be considered by this Court. It is a huge stretch to find that any of the elements of the forgery offenses are based in Lewis County. Therefore, this Court should vacate the convictions and order that the charged offenses be tried in the Grays Harbor County, which is where the actual crimes were committed.

ADDITIONAL GROUND TWO

Amos claims that the charging information was defective because it did not give him proper notice of where the charged offenses actually occurred.

"[A]ll essential elements of an alleged crime must be included in the charging document in order to afford the accused notice of the nature of the allegation so that a defense can be properly prepared," along with the particular facts supporting them. *State v. Kjorsvik*, 117 Wn.2d 93, 101-02, 812 P.2d 86 (1991) (citing 2 Wayne LaFare & Jerold Israel, *Criminal Procedure* § 19.2, at 446 (1st ed. 1984)). The constitutional adequacy of charging documents are reviewed de novo. *State v. Johnson*, 180 Wn.2d 295, 300, 325 P.3d 135 (2014).

While the County is not an element of the crime, it is a required fact that Amos is entitled to notice of so he can properly assert his constitutional right to be charged in the County where the crimes were committed. Without such notice, Amos cannot make a timely challenge.

In this case, the State recognized that the Charging Information was

defective because it charged the offenses as if they occurred in Lewis County, when they actually occurred in Grays Harbor County. RP at 70-73 (06/07/2017). The trial court denied the State's request to amend the defective Charging Information, which violated Amos' constitutional rights. He was unable to effectively assert his other constitutional rights associated with the right to be charged in the proper County.

Based upon the above, this Court should set aside the convictions that resulted from the defective Charging Information and remand back for a new trial based upon the corrected Charging Information.

ADDITIONAL GROUND THREE

The trial court erred by denying Amos' motion to dismiss via *State v. Knapstad*, 107 Wn.2d 346, 729 P.2d 48 (1986).

Under *Knapstad*, the trial court should dismiss a criminal charge if there are "no disputed material facts and the undisputed facts do not raise a prima facie case of guilt as a matter of law." *Id.* at 356-57; *State v. Barnes*, 189 Wn.2d 492, 495, 403 P.3d 72 (2017). *Knapstad* findings are reviewed de novo. *State v. Montano*, 169 Wn.2d 872, 876, 239 P.3d 360 (2010).

Based upon the undisputed facts of the case, the documents that were created by Amos were simply a notice which had not legal effect to cause liability (i.e., injury) to any of the victims in this case. Furthermore, based upon the State's theory that Amos entered himself as surety in those bonds, it is impossible for the victims to be subject to any sort of liability or financial injury. If Amos was the surety, he would be the one who would be held liable or financially injured if an action was brought against the victims. Lastly, it is undisputed that no action was brought against the victims as a result of the documents being filed with the county clerk.

Therefore, no injury ever occurred in this case. The State indicated in their response to Amos' Knapstad motion that "[t]he documents were an attempt to sue the Prosecutor's liability bond" So, because they recognized these documents for what they truly were, an attempt to sue, there is not criminal intent behind Amos' actions, which is a required element for each offense charged. Since this is an undisputed fact, dismissal was required under Knapstad. See State's Response to Knapstad motion (CP at ___).

Based upon the above, this Court should find that the trial court should of dismissed the four counts of forgery under the Knapstad analysis.

ADDITIONAL GROUND FOUR

The trial court's rulings on the State's motion in limine outright denied Amos the right to a fair trial. This is because he was unable to present a defense, argue his theory of the case or have the jury properly instructed.

A trial court's rulings on a motion in limine is reviewed for an abuse of discretion. *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). A court abuses its discretion if it is exercised on untenable grounds or for untenable reasons. *State v. Ruiz*, 176 Wn.App. 623, 634, 309 P.3d 700 (2013). Even if the trial court abuses its discretion, the error is not reversible unless the appellant demonstrates prejudice. *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). Appellate courts apply the rule that "error is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred." *Id.* at 403 (quoting *State v. Tharp*, 96 Wn.2d 591, 599, 637 P.2d 961 (1981)).

In this case, the State sought to limit a number of things Amos could present, talk about or question witnesses about throughout the trial. First, the trial court granted the State's motion to preclude Amos from asking any of

the witnesses about personal finances, namely whether or not they are insolvent or if they are rich. RP at 62-63 (06/07/2017). This grossly effected Amos' ability to present a defense and argue his theory of the case. This is because Amos was required to prove that the parties were insolvent in order to justify subrogation. Based upon the "conditions of release" contract imposed by the Superior Court after he was arrested for the crimes charged under cause No. 13-1-00818-6, Amos was required to either remain in jail pending the outcome of the criminal proceedings or post a 1 million dollar bail to be released pending the outcome of the criminal proceedings. This is the forced commercial contract the State imposed upon Amos and was the subject to his attempt to sue the liability bonds of the Prosecutor and Police Officers. Since Amos thought these people (i.e., the victims in this case) committed misconduct during the criminal proceedings, he thought he could sue their individual bonds. However, he was unable to argue his theory of the case to the jury and prove that his actions through subrogation were justified based on the victims of this case being insolvent.

Second, the trial court granted the State's motion to preclude Amos from asking questions as to the status of bonds of the Centralia Police Department. RP at 65-67 (06/07/2017). Since this case was about Amos' attempt to sue the liability bonds of the Prosecutor and Police Department, as explained above, this motion in limine prevented Amos from being able to present a defense or argue his theory of the case.

Third, the trial court granted the State's motion to preclude Amos from requiring or asking, inquiring, the witnesses to recite specific oaths of office. RP at 68-69. The oaths of office were essential for Amos to assert action against the Prosecutor and Police Department. Amos believed that the

Prosecutor and Police Officers forfeited their official bonds under title 42.08 RCW when misconduct was proven. This was the bases of Amos' action in filing the documents which lead to these charges in this case.

Lastly, the trial court granted the State's motion to preclude Amos from questing and arguing to the jury whether the written instrument had legal efficacy. RP at 69-70. This prevented Amos from questioning the witnesses about the legal effect of the documents that the State claimed to be forged. Legal efficacy was an essential element of the crime of forgery, as is the intent to injure. However, the trial court limited Amos' ability to question the witnesses about those elements. The trial court incorrectly considered the legal efficacy issue a matter of law that was not for the jury to decide. RP at 69 (06/07/2017).

It was not until after most of the witnesses testified, that the trial court and Prosecutor recognized that Amos was correct with regard to the legal efficacy issue. RP at 257-58 (06/09/2017). That was when the State sought to recall one of the witnesses, Jonathan Meyer, to try and establish the legal efficacy element, which Amos objected to twice. RP at 270-71 (06/09/2017). This was to late and already prejudice Amos' right to present a defense and argue his theory of the case. There is a high probability that the outcome of the case would have been different but not for all the motions in limine that were erroneously granted by the trial court in this case. The jury was obviously interested in what information Amos could present because they asked the trial court to define the term "subrogation" while they were deliberating. RP at 373-74 (06/09/2017). However, that request was denied by the trial court. This Court should find that any motion in limine to prevent questions, information or evidence concerning an essential element, such as legal

efficacy or intent, can never ever be harmless or non-prejudicial. Anytime the trial court limits an essential element of the particular offense charged in a criminal case should be considered a structural error, requiring automatic reversal.

Based upon the above, this Court should vacate the convictions and remand for a new trial.

ADDITIONAL GROUND FIVE

The trial court erred by denying Amos' pretrial discovery request which prevented his right to a fair trial.

Generally, trial court evidentiary decisions, including decisions on discovery, are reviewed for an abuse of discretion. *State v. Grenning*, 169 Wn.2d 47, 57, 234 P.3d 169 (2010). Among other things, discretion is abused if exercised on untenable grounds or for untenable reasons. *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003). A violation of a court rule is generally not considered constitutional error, and courts consider whether "the outcome of the trial would have been materially affected" had the error not occurred. *State v. Cunningham*, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980).

In this case, Amos requested documents, such as, the bonds or the Prosecutor's Office and the Police Department, their oaths of office and any liability insurance policies. They were material to the case because Amos attempted to sue the liability bonds of the Prosecutor and Police Officers. However, the trial court erroneously held that these documents were immaterial, thereby, preventing Amos from receiving a fair trial. This is because he could not prepare a defense or argue his theory of the case. Since the jury asked the trial court to define "subrogation," it indicates that the jury was interested in what Amos attempted to prove, but was ultimately

prevented from proving, because the trial courts abuse of discretion in denying the production of the requested discovery materials.

Based upon the above, this Court should vacate the convictions and remand for a new trial with instructions to provide Amos with the discovery materials he requested pretrial.

ADDITIONAL GROUND SIX

The trial court erred by denying the jury's question and Amos' request to provide the jury with an instruction defining the term "subrogation."

It is clear that the trial court must instruct the jury on every element of the crime. *State v. Emmanuel*, 42 Wn.2d 799, 819, 259 P.2d 845 (1953). This includes that trial courts must define technical words and expressions used in jury instructions, but need not define words and expressions that are of common understanding. *State v. Allen*, 101 Wn.2d 355, 358, 678 P.2d 798 (1984).

In this case, the term "subrogation" was included in the to-convict instructions. Under the law of the case doctrine, the State assumed the burden of proving that Amos used "subrogation" documents to prove the four counts of forgery. *State v. Hickman*, 135 Wn.2d 97, 954 P.2d 900 (1998). However, the jury was not appraised of the definition of "subrogation," even after they asked the trial court for the definition during deliberations. RP at 373-74 (06/09/2017).

Had the jury been instructed on this technical term, it is highly likely that the jury would have returned a not guilty verdict in this case because they would have understood that Amos' actions did not have the criminal intent necessary to find him guilty. Especially since the victim Jonathan Meyer admitted that an action could be brought against his bond if done correctly and how he knew what Amos was trying to do. RP at 148, 158-60, 174-77

(06/07/2017). Based upon this testimony from the Prosecutor, i.e., the victim, Amos raises another additional ground for vindictive prosecution that the Court should consider because this testimony suggests that the Prosecutor sought criminal action against Amos for attempting to sue him and his cohorts official bonds. This testimony is shocking and shows the truth behind the prosecution herein.

Based upon the above, this Court should vacate the convictions and remand for a new trial with instructions to properly instruct the jury on the technical term of "subrogation."

ADDITIONAL GROUND SEVEN

The trial court erred by denying Amos' request to include lesser included offense instructions for attempted forgery and criminal impersonation 2^o.

A party is entitled to have the jury instructed on a lesser included offense if that offense satisfies the two-pronged test this Court established in *State v. Workman*, 90 Wn.2d 443, 447-48, 584 P.2d 382 (1978). Under the first prong (Workman's legal prong), the offense must consist solely of elements necessary to conviction of a greater offense charged. *Id.* at 448. Under the second prong (Workman's factual prong), the evidence must support an inference that only the lesser offense was committed, to the exclusion of the greater offense charged. *Id.*

In this case, the evidence does not show that the act of forgery had legal efficacy because the court clerk never pursued action against the liability bond of the Prosecutor of Police Officers. The evidence presented at trial supports an attempted forgery at best. Therefore, Amos' request for a lesser included offense instruction for attempted forgery should have been granted.

With regard to the criminal impersonation 1° offenses, the State offender no evidence that Amos intended to injure or defraud while acting under the assumed character of the victims. The State proved that those victims were public officials or police officers, therefore, the lesser included offense of criminal impersonation 2° should have been granted because this is all the evidence proved.

Based upon the above, this Court should vacate the convictions and remand back for a new trial with instructions to include a lesser included instruction for attempt forgery and criminal impersonation 2°.

ADDITIONAL GROUND EIGHT

The trial court exceeded its authority under RCW 9.94A.535 by imposing a sentence above the statutory maximum sentence allowed by law for a class C felony, which is 5 years.

Based upon the language "subject to the limitations of this section," as provided under RCW 9.94A.535, Amos asserts that the trial courts ability to impose an exceptional sentence above the statutory maximum sentence for a particular offense is limited even when multiple offenses are being sentenced. Amos does not challenge the justification for the exceptional sentence in this case, he only challenges the clearly excessive sentence that was imposed for the four forgery convictions, which are class C felonies and subject to a 5 year statutory maximum sentence under RCW 9A.20.021(1)(c).

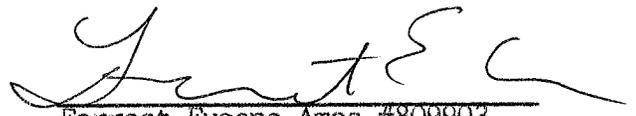
It has been long established that multiple offenses are sentenced concurrently under RCW 9.94A.589(1)(a), unless an exceptional sentence is imposed under RCW 9.94A.535. However, it has also long been established that exceptional sentences are subject to the limitation of RCW 9A.20.021. RCW 9.94A.537(6); see also, RCW 9.94A.506(3).

So, while the trial court has the authority to impose a sentence above

the standard range or consecutive sentences (or both) as an exceptional sentence, their sentencing authority when imposing those sentences are subject to the limitations of RCW 9A.20.021. See RCW 9.94A.506(3). Therefore, in a case involving multiple class C felony convictions, the trial court only has the power to fashion an exceptional sentence up to the 5 year statutory maximum sentence allowed by law under RCW 9A.20.021(1)(c). Otherwise, the language "subject to the limitations of this section" would be rendered ambiguous and allow trial courts the ability to impose de facto life sentences upon a defendant who already has a high offender score and is facing 20 counts of low level felony crimes, such as, a forgery which is a seriousness level I offense pursuant to RCW 9.94A.515. Is it fair to give that defendant 100 years? The answer should be NO and this Court should recognize the limiting language that is provided under RCW 9.94A.535. Once the trial court reaches the limitations provided in RCW 9A.20.021, their ability to depart from RCW 9.94A.589(1) governing whether sentences are run concurrently is limited. To conclude otherwise would provide an absurd result under our sentencing scheme.

Based upon the above, this Court should recognize the limiting language of RCW 9.94A.535 and vacate Amos' 116 month sentence because it exceeds the 5 year statutory maximum sentence allowed by law. This Court should also find that his sentence is clearly excessive in light of the purpose of the Sentencing Reform Act. This is because a 5 year statutory maximum sentence justifies the intent and purpose of the "free crime aggravator," no matter how the statutory maximum sentence is achieved under RCW 9.94A.535, i.e., by imposing a sentence above the standard range or by imposing consecutive sentences. The rule of lenity should apply to cure any ambiguity resulting from the limiting language recognized for the first time under RCW 9.94A.535.

Dated: June 19, 2019



Forrest Eugene Amos #809903
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, Wa 98326

DECLARATION OF SERVICE BY MAIL
GR 3.1

I, Forrest E. Amos, declare that, on
This 20 day of June, 2019 I deposited the foregoing
documents.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

or a copy thereof, in the internal legal mail system of CBC

And made arrangements for postage, addressed to: (name & address
of court or other party)

Edward Penoyer, Attorney At Law

P.O. Box 425

South Bend, WA 98586

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

Dated at CLALLAM Bay, Wash. on 6.20.19
(City & State) (Date)

Forrest E. Amos
Signature

FORREST AMOS
Type / Print Name

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