NO.50796-0-II

In the Court of Appeals of the State of Washington Division two

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State of Washington,

Respondent,

v.

Dean O'Neal,

Apellant,

FILED
COURT OF APPEALS
DIVISION II
2018 JUL 13 PM 1:07
STATE OF WASHINGTON
BY _____
DEPUTY

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on Appeal from the Superior Court of the State of Washington for Pierce County

The Honorable Garold Johnson, Judge

Brief of Apellant Pro-Se

DEAN M. O'NEAL

Table of Authorities

Washington Cases:

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Federal Cases:

Davis v. Alaska, 415 U.S. 308, 315, 94 S.CT (sic) 1105, 1109, 39 L.Ed 2nd 347 (1974)

Burr v. Sullivan, 618 F.2d 583, 586 (9th Cir. 1980)

U.S. v. Blakely, 14 F.3d 1557 (11th Cir. 1994)

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U.S. v. Hitt, 981 F.2d 422 (9th Cir. 1992)

U.S. v. Leos-Quijada, 107 F.3d 786 (10th Cir. 1997)

Rules, Statutes, and other Authorities:

- U.S. Constitution Ammendment 6
- U.S. Constitution Ammendment 14
- Washington Official Reports Headnotes

Additional Ground 1

1. Due Process violation And violation of 6th and 14th Amendments Due to not having the ability to Confront my Accuser's and my right to cross examine witness/victims against me. Out of 3 victims Against me for 3 counts of Assault in the 1st Degree only 1 victim/witness was present for trial at any Period of time, And denies every Aspect of this Case.

Davis v. Alaska, 415 U.S. 308, 315, 94 S.CT (sic) 1105, 1109, 39 L.Ed 2nd 347 (1974)

- The United States Supreme Court held that, The right to Confront Witnesses gauranteed by the 6th Ammendment and 14th Ammendment includes the right to Cross-Examination to show their possible Bias or Self Interest in Testifying.

Burr v. Sullivan, 618 F.2d 583, 586 (9th Cir. 1980)

- Ninth Circuit reaffirmed that it is Axiomatic that Defendants have a right to Confront Witnesses. It is also true that a witness potential motives for testifying is a relevant Inquiry.

Confrontation Clause provides that in all Criminal Prosecutions, An accused shall enjoy a right to be Confronted with the witnesses against him or her. U.S. Constitutional Ammendment 6. This means statements are Inadmissable in A Criminal Prosecution Unless a declarant is Unavailable and a defendant has a Prior

opportunity to Cross examine the declarant. The United States Supreme Court in Crawford v. Washington Sets forth examples of a "Core class" of testimonial statements, and Post Crawford cases since, clarify the limits of a testimonial Statement Category By focusin largely on a "Primary Purpose" of an interrogation or investigation. For example, interrogations by Law Enforcemen Officers Solely directed at establishing the facts of a past crime, in order to identify a Perpatrator fall within an ambit of testimonial hearsay. By Contrast, Statements are non-testimonial when made in the course of Police interrogation under Circumstances objectively indicating that the Primary Purpose of the interrogation is to enable police assistance to meet an on-going emergency.

Additional Ground 2

2. Prosecutorial Misconduct for the state to ask me about defense witnesses and bring to the attention of the Jury.

1998 WASH. App. Lexis 1366:: State v. Wagner:: September 21, 1998

"It is Misconduct for the Prosecutor to appeal to the Jury's passions in order to obtain a conviction."

"A Defendant has no duty to present any evidence, and it is Improper for the state to draw attention to the

abscence of defense witnesses."

"Prosecutorial Misconduct may deprive the Defendant of a fair trial and only a fair trial is a Constitutional trial."

"Note 1. There were two seperate instances of Misconduct, each of which were repeated. Note 2. Given these errors, together with the Mishandled evidence, including the Loss of several items between the date of the crime and the trial, We Cannot be Confident that a reasonable Jury would have reached the Same result in the abscence of the Misconduct. For that reason we must reverse."

Additional Ground 3.

3. Cumalative error violating Due Process; 14th Ammendment

- If numerous Police testify; It's Considered to be Prejudicial. On grounds Police Do not have intimate Knowledge of events. It Is third Party Hearsay testimony. Numerous Officers testimony is considered Prejudice as Cumalative; violating Due Process; 14th Ammendment.

Additional Ground 4

4. Multiple Unfair Prejudicial Prosecutorial misconduct statements that mislead the Jury, and appealed to passion and/or Prejudice.

Section 4 of 4, page 457 of Trial Transcripts

Prosecutor says "If I'm to be believed."
Defense Attorney objects to editorial comment.

Section 4 of 4, page 512
During closing Argument Prosecutor states to Jury "I Lied through my teeth."

Section 4 of 4, page 518
Prosecutor states to Jury "I have to say It's Self-Defense.

Section 4 of 4, page 522
Prosecutor states to the Jury "the idea that this was Self-Defense is Ludicrous."

Section 4 of 4, page 534
Prosecutor states to the Jury "you have a clear picture that the Defendant is guilty."

Section 4 of 4, page 574

Prosecutor states to Jury "I had no desire to honor the Oath as a witness, because my testimony was non-sense."

U.S. v. Blakely, 14 F.3d 1557 (11th cir. 1994)
"Prosecutor may not make suggestions, insinuations, and assertions calculated to mislead a Jury."

U.S. v. Crooks, 83 F.3d 103 (5th cir. 1996)
"Counsel is not permitted to make appeal to passion or prejudice calculated to Inflame a jury."

U.S. v. Hubbell, 167 F.3d 552 (D.C. Cir. 1999)
"5th ammendment protects against: 1. Compulsion, 2. of testimony, 3. that incriminates."

U.S. v. Vaziri, 164 F.3d 556 (10th Cir. 1999)
"A new trial is required If perjured testimony could in any reasonable likelihood have affected the judgement of the Jury."

Additional Ground 5

5. Ineffective Assistance of Counsel

Ineffective Assistance of counsel for failing to object to prejudiced comments made by the prosecutor multiple times.

Section 4 of 4, page 512 of Trial Transcripts Lines 3 and 4
Prosecutor states to Jury "I lied through my teeth."
No Objection from Defense Attorney.
Prosecutor states again on lines 22-23 with no
Objection from Defense Attorney.

Additional Ground 6.

6. Prosecutorial misconduct - Depicting and Degrading my character to mislead the Jury and appeal to passions and prejudice.
By asking me about Being previously shot in 2015 which has nothing to do with this case and repeatedly asking me about why I never reported it to the police. Section 4 of 4, page 439, 440, and 441 of Trial transcripts.

U.S. v. Hitt, 981 F.2d 422 (9th cir. 1992)
"Where evidence is very slight if any probative value, It is Abuse of discretion to admit it; If there is even modest likelihood of unfair prejudice or small risk of misleading Jury."

U.S. v. Leos-Quijada, 107 F.3d 786 (10th cir. 1997)
"Evidence of defendants proximity to illegal activity and other suspicious factors are insufficient to prove guilty beyond a reasonable doubt."

164 Wn. App. 724 :: State v. Walker :: May 9, 2011
Washington Official Report headnotes

[10] Criminal law - Trial - Misconduct of Prosecutor - Prejudice - Cumalative effect.

"The Cumalative effect of several instances of Improper conduct by a prosecutor may be so flagrant that no instruction or series of instructions could erase their combined prejudicial effect, in which case a claim of prosecutorial misconduct is established and the conviction must be reversed."

Conclusion:

Because of the multiple instances of prosecutorial misconduct, Ineffective Assistance of counsel, violations of 6th and 14th Ammendments, and Cumalative error deprived me of a fair and Constitutional trial, I Dean M. O'Neal request this matter be remanded for retrial.

Dated- July 7, 2018

Respectfully Submitted,

Dean O'Neal