

FILED
Court of Appeals
Division II
State of Washington
12/10/2019 11:14 AM

NO. 52824-0-II

SUP. CT. #18-1-00437-1

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

STATE OF WASHINGTON, Respondent

v.

MICHAEL SCOTT, Appellant

APPELLANT BRIEF

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118 Wis. 89, 94 N.W. 771 (1903). In a doubtful case ... criminal tendency, effect to swerve such mind toward accepting conclusion of guilt.

State v. Stout, 2002 WI App 41, 250 Wis. 2d 768, 641 N.W.2d 474,

01-0904. Reasonable suspicion is not a prerequisite to an officer's seeking consent to enter a private dwelling.

United States v. Catton, 89 F.3d 387 (7th Cir. 1996), the Seventh Circuit found that reversal is required

STATE v. WATKINS, 53 Wn. App. 264 (1989)No. 18347-8-I. Watkins argues that she was prejudiced in the presentation of her defenses by the court's refusal to sever.

Simmons v. United States, 390 U.S. 377, 384, 19 L. Ed. 2d 1247, 88 S. Ct. 967 (1968);

State v. McDonald, 40 Wash. App. 743, 746, 700 P.2d 327 (1985)

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Mapp v. Ohio (1961)

State v. Ferguson, 140 N.C.App. 699 (2000)

State v. Jordan, 120 N.C. App. 364, 370, the jury is entitled to consider in evaluating a witness's credibility,

CONSTITUTIONAL PROVISIONS

The **Washington State Constitution Article I Section III** forbids the use of pretext as a justification for a warrantless search or seizure.

Exclusionary Rule in U.S. law, the principle that evidence seized by police in violation of the

Fourth Amendment to the U.S. Constitution may not be used against a criminal defendant at trial. The **Fourth Amendment** guarantees freedom from unreasonable searches and seizures—that is, those made without a warrant signed by a judge. The U.S. Supreme Court held in *Wolf v. Colorado* (1949) that “security of one’s privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society.” However, that decision did not extend to state courts.

During the next decade, approximately half of the states adopted the rule. Later the Supreme Court held in *Mapp v. Ohio* (1961) that the rule had to be applied universally to all criminal proceedings.

The broad provisions of the exclusionary rule came under legal attack, and in he Supreme Court held that evidence obtained “in good faith” with a search warrant later ruled invalid was admissible. A central argument was

the unacceptable social cost of excluding such evidence, a reason subsequently given for creating further exceptions to the rule.

CrR 8.3(b)

WPIC 6.42.

42 U. S. C. §1983. 18 U.S.C. §1001.(a) (1)(2)(3)

Fourth and Fourteenth Amendments to the Constitution. The Fourth Amendment states that "No Warrants shall issue, but upon probable cause, supported by Oath or affirmation. The Fourteenth Amendment states that "No person shall be deprived of life, liberty, or property without due process of law."

the fact that the State has a "weapon to control the witness." (the possibility criminal charges can be reinstated against a witness is within the proper scope of cross-examination)

RULES

RULE 402 RELEVANT EVIDENCE GENERALLY ADMISSIBLE;

IRRELEVANT EVIDENCE INADMISSIBLE

RULE 403 EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS
OF PREJUDICE, CONFUSION, OR WASTE OF TIME

RULE 609 (c) (1) IMPEACHMENT BY EVIDENCE OF CONVICTION
OF CRIME

RULE ER 701 OPINION TESTIMONY BY LAY WITNESSES

RAP 2.5(a)

RULE ER 901: REQUIREMENT OF AUTHENTICATION OR
IDENTIFICATION

(a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

2. 403 "Filter through which all evidence must pass" - Relevant evidence may be excluded if it (1) poses problems (confusing the jury, undue delay, waste of time, cumulative evidence) & that problem will (2) "substantially outweigh" its probative value. ****Don't use all objections at once. First, "not relevant." Denied-then, argue under 403 "how"/"why" the evidence is unfair**

WASHINGTON STATUTES

RCW 4.24.350(1) Actions for damages that are false, unfounded, malicious(1) malicious prosecution...action was instituted with knowledge that the same was false, and unfounded, malicious and without probable

cause in the filing of such action, ...as a filing an action known to be false and unfounded.

RCW: 9.73.050 Admissibility of intercepted communication in evidence.

RCW 5.46.010 (The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

EVIDENCE AUTHORITY

528240.VOLUME3.SCOTT.VPD

Incident Report Ce No. 14-4216,

Supreme Court of the United States, No. 18-485

INTRODUCTION

STATEMENT OF ARGUMENT

For the Honorable Judges of the Appellate Court of Cowlitz County in the State of Washington; Case, COA#: 52824-0-11. I am bringing to you the proceedings of the trial in Superior Court of Cowlitz County in the State of Washington, from October 29, 2018, Case: SUP. CT.# 18-1-00437-1. STATE of WASHINGTON v. MICHAEL SCOTT. A felony judgment; the Jury found me Guilty of Counts 1-3, Not Guilty Ct 4,

Guilty Counts 5-11 and 1 Count of Bail Jump. I strongly oppose this decision of guilty. I am requesting the Judgement for Acquittal.

As I find the problem in this case actually comes down to, two points (1) the Identity of the Person in the grainy, blurry surveillance videos, to be Michael R. Scott. (2) and, After plead guilty, Summer Smith then testifies against Michael Scott for the purpose of Identification, for getting a Lesser Charge..

I am requesting this Judgement be Reversed with the help of your Honors; CrR 8.3(b), WPIC 6.42. Admissions or Incriminating Statement by...& In the Supreme Court of the United States No. 18-485 Fabrication.

In summary, Michael R. Scott is being charged with 9 counts of Burglary, second degree, against Woodland Walmart Store, during, September 19, 2013, through March 12, 2014. Judge Ann Crusier, my sentencing judge, advised me at sentencing to appeal, so I am appealing my Judgement. She also had stated during trial issues that brings me to believe I have good cause to follow this course, Verbatim Report of Proceedings; Transcript; 528240.VOLUME3.SCOTT.pdf, accompany with the videos and still photos in the evidence from the court case

no:SUB. CT # 18-1-00437-08. This transcript & Videos with the Still Photos, I find vital to my case.

I believe this guilty verdict was with errors that started under;

wrongful arrest or Malicious Arrest without a true identification of whom

the arrest was for. Which was under questionable investigative reasoning,

done by Officer Murray, within his testimony in the transcript on (October

18, 2018) VRP: Pg 417 Video 11A-2. (March 3, 2014).

Throughout the trial, the prosecutor has been cautioned by the

Judge, not to lead the witness. VRP: Pg.317. Objection; Sustained, VRP:

Pg323, Objecting finding with setting Foundation and Relevance with his

leading the witness, VRP: Pg 326. Objection; LeadingVRP:Pg 327-328

Objection; Leading, Sustained. This goes on and on, throughout the trial,

leading the witnesses, being repetitive, lengthy, cautioning over and over

about Leading, Speculation w/Relevance for Foundation. Totally within

the parameters that Rule ER 403.1(d) 2(F)(J). Typical recurring issues

under the prejudice rule.

The Prosecutor has, within the transcripts, used the witnesses to

extend the testimony by showing the evidence of 10 videos and a lot of

grainy blurry photos. Becoming lengthy and repetitious, stated also by the

judge; VRP: Pg344&Pg346. He reshows all 10 burglary videos again to witness Ms. Summer Smith in court, And then, after his videos wouldn't run on his laptop, he still shows photos from the video to Kelly Smith and Mike Geiger, one by one. This definition for error within Rule 403. VRP Vol 2: Pg 209-Pg 278. Then witness for the prosecution When Officer Murray testified he brought more photos, some mugshots and surveillance security/defendant of both defendants these were put into Exhibit 13A-E & exhibits 14A-G&12H the Hall of Justice; Exhibits 18B-L. To try and confirm the identification of the accused as in case of Sergey Fedoruk.

As lengthy as this process was the proceedings did involve a timeline that gave Jerad Carter, the loss prevention agent for Walmart, logically the ability to look for the criminals on his own time, be able to himself do surveillance, that would get the license plate of the individuals that were stealing the dead batteries. Why would he not bring that to light? As a witness, he would be more credible, I would think. Instead, he's saying he gave the officer the evidence, and he looked through the video frame by frame, to eventually guess what the license plate might have been. VRP:Pg.417Video11A-2. Thinking as a reasonable person doubt.

Then after, comes to the correct address to arrest Summer Smith. In which, brought Michael Scott to be arrested, without proper identification, as of the theory he was, the white male in the videos, only after being at Ms. Summer and Kelly Smith's residence. The only description was a white male with dark hair about 6 ft tall, 180-200lbs and a bald spot on his head. Summer Smith testified that she had brought several people to this type of crime to help her steal batteries VRP; Pg 322.

Next possibility of Rule ER 701 Forged using a fabricated testimony by a person known to hate Michael Scott for many years and decides to testify after the prosecutor threatens her daughter with an extensive sentence. 18 U.S.C. § 1001. Probability in Rule 609(c) (1) In an incentivized exchange to testify; an ex-girlfriend gives identification of co-defendant being Michael Scott, the reason for the thief is unemployment and drug use. Thereafter, the act of testifying against someone that there has been a romantic bond, lying is a type of justification of that act. As well as she was raised to lie, her mother allowed it. VRP; Pg451

Unemployment is also untrue proven with the testimony of Mike Giger, that they work together. Also in the VRP;Pg.510.

The prosecutor brought up Michael Scott, Bail Jump from (Feb. 16, 2017), in front of the Jury. He took the stand as was his choice to be able to give his side of the story. As well as a theft in the third degree in (Feb. 2014). Rule 404(a)(1). Unaware that the Jury was going to be present. The prosecutor had the Arresting Officer from Oregon come and testify about the shoplifting that caused the Bail Jump, pertaining to the charges of this case.

Then there is the amount that the dead batteries are worth in connection with the videos shown there in the exhibited evidence and what amount the prosecution charged Michael Scott with. Prosecutor tried charging him with \$4100.00 of dead batteries. 216 Batteries. The person that was assisting Ms. Summer Smith in the videos that were in evidence were 33 dead batteries. Shows again prejudice on behalf of the prosecutor. And Michael Scott when he was sentenced, the prosecutor argued with the Judge for his suggested sentence being 51 months, the max., because she sentenced 27 months the min. possible for the charges, but still being incarceration in prison. As in the Judge's explanation, the sentence that Ms. Summer Smith was receiving; for a 1st-time offender being probation of 6 months. She also had been the original and on-going participant, as

she testified. The Judge seemed to want fairness within the part of sentencing, leaving the actions of the prosecutor out of prejudice. Given the other actions that she portrayed to tell about Michael Scott to the courts' prosecutor of incidents, such as her victimization and her fear of the defendant; that the Judge found without credibility or evidence. This can be found within the VRP; Pg122 Pg123.

The last part of misconducted procedure that I would have the State of Washington Cowlitz County Court of Appeal review concerning this trial is that this Case has gone in front of several Judges at other times and it failed to have enough evidence to go to trial, in case No. #'s. 14-1-00380-1 & 14-1-00291-2 & 14-1-01345-1 & 14-1-02138-1 & 15-1-00076-4 were the cases that did not go to trial and 16-1-011198-2 was Dismissed. Now we have come again to trial and they get a Guilty for 9 counts of Burglary in the second degree and 1 Count of Bail Jump.

In this trial, the prosecutor does extremely express that there had been no other events of batteries being stolen from Walmart's cage before September 19, 2013, but there was VRP; Pg.277. For instance the case no.14-1-00380-1. (3/24/2014), for 2nd-degree burglary, 13 counts of third-degree theft. These events were before (September 2013),

preexisting that fell into the time limited for statute of limitations. There before were the same circumstances, not able to take to trial today.

I request to have this Judgement acquitted for remedy. As for the presumption of identification with the arrest and the wrongs and errors that persuaded the jury judged my case with such negative prejudices to find a Verdict of Guilty. Because of the faults within these proceedings by the prosecuting attorney and the investigative officer. That gives the trial as manipulated by the use of excessive repetition of evidence and a waste of time, Jury to be confused and drowsy. Michael Scott is not given a fair trial behind Malicious and Prejudice on the part of the Prosecutor. And I don't think my attorney did what he should have in objections.

Statement of Errors

Your Honors, I am requesting an acquittal for the Judgement of Guilty from a Jury trial, SUP CT # 18-1-00437-1. I believe caused from errors of Malicious Prosecution with Undue Prejudice. The Errors can be remedied in accordance with Due Process, The State of Washington Constitution (without due process of law). Also, In The Supreme Court of the United States Brief No.18-485 (fabrication of the evidence).

As I find the problems in this case actually comes down to, two points (1) the Identity of the Person in the surveillance videos, in the undertaking of theft. They want it to be Michael R. Scott. (2) and, Summer Smith seems to be the closest person to testify against Michael Scott. She has already plead guilty for these burglaries. Prosecution got Summer out of jail, and Summer was credited with time served in exchange; identifying Michael Scott, Summer will receive a Lesser Charge.

I will state my reasoning, in **Logical Order** starting with the testimony of my Arrest using the VERBATIM RECORD of

PROCEEDINGS (VRP) of Officer Lear. The first Official as well as the 1st to take physical action in this case.

The complaint is begins with the Woodland Walmart Store and Jerad Carter the Asset Prevention Associate.

Firstly in short Officer Lear of Vancouver Police Department (VPD) was contacted (Mar. 23, 2014), by Officer Murray, Woodland Police Department (WPD), asking if he would drive by 2407 Talton Ave. Vancouver WA. Officer Lear said that it was in his jurisdiction, no problem. Also requested what to look for? Office Murray (WPD) gives him the description of a black pick-up & license plate number. Officer Lear did as he was requested The state of Washington cooperates with any and all other government departments without question. He saw the pick-up in the garage from Officer Murray's description, because the garage door was open. He called Officer Murray from down the street and Officer Murray asked if he would go back and check if Summer Smith and Michael Scott were there? If so, take them into custody. Officer Murray told Officer Lear he has "Probable Cause" for a couple individual in a burglary case. Officer Lear found Summer Nicole Smith in the garage along with Michael R Scott. VRP Vol 2 Pgs194-202. Officer Lear reported

back to Officer Murray that he had them in custody. Murray was on his way. Officer Lear, the arresting officer said, in his testimony VRP Vol 2, P 194-195, Mr Nguyen: "You don't know the specific facts of the investigation, right?" "No, sir. He did mention that he had "probable cause" for a couple of individuals for burglary." *Bender v. Seattle 664 P.2d 492* (Wash. 1983),... action of damages, false arrest and imprisonment, malicious prosecution,... *Weeks v. United States, 232 U.S. 383* (1914) 4th Amendments Rights.

To read from the VRP pages further to get a feel for the mood of the event, you might find interesting. VRP Vol 2 Pg 196-207 Also as the Officer was talking to Michael and Summer he had a chance for a quick look and **did not see any evidence** to the burglaries, like batteries. Especially without a warrant.

The mention of a Blk GMC Truck, that was the **fact finding tool**, Rule 407 [When measures are taken that would have made an earlier ...harm less likely to occur, evidence of the subsequent measures not admissible to prove: negligence, culpable, a need for a warning or instruction.] was supposedly the way Officer Murray identified the owner of the truck and how the arrest comes about, VRP Vol 2 Pg 207-208 in the

cross examine "needed a search warrant". Without a search & seizure or arrest Warrants, also in Officer Murray testimony he states VRP VOL 3, Pg 435 & VRP Vol 2 Pg 236, he never did get a Warrant. Washington State of Constitution.

OFFICER MURRAY GOT BUSY

Reviewing testimony from Jared Carter the Asset Prevention associate at the Woodland WALMART Store. He had been setting up different ways to try and catch some individuals that have been taking dead batteries from, he called it, The Battery Cage. His boss also had adding a game camera on Jan. 15, 2014. Statements in Jerad Carters testimony in the VRP VOL 2, Pg 10 Pg229, Pg230. These burglaries had been happening more frequently. As Jared Carter did check the Surveillance Videos, He became hopeful that on (March 3, 2014), that he might have got a picture of the License plate of the Black Truck. Exhibits 1A 2B, Ex. 2A-2E VRP Vol 1 Pg 18 Photos in those Exhibits that show reproductions of surveillance videos, Collin v City of Colton This was not

checked by the Defense attorney nor objected by the Defense attorney. The videos were grainy and also blurry but that's all they had to work with. As in the VRP VOL 2 Pg 220 Pg 260, Exhibit 11G & I, Pg261 Jared also had a long testimony because of most of the Exhibits were to be identified came from his 10 videos that gives Officer Murray to be investigated. Jerad acted on his assumption and calls the Police;

(March 13, 2014, at 22:37), Officer Murray of the Woodland Police Department, was called to the Woodland WALMART Store. He met with Jerad Carter the loss prevention officer at the store. The individuals had struck again, (March 12, 2014) and he had surveillance videos to be reviewed. The Prosecutor asked Jared Carter that the first missing batteries were from (September 19, 2013), was the last missing battery was on (March 23, 2014). Before that had there been any problems with the battery cage, and Jerad says "Before 2013 No". VRP Vol 2 Pg 277 & 278 Having previously charged with events of burglary of batteries before in court case 14-1-00380-1. Michael was charged with 13 counts of Burglary, so there had to be more burglaries before and that comes to the Malicious Prosecution.

Officer Murray took the videos and the complaint to investigate. VRP VOL 3, Pg 415. Officer Murray says that he investigated to find similar cases, within the Walmart Stores, he states. VRP Vol 3 Pgs 414-416 These cases were inactive/insufficient information. Still No eyewitness. VRP VOL 3 Pg 416 Exhibit 11A, Video 11A-2 Prosecution went past that video very quickly, Gives me cause to wonder or, Probable Cause to suspect that there was more to Officer Murrays Fact Finding than he's telling us. VRP Vol 3 Pg 417, was the one that Officer Murray says he watched it frame by frame until he guessed what the numbers and letters come together he tells his process of examining the videos. VRP VOL 3, Pg 417., RCW 5.46.010 The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original. The license plate that he says he saw is, Oregon 010 GSH, 1998 Blk GMC Pick-up, Washington Constitution, Article I Section III No person shall be deprived of life, liberty, or property, without due process of law.

The registered owner was Summer Nicole Smith. The address in Gresham OR. She was not there. He had to investigate the connecting address' that Ms Smith had connection through media and records search.

Evidential statement that Officer Murray gives to itemize his pursuit to find Summer Smith and then Michael Scott. VRP VOL 3, Pgs 416-422.

Also the registration of Vehicle admitted into evidence Exhibit 14 I.

Reasonable suspicion is not a prerequisite to an officer's seeking consent to enter a private dwelling. State v. Stout, 2002 WI App 41, 250 Wis. 2d 768, 641 N.W.2d 474, 01-0904. (And) Freeman v. City of Santa Ana, 68 F.3d 1180, 1189 (9th Cir. 1995); see also Lassiter v. City of Bremerton, 556 F.3d 1049, 1054-55 (9th Cir. 2009)("[P]robable cause is an absolute defense to malicious prosecution." I have, Officer Lear's Incident Report (IR), that Officer Murray did have Michael Scott and Summer Smith identified to be persons of interest, I received the IR (9/19/2019) from VPD Incident Report; Case No.14-4216 Pg 3.

Now, how many errors have been committed? I am just a lay person, with my freedom at stake! I've put my emotions in check to solve the problem. It is the probability of malicious prosecution being apparent? With the use of the fact finding tool applied, I can't exclude the reasoning behind the Officer Murray use of the original video surveillance, because it's against the rules and law. The questionable fact that with all together

collective evidence, **why didn't** Officer Murray obtain a Warrant for Search, or Arrest, for at least Summer Smith. It just looks like Officer Murray has Michael Scott in his cross hairs for some reason. In cases concerning police procedures for witness identification of suspects, the Court has voiced the concern that the jury did not hear the testimony, that they deny the defendant due process. "Reliability is the linchpin in determining the admissibility of identification testimony."

TESTIMONY EVALUATION

Ms Summer Smith. Jury's in the courtroom, no error there . VRP Vol 2 Pgs 315-321 The Prosecutor brings up the romantic relationship between Michael and Summer That they have a love for each other but it's(not so much now). That brought into the light the emotional level within, Prejudice Rule 403. Then Summer is asked about the financial situation. Summer answer is that Mike sells Hot Tubs. Summer is asked about her Mother(Kelly) and her Dad (David) and the relationship between Michael and Kelly? Summer confirms that their relationship isn't

good at all," she dealt with him" is the description. VRP Vol 2 Pg 317

And, Summers Dad and Michael? David didn't like him at all, he didn't know him very well. Confirmed Kelly didn't like Mike! Lastly there's a lot of hating on Michael in this family right at this moment. Now that we have that confirmed lets see what the law says about the testimony from people giving legal statements that could be fabricated because of relationships. This is so because the jury is entitled to consider, with evaluating a witness's credibility, [the fact: The State has a "weapon to control the witness.": Denied Due Process and the 4th Amendment: Heck v. Humphrey, 512 U.S. 477(1994), RCW 4.24.350(1) In Foster v. California, for example, the Supreme Court excluded identification testimony because the police procedure used in obtaining the identification rendered the testimony unreliable. No practice is more ingrained in our criminal justice system than the practice of the government calling a witness who is an accessory to the crime for which the defendant is charged and having that witness testify under a plea bargain that promises her a reduced sentence. It is difficult to imagine a greater motivation to lie than the inducement of a reduced sentence, but courts uniformly hold that such a witness may testify so long as the government's bargain with her is

fully ventilated so that the jury can evaluate her credibility It makes no sense to exclude the testimony of witnesses such as [the informer in this case] yet allow the testimony of informants ... who are testifying with the expectation of receiving reduced sentences.

Summer gets the full array of videos and still photos to identify Michael. There is the question of why? The answer is on VRP Vol3 Pg 329. Summer is asked the question Why? If you cooperate , you will be able to withdraw that plea to lesser felonies VRP Vol 2 Pg330 Did you have a concern about testifying against Mike? VRP Vol 2 Pg 329 When did Mike find out you were going to testify against him? Summer didn't know when VRP Vol 2 Pg 331 Michael knew. But Summer agreed with all that. She didn't want to and she was nervous and it made her feel awful VRP Vol 2 Pg329-331. Michael had tried to call Summer.- But the prosecutor is steady leading her testimony toward the obvious. To get Michael Convicted. The prosecution has her where he wants her, so as to let her know she can't walk away now. VRP Vol2 Pg 331 Has this emotional admission been involved in an appeal? 1.c.Prejudice Rule 403
Determining "prejudicial effect" of the evidence is also at the discretion of

the judge. In general, it means; 2) Whether the emotional impact is fair or unfair. Emotionalism is fair if it's part of the case, and unfair if it is outside the facts of the case.5) Whether less prejudicial evidence is available.1d. Rule 403 mentions two other dangers that warrant the exclusion of minimally probative evidence: 1) "Confusing the issues or misleading the jury"2) "Waste of time" is also a potential ground for exclusion.

I can't count the time he repeated questions back to the witness throughout the trial, is this to confuse or by repeating, is to convince the jury that the testimony is true. For anyone to see the extensive exaggeration the prosecution gives that is apparent in this trial, is to read the prosecution's procedure in his examinations of witness' in the VRP Vol 2 Pgs 209-278. witness Jaed Carter. VRP Vol 2 Pgs451-455, 313-350 witness Ms Summer Nicole Smith. VRP Vol 2 412-449 witness Officer Brent Murray. Then we have the Exhibits There are extensive reconstruction of the Videos and Photos coming from the Prosecution and Officer Murray as he took pictures of Summer and Kelly Smith house and the yard and the door etc...As well as bringing to light the Mugshots of both the defendants, VRP Vol 2 Pgs 420-421, Pg 426-429. 2. RULE 403

F. Mug shots. Mug shots and testimony that a victim identified the defendant from mug shots reveals that the defendant has an arrest record and is therefore not admissible unless it has substantial probative value on a contested issue. The extreme amount of Photos, Videos, Flash Drives CD's and replications of the same if shows enlargements of the same are shown that errors in the statute. The Exhibits begin, 1A-B, 2A-E, 3A-3K, 4A-4K, 5A-5F, 6A-6H, 7A-7L, 8A-8H, 9A-9H, 10A-10P, 11A-11P, 12A-12M, 13A-13E, 14A-14L, 15A-15F, 16A-16E, 17A-17E, 18A-18L, 19. Then end with 19. State v. Wisner (1) admitting photographic and video evidence without proper authentication. We agree that the court erred by admitting the photographic and video evidence and that the error prejudiced Wisner. We reverse his conviction and remand for further proceedings. I am aware that there would be 10 videos but let me express, this isn't a Murder trial. As the Defense attorney touched on not exactly his words, in a later statement. This is only about some dead batteries, worth about \$10.00 a piece, not a home invasion or theft of an elderly couples life savings. The Prosecutor continually pushes the line to be under the 1. a RULE 403 Exclusion of relevant evidence on Grounds of Prejudice, Confusion, or Waste of Time. As for example, I'm going to

assume that most interviews with a witness's testimony takes an hour. I have an example for the reasoning by error to claim my Judgment by **unfair prejudice, confusion, and ultimately a waste of time. RULE 403** **(1) unfair prejudice 2) confusing the issues or misleading the jury 3) undue delay, wasting time, or needlessly presenting cumulative evidence.**

The last Witness was for Michael Scott, It was Mike Geiger a co-worker and friend for at least 10 years VRP Vol 3 Pg 510. He actually taught Michael the Hot Tub business. He is asked and has reviewed the photos that are for the purpose of Identifying if the male is Michael Scott. He admits that it is NOT Michael Scott and gave reasons for it to be that the person in the video was a lot smaller and more agile than Michael is. And Michael did have more hair than the individual in the photos, VRP Vol3 Pg512

As the prosecution cross-examined Mike Geiger, Where he said that the video between poor quality and uncertain? Mike says it was good enough to see that it wasn't Michael Scott. Prosecution again asks Mike Geiger was it between uncertain and poor quality. Mike says again No

problem. It's not Michael Scott. Prosecution again admits the problem with the quality being unable to see the outline of the man in the video. In a manner that he was cross-examining a hostile witness. VRP Vol 3 Pgs 512-515 Repeated again and again. Showing the Malicious Prosecution with undue prejudice. I hope you can really tell about his state of mind?

I know that when the Judge notices, "Leading" prosecution is cautioned, do not lead the witness. VRP Pg 323 Ln1-2 We have to evaluate the errors that have occurred with the testimonies that the prosecution has already examined. VRP Vol 2 Pg 316, Judge instruction to the prosecution VRP Pg 325. "I have to caution you. You're leading this witness. You know. You know, it's the defense attorney decision on when to object, but you really are leading her, and I just wanted you to be aware of it." VRP Pg 327, Pg 328, Just for Summer Smith. VRP Vol 2 Pg 374

Leading

Let's again give cause to my Rule 403. Summer gets the full array of video even though she has already seen them. Here the Judge expresses her disapproval of viewing the videos. VRP VOL 2 Pg 345-346.

Reviewing another testimony; Summer answered all the questions and was cross-examined. Where she tells exactly what her plea deal is about. VRP Vol 2 Pgs 351-353 (Oct. 18, 2018). Which, Is to cooperate with the prosecution and testify that the male in the videos is Michael Scott, then the court will remove the guilty plea and give her a first time offender charge with a lesser charge. Summer was interviewed and admitted that she lied on the stand about the male in the videos. It was not Michael Scott. He was so disappointed in Summer, "I couldn't stand him not talking to me. So I was paying him back" Is what she said, because, she said also that Michael took her to Tacoma and dropped her there with no way home," she said to the Prosecutor. The Judge has a statement about that during sentencing.

VRP Vol 2 Pgs 118-131 Let me describe; (On, for sentencing.)

The Judge asked; (what is the status of the accomplice, Summer Smith. When is she being sentenced?)The Prosecution states, [she's waiting for

after this. It is anticipated that she will withdraw her plea and plead to a Bail Jump, theft in the 3rd degree with a first time offender sentence, both community custody and treatment is what is, I anticipate.] The Judge; (comes back with. "So, why did that have to happen when the agreement was just for the testimony.") Prosecution; [before finishing up with Summer Smith so...]The Judge says:(I'd like to know what the sentence she gets, so I can sort...this is fair to him? I mean) Prosecution;[He has a high offender score.... He stopped because we made him stop.... We were supposed to go to court in 2016 but the bail jump interfered That only lead to Dismissal. in the case. Also subsequently, we found behind the scene, Mr Scott had picked up Ms Smith, drove her to Tacoma, with no way to get back.. That led to her bail jump, that why she wasn't available for trial. . Then we picked her up again and she missed the next court date and she was picked up again. Summer and Kelly are both deadly afraid of Mr. Scott. That he had shown up at their house several times. Making innuendos and threats directed at Summer.]The Judge says;(I want to make sure I heard you. Did you say 68 months for Burglary and 60 in the Bail Jump?) Prosecution;[YES]. The Judge;(give me the case number on Summer.) Prosecution;[I don't have it on hand...]The Judge;(I have

memory of the time that Ms Smith failed to appear for a trial.)

Prosecution;[I...I... I should have.] The Judge;(I could not remember

correctly, but...)Prosecution;[...like Mr. Scott took em'... her awhile to get

back here, but led her to being unavailable was being shipped up north by

Mr. Scott is what...]The Judge;("Shipped up North." So, she was

abducted?) Prosecution;[she had agreed to testify...and..] The Judge; (She

could've called the office and your office would have arranged for her to

be picked up.) Prosecution;[She didn't do that.] The Judge;(So, it kind of

looks like to me--are we talking FTA that was in May of 2017, and then

she didn't come back till Aug. 2017. Is that correct?) Prosecution; [That

sounds right...]The Judge;(Shes done this FTA twice. Well after the first

time.) Defence attorney;{ we completely refute any theory or story my

client somehow meddled in her ability to appear ...That's not the case.}

The Judge;(You should know that I don't believe that for a second. That I

don't believe that Michael interfered with her ability to come to court for a

second. She had numerous FTA's She could have called the State and said

come pick me up because I struck a deal. I don't believe for a second.)

Defence;{ OK.} The Judge;(and I also don't believe for a second that she

was--well, I don't believe the presentation she made to the prosecutor

about her victimization and her fear of the Defendant, I actually have no evidence of that and since I don't find her credible, I don't believe it. So, go ahead.... He's at the range of 51 to 60. The co-defendant who is equally, I think, culpable for these, she drove the vehicle each time, she had the idea.)Defense Attorney;{ It Looks like the property alone 5-10\$ a piece. He's stealing recyclable trash, is basically what the batteries are. ...not a real monetary value to them. I'm not minimize who it was stolen from, but it was stolen from a corporation that has insurance, not our grandmothers or aunts and uncles. No one was going into their homes or their garages, going behind a fence ...Ms Smith to get through with 9 months, being kind of the ringleader of the operation...}The Judge(So, I'm looking at prison-based DOSA. I'm sorry, so it has to be the--the mid point has to be at least 12 months to be eligible .) Prosecution;[I'd like to address the prison-based DOSA issue...With great discontent, you have to prove that the crime was committed on drugs and there wasn't enough testimony about drugs to support that. And that would include the bail jump?] The Judge;(I just want to be clear, because Summer Smith testified that--that she, you know, was doing this purpose of feeding an addiction. I know that the State initially wanted her to be able to testify

that was also perhaps, the reason that he engaged in the conduct I preclude that testimony from going to the jury because I found it unduly prejudicial. But I thought the State's position at that time was that substance abuse was involved--for both Mr. Scott and Ms Smith.) Prosecution: [testimony that they were together living a lifestyle where they were using drugs...committing multiple thefts.... I thought you had to show proof that these crimes were caused by that. Therefore when we talk about their lifestyle like if Defense was going to ask, ok were you committing crimes she would be able to say yeah. You can't paint the picture that she was the only one using drugs she was the only one committing crimes. She was interviewed and said yeah he threatened me if I cooperate I will rat on you for all the other crimes that your committing. One of the Motions in limine was you couldn't get into all that stuff. Is it probably there? I can say, yes; but, to show that these-- the burglary that happened on this date was because of--I don't know if there is evidence of that, other than the general lifestyle.] The Judge;(Well, general lifestyle is the evidence. Here we go Again)The Judge,(Because, Essential, your position is that I am precluded from making that finding based on my ruling on a motion in limine that Summer Smith testifying about her own substance abuse issues

did not then open the door for sort of a mud-slinging process, where she has to say it was his motivation, as well. That was really an evidentiary ruling. I mean, it had to do with undue prejudice to the defendant, but -- so, you're saying that the impact of my ruling now precludes me from making that finding as to Mr. Scott.) Prosecution;[No, I guess what my understanding is that ...for the purpose of DOSA ...needs some more evidence that this is,... was it had a drug alcohol dependency component...you have a general lifestyle. Yes, I'm an addict ...that doesn't mean that.] The Judge;(You don't think there's evidence of that?) Prosecution;[...So, just because someone is a dependant, doesn't mean all the crimes is--they were committing because of dependency, if that makes sense)Ok I think we have enough for an acquittal there it is . **VRP Vol 2 Pgs 118-131** Mr Nguyen admitted that he lied clear through the trial and that Michael being innocent, makes no difference But it's obviously **Undue Prejudice. Malicious Prosecution. ALL DONE!!**

As well as introducing the involvement of other people that wasn't Michael, **VRP Vol2 Pg 354**

The Judge VRP Vol 2 Pg. 359-363 she says, " I just don't understand what went on here?" was a little curious about why there weren't other people, only Michael, from the videos there isn't. The removal of the batteries that shown isn't anywhere close to the number that Jerad had claimed to be missing? Gives question to reasonable doubt. If we can?

Now we can address Kelly Smith, she gets to see photos and of course she testifies that the photos are Michael Scott but she also admits to teaching her child to lie, and admitted to lying VRP Vol 2 Pg 370 & Pg 381, herself for her daughter. Admitting the dislike for Mike Scott VRP Vol 2 Pg 382

I want to impeach Kelly Smith and Summer Smith, The method is obvious, Due Process and the 4th Amendment with an Exclusionary Rule, and again the Brief of Supreme Court of the United States 18-485

This case has come in front of the courts 7 times since 2014. The only remedy for the correction, is using the fabrication Brief introduced. Supreme Court of the United States, No. 18-485 Or the truth will work.

The prosecution repeatedly states that these burglaries did not happen before (Sept. 19, 2013), never happened after (March 12, 2014), he is insinuating the arresting of Michael Scott gives significance to the burglaries, VRP Vol 2 pg 277. While the prosecution was taking Officer Murrays testimony he again repeated the reference that these thefts hadn't happened before finding Michael Scott in VRP VOL 3 Pg 441. I'd like to show error for this statement show cause within these previous cases No.: 14-1-00380-1, 14-1-00291-2, 14-1-01345-1, 14-1-02138-1, 15-1-00076-4, 16-1-01198-2 Dismissed. As for the admission of that is on VRP Vol 1 Pg 65" The Prosecution wanted to be clear." (What has happened is he's charged with 10 counts. Before the count 1, I don't remember the dates, there's like 4 other Counts that the State did not charge because of statute of limitations issues. So I've advised my people to say that basically, these case events start with Count 1 and that's we're not going to talk about any other Counts. I've advised my witnesses to pretend that those other counts didn't actually happen. Like a legal fiction ...say there is no other events, then they're not technically lying. It's just

because of what I've instructed them that there's no other events outside of this...)"

CONCLUSION

Remedy for the Error of this case I want to use my transcripts to clear this Judgement for Acquittal, **Malicious Prejudice, Undue Prejudice, Due Process under the 4th & 14th Amendments, The Exclusionary Rule, and the Supreme Court of the United States No. 18-485 Prejudice Rule 403 The use of the RULE 403, RCW 5.46.010, To define Each Error; 5 Prejudice Rule 403** It' all done There it was the admission with the Prosecution Mr. Nguyen admits it to the Judge; It's not fair to put anyone through this, obviously. I knew that Judge Anne Cruser had my back after she got it.

Warrantless Arrest
Undue Prejudice
Malicious Prosecution
Impeach Witness (Summer Smith)&(Kelly Smith)

Exclusion of Evidence

The court should exclude the evidence because it is irrelevant and immaterial to the issues presented in this case. The evidence is hearsay and does not meet the requirements of the hearsay exception. The evidence is also hearsay and does not meet the requirements of the hearsay exception. The evidence is also hearsay and does not meet the requirements of the hearsay exception.

MARIE TROMBLEY

December 10, 2019 - 11:14 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52824-0
Appellate Court Case Title: State of Washington, Respondent v. Michael Robert Scott, Appellant
Superior Court Case Number: 18-1-00437-1

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