COURT OF APPEALS
DIVISON TWO
OF THE STATE OF WASHINGTON

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DIVISION II
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STATE OF WASHINGTON
BY DEPUTY

STATE OF WASHINGTON Respondent v. JAY M CHRISTENSEN Appellant	No. 53421-5-II STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I Jay Christensen, 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 1

The trial court erred by allowing the state to violate Jay Christensens United States Const. Amend. 14 a due process rights violation and United States Const. Amend 6 The right to a fair trial, by allowing State to re-arraign Christensen with 14 additional counts to the original five single counts of robbery. Which defense objected to on grounds that the charges are punitive For

the exercise of the right to go to trial, Which is a Constitutional right, and showed prosecutorial vindictiveness, and trial tactics in bad faith by State.

The case was over five hundred days old and had already went to trial once for the five original charges with a diffrent prosecutor.

To re-arraign Christensen after five hundred days and the mis-trial shows clear motive to up the ante in a vindictive way.

State did in fact up the ante when adding the new charges to Christensen's case in a attempt to punish Christensen for exercising his fourteenth amendment right of due process in having a jury decide his case

It clearly shows in the transcripts first during the pre-trial hearing where defense objected to the re-arraignment of the new charges added by Deputy Prosecutor Terry Lane, and pointed out by defense that there were two very experienced Prosecutors on the case before him who in fact amended the charges each, and even started trial and had a mis-trial five hundred days before Prosecutor Terry Lane was assigned to the case...

Prosecutor Terry Lane then re-arraigned Christensen with the additional charges, all arriving from the same incident.

It is clear that Christensen planned to have a jury decide his case, and the added charges were an attempt to prevent and punish Christensen for carrying out his

decision to have a jury decide his case.

During the trial readiness hearing, before the trial held in front of Honorable Kathryn Nelson the transcripts show that plea-aggrement talks had been attempted, but broke down.. It shows Prosecutor Terry Lane did attempt to use the added charges in there entirety as a tool to force Christensen not to exercise his due process right to have a trial by jury, and if he did he would be punished with the charges.

In United States v. GOODWIN the Supreme court resolved the tension between the interests of free exercise of legal rights, and the need for prosecutorial descretion.

In United States v. GOODWIN the defendant was charged with misdermeanor assault. He refused to plea guilty and requested a jury by trial. Where upon, the prosecutor re-indited GOODWIN with a felony charge arising out of the same incident.

The court recognized the need for a pre-trial / post-trial distinction, and held that, in the pre-trial context the prosecutor has the discretion to charge the deffendant with a more serious offense after a defendants exercise of a right, except for the purpose of punishing that exercise.

It becomes clear when one first takes into fact that Jay Christensen showed that he did plan to exercise a constitutional right to have a jury by trial.

When Deputy Prosecutor Terry Lane took the case after a mis-trial in front of Honorable Timothy L. Ashcraft,

(RP Volume 1 Pg. 51-52) For 6 Felony charges and a case that was Five hundred days old.

Prosecutor Terry Lane made the decision to re-arraign Christensen (RP-Volume 3 Pg. 27,28, 29, 30, 31, 32, 33) at which time defense objected.

The information in it self is not enough to show that the prosecutor abused his powers in a vindictive and discrimatory way in a attempt to punish Christensen and stop him from exercising his due process rights, untill the courts look at the proceedings of the plea deal offered by state (RP volume 4 Pg. 42) dropping all the charges added during the re-arrignment, and even turns the possesion of a firearm first degree back to the second degree, which was originaly charged...

This plea offer shows that State did add the charges objected to in a attempt strategic, and tactic to prevent Christensen from exercising his due process right, and to punish him if he did go to trial

These actions by State do become Prosecutorial Misconduct and abuse of powers...

· Charges of vindictive prosecution usually arise when the defendant has been re-indited. UNITED STATES v. WILSON, 639, F 2d 500 9th Cir (1981)

· To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort. UNITED STATES v. GOODWIN 457 U.S. 368, 372, 102 S ct 2485 73 L. Ed. 2d. 74 (1982)

· Prosecutorial Vindictivness occurs when the

government acts against a defendant in response to the defendants prior exercise of Constitutional or Statutary rights. UNITED STATES v. MEYER, 258 U.S. App DC. 263, 810 F.2d 1242, 1245 (1987)

• Due process prohibits a judge or a prosecutor From punishing a criminal defendant in retaliation for the defendants decision to exercise a constitutional right. The judge may not punish the defendant by enhancing the defendants Sentence, Similarly the prosecutor may not punish the defendant by Filing excessive or severe charges. NORTH CAROLINA v. PEARCE 395 U.S. 711, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969). COLIEN v. KENTUCKY 407 U.S. 104, 92 S. Ct. 1953, 32 L. Ed. 2d 584 (1972) BLACKLEDGE v. PERRY. 417 U.S. 21, 94 S. Ct. 2098, 40 L. Ed, 2d. 628 (1974)

Additional Ground 2

The trial court erred by Failing to protect the witness of a proceedings to the standards of RCW. 9.A.72.120 Tampering with a witness, and the Victim and Witness Protection Act of 1982 (18 USCA §1512) By the trial courts error allowing the actions of the State to go unchecked created reasonable doubt in the conduct of State with all witnesses called during Christensens trial.

It also show Prosecutorial misconduct, Obstruction of Justice and Bad Faith, and violated Christensens Sixth Amendment right to a Fair trial, and his Fourteenth

Amendment right to due process.

• Because of the great power given to a prosecutor in his duties it becomes the trial judges responsibility to maintain the integrety of the court..

When the question of Tampering with a Witness issue came up it became the trial courts duty to investigate the issue with all the discretion and caution of the court.

This was not done and simply dismissed as having no judicial value. This was a error by the court and [redacted] cost Christensen his chance at a fair trial.

During the Febuary Fourth 2016 Afternoon Session proceedings held outside of the jury the issue was approched by defense regarding the interview conducted by Deputy Prosecutor Terry Lane accompanied by Pierce County Det. Kevin Johnson and the moral issues it represented regarding a short recording that was played for a defense witness Sandra Whitehead of a jail phone call recording of Christensen talking to another women, and questions what was the motive, and was it a attempt to influence the witnesses testimony. (RP. Pg. 1569 threw 1576)

Then during examination of defense witness Sandra Whitehead. She explains to the court how the interview conducted by Deputy Prosecutor Terry Lane influenced her mood during the interview, and how many times the short clip of the recorded jail house phone call was played. (RP Pg. 1678 threw 1681)

Deputy Prosecutor argues that he thought the voice

on the recording may have been Sandra Whitehead, but When the court reads the record it becomes clear that Deputy Prosecutor Terry Lane was being untrue to the court, because after he asked Sandra Whitehead if it was her on the recording, he then went on to notify her that the women on the recording was a prostitute. (RP Pg. 1705-1706)

When Pierce County Det. Kevin Johnson testified about the interview that the short clip played for Defense Witness Sandra Whitehead was of Christensen asking the women what color were her panties and bra, and he also testified that he did hear Deputy Prosecutor Terry Lane say he had millions of calls to this women. (RP Pg. 1721 threw 1725)

The motive behind the attempt to induce the testimony of Sandra Whitehead was that her testimony was damaging to states star witnesse testimony.

Her testimony that Christensen and Sommers were friends and had actually spent time together the night of the crime charged was very damaging to there case, and the testimony of states witness Steven Sommers.

Sandra Whiteheads testimony that Sommers came to Christensens trailer and spent 15-20 minutes with Christensen talking about commiting the Dennys Robbery (RP Pg. 1620-1621)

Her testimony went against Sommers testimony that he had never been in Christensens trailer and knew nothing of the Robbery and was forced to participate in the

Dennys Robbery at gun point. (RP. Pg. 1243, 1244, 1245).

Sandra Whiteheads testimony was also damaging to the State because when Deputy Prosecutor Terry Lane was assignned to Christensens case he after 500 days dropped the criminal charges against Steven Sommers for his testimony that he was a victim of Christensen, and then re-arraigned Christensen with multiple charges including, Assault second degree, Kidnapping first degree and Felony threat of death against Steven Sommers. (RP. Volume 3. Pg. 28 threw 33).

Tampering With A Witness RCW. 9.A. 72.120

1.) A person is guilty of tampering with a wittness if he or she attempts to induce a witness or a person she or he believes is about to be called as a witness in any any official proceedings, or a person whom he or she has reason to believe may have information relevant to a criminal investigation.

- Wash Rev Code 9.69.080 Tampering with a witness is a class C Felony.
- Does the States actions meet the elements of Tampering with a witness RCW. 9.A. 72.120 and Wash Rev Code 9.69.080. It is clear that from the record they do, and it was the courts duty to intervene.
- The effect of an inducement attempt upon a potential witness is not dispositive. One can be guilty of an attempt to induce a witness regardless of the effect upon the witness.
- Whether a person attempted to prevent the

appearance or induce the testimony does not depend solely upon the literal meaning of words used to witness, but may be determined on the basis of the inferential meaning of such words in the context in which they were used. STATE v. SCHERCK 9 Wn App. 792, 514 P. 2d 1393, 1973 Wash App LEXIS 1269 (Wash Ct. App 1973)

Can the court say that after reading the reference points of the trial record, and learning of the conduct of Prosecutor Terry Lane with the interview of Sandra Whitehead, That there was no misconduct practiced with any other witnesses called in the case of Christensen, and that beyond a reasonable doubt Christensen recieved a fair trial?

Additional Ground 3

The trail court erred by allowing testimony from States witness that was false, Prosecution should have known that it was false, and that it was material, with a reasonable likelihood could have affected the judgement of the jury.

The testimony accepted by Pierce County Prosecutor Terry Lane from the witness for the State. Steven Sommers regarding his testimony that he was the victim of Christensen the night of the Dennys Robbery was accepted as truthful testimony.

Yet prosecution still chose to charge Steven Sommers

with a felony charge of elude to use as leverage to ensure that Steven Sommers would testify against Christensen.

The actions by the state, and the trial courts error of allowing the testimony violated Christensens sixth amendment right to a fair trial, and his fourtenth amendment right to due process.

During the direct examination of Steven Sommers by Prosecutor Terry Lane. Steven Sommers testified that he was abducted by Christensen at gun point and forced to drive him to a Dennys Restraunt were he verbally threatened him and his familys life if he left while he was in the Dennys.

Steven Sommers testified he did not leave because of the threat by Christensen. He then testified that Christensen came out of the Dennys, got back into the truck with Sommers and ordered him at gunpoint to drive, and gave him directions which way to go.

When police attempted to pull over the truck Steven Sommers testified that Christensen threatened him at gunpoint that; "if the police catch them he would shoot him".

After a short chase the truck crashed into a concrete pillar, and Sommers and Christensen were takin into custody. (RP Pg. 1243 threw 1255)

Both Steven Sommers and Jay Christensen were charged with Robbery First Degree and Possesion of a Firearm in the second degree. for the first 500

days. including threw a trial which Sommer was Christensens co-defendant which ended in a mis-trial (RP Volume 1 Pg. 51-52)

After the mis-trial Pierce County Prosecutor Terry Lane was assighned to Christensens case and re-arraighned Christensen on multiple charges including. Kidnapping First degree, Assault Second degree, and Felony threat of death all against Steven Sommers. (RP Volume 3 Pg. 27 threw 33)

Prosecutor Terry Lane then dropped the criminal charges against Sommers in exchange for truthful testimony regarding the night of the Dennys robbery.

During the direct examination of Steven Sommers by Prosecutor Terry Lane, Sommers testified that the deal he would recieve from the State for his truthful testimony, and he testified regarding the charge of Felony Elude he would have to plead guilty to as part of the deal. (RP Pg. 1268 threw 1271)

Steven Sommers testimony was that there was no criminal intent with his actions, and that he was a [redacted] innocent victim of Christensen.

Prosecutor Terry Lane used this testimony to bolster the charges State re-arraighned Christensen on of First Degree Kidnapping, Assault Second Degree, and Felony threat of Death against Steven Sommers.

In order for Prosecutor Terry Lane to charge and except Steven Sommers guilty plea to Felony

Elude, State would have known that Steven Sommers testimony was dishonest and false.

• The Due Process clause of the Fourteenth Amendment to the United States Constitution imposes on prosecutors a duty not to introduce perjured testimony or use evidence known to be false to convict a defendant. STATE v. FINNEGAN, 6 Wn App 612, 616, 495 P. 2d 674 (1972)

• This duty requires that Prosecutors correct States Witnesses who testify falsely. Napue v. Illinois 360 US 264 79 S. Ct 1173, 3L, Ed 2d 1217.

• To suceed on a claim that a Prosecutor used false evidence to convict, defendant must show that (1.) The testimony or evidence was actually False (2.) The prosecutor knew or should have known that the testimony was actually false and, (3.) That the false testimony was material. United States v. Zuno-Arce 339 F. 3d 886, 889 (9th Cir 2003)

• A conviction will be reversed if the prosecution knowingly presented false evidence or testimony at trial and there is a reasonable likelihood that the false evidence or testimony could have affected the jurys decision. Morris v. Yist, 447 F. 3d 735, 743 (9th Cir 2006)

Additional Grounds 4

The court erred in allowing state to introduce physical evidence that was collected improperly, with no chain of custody started, and also the chain of custody was badly broken.

Gig Harbor Officer Jacob Daniels testimony does not meet the requirements to reastablish the chain of custody, showing that not only that there was another officer who had access to the temp locker were the physical evidence was stored, besides Officer Daniels and the evidence tech.

The evidence itself was placed in the temp locker in one condition, the collected by the evidence tech in another.

This error by the court on its ruling of the evidence violated Christensens United States Constitutional sixth Amendment right to a Fair Trial and his Fourtenth Amendment right to Due Process.

During the testimony of Gig Harbor Police Officer Jacob Daniels regarding evidence he collected, and how he collected it. he testified that he had gloves on his hands when he collected a ball of blue tape from the ground, "So I put a glove on, and then what i did was I take my glove off like and I drop it in the bag with the item", He then testified that he dont recall if he put the evidence in a paper bag or a plastic bag, that he did not write any thing on the bag to start a chain of custody, or reference it to a incident, date, or time, he then testified that he does not remember if he even sealed the bag. (RP Pg. 471-472)

He also testified that he placed the unmarked evidence bag containing the tape and the glove in a temp locker that was accessible by two other officers and left to pick up his kids in a

hurry. (RP Pg. 465 threw 469)

Then the next witness called Adam Blodgett Gig Harbor evidence technician testifies that there are two evidence techs who have access to the temp lockers. (RP Pg. 491)

[redacted] Officer Adam Blodgett also testifies to how he found the evidence collected by Officer Daniel and how he handled it. He testifies that when he collected the evidence from the temp locker the evidence was in a sealed bag.

He then testified that if there had been any other materials in the bag he would have preserved them.

Officer Jacob Daniels testified as noted, that he placed the glove used to collect the evidence in the bag..

Officer Adam Blodgett testified that when he recieved the evidence the glove was gone.

It also came up that the evidence sheet that officer Blodgett filled out did not match the dates of the time he processed the evidence..

Due to this testimony Defense objected on the record to the admission of the item (RP Pg. 500 threw 502)

This error was also brought up again during half time motions inpart to a motion by defense. (RP Pg. 1515 threw 1524)

This evidence was a key peace in this case and would have affected the judgement of the jury.

• Tradionally, there have been primarily two ways of showing that the evidence is in the same condition as it was at the relevant time (1.) a [redacted] series of people who had custody of the evidence from who it was recieved and to whom it was given between the relevant time and the time of trial, and (2.) a witness with personal knowledge of the evidence condition. When first obtained testifies that it is in the same or substantially the same condition at trial as the relevant time. The relevant law in this area was aptly summarized in State v. Cambell, 103 Wn. 2d 1, 21, 691 P 2d 929, 941 (1984)

· Conclusion ·

The errors listed in this statement of Additional Grounds shows a disregard for Christensens due process rights.

There is reason to believe that Christensens trial was curropted from the time Deputy Prosecutor Terry Lane was assighned to Christensens case, to the [redacted] finnish of it by Prosecutorial misconduct.

This misconduct included witness Tampering, Provision of false testimony, Punitive charging, and other flagrant violations of Christensens due process rights.

The egregious misconduct of the prosecutor and the courts error of not steping in on the issues deprived Petitioner of his Constitutional right to

a Fair trial.

· It must be legal, and it must be moral, and it is not the prosecutors Job to win at any cost, or to carry out his duties with a end-Justifies-the-means approach.

Christensen convictions must all be reversed, and his case must be remanded for a new trial.

Date: 01-09-2020

Jay M Christensen

· CERTIFICATE OF MAILING ·

I certify that on 01-09-2020 I caused to be placed in the mails of the United States, first class postage pre-paid a copy of this document addressed to:

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