

FILED
Court of Appeals
Division II
State of Washington
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No. 53814-8-II

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

CHARLES ANDREW STOCKER

Appellant,

vs.

STATE OF WASHINGTON

Respondent.

APPEAL FROM THE SUPERIOR COURT
OF GRAYS HARBOR COUNTY
Cause No. 18-1-00180-14

REPLY BRIEF OF APPELLANT

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TABLE OF AUTHORITIES

STATE CASES

None

FEDERAL CASES

I. STATEMENT OF THE CASE

Appellant relies upon the statement of facts and procedural history set forth in his opening brief.

II. ARGUMENT

- A. THE RECORD CLEARLY SUPPORTS THE POSITION THAT THE TRIAL JUDGE USED HIS KNOWLEDGE OF DRUG COURT AND THE ALLEGED VICTIM'S PARTICIPATION IN THE PROGRAM AS A BASIS FOR FINDING HER CREDIBLE.

In response to Mr. Stocker's argument that the trial judge should have recused himself in this case, the State argues:

The Appellant does not cite to anything in the record that indicates the judge used any improper basis to determine credibility. Despite repeatedly stating that "...the trial judge utilized his knowledge of the drug court and alleged victim's participation in to find her "brutally honest'..." it is not supported by the record.

Respondent's brief at 7. To the contrary, Mr. Stocker did cite to the record to demonstrate that the judge in fact did use an improper basis to determine credibility. Specifically, to reiterate, in its oral decision, the court stated:

So when you hear the testimony of addicts who are in recovery, especially Ms. – Ms. Masterson I think was on medically assisted treatment, her testimony, she was pretty shaky. She is still – to me, still dealing a lot with the effects of her addiction. But her testimony, the testimony of Ms. Brooks, Ms. Mirante, addicts in recovery, we have this duality. An addict will basically say and do anything to get what they need, which is to get their next fix, so their credibility is basically close to zero. **On the other hand, once they're in recovery it's – in listening and observing their testimony in this courtroom in this case, the individuals who testified that were in recovery they're – at that [point they become brutally honest about their addiction and what they do.**

...

... as far as how they testify about things that would occur, just coming from them they – they’re testifying from their brutally honest at that point. So here we are.

So let me go through a few things here. As far as the credibility of Ms. Gonzales, I think what I just said applies to her as well.

RP 483:9–484:12(emphasis added).

The state simply ignores the record in its response. Presumably, its deliberate decision to avoid even acknowledging the trial judge’s oral decision is an implicit acknowledgement that the judge’s decision was based on an improper factual determination, which could only be based on his involvement in the drug court of which the alleged victim was attending.

Secondly, the State likens the situation here to a situation where an attorney who practices before the court is called as a witness in a case being tried before the court. That scenario is inapposite to the situation here. The connection here is where the judge gains intimate knowledge of an individual who is participating in drug court and subsequently uses her participation in drug court to find that she is “brutally honest”. Under these circumstances, the court should have recused himself, at a minimum, to avoid the appearance of bias.

III. CONCLUSION

Based on the files and records herein, and the points and authorities previously presented, Mr. Stocker requests that his conviction be reversed and the matter remanded for a new trial.

RESPECTFULLY SUBMITTED this 13th day of August, 2020.

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Attorneys for Appellant

By:



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CERTIFICATE OF SERVICE

I certify that on the day below set forth, I caused a true and correct copy of this reply brief to be served on the following in the manner indicated below:

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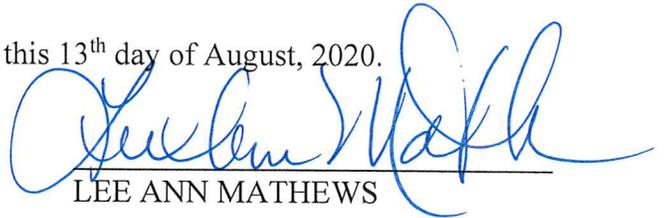
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Signed at Tacoma, Washington this 13th day of August, 2020.


LEE ANN MATHEWS

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August 13, 2020 - 9:56 AM

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