57463-9

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STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

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FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2006 OCT 25 AM 10: 42

STATE OF WASHINGTON

Respondent,

v.

Gantry Mathews
(your name)

Appellant.

No. 57463-9

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Gantry Mathews 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 State should be Equitably Estopped From Charging Mr. Mathews with Intentional Second Degree Murder Where At the First Trial The State Affirmatively Represented that it was not Seeking A Conviction For Intentional Murder.

(Explained further in attachment)

Additional Ground 2

If there are additional grounds, a brief summary is attached to this statement.

Date: 10/23/06

Signature: Gantry Mathews

No. 57463-9-I

In The Court Of Appeals of The State Of Washington
Division One

State Of Washington

Respondent,

v.

Gantry Lomone Mathews

Appellant.

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2006 OCT 25 AM 10: 44

On Appeal From The Superior Court of
The State of Washington for King County

The Honorable Sharon Armstrong

Statement Of Additional Grounds

Gantry Mathews
Appellant

Thomas M. Kummerow
Attorney for Appellant

Argument Of Law

The purpose of this section of the standards is to protect Mr Mathews from Successive prosecution, Whether the purpose in so doing is to hedge against the risk of an unsympathetic Jury or to harass by multiplicity of trials or Vindictiveness.

The principle of Equitable Estoppel is to ensure that, "A party should be held to a representation made or position assumed where inequitable consequences would otherwise result to another party who has justifiably and in good faith relied there on." In re Peterson, 99 Wn. App. 673, 680, 995 P.2d 83 (2000). To establish the elements of Equitable Estoppel against the government, the moving party must show the following by clear, cogent, and convincing evidence.

(1) the government has made a statement or acted in a way inconsistent with a previous statement;

(2) the party relied on the previous statement of the government;

(3) the party's reliance on the government's previous statements was justifiable;

(4) the party would be injured by allowing the government to repudiate its original statement;

(5) estoppel should be applied to prevent a manifest injustice; and

(6) governement functions would not be impaired despite the application of estoppel.

Argument

The State had all of the facts Constituting the intentional second degree murder charge and had sufficient evidence to warrant trying Mr. Mathews for that Crime at the time of the first trial.

In 1995, the State had sufficient evidence to charge Mr. Mathews with intentional second degree murder but chose not to. The same certification for the Determination of Probable Cause utilized for the Amended information at trial in 1995, is used in support of the filing for the Second Amended information filed almost ten years later. Further, the State has not identified any evidence that is now available to support the intentional murder -

charge that was not available in 1995. Therefore, the State cannot rely on any exception to save its improper prosecution of Mr. Mathews.

During the first trial in April, 1995 the State represented to the trial court and counsel that it was not seeking to convict Mr. Mathews of intentional Second Degree murder.

Specifically, during motions in limine, the trial deputy stated: "[We] are not charging Mr. Mathews nor are we alleging that he intentionally killed or had gone in with premeditation or the intent to kill Mr. Villarosa. "(We) have charged him by a felony murder, which is commission of assault, which requires no preplanning." RP 81. During closings, the State argued, "[D]efendant may not have intended to kill [the victim] but he certainly intended to shoot him. He certainly intended him to be harmed. And the State has proven in this case that he intended to assault him, as a result of that assault, he died." RP 767.

The intentional Second Degree murder trial was delayed because the State chose not to pursue that charge in 1995.

Conclusion

The State should not be heard to complain now when they can offer no reason for their failure to pursue the charge at the initial trial.

For the reason stated, Mr. Mathews conviction of intentional Second degree murder must be reversed where the State made representations that it was only pursuing a conviction under the felony murder prong RCW 9A.32.050(1)(b), and Mr. Mathews relied upon that representation to his detriment. ~ To allow the conviction of intentional Second degree murder to stand results in a manifest injustice.

Dated this 23rd day of October 2006.

Respectfully Submitted,
Gantry Mathews

 Gantry Mathews

State of Washington)
) No. 57463-9-I
Respondent,)
v.)
)
Gantry Mathews)
)
Appellant)

FILED
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2006 OCT 25 AM 10: 49

Certificate of Service

I, Gantry Mathews, Certify that on the 23rd Day of October 2006, I caused a true and correct copy of the Additional Grounds to be served on the following in the manner indicated Below:

x Thomas M. Kummerow
Senior Staff Attorney
Washington Appellate Project
1511 Third Avenue, Suite 701
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x King County Prosecutor's Office
Appellate Unit
King County Courthouse
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Notary Public
State of Washington
ELAINE L. HARMON
MY COMMISSION EXPIRES
September 14, 2009

x Elaine L. Harmon
Elaine L. HARMON
NOTARY: Thurston Co.

Signed x Gantry Mathews