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WASHINGTON STATE
No. 93035-0 SUPREME COURT

bjh

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs

TRAVIS LEE LILE,

Petitioner.

(CORRECTED) SUPPLEMENTAL BRIEF OF PETITIONER

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1. INTRODUCTION

Petitioner Travis Lile sought review of the decision of the Court of Appeals affirming his conviction and presented eight issues in his petition for review. This court, in granting the petition, limited review to two issues.

The first is petitioner's contention that he was entitled to reversal because a judge, disqualified under RCW 4.12.050, Washington's Affidavit of Prejudice Statute, rejected petitioner's Affidavit of Prejudice as untimely and thereafter ruled upon and denied petitioner's critical pretrial motion seeking to sever trial on the counts involving his encounter with the officer from the counts involving the civilians who came out of the bar. Lile argues based upon *State v. Dixon*, 74 Wn2d 700, 703, 446 P.2d 329 (1968), that the status calendar judge's approval of the parties' desire to move trial of the case one week on the status calendar in Whatcom County Superior Court was a calendaring matter of setting a case down for trial as specified in RCW 4.12.050 and did not constitute a discretionary ruling. The State argued that the decision was discretionary. The Court of Appeals found the continuance was the equivalent of a stipulation or joint motion which although approved of by the court does not involve its discretion, based upon *State ex rel Floe v. Studebaker* 17 Wn2d 8, 134 P.2d 718 (1943) as refined by *State v. Parra*, 122 Wn2d 590, 600, (1993); see Court of Appeals Slip Opinion at page 10. This court also granted the State's cross petition for review preserving the State's argument that the status calendar's judge's approval of the parties' desire to move the trial one week was a discretionary ruling.

So with respect to the Affidavit of Prejudice statute and its application in this case, the parties are in the same position as they were in the Court of Appeals. If this

court accepts the state's argument that Judge Uhrig's ruling involved the exercise of discretion, petitioner's claim fails. The Court of Appeals holding that judges properly disqualified under RCW 4.12.050 can nevertheless rule on pretrial motions and those decisions are subject to review, not requiring an automatic reversal, would be dicta.

However, if this court affirms the holding of the Court of Appeals that the status judge's decision to adopt the parties' agreement to move the trial one week was not a discretionary decision, then the court must address the legitimacy of the Court of Appeals ultimate decision to apply a harmless error analysis or alternatively, to find waiver. The Court of Appeals held that the disqualified judge's ruling on a pretrial motion, here a severance motion, is subject to review on a harmless error standard and, in addition, that petitioner waived his right to complain by not raising the severance motion again before the trial judge at the conclusion of trial as required by CrR 4.4 (a) (2).

As the Court of Appeals recognized, no previous Washington case has affirmed a conviction where a properly disqualified judge under RCW 4.12.050 ruled upon and denied a pretrial motion. Court of Appeals Slip Opinion, page 14. The slender reed upon which the Court of Appeals predicated its construction of the scope of the protections afforded under the Affidavit of Prejudice statute is *State ex rel LaMon v. Town of Westport*, 73 Wn2d 255, 261, 438 P.2d 200 (1968). The consequence of the Court of Appeals construction of the Affidavit of Prejudice statute is that it eliminates the heretofore automatic reversal sanction for a judge's violation of RCW 4.12.050 or at best applies it only to cases where the disqualified judge presides at trial.

The second issue presented for review is whether witness Christopher Rowles opened the door to impeachment. Rowles had three petitions for the issuance of a

protection order filed against him in Whatcom County courts under the Domestic Violence Prevention Act, RCW 26.50. 030. Lile wanted to impeach him with these adjudications after Rowles professed not to be a fighting man and never in a fight- first on direct examination – and then later on cross examination when he testified twice that that he was not a fighting man. Rowles said he was not a fighting man to deflect Lile’s assertion that Rowles intentionally pushed him and then aggressively approached Lile and got into his face.

2. ARGUMENT

A. A judge’s signature on an agreed order to continue a trial on a status calendar falls within the exemption in the affidavit of prejudice statute RCW 4.12.050 which states “but the arrangement of the calendar, the setting of an action, motion or proceeding down for hearing or trial, the arraignment of the accused in a criminal action or the fixing of bail, shall not be construed as a ruling or order involving discretion within the meaning of this proviso.”

Petitioner respectfully disagrees with the Court of Appeals limitation of *State v. Dixon* to its specifics. See Court of Appeals page 9. The Court of Appeals reading of *Dixon* is tied to the fact that the *Dixon* trial court granted a motion to change the time for a hearing on a motion and did not continue a trial. Petitioner submits this is a difference without a distinction because the statute refers to the “setting of an action, motion or proceeding down for hearing or trial.” RCW 4.12.050.

The Court of Appeals analysis on *Dixon* is at page 9 as follows:

The facts of the case (*Dixon*) are not those here. *Dixon* did not involve a continuance of the trial date. It involved a change of date to hear the motions. It involved unique considerations of fairness. But, Lile points to a comment of the *Dixon* court subsequent to its decision for relief.

Furthermore, it is our view that the setting and/or renoting and resetting of a cause or motion for hearing on the merits is a preliminary matter falling squarely within the ambit and contemplation of the proviso to RCW 4.12.050. This proviso

specifically excludes from the discretionary classification otherwise referred to therein those orders and/or rulings relating to 'the arrangement of the calendar' or 'the setting of an action, motion or proceeding down for hearing or trial.' This language, in our view, clearly embraces the calendaring action taken by the motion calendar judge in resetting petitioner's motions pursuant to the state's motion.

This statement is an accurate application of the statute to the facts in Dixon. However, it cannot be regarded as establishing a rule that every calendaring motion, including trial continuances, are non discretionary acts. Many subsequent cases including these cited above hold otherwise.

Petitioner's argument is linked to the specifics of the Whatcom County Superior Court practice of setting trial dates and status hearings. This Whatcom County practice is described in Appellant's Opening brief in the Court of Appeals at pages 4 and 5 and in the declaration of counsel found at CP 61.

The continuance of trial by agreement of counsel at a status hearing is not a discretionary ruling but rather a calendar matter within the ambit of setting a matter down for trial. This is because only two things happen at a status hearing: the case is either confirmed for trial or continued. Both results are litigant driven. If the parties agree, the court ratifies the agreement. A status hearing is a calendaring event only.

For example, in the case of a continuance, if one party wants a continuance and another party does not consent at the status hearing, no ruling is made. Rather the matter of whether a continuance should be granted is referred to the criminal pretrial motions calendars for resolution by a discretionary action of the court in either granting or denying a continuance.

The judge's acquiescence in the parties' stipulation or agreement or joint motion, however described, does not involve judicial discretion. These status hearings commence at 8:30 am and are concluded at 9:30 am. Large numbers of cases during this short time

period are either confirmed for trial or continued. The actions before the court here clearly qualify as the movement of a trial date at a purely scheduling calendar contemplated by RCW 4.12.050. There is not enough time to consider the specific merits of any case at the status hearing. Attached as an Appendix to this brief for illustrative purposes is a copy of the Wednesday November 2, 2016 status calendar in which one hundred and forty one (141) criminal cases were either confirmed for trial or continued by agreement within approximately one hour's time.

Petitioner's construction of the proviso in RCW 4.12.050 and reading of *State v. Dixon* is consistent with *State ex rel Floe v. Studebaker*, 17 Wn2d 8 (1943). In *Floe*, the Supreme Court concluded its opinion with the following statement:

Neither do we think it can be said that the court was called upon by any of the attorneys connected with this case to make any ruling involving discretion, as contemplated by the statute. We do not believe it can be said that the court is required to exercise discretion when asked to make an order involving preliminary matters such as continuing a case, or for consolidation, where all the parties have stipulated that such order be made; *Floe*, 73 Wn2d at 15.

The Court of Appeals reaches the same result emphasizing that under its rationale, the court is free not to adopt the ruling and the parties are still in their original position where they may exercise the right to file an affidavit. See the Court of Appeals Slip Opinion, page 13: "Had Judge Uhrig denied the motion, either party would have been free to make a different motion." The same result is reached under Lile's rationale that the joint motion to continue or stipulation of what happened was a "calendaring matter" within the ambit of the proviso of RCW 4.12.050.

Both rationales are sound. The action taken by Judge Uhrig was the equivalent of accepting a joint motion or stipulation approved of under Floe and under State v. Parra, 122 Wn2d 590, 600 (1993). As well, actions taken on status calendars are all calendaring matters subject to the proviso in RCW 4.12.050. It is unsound to propose that the processing of maybe one hundred or more cases in an hour-long status hearing in which the cases are either continued by agreement or confirmed for trial involves discretionary decisions by a judge insulating him from being later challenged by an Affidavit of Prejudice. This should be obvious given the status hearing practice of referring any disputes to the contested criminal motions calendar.

B. A litigant who timely files an affidavit of prejudice against a judge is entitled to a new trial when the disqualified judge rejects the affidavit of prejudice and rules upon and denies a severance motion. The litigant cannot be deprived of his right to challenge the pretrial severance motion by failing to renew the motion at the close of the case as required by CrR 4.4 (a) (2). The disqualified judge's ruling denying severance was a legal nullity and cannot be later legitimized by petitioner's failure to raise again the severance issue before the trial judge at the conclusion of the case.

Petitioner addresses this issue in his Petition for Review at pages 9-10, and in his Reply to State's Cross Petition for Review at pages 7-10. Petitioner relies on the statutory guarantee that his case would not be handled, at all, by a Superior Court judge against whom an affidavit of prejudice was timely filed. The purpose of the statute was "to remove discretion from the trial court when presented with a motion for change of judge." *Marine Power & Equip.Co v. Industrial Indem. Co.*, 102 Wash.2d 457, 460, 687 P.2d 202 (1984).

Against this interpretation of the scope of the venerable Affidavit of Prejudice statute, enacted in 1911, the Court of Appeals excludes pretrial motions from the

legislatively intended protections of the statute and allows the pretrial ruling made by the disqualified judge to stand subject to a harmless error review, or to be waived by non compliance with court rules such as by not raising the severance motion again before trial judge at the conclusion of trial as required by CrR 4.4 (a) (2).

This portion of the Court of Appeals decision, see Slip Opinion at page 18, holds that the protections of the Affidavit of Prejudice statute do not cover situations where the disqualified judge later made a substantive ruling that could have been challenged in front of a qualified judge. For example, had the disqualified judge denied a suppression motion, presumably under the Court of Appeals analysis, the error would be harmless if the ruling on the suppression motion was later held to be sustainable. As further explained below, this construction makes no sense. It pretends that the court acting without statutory authority actually did have authority.

One of this court's earliest cases interpreting the statute confronted a situation where a trial judge improperly refused to apply the statute and the State obtained a conviction before that judge. This court reversed the conviction without a hint of a harmless error analysis. *State v. Vanderveer*, 115 Wash. 184, 188, 196 P.650 (1921). The same result should obtain in this case.

C. The Court of Appeals limitation of the sanction of reversal only to cases where the disqualified jurist presides at trial is error. The Court of Appeals reliance upon *State ex rel LaMon v. Town of Westport* 73 Wn2d 255, 261, 438 P.2d 200 (1968) is misplaced because the right embodied in RCW 4.12.040 and RCW 4.12.050 to a fair adjudication of a civil or criminal dispute from a unbiased judge is just as much compromised by the disqualified jurist deciding pretrial motions as is the case where the disqualified jurist decides motions and objections at trial.

The application of State ex rel LaMon v. Town of Westport 73 Wn2d 255, 261, 438 P.2d 200 (1968), hereinafter referred to as LaMon, to the facts of this case is found at pages 14-16 of the Court of Appeals Slip Opinion.

Petitioner's reply to the Court of Appeals reasoning is found at pages 7-9 of his Petition for Review and pages 2-4 of Petitioner's Reply to State's Cross Petition for Review.

Lamon is a fact specific case and should be limited to its precise facts. Lamon wanted to recall the Mayor of Westport. LaMon and officials of the Town of Westport were the real parties in interest. An individual named Tony McClendon was named in the application but because he was not served, he was not a proper party. McClendon showed up at a court hearing on the writ and presented an affidavit of prejudice. The Westport parties moved to dismiss McClendon from the action, which was granted. The court then heard the case and eventually found that the allegations were sufficient to support recall. The Westport officials appealed and argued in part that the filing of the affidavit of prejudice automatically divested the court of jurisdiction. The court rejected this argument, holding that the error at law of refusing to honor an affidavit of prejudice is not jurisdictional. And under the circumstances, it was not a predicate for reversal because "it was unique to the non appealing party, and since the appealing party [Westport] participated in the error and offered no objection or exception." LaMon 73 Wn2d at 262.

Respectfully, LaMon has no relevance to the instant case because the petitioner Lile was the defendant and clearly a party in interest, and he did object before Judge Uhrig proceeded to rule and deny the severance motion. In LaMon, it was the Town of

Westport, although not objecting below, that sought to reverse the judgment of the Superior Court on the basis that McClendon's affidavit of prejudice had disqualified the judge. In affirming the judgment, the Supreme Court did not engage in harmless error analysis. To the extent it applied a waiver analysis, the waiver occurred because the party seeking reversal on appeal did not object below to the judge hearing the matter.

LaMon simply stands for the premise that the Superior Court retained authority to adjudicate the case between the real parties in interest after the housekeeping matter of advising McClendon that his name on the pleading was a mistake and he was not involved in or to be affected by the case and therefore dismissing him from the case.

The mistake of the Court of Appeals is to read LaMon to permit judges disqualified under RCW 4.12.050 to rule on pretrial motions of the party who was a real party in interest in the case, who properly invoked the protection of the Affidavit of Prejudice statute. The fact that Judge Uhrig had jurisdiction under the LaMon analysis does not in any way lead to the Court of Appeals conclusion that Judge Uhrig's disqualification from ruling on the severance motion does not prejudicially affect the judgment.

Under the plain wording of the rule, once a party complies with the terms of the statute, prejudice is deemed established and the judge is "divested of authority to proceed further into the merits of the action. *State v. Cockrell*, 102 Wash.2d 561, 565, 689 P.2d 32 (1984), quoting *State v. Dixon*, 74 Wash.2d 700, 702, 446 P.2d 329 (1968). No showing of actual prejudice is required. *Marine Power*, 102 Wash.2d at 460. All considerations of judicial efficiency are secondary to the "predominate importance" of the statutory right. *Marine Power*, 102 Wash.2d at 463.

The discussion of presumed prejudice underscores that the statute controls and leads to the automatic reversal consequence when a disqualified judge rules on “the merits of the action.” The statement that the judge is “divested of authority to proceed further into merits of the action” speaks directly to and is anathema to the State’s proposed remedy and the Court of Appeals construct of endorsing a disqualified judge to rule on pretrial motions and then to later have an appellate court declare that the error was harmless, i.e. there was no prejudice. This leads to the present confrontation where the state says there was no error in Judge Uhrig’s decision denying severance, or the error was harmless and not prejudicial, versus petitioner’s claim that there was prejudicial error because the statute says so.

The statute accords greater weight to a party’s right to one change of judge without inquiry than it does to the competing interest of the orderly administration of justice. *Marine Power*, 102 Wash.2d at 463. The legislature has maintained the statute for more than a hundred years with very little alteration notwithstanding the inconvenience associated with recusal. *Tatham v. Rogers*, 170 Wash. App. 76, 106-07, 283 P.3d 583 (2012).

Judge Uhrig’s ruling denying severance is a legislatively mandated legal verity of prejudice, necessary to preserve absolute compliance with the statute and thereby to preserve this unique and historic right guaranteeing to all Washingtonians the unqualified right to exclude one judge from ruling on the merits of the case.

In counsel’s experience, Superior Court judges as well as most counsel are very wary of presenting any order, much less presenting a pretrial motion, to be decided by a Superior Court Judge against whom an affidavit has been filed. Here, the prosecutor

challenged the affidavit and pressed forward to have Judge Unrig decide the severance motion because the State wanted Judge Uhrig as the decision maker on this severance motion which is a highly discretionary call for a trial judge—the same reason Lile did not want Judge Uhrig as the decision maker. The state could have easily avoided this confrontation by saying to Judge Uhrig, your Honor, in the abundance of caution, we will yield and have another judge rule. After all, the state later declared in its presentation in the Court of Appeals that the severance ruling was correct before any judge. Now the Court of Appeals has rewarded the state for its wide open trial strategy by reaching a result exempting pretrial motions from the automatic reversal protection of the statute. This court should not countenance such chipping away at a statute intended to be a bulwark of support for the right to an impartial decision maker.

The rule established by the Court of Appeals undermines the protection of the statute on an irrational construct that the litigant's statutory right to a nonbiased judge only applies once the trial starts. The statute says, "No judge shall sit to hear or try any action or proceeding..." RCW 4.12.040. The rulings in pretrial proceedings are just as important in the resolution of litigation as rulings made during the trial and they are within the legislature's intention in enacting RCW 4.12.040 and 4.12.050.

This court should conclude that Judge Uhrig's order denying severance exceeded his authority and was a nullity because he was disqualified from entering it. Prejudice is presumed. His ruling was the foundation for allowing the trial to proceed just as if Lile had never made a motion to sever. Lile is entitled to a new trial in which his pretrial motion to sever can be decided by a qualified judge.

D. The trial court and the Court of Appeals erred in refusing to permit evidence of Christopher Rowles' two previous orders of adjudication for domestic violence, after Rowles testified on direct examination not be a fighting man and never in a fight and later on cross examination that he was not a fighting person on the basis that violence against women is not "fighting."

Petitioner addresses this issue in his Petition for Review at pages 10-15, and in his Reply to State's Cross Petition for Review at pages 10-15.

1. Misstatements in the Record

First, there is some misunderstanding of facts relating to the record which have been incorporated into the briefing and the opinion of the Court of Appeals. The major one is that Christopher Rowles injected his non fighter status into the record only during cross examination. Court of Appeals page 19; see Footnote 10, "The State argues the door was not opened because Lile first elicited Rowles testimony on cross examination of the state's witness -- the state did not elicit the testimony on direct examination."

This was pointed out in petitioner's answer to the State cross petition for review where the entire record of Christopher Rowles testimony concerning his status as a non fighting man is presented; see Petitioner's Response to State's Cross Petition for Review, page 12. To restate the record on this is as follows:

In the direct testimony of Christopher Rowles the following took place upon examination by the deputy prosecutor:

Statement 1

Well how come you did not like defend yourself?

Everything like caught me by surprise to be honest with you, I don't get into too many fights. I don't think I have ever been in a fight. So it kind of caught me by surprise and I was knocked back a bit against the car, RP 508, lines 1-7.

Statement 2

Later in cross examination, after Rowles testified he heard profanities, he testified:

I am not a fighting guy so just let things roll off my chest here, RP 528, lines 1-5.

Statement 3

Still later on cross examination, Rowles testified:

Are you punching back?

No.

Why not?

Still a little in shock. I didn't. I'm a not a fighter. I did not want to be a fighter, RP 538, lines 17-18.

Another incorrect fact mentioned by the trial court in reaching its conclusion that adjudications of domestic violence of Christopher Rowles were not sufficiently similar to the physical fighting involved in the Lile - Rowles confrontation because the Rowles girlfriend, Nicole Foster, never described Rowles' actions as fighting, RP 549 lines 23-25. The Court of Appeals adopted the Superior Court perspective and stated:

After reviewing the court record of Rowles' alleged assault of his ex-girlfriend, the trial court specifically noted that the allegations involving the assault in the petition for an order of protection did not accuse Rowles of fighting. The trial court found that the assault allegations listed in the petition for the order of protection against Rowles were not sufficiently similar to be used to impeach Rowles. Court of Appeals Slip Opinion, page 20.

This is inaccurate Ms. Foster did use word, "fight." Exhibit 21 does contain the following remarks in Ms. Foster's testimony before Whatcom County Superior Court Commissioner Marti Gross, CP 179, 180:

He did say that, he said that he was going to work, like he works with, in the same place as one of my co workers I worked with, they both work out at BP and he said he was going to find him and that he, like I said in the (indiscernible) report, that he was going to (indiscernible) and everything and then he came to my work and I asked him not to because I did not want to get into a fight with him at work.....

Right and I needed to stay home with Ryker, and that fine, but I wanted Chris to leave so that I didn't have to be around him and he wouldn't so I decide before I make him even more angry and got in another physical fight I would leave.

2. Context of Rowles Statements in the Trial

Petitioner's position at trial is reflected in his trial brief, see CP 195-198.

Essentially, Rowles saw the bump between his girl friend Amanda Millman and Lile, and heard the exchange of profanities between them and took offense. Rowles reacted in the same way as when he got into the face of his girl friend Nicole Foster and assaulted her when he got angry. But the trial court denied petitioner's pretrial motion to admit Rowles prior bad acts toward Foster because the conduct alleged was not sufficiently similar under ER 404 (b); see RP 11, 12, CP 190-194.

Respectfully, petitioner asserts that the state got the benefit of Rowles' portrayal of himself as a non fighting man, which was that he never was in a fight in his entire life, to defuse any attack upon Rowles as a person who would react and start a fight.

As to the circumstances of how this brouhaha started, the only witnesses were Lile, his two shipmates and a civilian friend and Rowles, and his three companions. Their respective versions were directly contradictory.

3. Effect of the injection of Rowles non fighter testimony on resolution of who started the fight

A man person who has never been in a physical fight in his life, in the experience of this counsel, is rare. Rowles' proclamation has never been in a physical fight in his life, and is not a fighting person must be examined in context.

Here the context is that Lile accused Rowles of intentionally bumping into Lile and then confronting him close up with his friend Taylor Powell. Rowles had witnessed the bump between Amanda Millman and Lile. Rowles' purpose, Lile argues, was intimidation and control, similar to his reaction to Nicole Foster when she did not immediately comply with his demands. In response to the allegation that Rowles bumped Lile and then rapidly approached Lile and got into his face, Rowles is not content to deny the allegation. Instead, he gives, repeatedly, the explanation that he could not have started the fight because he does not get into fights. Because he is not a fighting man.

The first time Rowles testifies that he is not a fighting man might be justified, in context, as an explanation for why Rowles was caught by surprise. But the first instance on cross examination, Rowles advances by testifying " I am not a fighting guy so just let things roll off my chest. " The representation that Rowles lets things roll of his chest is demolished by a review of the Domestic Protection petitions, CP 90-190, which reveal a controlling, constantly text using and phone call making person, hardly a person who lets things roll off his chest.

Finally on cross examination, Rowles testified:

Are you punching back?

No.

Why not?

Still a little in shock. I didn't. I'm not a fighter. I did not want to be a fighter, RP 538, lines 17-18.

This last portrayal by Rowles of himself as non-fighting back person even in the face of receiving blows almost suggests almost of a religious motivation for his pacifism, a self-portrayal completely at odds with his treatment of Ms. Foster.

As pointed out in previous briefing on this issue, see Petition for Review at pages 10-15, and Reply to State's Cross Petition for Review at pages 10-15, the Superior Court had previously denied Lile's pretrial motion to admit the evidence of Rowles' adjudication for domestic violence under a ER 404 (b) basis citing the lack of similarity between the assaults; see RP 11, 12. In its opinion upholding the Superior Court's exercising of discretion to preclude cross examination on the topic after Rowles had opened the door, the Court of Appeals analysis focuses on the lack of the similarity between picking a fight with a stranger and fighting with one's girlfriend. This distinction is unsustainable. It normalizes domestic violence.

Lile's defense theory was self defense. By excluding cross examination to impeach Rowles on his claim that he could not have started the fight, the court violated Lile's right to present his defense and his confrontation right. While the Court of Appeal is correct that admission of evidence under ER 608 (b) is discretionary, Slip Opinion at 21-22, discretion cannot be exercised unreasonably.

The domestic violence evidence went directly to the trustworthiness of Rowles as a witness on the crucial question of who started the fight. It should not have been deflected by the bogus and untenable basis that physical aggression in a domestic relationship is different from physical aggression on the street.

Because who started the fight was exclusively a credibility conflict between the Navy men and Rowles and his friends, and because Rowles' statements that he was "not a fighter" were demonstrably false, the domestic violence evidence was not impeachment on a collateral matter. Failure to allow cross examination of a State's witness under ER 608 (b) is an abuse of discretion if the witness is crucial and the alleged misconduct constitutes the only available impeachment, State v. York, 28 Wa. App. 33, 621 P.2d 784 (1980).

This was a classic case of opening the door. The state was able to boost its argument that Rowles was credible by his false testimony that he had a propensity to avoid fighting. To allow the State that advantage and to get away with the un rebutted characterization of Rowles as a non fighter violated Lile's confrontation rights and was an abuse of discretion under ER 608 (b).

3. CONCLUSION

Judge Uhrig's ruling denying severance violated the right of Petitioner Travis Lile's under RCW 4.12.040 and RCW 4.12.050 to an unbiased judge. The motion was a crucial defense motion and petitioner Lile had the right to have a nonbiased and qualified judge decide the motion. Prejudice is presumed as a matter of legislative fiat to ensure strict compliance with the statute and to protect this historic right of Washington citizenry to a fair adjudication.

Petitioner's right to confrontation was violated by the trial court's refusal to permit cross examination of Christopher Rowles after he had repeatedly opened the door. The trial court's ruling was an abuse of discretion under ER 608 (b).

For the above reasons, petitioner Travis Lile respectfully request that the court reverse the conviction and remand the case for retrial.

Dated this 7th day of November, 2016

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