

FILED
COURT OF APPEALS
DIVISION II

NO: 49284-9-II

2017 JUL 10 PM 1:11

No. 96599-4

STATE OF WASHINGTON IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON
BY AP DEPUTY
DIVISION TWO

STATE OF WASHINGTON
RESPONDENT

V

ROBERT DAVIS
APPELLANT

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KITSAP

THE HONORABLE JENNIFER A. FORBES, JUDGE

AMENDMENT TO APPELLANTS STATEMENT OF
ADDITIONAL GROUNDS FOR REVIEW &
ADDENDUM TO APPELLANTS PRO SE SUPPLEMENTAL BRIEF
DATED MAY 22, 2017

ROBERT DAVIS
APPELLANT

P/M: 7/6/17

INTRODUCTION

Comes now Robert Davis (Appellant / Davis) with the following materials; (1) Correction of information related to his claim of a "Brady Violation" as it relates to the Cory Manchester report dated 12-22-15, and (2) information intended as addendum to his previously submitted Statement of Additional grounds. Mr. Davis clarifies that this material is submitted in addition to and not intended to replace, his original filings.

CLARIFICATION OF ISSUES SURROUNDING THE COREY MANCHESTER ISSUE

Mr. Davis informs the court that the issue/error referred to in his Statement of Additional Grounds (SAG) of Brady Violation on the Corey Manchester Report, Dated 12-22-15 is hereby withdrawn by Appellant. Mr. Davis trial attorney advised in a letter dated June 26, 2017, that she had in fact did receive the report at issue.

The other issue of the state turning a blind eye to this report and Mr. Davis' counsel not impeaching Alisha Small with this report (ineffective assistance of counsel) is in full argument.

Appellant respectfully requests this court disregard any and all arguments pertaining to "Brady" on the Cory Manchester report. The delay is due to the late stage of receiving this letter from my trial counsel. See Attachment Addendum 1.

ADDENDUM

Mr. Davis submits the following addition to his original 41 page brief and respectfully asks this court to please accept this addendum and to take Mr. Davis's Statement of Additional Grounds seriously and to carefully look at every detail within. Appellant thanks this court in advance for its time and understanding.

ISSUES AND ARGUMENT

INEFFECTIVE ASSISTANCE OF COUNSEL

By Mr. Davis trial counsel bringing up Mr. Davis's prior bad acts of alleged prior drug dealings in front of the jury on numerous occasions, unprompted and without Mr. Davis's permission

Please see May 26, 2016 transcripts pg. 3374 - L-4 to L-6. Davis' attorney says to Michelle Lamb. "you owed Mr. Davis money for drugs, correct?" she answers "Yes Ma'am". At L-7 the prosecution, not wanting a mistrial objects as to relevance. L-8 The Court, in error; overruled the states objection and allowed Mr. Davis's counsel to continue to elicit testimony in violation of ER 404(b)

against the interests Mr. Davis.

Davis maintains that this is an error on the part of the court, and is abuse of judicial discretion. That the Court should have sustained the objection of the State, and declared a mistrial because curative instruction to disregard this line of response would be insufficient to outweigh the obvious prejudice of the Appellant's own trial counsel eliciting testimony about criminal conduct that he was alleged to be involved in that he was not on trial for, had not been charged with, and did not meet the 404(b) exceptions showing pattern, design, or intent to commit a similar criminal act.

L-10 MR. Davis's counsel further painting Mr. Davis as a bad guy and drug dealer in front of the jury says, (Q) And you also wanted to obtain more drugs correct? Pg. 3375 - L-2 to L-4. Mr. Davis's attorney says "When you need drugs you get your drugs from Mr. Davis. and continues Pg 3377 L-4 to L-20. On L-5 counsel asks "did he give you drugs?" L-8 to L-10. Counsel through the witness presents to the jury that Mr. Davis was also getting a package of drugs ready to sell to someone else pg. 3378 L-2 "Mr Davis was getting a bag ready for someone else." implying drugs. This clearly prejudiced Mr. Davis's case, served no legitimate trial strategy, what was the point?

The entire line of questioning regarding alleged drug activity was in clear violation of ER 404(b); was unduly prejudicial, should have been stopped by the Court. At the very least this was abuse of judicial discretion and at the most, should have resulted in a mistrial.

Violative testimony continues as follows:

June 20, 2016 Transcripts, Sheila Costello Testimony Pg. 4749 L-11 to L-18. Beginning L-16 to L-17 Mr. Davis's counsel asks defense witness in front of the jury; "And it's fair to say that you or your relationship with Mr. Davis is that you get drugs from him?" L-18 Answer "Yes". What was the point? What was the relevance? There is no good reason to do this. This is a clear case of ineffective assistance of counsel by Mr. Davis's counsel. The jury can imply all kinds of things from this unnecessary line of questioning, such as "Mr. Davis doesn't care how he gets his money, drugs, I.D. theft, whatever. He's a bad guy.

The negative far outweighs the positive if there is any positive points to this line of questioning. This is why this type of questioning is prohibited by the Rules of Evidence.

IF this line of questioning were permissible, or tactically advantageous, it is still objectionable as counsel has not laid proper foundation for this line of questioning as it relates to Mr. Davis's prior bad acts or alleged drug dealing. These are unproved allegations of criminal acts. These statements elicited by defense counsel were not in the best interests of Mr. Davis. These were gifts to the prosecution from Mr. Davis's counsel. This entire line of questioning brought the credibility, integrity, and truthfulness of Sheila Costello into question.

Mr. Davis maintains that the only curative action available is remand for a new trial.

The record provides further evidence in support of Mr. Davis's position. May 26, 2016 Transcript pg. 3371 L-22 to L-25 pg. 3372 L-1. Michel Lamb admits she has been paid one-hundred dollars by the detectives in this case to provide information for this investigation. She has incentive to please the detectives by any means necessary including lying. Pg. 3372 L-12 to 18 Lamb is asked, was talking about this case and Mr. Davis. She answers "yes vaguely." L-20 to L-24 Ms. Lamb admitted she lied when talking to detectives about the case and Mr. Davis. Pg. 3373 L-2 Lamb says again "yes I did" referring to talking to Brandon Egler about lying to the detectives about this case and Mr. Davis. Then goes on to lie ~~some~~ L-2 by saying "not specifically about Rob." Please see all of Micelle Lambs paid testimony Pgs. 3338 to 3394.

VINDICTIVE PROSECUTION BY STATE

This issue goes to the state's malicious intent and vindictive actions in prosecuting this case. The state turned a blind eye to the perjured testimony of Michelle Lamb, who admits repeatedly that she lied, yet the state continues to use her testimony, and continues to abuse Mr. Davis's rights to fair legal treatment and due process in this matter. The state interviewed Mr. Egler and know what he has to say and that he is not needed for trial because Michelle Lamb admitted to everything he (Egler) said that she (Lamb) said. So with malicious intent to do Mr. Davis legal harm the state put Michelle Lamb on the stand to lie and violate Mr. Davis's right to a fair trial. She really wanted that \$100.

June 8, 2016 Transcripts Detective Krista McDonald, say she interviewed Alisha Small, with Cory Manchester, Pg 3944 L-1 to L-7. Proving more than the recorded interview took place. Also, there was no report filed by McDonald of this interview. The only report is the recently located Cory Manchester report dated 12-22-15.

Also see pg. 3970 L-13 to L-25 in support of affidavit by McDonald.

NO SEARCH WARRANT WAS REQUESTED FOR THE DAVIS
RESIDENCE OR VEHICLES IN THIS MATTER

June 9, 2016 Transcripts pg 3983 L-17 to L-25 says "no search warrant was ever requested for Mr. Davis's house or vehicles." (why?) This is a murder investigation and Mr. Davis is a suspect correct? The answer to that question is because detectives know Mr. Davis is not involved.

June 16, 2016 Transcripts pg 4481 L-6 to L-8. Mr. Davis offered his cell phone to the detectives (Birkenfeld) because he has nothing to hide.

RELIEF SOUGHT

Mr. Davis requests this court remand this matter for a new trial due to the deficiencies and conduct of defense counsel as outlined herein put Mr. Davis in such a bad light before the jury, and the actual malice exhibited by the state in this matter a is exhibited by the use of admitted perjured testimony, tacit acceptance of violation of ER 404(b), and turning a blind eye to the glaring deficiencies of the conduct of state witnesses and serious issues within their own investigation.

Dated this 5 day of July, 2017



Mr. Robert Davis #958015
Airway Heights Corrections Center
PO BOX 2049 / KA17
AIRWAY HEIGHTS, WA 99001-2049

DECLARATION OF APPELLANT

Appellant, Robert Davis, declares and affirms that the foregoing is truthful and correct to the best of his knowledge and is intended to comply with state court rules and perjury laws.
FURTHER AFFIANT SAYETH NAUGHT

Attachment - Addendum

1

Jeniece L. LaCross
Attorney at Law

904 Dwight Street
Port Orchard, WA 98366
(360) 876-1879

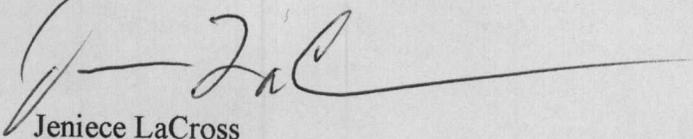
June 26, 2017

Robert Davis
DOC# 958015-K-A-17
Airway Heights Corrections Center
PO Box 2049
Airway Heights, Washington 99001

Mr. Davis,

I received your letter inquiring whether I had received Deputy Manchester's report dated 12/22/15 contained in Bate Stamp 152-159. I have reviewed my file and I did receive that report.

Sincerely,



Jeniece LaCross
Attorney at Law

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STATE OF WASHINGTON

GR 3.1 CERTIFICATE OF COMPLIANCE

I Robert Davis, do swear or affirm that I placed into the inter-institution prison legal mails system the following document:

1. Amendment to Appellants Statement of Additional Grounds for Review & Addendum to Appellants Pro Se Supplemental Brief Dated May 22, 2017.

Addressed as follows:

1. Court of Appeals Div. II
950 Broadway Ste 300
MS. TB-06
Tacoma, WA 98402-4454

2. Jennifer Winkler
Attorney at Law, Nielsen, Beman and Koch
1908 E. Madison St.
Seattle, WA 98122

3. Randal Sutton
Kitsap County Prosecuting Attorney
614 Division St. MSC 35
Port Orchard, WA 98366-4681

Signed and dated this 5 day of July 2017

Robert Davis

Mr. Robert Davis