

08443-4

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NO. 68443-4-I

IN THE COURT OF Appeals OF THE STATE  
OF WASHINGTON DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ELIJAH S. HALL,

Appellant.

2012 DEC -7 PM 1:48  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON

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

The Honorable Mariane C. Spearman, Judge

STATEMENT OF ADDITIONAL GROUNDS

Elijah S. Hall  
Appellant

Washington State Penitentiary  
1313 N 13th Ave  
Walla Walla, WA 99362

## Introduction

Mr. Hall challenges his conviction of felony murder in the first degree predicated on attempted first degree robbery due to the Court abusing its discretion by denying defense counsel's motion to continue the trial date.

### A. Assignment of Error

It was an abuse of discretion for the Court to deny defense counsel's motion to continue the trial date, thus depriving Mr. Hall of his Sixth and Fourteenth Amendment rights to the United States Constitution.

### B. Issues Pertaining to Assignment of Error

The Sixth and Fourteenth Amendments to the United States Constitution and article 1, section 22 of the Washington constitution both guarantee a criminal defendant effective assistance of counsel. Also whether rooted directly in the Due Process Clause of the Fourteenth Amendment, or in the Compulsory Process of the Sixth Amendment, the constitution guarantees criminal defendants a meaningful opportunity to present a complete defense. *Brown v. Ruane*, 630 F.3d 62. The Court has a duty to ensure a defendant's right to the effective assistance of counsel is scrupulously protected. This includes granting a motion to continue the trial date, where defense counsel needs more time to adequately prepare a complete

defense. With the denial of defense counsel's motion, defense could not interview the State's expert witnesses or retain witnesses to evaluate the State's scientific evidence and possibly provide trial testimony. So denying Mr. Hall's defense counsel's motion to continue the trial date was a constitutional error since every criminal defendant is entitled to test the State's evidence against them. The Court's duty to scrupulously protect a defendant's constitutional right to test the State's evidence and present a complete defense requires the Court to grant a continuance where it is necessary to ensure counsel has adequate time to prepare the defense. Also pursuant to CrR 3.3, the Court must grant a continuance request where denial of the continuance will result in prejudice to the defendant's ability to prepare his defense.

C. Statement of the Case  
(See Brief of Appellant)

D. Argument

It was an abuse of discretion for the Court to deny defense counsel's motion to continue the trial date, thus prejudicing Mr. Hall to having adequate time to prepare his defense and also to having effective assistance of counsel. Which are both protected in the Sixth and Fourteenth Amendments to the United States

Constitution. Unlike *State v. Cadena*, 74 Wn.2d 185, 188-89; Hall points out the abuse of discretion was committed by the denial of the continuance preventing him from presenting a complete defense (eg.) exculpatory evidence. (Diminished Capacity). This prevented Mr. Hall from benefitting from the lesser diminished capacity jury instruction. If a continuance was granted Mr. Hall would of been able to present expert testimony stating he did not have the capacity to form the intent required to prove first degree felony murder predicated on attempted first degree robbery. The denial of the continuance also deprived Mr. Hall's defense counsel from adequate time to prepare a defense which deprived him to effective assistance of counsel. Mr. Hall's defense counsel stated himself in his Motion to continue the trial date that "A continuance of the trial date is essential because defense counsel is not prepared to competently move forward." (See Defense Motion to Continue Trial Date [Oct. 12, 2011]). Defense counsel stated he was seeking additional time to be able to consult with experts. The Court asked why experts were not already consulted with and defense counsels answer was that he did not know, adding he had just been assigned to Mr. Hall's only 2 months prior. Its clear Mr. Hall's defense counsel did not have adequate time to prepare a complete defense resulting in him being ineffective at trial. Which is a violation of Mr. Hall's Sixth Amendment.

Consistent with the constitution, the Court has a duty to ensure a defendant's right to the effective assistance of counsel is scrupulously protected. U.S. Const. amend. VI; WA. Const. art 1 § 22. A criminal defendant is denied the effective assistance of counsel by his attorney's failure to conduct reasonable investigation as necessary to prepare an adequate defense. *Brett*, 142 Wn.2d at 880. "To provide constitutionally adequate assistance, 'counsel must, at a minimum, conduct a reasonable investigation enabling (counsel) to make informed decisions about how best to represent (the) client.'" *In Re Fleming*, 142 Wn.2d 853, 866 (1996) (citing *Sanders v. Ratelle*, 21 F.3d at 1456 (emphasis in original)).

"Ineffectiveness is generally clear in the context of complete failure to investigate because counsel can hardly be said to have made a strategic choice when she <sup>has</sup> not yet obtained the facts on which such a decision could be made." *Sanders v. Ratelle*, 21 F.3d at 1457 (citing *U.S. v. Gray*, 878 F.2d 702, 711 (8<sup>th</sup> Cir 1989)). Appellate Courts have found defendants were deprived the effective assistance of counsel in circumstances where trial counsel failed to undertake measures necessary to preparation of an adequate defense. See e.g. *State v. Tilton* 149 Wn. 2d 775, 784 (2003) (failure to present diminished capacity defense); *Caro v. Woodford*, 280 F.3d 1247, 1254-55 (2002) (and citations therein) (where attorney is on notice of defendant's mental impairment, failure to investigate

and provide appropriate experts is deficient performance.). So the denial of the motion to continue the trial date prejudiced Hall from not having adequate time to prepare a complete defense. Also the Court's duty to scrupulously protect a defendant's constitutional right to test the State's evidence and present a defense requires the Court to grant a continuance where it is necessary to ensure counsel has adequate time to prepare the defense. A criminal defendant has the due process right to adversarial testing of the State's evidence against him, to compulsory process, and to present a defense at trial.

The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. The right to call witnesses in one's own behalf has long been recognized as essential to due process.

*Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). The guarantee of compulsory process is a "fundamental right and one which the Courts should safeguard with meticulous care." *State v. Maupin*, 128 Wn.2d 918, 924 (1996) (citing *State v. Burri*, 87 Wn.2d 175, 181 (1976)). Mr. Hall's defense counsel also added if the continuance was not granted, he

"would not have the opportunity to complete the interview and additional investigation required to support a defense at trial," in his motion to continue the trial date. So the denial of the motion to continue the trial date prejudiced Mr. Hall from having a fair trial due to the abuse of discretion by the Court.

### E. Conclusion

For the above reasons, this Court should reverse Hall's murder conviction and remand for a new trial.

Dated this 27<sup>th</sup> day of  
November, 2012

Respectfully submitted,

Elijah Hall

Elijah S. Hall Doc# 356353

Washington State Penitentiary

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

State of Washington  
Plaintiff,

Case No. 68443-4-I

Elijah S. Hall  
Defendant.

DECLARATION OF FILING/SERVICE

The undersigned declares under penalty of perjury that the below documents were mailed via U.S. Mail, postage prepaid as "Legal Mail", this day:

1. Statements of Additional Grounds ;
2. \_\_\_\_\_ ;
3. \_\_\_\_\_ ;
4. \_\_\_\_\_ ;

to the following addressees:

The Court of Appeals \_\_\_\_\_  
Division One \_\_\_\_\_  
600 University Street \_\_\_\_\_  
Seattle, WA 98101-4170 \_\_\_\_\_

Thomas Cahen \_\_\_\_\_  
King Co Courthouse \_\_\_\_\_  
516 3rd Avenue WSS4 \_\_\_\_\_  
Seattle, WA 98104-2362 \_\_\_\_\_

SIGNED this 3 day of December, 2012.

Elijah Hall  
 Elijah S. Hall Doc# 356353