

SEP - 3 2014  
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Ronald R. Carpenter  
CLERK

THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, )  
RESPONDENT, )  
v. )  
TODD DALE PHELPS, )  
PETITIONER, )

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NO. 90552-5  
MOTION TO SUPPLEMENT  
THE RECORD BY USE OF  
DECLARATIONS AND REQUEST  
FOR AN EVIDENTIARY  
HEARING

1. IDENTITY OF MOVING PARTY

PETITIONER TODD D. PHELPS, PRO SE, REQUESTS THE RELIEF SET OUT BELOW.

2. STATEMENT OF RELIEF SOUGHT

THE PETITIONER REQUESTS THAT THIS COURT ACCEPT THIS MOTION TO SUPPLEMENT THE RECORD BY USE OF DECLARATIONS AND REQUEST FOR AN EVIDENTIARY HEARING.

3. FACTS RELEVANT TO THIS MOTION

TODD D. PHELPS WAS CHARGED IN THE STATE OF WASHINGTON V. TODD PHELPS, LEWIS COUNTY SUPERIOR COURT CAUSE NO. 11-1-00790-6, BY DEFICIENT INFORMATION FILED ON NOVEMBER 10, 2011, WITH ONE COUNT OF RAPE IN THE THIRD DEGREE AND ONE COUNT OF SEXUAL MISCONDUCT WITH A MINOR IN THE SECOND DEGREE. IN APRIL 2012 PHELPS WAS CONVICTED BY A TAINTED JURY.

PHELP'S CONVICTIONS WERE REVIEWED BY DIVISION II OF THE WASHINGTON STATE COURT OF APPEALS, CASE NO. 43557-8-II, AND THE COA AFFIRMED PHELP'S CONVICTIONS ON JUNE 17, 2014, BECAUSE THEY STATED THAT PHELP'S DID NOT PROVE THAT THEIR WERE COURTROOM CLOSURES, THAT

VIOLATED VOIR DIRE OR THE JURY SELECTION.

SO PHELPS FILED A PETITION FOR REVIEW IN THIS SUPREME COURT AND WAS ASSIGNED CAUSE NUMBER 90552-5. BUT PHELP'S RE-TYPED AND RE-FILED A NEW PETITION FOR REVIEW TO MAKE SURE THAT IT WAS IN PROPER FORM AND WOULD MEET ALL THE RAP AND COURT RULES. BECAUSE THE STATE FILED A "MOTION TO STRIKE" ON AUGUST 1, 2014. SO PHELP'S HAS NOW FILED THESE MOTIONS: 1) MOTION TO ACCEPT RE-TYPED PETITION FOR REVIEW AND 2) MOTION TO SUPPLEMENT THE RECORD BY USE OF DECLARATIONS AND REQUEST FOR AN EVIDENTIARY HEARING.

#### 4. ARGUMENT

THE PETITIONER WOULD LIKE TO POINT OUT TO THIS COURT, THAT THERE ARE SEVERAL FACTS, THAT ARE IN DISPUTE WITH THE PETITIONER. MAINLY, THAT IN ORDER FOR THE PETITIONER TO WIN HIS APPEAL. THE PETITIONER MUST SHOW THIS COURT, THAT A VIOLATION OR COURTROOM CLOSURE DID IN-FACT HAPPEN ON RECORD. SO ONE OF THE WAYS FOR THE PETITIONER TO LEGALLY ARGUE OR DISPUTE THE STATES FACTS, ARE TO SUBMIT DECLARATIONS AND FILE THESE MOTIONS IN OPPOSITION TO THE FACTS AT HAND.

DECLARATIONS MAY BE USED TO DISPUTE FACTS, THAT ARE IN CONFLICT WITH OTHER FACTS. IF YOU ARGUE THAT THE STATE FACTUAL ALLEGATIONS ARE NOT CORRECT OR ARE INCOMPLETE. YOU MUST FILE DECLARATIONS IN OPPOSITION OF WHICH FACTS ALLEGED BY THE STATE YOU DISPUTE, OR WHICH FACTS THE STATE LEFT OUT. IN HOW YOU KNOW THESE FACTS. IN-FACT, IN PRO SE CASES, COURTS ARE SUPPOSED TO CONSIDER ANY FACTUAL MATERIAL SWORN TO, OR DECLARED UNDER PENALTY OF PERJURY, WHATEVER FORM IT IS IN, BUT IT IS BEST TO DO IT RIGHT AND

MOTION TO SUPPLEMENT - 2

SUBMIT AFFIDAVITS OR DECLARATIONS. SEE JONAS V. BLANAS, 393 F.3D 918, 923 (9TH CIR. 2004).

THE PETITIONER WOULD NOW ASK THIS COURT TO DIRECT THEIR ATTENTION TO APPENDIX A, AND SEE THE 3 DECLARATION'S THAT ARE SUBMITTED ON PETITIONERS BEHALF, ALONG WITH THIS MOTION.

THE PETITIONER HOPES THAT THESE DECLARATIONS WILL SHED LIGHT ON THE RECORD, THAT THIER ARE OUTSIDE PEOPLE AND WITNESSES THAT WERE NOT CALLED TO TESTIFY. THAT WILL GLADLY COME TO COURT IN TESTIFY THAT JUROR MEMBERS WERE BEING EXCUSED WITHOUT PHELPS PRESENCE OR KNOWLEDGE, AS FAR AS A DAY A HEAD OF TIME. IN THAT "DISCUSSIONS HELD OFF RECORD" SHOULD BE COUNTED AS "COURTROOM CLOSURES," BECAUSE THEIR IS NO RECORD ON THIS RECORD TO SAY WHAT WAS SAID AND DONE OFF RECORD, AND WITHOUT PHELPS KNOWLEDGE OR PREMISSION.

THE SWORN DECLARATION OF BREGG PHELPS SAYS, JUDGE NELSON HUNT SAID TO JUROR No. 62, "I ALREADY DIMISSED YOU. WHAT ARE YOU DOING HERE?"

THE SWORN DECLARATION OF ALLEN PHELPS SAYS, THAT THE JUDGE EXCUSED THREE JURORS AND ONE WAS JOEL KEPART AND DANNY McCARTY, AND THIS WAS THE DAY BEFORE. THEN ON THE NEXT DAY, THAT JUROR No. 62, SHOWED UP ANYWAY AND THE JUDGE TOLD HIM, HE WAS ALREADY EXCUSED.

THE SWORN DECLARATION OF AMANDA PHELPS SAYS, THAT THE JUDGE HAD ALREADY DISMISSED JUROR No. 62, AND THAT THE JUDGE WAS IRRITATED THAT JUROR No. 62 SHOWED UP TO COURT AGAIN, AFTER HE WAS ALREADY DISMISSED.

PETITIONER PHELPS HOPES THAT THIS COURT WILL FIND THAT THEIR WERE SO MANY AND NUMEROUS OFF RECORD AND COURT ROOM DISCUSSIONS HELD OFF RECORD. THAT THEY HAVE NO CHOICE, BUT TO GRANT THIS MOTION AND REMAND BACK FOR A NEW TRIAL OR GRANT AN EVIDENTIARY HEARING. IN THESE DECLARATIONS SHOULD BE ALLOWED AS "ALIUNDE EVIDENCE," AND UNDER RAP 9.10 THESE DECLARATIONS SHOULD BE ALLOWED TO BE USED ONLY AS A WAY TO SHOW THIS COURT, THAT THEIR ARE MANY ERRATUM'S.

**5. CONCLUSION**

THE PETITIONER TODD D. PHELPS RESPECTFULLY REQUESTS THIS COURT TO GRANT THIS MOTION TO SUPPLEMENT THE RECORD BY USE OF DECLARATIONS AND REQUEST FOR AN EVIDENTIARY HEARING. BECAUSE PHELPS BELIEVES STRONGLY THAT THE ONLY WAY TO PROPERLY RULE ON THIS CASE. IS TO HAVE AN NEW TRIAL OR AN EVIDENTIARY HEARING. BY TALKING WITH ALL PEOPLE AND JURY MEMBERS INVOLVED, AND FINDING OUT HOW MANY WERE ACTUALLY EXCUSED PRIOR TO VOIR DIRE OR DURING JURY SELECTION. BECAUSE THESE DECLARATIONS SHOULD PROVE THAT THEIR ARE WITNESSES, THAT ARE NOT ON THE RECORD.

RESPECTFULLY SUBMITTED THIS 26, DAY OF AUGUST, 2014.

  
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TODD DALE PHELPS, PRO SE  
PETITIONER & DEFENDANT

APPENDIX A  
DECLARATIONS OF BREGG, ALLEN AND AMANDA PHELP'S

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Sworn Declaration of Bregg W. Phelps

I was present in the courtroom at the Lewis County Courthouse, for the entire jury selection for Todd D. Phelps on April 17, 2012. During the questioning of the jury panel, juror #62 (Joel Kephart) was questioned by one of the attorneys. When juror #62 answered the question for the attorney, Judge Nelson Hunt said to him, "I already dismissed you. What are you doing here?" Then Judge Hunt told him he could leave. Prior to Judge Hunt's statement and question to juror #62, he was not dismissed during jury selection.

I, Bregg W. Phelps (Bregg W. Phelps), declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Dated this day, July 13, 2014, in Lewis County, State of Washington.

## Sworn Declaration of Allen Phelps

Joel Kepar talked to me about the processing in the court room of State versus Todd Phelps. He said that on the first day of jury selection that they were ask if anyone knew both parties. Joel said that him, and Danny McCarty, and one other person said yes, he could not remember that person's name. Joel said that the Judge excused all three of them.

The next day Joel said he showed up for court again, thinking he still needed to report. The Judge told Joel before he went into the courtroom that he had been excused from the trial. At that time Joel left the courthouse.

Joel also said that he liked both families and did not want to get involved.

I, Allen Phelps declare under penalty of prudery under the laws of the State of Washington that the foregoing is true and correct dated this day 7/13/14 in Lewis County Washington.

Sworn Declaration of Amanda Phelps

On April 17<sup>th</sup> 2012, in anticipation of the trial, State vs. Phelps, my family and I we were the first ones in the courtroom. Seated in the front row, we were told we had to move as the first five or six rows were to be used for jury selection.

So we moved. I sat in the second to last row with an uncle and the rest of my family sat in the last row behind me.

They brought the potential jurors in and my uncles behind me named the few they knew. Carol Bryant, Danny McCarty, and Joel Kephart. Joel sat a few rows in front of me as his juror number was in the 60s. There was some introductions and procedural jargon that people nodded to.

The question asked was either 'Is there anyone who knows either party?' or 'Is there anyone who has a scheduling conflict?', but Joel waited until everyone else had been addressed before raising his hand. Joel began to tell the judge "You already dismissed me" but Judge Hunt interrupted him and demanded, "Why are you here?" Joel continued, "You said I needed to be here today." I remember the judge's growing irritation as he said "I already dismissed you." Joel tried to explain again, "You said earlier that I would be excused but I still had to show up." The judge sat back in his chair and said again "Well I've already dismissed you." Then Joel stood up and left.

 declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct to my memory, dated this day July 14, 2014 in King County, Washington State.