

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

2013 OCT -7 PM 1:22

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
PATRICK J McAllister)
(your name))
)
Appellant.)

STATE OF WASHINGTON
No. 44031-8-11
DEPUTY
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, PATRICK J McAllister, 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

please see attached statement for an Addition
TO my statement of Additional grounds.
~~As~~ AS well AS my extension request

Additional Ground 2

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

Date: ~~10-2-13~~
~~10-2-13~~

Signature: Patrick J McAllister

I state under penalty of perjury
That the following is a True and Accurate
Statement.

I PATRICK McAllister had to go to court.
I left on Aug 9 And didn't get back to
Airway till Sep 4. That's why I'm
asking to do an addition to my Statement
of Additional Grounds

Because I had only a few days with
my Transcript.

CASE # 44031-8-11

Thank you

Patrick J McAllister
PATRICK J McAllister

It should be mention that I already asked
for an extension about Sep 6 I think.
But have not hear back from you as of yet.

Thank you for your time

LEGAL

prosecutor Misconduct

Not only did the prosecutor NOT inform the court that Mr. Sabiniano was threatened by relatives of Mis. Lotega NOT to testify. But prosecutor actively interfered in Mr. Sabiniano's testimony.

Denying Mr. Sabiniano the ability to tell the jury that he was threatened not to testify.

452 - Q okay did anybody ever suggest one way or the other whether you should come and testify in the United States

MR. Rosekrans: And objection your Honor as to relevance.

He's here and he's testifying.

Court: sustained

Q Mr. Sabiniano, did you ever feel, or did anybody ever try to make you feel that you should not testify?

MR. Rosekrans: objection. Relevance

Court: sustained Mr. Arbenz

MR. Rosekrans knew that Mr. Sabiniano was going to testify about being threatened by relatives of Mis. Lotega. That's why Mr. Rosekrans objected.

It was also Disingenuous when
in The Respondent Brief Deputy prosecuting
Attorney Thomas A. Brotherton WSB#37624
SAID in his brief

P. 24 - 14-16 It is Likely That deFence counsel
determined That Mr. Sabiniano's Testimony on This issue
would simply undermine his credibility and did NOT
pursue The issue during Trial.

This was highly Disingenuous because Mr. Rosekrans
objected Twice about Mr. Sabiniano's being Threatend.

This would also show what Mis Lorega was
willing To do To stay in The U.S.A.

Mr. Sabiniano's Testimony would HAVE gone a Long
way To undermine Ms. Lorega's Credibility,
By NOT Letting Mr. Sabiniano Testify About being
Threaten This was highly per-jedice TO Me.

The prosecutor's Job isn't Just To win, but
To win fairly, staying well within The rules.

United States V. Hill 953 F.2d 452, 458
(9th Cir. 1991)

Failure by lawyer to impeach Ms. Lotega.
 At Trial she said her home in The Philippines
 had a bathroom inside her home.

597 4-13

Q: in The village um did you -- when your father
 found out that Mr. McAllister was coming did he, did
 he build a toilet in The house for Mr. McAllister

A: NO, we have toilet

Q: All right, so he didn't build a special toilet for him.

A: NO

Q: Okay, and The toilet that you had was in
 your house?

A: yes

But The states own witness Ms. Lotega's
 brother-in-law Temu Perkins
 testified at 252 4-6

The family home had two bedrooms, a packed
 dirt floor and a thatched roof!

The house lacked running water.

This is clearly prosecutor misconduct.

Because The prosecutor supported perjured
 testimony.

This would show how Miss. Lotega
 Deliberately deceive The court.
 This case largely has to do with Credibility.
 And by The prosecutot willingly
 Subporting perjurered Testomily WAS
 prejudicial TO Me.

And it goes ~~against~~ against The ethics The
 prosecutot must comply with.

Knowing That Ms. Lotega Home didnt have running
 water and could not of had A in doot bath room.
 This would severely undermined Ms Lotega Credibility.
 And would show That her parents did put An
 outhouse for Mr. McAllister.

And That Mis Lotega parents knew well
 in advance That Mr McAllister WAS coming TO
 VIST Mis Lotega.

The proper role of The criminal prosecutot is not simply
 To obtain a conviction. But to obtain a fair conviction.

Brady V. Maryland, 373 U.S. At 87, 83 S.Ct.
 1194, at 1196, 10 L.Ed. 2d 215 (1963) quoted
 by Brown V. Botg 915 F. 2d 1011, 1015 (9th Cir. 1991)

see PERJURED
 TESTIMONY

The principle That a state MAY NOT knowingly use false evidence,
 including False Testimony. to obtain a tainted conviction, is implicit in any concept
 of ordered liberty Napue V. ILLionis 360 U.S. 264 At 269, 79 S.Ct. 1173 At 1177,
 (1959) 3 L.Ed. 2d 1217

Prosecutor Misconduct =

When The prosecutor Told The Jury That Ms. Ortega would NOT have to see AN immigration Doctor "Graty" in The U.S. is a delibetat Lie.

694 - And They Talk About, you Know, well, you Know TAKing her TO The Doctor TO MAKE sure That shes clean So That we can go on This wedding Ceremony. Well Im pretty sure That's probably Taken care OF AT The U.S. Embassy.

695 They're just NOT going TO allow somebody TO come INTO The country That MAY have some sort OF Contagious disease. So I Think That WAS Already Taken care of

The prosecutor is Blatantly Lying TO The Jury.

The prosecutor is a officer OF The court and he is obligated TO do his Job with integrity. And by him being The Elected prosecuting Attorney he is held TO a highter standard OF ethics.

The people OF This County and The courts as well as Mr McAllister "me" deserve TO have a prosecuting Attorney That doesnt Lie TO The Jury or The court.

The appeals court should dismiss with prejudice. All charges because of the Gross Violation by the prosecutor. His misconduct erodes the very Fundamental Foundation of the court system. The prosecutor is making a Mockery of the court.

A conviction must be overturned which rests in part upon the knowing use of false testimony if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury.

United States v. Agurs, 427 U.S. 97, 96 S. Ct 2392, 49 L. Ed. 2d 342 (1976) quoting by, De Marco v. U.S. 928 F.2d 1077, (11th Cir. 1991) 1074

The prosecutor's actions in this case are intolerable. Possessed of knowledge that destroyed her theory of the case, the prosecutor had a duty not to mislead the jury. Brown v. Borg, 951 F.2d 1011, 1015 (9th Cir. 1991) see section 7

The Supreme Court has found due process violation in several cases where prosecutors knowingly have introduced and argued from false testimony. SEE Mootey v. Holohan 294 U.S. 103, 112, 55 S. Ct. 340, 341, 79 L. Ed 791 (1935) (prosecution based on prejudiced testimony) Miller v. Pate, 386 U.S. 1, 87 S. Ct. L. Ed. 2d 690 (1967) 785, 17

Prejudicial Remarks Made by Prosecutor
Dubcia v Smith 197 F.3d 390 (9th Cir. 1992)

Trial counsel's failure to object to the prosecutor's inflammatory statements that the defendant was a "piece of garbage", and the biggest liar you've ever encountered" constituted ineffective assistance of counsel

Weygant v. Ducharme, 774 F.2d
1491 (9th Cir. 1985)

Trial counsel's failure to object to improper closing remarks amounted to performance below the objective standard of reasonableness
U.S. v. Wolf 787 F.2d 1094 (7th Cir 1986)

Trial counsel's failure to object to improper and inflammatory remarks by the prosecution used to show defendant's bad character constitutes ineffective assistance of counsel

Seehan v. State of Iowa 37 F.3d 389 (8th Cir 1994)

Trial counsel's failure to object to highly prejudicial remarks made by the prosecutor during opening arguments, deprived defendant of a fair trial and constitutes ineffective assistance of counsel.

United States V. Estelle
708 F.2d 954 (5th Cir 1983)

defense counsel's failure to object to prejudicial testimony which was used to inflame minds of jury, constitutes ineffective assistance.

Lyons V. McCotter
770 F.2d 529 (5th Cir 1985)

Where counsel passes over clearly inadmissible evidence, which is prejudicial to defendant, has no strategic value and constitutes ineffective assistance of counsel.

Prosecutor Misconduct

Prosecutor - Lied mislead the jury when he asked Temar Perkins At 244 20-22

Q: Now you were aware that, I guess, that her fiancée visa was either getting ready to expire, or was going to, or had already expired, I'm not sure of the timeline there.

This was ~~disingenuous~~ disingenuous because the prosecutor was well informed about Mrs Lotega's ~~immigration~~ immigration status. This shows that the prosecutor was misleading the jury. Prosecutor had a duty not to mislead the jury. Brown V. Botg, 951 F.2d 1011, 1015 (9th Cir. 1991) see section 7

9
Prosecutor Misconduct prosecutor
Supporting perjured Testimony.

When Detective Garrett said that she got
a phone call from Mr. Perkins. ON April 20, 2010.
This is impeachment of Detective Garrett
and perjured Testimony.

Because Me and Mrs. Lotega were still in
OR. on the 20th of April visiting my MOM.

Detective Garrett 277 5-9

A: Then I had to conduct an interview with Shetilyn.

Q: OKAY and if you got this phone call on April 20,
2010, how quickly did you schedule
and conduct the interview with Shetilyn Lotega?

A: It was in a few hours

Detective Garrett took an oath before she
testified to tell the truth. Which she
obviously didn't do.

The prosecutor supported perjured
Testimony.

By doing so it depriving me of a fair trial.

The prosecutor's job isn't just to win,
but to win fairly, staying well within
the rules SEE

United States v. Hill

953 F.2d 452, 458 (9th Cir. 1991)

The Fourteenth Amendment prohibits a state criminal
conviction obtained by the knowing use of false
evidence. Conviction on testimony known to
~~be~~ prosecution to be
perjured as denial of due process
2 L. Ed. 2d 1575, and 3 L. Ed. 2d (1991)

PERJURED TESTIMONY

A prosecutor has a constitutional duty to correct evidence
he knows is false. E.g., id., N. Mariana Islands

V. Bowie, 243 F.3d 1109,
1115 (9th Cir. 2001) A lie is a lie, no matter
what its subject and if it is in any way relevant
to the case, The district Attorney has
the responsibility and duty to correct what
he knows to be false and elicit the truth."

Prosecutor Misconduct - Prejudicial Remarks
Made by Prosecutor

When he said At 648 And he becomes physically abusive. Because That's what happens in a domestic violence situation, you've got that mental abuse, mental abuse; And physically abuse To go ahead and keep that person in line. you control them by fear and by intimidation.

658 It's just, if it's never happened to you it's hard to fathom that it could happen to somebody somebody else. But, it does and did.

These remarks were so flagrant and ill-intentioned that it evinces an enduring and resulting prejudice that could NOT have been neutralized by an admonition to the jury.

The jury should decide on guilt or innocent NOT the prosecutor.

For the prosecutor to say that physically abusive and mental abusive did happen. was highly prejudicial to me.

State V. Douglas Rivers

981 P. 2d 16 96 Wn. App 672 July 26 1999

The court of appeals Baker J. held that
prosecutor's closing argument made inappropriate;
inflammatory, and deliberate attacks on the
credibility of defendant and his character
witnesses and the error was not harmless
reversed

State V. Richard Maurice Jones Jr

183 P. 3d 307 144 Wn. App 284

Cumulative effect of prosecutorial
misconduct depriving defendant of
fair trial

State V Rand Allen Boehning

11, P. 3d 899 127 Wn. App 511 May 7 2005

State V. David S. Dailey #46616 May 1 1980

The court dismissed the criminal prosecution
"in the furtherance of justice"

State V. Jacob Melvin Koram

27482 - 5 - I I MARCH 15, 2004

Holding prosecutor acted vindictively

State V. Leonard A. Stephens

sanctions for breach of prosecutorial duties Dismissal

May 5, 1980

Failed To Object
To...

13

Prejudicial Evidence

Saget V. Maass 907 F. Supp. 1412 (D. Or 1995)

Trial Counsel's failure to object to irrelevant and unduly prejudicial statements which implied that petitioner was a habitual criminal, allowed the prosecution to introduce evidence of defendant's unsavory character merely to show that he is a bad person and thus more likely to have committed the crime", constitutes ineffective assistance of counsel. The court found that jurors are not likely to remain impartial after hearing evidence which permits them to believe that acquitting the defendant may mean releasing an exceedingly dangerous person.
quoting U.S. V. Bland 908 F. 2d 471, 473 (9th Cir. 1990)

Seehan V. State of Iowa, 37 F.3d 389 (8th Cir 1994)

Trial counsel's failure to object to highly prejudicial remarks made by the prosecutor during opening arguments, deprived defendant of a fair trial and constitutes ineffective assistance of counsel

Potcaro V. United States,
784 F.2d 38 (1st Cir. 1986)

Trial counsel's failure to object to improper comments and prejudicial remarks made by Trial Court may constitute ineffective assistance of counsel

United States V. Rasmisel
716 F.2d 301 (5th Cir. 1983)

Trial counsel's failure to object to inflammatory remarks made by prosecution during closing arguments amounted to ineffective assistance of counsel.

Matzullo V. State of MD
561 F.2d 540 (1977)

Trial Counsel's Failure to move to exclude the jury during a discussion to dismiss one count of Rape charge or to request a limiting jury instruction to disregard the prejudicial remarks of the first Rape count amounted to ineffective assistance of counsel

State V. Corinne Paulette Dixon MAY 5 2009
207 p.3d 459 150 WN. App 46

State V. Leonard A. Stephens
Dismissal Sanctions for breach of prosecutorial
duties 47 WN. App 600

State V. Vincent MR Fitzgerald
694 p.2d 1117 39 WN. App. 652

State V. Swenson
382 p.2d 614 62 WN.2d 259

State V. Darrick Donte Wright
76 WN. App 811

State V. Alexander B. Torres
554 p.2d 1069 16 WN. App. 254

State V. Osiel SUAREZ-BLAVO
864 p.2d 426 72 WN. App 359

State V. Edward R Rose
382 p.2d 513 62 WN.2d 309

~~State~~ State V Joseph SHERMAN
698 p.2d 598 40 WN. App. 340

The prosecutor Admits That The examination from Nurse Calbertson did not result in any findings.

See Brief of Respondent page 4 5-6

Then why after Ms. Lotega saw

Nurse practitioner white.

Would Mis Lotega's allege injury be

assign to Mr. McAllister?

Prosecutor Misconduct

prosecutor Suborning perjured testimony

When Mis Lotega said vaginal sex with her on March 20 - see ³¹⁸ ~~318~~ happened. 9-15

~~Q~~ 318 9-15 Q Fine okay also on the 20th After he got done having sex with you did anything else happen on that day.

A: yes

Q: what happened

A: He Kicked me 3 to 5 times

Q: where did this happen

A: his house

see →

Prosecutorial Misconduct
under C.R. 8.3(b) a court may dismiss
a prosecution when government misconduct
causes prejudice to the rights of the
accused which materially affect the accused's
right to a fair trial.

from 320 4-6

Q: Was there ever a time when one of these
things happened to you and it wasn't in his house?
A: No it's always in his house.

This could not of happened because me and Miss Lorega
were in Seattle in a kissing booth with a photo that
was date March 20th. It could not of happened and the
Prosecutorial knew that.

1999. Now you'll get to see this picture better.
It's been admitted into evidence you'll get to take it back
to you in the jury room. And you'll see that because
it's from a photo booth that it's got the date, date
stamped on the bottom of March 20th.

The photo is ~~the~~ PROOF that me and Miss Lorega were not
home on the 20th of March and it could not of happened. Miss Lorega gave
perjured testimony. The Prosecutor subverted it. The Prosecutor's
actions in this case are intolerable. See next page.

The prosecutor had a duty NOT TO
mislead The Jury

Brown V. Bortg

951 F.2d 1011, 1015 (9th Cir. 1991)

see section 7

Because The prosecutor Knew That Mis Lorega
was give fake Testimony, And Because
OF All The prosecutor's Flagrant and
Calminate Violation.

I am asking for a dismissal
OF all charges with prejudice.

Inclusion because of the
Prosecutor's Flagrant and culminate
Violation. I am asking for a dismissal
of all charges with prejudice.

Sincerely

Patrick J. McAllister

Patrick J. McAllister

Under RCW 9.94A.010 (6) Making
frugal use of state resources, would be
To dismiss with prejudice.