No.: 92020-6

IN THE SUPREME COURT

FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

ROOSEVELT REED, Petitioner.

REPLY TO RESPONSE BRIEF

Mr. Roosevelt Reed #962757
Clallam Bay Correction Center
1830 Eaglecrest Way, HA23
Clallam Bay, Washington 98326

REPLY TO RESPONSE

1. The State is correct that the Court of Appeals affirmed the trial court's ruling that Mr. Reed had opened the door to evidence of his involvement in prostitution, holding that any error was "harmless." The error was far from harmless. The Appellate Court Opinion was based upon what the Appellate Court accepted as fact, relying on the Prosecutor who wrote the State's brief as an officer of the court, to not lie or misrepresent the truth and record that the Court is to rely upon. The facts quoted and cited to by the State were plain hot air, 100% prosecutorial hearsay and vouching by the prosecutor the Appellate Court misapplied as genuine fact and record that they based their decision on. The Court of Appeals justified "opening the door" to questions about the prior assaults coming in because of the fact that Mr. Reed was the victim's "pimp" and that Mr. Reed assaulted her because while he was in jail, "she did not put money on his books. Id. at 388." **OPINION, page 10.** This cite was not testimony or evidence, it was pure prosecutorial vouching and hearsay at it's worst. Because this is not established credible evidence with even one shred of proof that a court can have a basis to rule upon, it is harmful error. The prejudice was overwhelmingly harmful. A viscious woman beating "pimp" clearly made every single woman empanaled on the jury convict Mr. Reed regardless of the facts in this case. Allowing the "prostitution" door to be

opened was exactly why this Court has made past rulings to protect a right to a fair trial. State v. Lough, 125 Wn.2d 847, 889 P.2d 487 (1995). "First, such evidence is highly prejudicial because the possibility exists that the jury will vote to convict, not because they find the defendant guilty of the charged crime beyond a reasonable doubt, but because they believe the defendant deserves to be punished for a series of immoral actions...Second, the jury may place undue weight or overestimate the probative value of other bad acts...Overestimation problems are especially acute where the prior acts are similar to the charged crime...Finally, introduction of other acts of misconduct inevitably shifts the jury's attention to the defendant's general propensity for criminality, the forbidden inference; thus the normal presumption of innocence is stripped away." State v. Bowen, 48 Wn.App. 187, 738 P.2d 316 (1987). The court admitted prejudicial hearsay that could not be effectively cross-examined by the defense which violates the Sixth Amendment's confrontation of witnesses to rely the Court of Appeals decision upon. Douglas v. Alabama, 380 U.S. 415 (1965); Dutton v. Evans, 400 U.S. 74 (1970). Petitioner's appeal was denied because of the most appellate prosecutor's presenting the Court misinformation and portraying it as factually true, which is a violation of RPC 8.4(c) as it was done intentionally to win at all costs.

The Respondent claimed in their Response that Mr. Reed did not meet the qualifications required to merit review by this Court. Since the Court of Appeals based it's holding on the misfacts above, review is necessary to correct a manifest injustice. The discretionary decision on untenable grounds and untenable reasons on facts unsupported by the record is error. State v. Quismundo, 164 Wn.2d 499, 504, 192 P.3d 342 (2008).

2. The State in it's Response Brief conceded that the State's proposed jury instruction on ER 609 was error. **RESPONSE, page 32, fn 11.** The State claims that inquiry on appeal is limited to whether Mr. Reed's trial attorney was ineffective for failing to object, then agrees that Mr. Reed assigned error to the instruction, but his ineffective appellant attorney only briefed the ineffective assistance of counsel argument. **RESPONSE, page 32, fn 11.** What we have here is a humdinger of an issue that merits new trial, and will get one if raised on the instruction itself on PRP, which will come if this Court does not agree with the issue soley presented by the lame appellate counsel that missed the big picture, but did ring the bell, that trial counsel was ineffective for failing to object to this erroneous jury instruction the State concedes is error. It is harmful error as it eroded the jury's decision making.

Review should be granted for this ground to correct a manifest injustice. The bottom line is that the ground was properly claimed in Appellant's Opening Brief under the A. ASSIGNMENTS OF ERROR, 2. The trial court erred by instructing the jury they could consider appellant's prior convictions in assessing his credibility when the convictions were not admitted for impeachment purposes. CP 62 (instruction 4). **OPENING BRIEF, page 1.** The appeal attorney did name and raise the correct ground. The State is right that the appeal attorney was so ineffective that he completely argued it was ineffective for the trial attorney not to have objected, which was Assignment of Error number three. Due to the States proper concession that the jury instruction was error, Mr. Reed should not be penalized for having a court appointed appellate attorney that obviously needs to go back to law school he was so ineffective. ER 609(a)(2) is very clear that only if the crime "involved dishonesty or false statement, regardless of the punishment." Allowing the jury to use ER 609 IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME to assess Mr. Reed's credibility when the crime used was assault violated his constitutional right to a fair trial. Mr. Reed's conviction resulted from jury instructions that were fundamentally defective and violated his Sixth Amendment Right to Jury Trial and Due Process Rights. Richardson v. United States, 526 U.S. 813 (1999). A new trial should be granted.

3. The State wrongly asserts that any error was harmless due the ineffectiveness of trial counsel not objecting to the defective ER 609 "Credibility" jury instruction the State concedes is error. There was no "strategic" reason not to object and defense counsel clearly must not have known the law, since assault is not a crime of dishonesty. "Trial counsel's failure to object to a constitutionally defective jury instruction may constitute ineffective assistance of counsel." Waye v. Morris, 469 U.S. 909, 105 S.Ct. 282, 83 L.Ed.2d 218 (1984). The Strickland standard was met at not knowing the law and properly objecting is below the bar set for a reasonable attorney to have made. Trial counsel's perfomance fell below a minimum objective standard of reasonableness. There is no legitimate trial strategy or tactics when the jury instruction is unconstitutional and clearly the wrong law being applied to Mr. Reed's determent. The jury instruction here on ER 609 Credibility completely relieved the prosecution of it's burden of proof and violated Mr. Reed's Due Process rights.

4. It is very obvious that there was no strategic reason for trial counsel not to request a ER 404(b) limiting instruction. All kinds of this Court's cases and the Court of Appeals Courts cases make it manditory that if you ask

for a limiting instruction in these circumstances, you get one. "If evidence of prior bad acts is admitted, the trial court **must** give a limiting instruction." State v. Gunderson, 181 Wn.2d 916, 337 P.3d 1090 (2014). "If a trial court admits prior bad acts evidence it must provide the jury with a limiting instruction specifying the purpose of the evidence." State v. Craven, 170 Wn.App. 744, 284 P.3d 793 (2012).

CONCLUSION

Mr. Reed did not get a fair trial. The prejudice is not to be ignored due to what was deemed overwhelming evidence. Some of the supposed overwhelming evidence is proven now to have been prosecutorial misconduct, hearsay and vouching. Regarding the jury instruction that the State introduced. Recently this Court held, Barry argues, relying on State v. Wanrow, 88 Wn.2d 221, 237-38, 559 P.2d 548 (1977), that all "instructional errors" are presumed prejudicial and subject to an intermediate standard of review. This is incorrect. We presume prejudice only when the erroneous instruction was "'given on behalf of the party in whose favor the verdict was returned.'" Id. at 237 (quoting State v. Galladay, 76 Wn.2d 121, 139, 470 P.2d 191 (1970). The verdict was returned in favor of the State, prejudice is "presumed."

State v. Parry, 183 Wn.2d 297, 303, ___ P.3d ___ (2015).

Respectfully submitted on this 19th day of August, 2015,

Roosevelt Reed

Mr. Roosevelt Reed, Pro se.

PROOF OF SERVICE

I, Roosevelt Reed, do hereby declare under the penalty of perjury that I received the State's RESPONSE BRIEF on the 5th of August 2015, and have timely filed the REPLY BRIEF by placing the same in the Prison Legal Mailbox utilizing GR 3.1 to timely file this with proper postage addressed to: Mr. Jacob R. Brown, Dptv. Prosecuting Attv., King County Prosecutor's Office, 516 Third Avenue, Ste. W-554, Seattle, Washington 98104, within the 15 days allowed.

DATED: August 19, 2015

SIGNED: Roosevelt Reed

Mr. Roosevelt Reed, Pro se.