

70862-7

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No. 70862-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

Nathaniel S. Clark,

Appellant.

STATEMENT OF ADDITIONAL
GROUND (RAP 10.10)

2014 OCT 23 AM 11:45
COURT OF APPEALS
STATE OF WASHINGTON

I, NATHANIEL CLARK, 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.

STATEMENT OF ADDITIONAL
GROUND (RAP 10.10)

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Additional Grounds



THE Appellant purposes;

I.

During deliberations, the prosecution tampered with the jury and its ability to deliberate without prejudice. By exposing the jury to evidence it had specifically asked not to hear, during an in court session to answer the "INQUIRY FROM THE JURY".

II.

The trial court committed an abuse of discretion, by admitting improper, prejudicial gang evidence over objections by defense counsel.

I. COURT OF APPEALS CASE LAW AND COURT

Rules in Support of Grounds (1)

1. In its discretion a court may grant a jury's request to RE-HEAR OR REPLAY EVIDENCE, But should do so in a way that is least likely to be seen as a comment on that evidence and in a way that is not unfairly prejudicial, and in a way that minimizes the possibility that jurors will give un-due weight to such evidence.

CrR 51 (E) ; CrR 6.15 (E) (1)

2. During deliberations evidence must be reviewed in a MANNER that does not un-duly emphasize evidence.

St V. KOONTZ, 145 WASH. 2d 650, 651-52
657-61 (2002)

St V. MONROE, 107 WASH. APP. 637, 638
27 P.3d 1249 (2001)

Statement of additional grounds

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I. Summary of Grounds (1)

THE appellant purposed that the King County prosecution tampered with a jury during its deliberations. This was done so by exposing the jury to evidence that the "INQUIRY FROM THE JURY" specifically asked NOT TO HEAR.

It was done so in a way as to direct the deliberating jury as to the weight of the evidence. Because the jury was in deliberations it can be seen as a comment on the evidence.

The prosecution was AWARE that the evidence it was about to play to the jury was prejudicial. It was ALSO AWARE that the court had directed them not to play the calls the jury had ASKED to EXCLUDE. The PROSECUTION consciously and vendictively committed the misconduct.

Because the jury was in their deliberations, the misconduct was so flagrant, that no curative instruction could have eliminated the prejudice. The "ball" could not be "un-rung". The ERROR WAS NOT HARMLESS.

STATEMENT OF additional Grounds

I. Statement of Grounds (1)

Argument was made as to phone calls the prosecution was seeking to admit as evidence. The defense objected on the grounds that the calls were "simply prejudicial with no probative value". The court admitted the evidence.

(8.05.2013; RP at 8-12)

During trial, Catey Hicks, A Sergeant at the King County Jail submitted into evidence five phone calls that were recorded while the defendant was in custody. The calls were then inventoried, and the different numbers the calls were made between were listed.

(8.05.2013; RP at 24-25)

During testimony, Detective MANSIONE identified one of the numbers in the recordings, as belonging to Estrellita MATIAS.

(8.05.2013; RP at 51)

During testimony, Estrellita MATIAS, also identified the number as belonging to her.

(8.05.2013; RP at 104, 113)

During jury deliberations an "Inquiry from the jury" was given to the judge. It was a request to hear recorded evidence that media equipment was needed to review. Court was reconvened to review the evidence. A recess was taken to compose a "playlist".

(8.08.2013; RP at 2-6)

STATEMENT OF Additional Grounds

LEGAL MAIL

I. Statement of Grounds (1)

When the jury reconvened, there was a new "INQUIRY FROM THE JURY". It stated that the jury only wanted to hear jail calls between "NATHANIEL and ESTRE", not all of the jail calls.

(8.08.2013; Rpt at 9)

The defense addressed the court, and advised the judge that many of the calls on the "playlist" were not between the defendant and estre.

(8.08.2013; Rpt at 10)

The prosecution quickly inserted that in his opinion, "because we can't obviously say too much once the jury is deliberating" that the court should instruct the jury to just rely on their notes.

(8.08.2013; Rpt at 11)

The judge advised the prosecutor that if the calls were not between the defendant and estre, he did not want them played.

(8.08.2013; Rpt at 11)

The prosecution then played all five of the calls. Fully aware that they were not between the defendant and estre, he ignored the advisement of the court.

(8.08.2013; Rpt at 11-12)

Statement of Additional Grounds

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II. Court of Appeals Case law

IN SUPPORT OF Grounds.(2)

1. There must be a nexus between the crime and the gang before the evidence of affiliation is admitted.

St v. Asaeli 150 WASH. APP. 543, 208 P.3d 1136 1155-56 (2009)

2. Such evidence is inherently prejudicial.

St v. Scott 151 Wn. App. 520 213 P.3d 71 (2013)

3. When there is no connection between a defendants gang affiliation, and the charged offense, the admission of gang evidence was found to be prejudicial error.

St v. Ra 144 Wash. App. 688 701-702, 175 P.3d 609 (2008)

Statement of additional Grounds

II. Summary of Grounds (2)

Evidence of gang affiliation is inherently prejudicial. Throughout the trial many times evidence was heard with reference to Gang affiliation, and the use of the defendant's gang moniker was highlighted. With no connection of that status to the charged crimes the jury's only reasonable inference was that the defendant was a bad person.

The failure to connect the gang evidence to support the motive presents a significant probability that the error was not harmless.

The impression the jury was left with was that the defendant was a career criminal engaged in terrible crimes, who should and could be connected to crimes despite a lack of evidence or testimony to the contrary.

Due to the abuse of discretion by the court, the weakness of the state's case was overcome by improperly admitted prejudicial evidence and testimony.

Statement of additional grounds

II. Statement of Ground (2)

During trial, Questions of redactions were discussed as to the defendants recorded statement. There were many references to the defendant being a member of a prison Gang.
(7-31-2014; RP at 168-184)

The prosecution raised the question; if the defense was going to claim duress. The answer was "Mr. Clark would like a duress instruction"

(7-31-2014; RP at 170-171)

The judge said that he would not redact the gang evidence. "IF he wants a duress defense to any of this, then the relative "toughness" of the two guys may be examined."
"If comes in, thats my ruling."

(7-31-2014; RP at 173-175)

The prosecution purposed that he would make two copies of the statement. one with the gang references, one without. That way if a Duress instruction was given, one would be played. IF Not then the redacted copy would be used.

(7-31-2014; RP at 176-177)

A portion of the statement where a reference, "Im a gangster tattooed from Head to toe, I've been a gangster my whole life" was ruled admissible with or without a Duress Instruction.

(7-31-2014; RP at 179-184)

Statement of additional Grounds

II. Statement of Ground (2)

The defense objected to the Gang evidence and was overruled.

(7-31-2014; RP at 181)

A duress instruction was then submitted by the defense.

(8-06-2014; RP at 3)

A "hybrid" recording, including some but not all Gang references was played during trial. Two portions were redacted; Exhibit 144 pg. 11-12; and pg 29, as the transcripts show black marks.

(8-05-2014; RP 56-57)

When the court gave the jury instructions Duress was not included.

(8-07-2014; RP at 58-60)

The recorded statement with the prejudicial Gang evidence was again played to the jury during deliberations, even after the Duress instruction was not given.

(8-08-2014; RP at 12)

Statement of additional Grounds

LEGAL MAIL

CONCLUSION

The appellants statement of Additional Grounds respectfully requests that His Convictions be reversed and a new trial should be ordered. Due to the abuse of discretion that allowed the prejudicial effect of, improperly admitted evidence. Also, due to the misconduct of the prosecution for commenting and directing a deliberating jury as to the weight of evidence

Dated this 20 Day of Oct. 2014

Respectfully Submitted,
Nathaniel Clark

Nathaniel CLARK, PRO SE

CLALLAM BAY CORRECTIONS
1830 EAGLE CREST WAY
CLALLAM BAY, WA
98326

STATEMENT OF Additional Grounds