

63494-1

63494-1

IN DIVISION ONE OF THE COURT OF APPEALS

STATE OF WASHINGTON

---

JAMES K. BARNHART

Petitioner,

v.

THE CITY OF BOTHELL

Respondent.

---

APPELLANT'S REPLY BRIEF

---

Mark R. Stephens, WSBA #26110  
Attorney for the Petitioner  
2825 Colby Avenue, Suite 304  
Everett, Washington 98201  
(425) 252-0573

(King County Superior Court # 08-1-07319-6 SEA)

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2010 JAN 11 AM 11:07

ORIGINAL

Cases

State v. Langford, 57 Wn.App. 572 (1992) 4

State v. Tingdale, 117 Wn.2d 595 (1991) 4

## REPLY

Mr. Barnhart challenges the King County Superior Court decision dated April 10, 2009 allowing the City of Bothell to seat jurors who were residents of King County in a criminal case in which the offense was committed in Snohomish County.

Article One, Section 22 of the Washington Constitution guarantees an accused's right to trial by an impartial jury of the county in which the offense is charged to have been committed. Prior to trial, the defendant filed a written demand for a jury drawn exclusively from Snohomish County. The defendant renewed his effort to get the court to comply with its constitutional mandate by asking to have King County residents from the venire excused for Cause. The motions for removal of non-Snohomish County residents from serving as jurors at a criminal trial alleging a crime committed entirely within Snohomish County were denied or ignored at every stage.

For the first time in the history of this case the City of Bothell argues, in effect, the defendant waived his Article One, Section 22 right to trial by a jury of the county where the crime is alleged to have been committed. The City argues by failing to exercise the three Peremptory Challenges available to the defense, presumably in an attempt to mold a

lawful jury from an unlawful venire. This argument fails for a number of reasons. CrRLJ 6.3 (e)(1).

First, the Fourteenth Amendment to the U.S. Constitution guarantees due process and equal protection of the law. The City argues the Bothell Municipal Court be allowed to draw a venire of potential jurors who would otherwise be prohibited from serving on the jury. Then the City may exercise peremptory challenges for any reason the prosecutor feels gives the government an advantage at trial. While weeding out potential jurors by way of peremptory challenges, the Defendant must follow a single criteria in order to enforce the Article One, Section 22 mandate. When faced with a potential juror from outside the county in question, the Defendant is placed in the unequal position of having to exercise peremptory challenges **based solely on the residency of the potential juror**. Such a system is abhorrent to equality of law, equal treatment of the parties, and the due process of law.

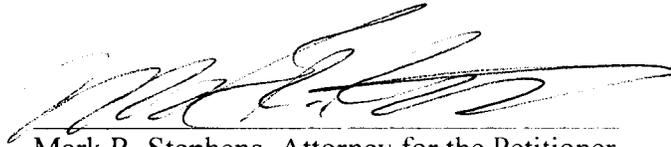
Second, the City has not established that exercise of any of the defendant's peremptory challenges would have led to a jury of Snohomish County. The argument fails on the thin record provided. See City's Appendix 1. The record does not establish that exercise of any of the defendant's peremptory challenges would have cured the Constitutional violation of Article One, Section 22's jury panel by necessarily resulting

in a jury made up entirely of Snohomish County residents. The trial court's error lies in the summoning of potential jurors from a pool which includes residents of King County, despite a written objection to the seating of King County jurors nearly six months prior to trial. The trial court also denied the defense challenges to King County residents sitting on the jury for cause. City's Appendix 1.

Finally, State v. Langford, 57 Wn.App. 572, 582-84 (1992), discusses jury selection at some length. The Court quotes Ferguson from *Criminal Practice and Procedure* emphasizing "the point at which to consider the constitutionality of the [jury] selection process is at the selection of the master list from which the panel of each jury term is selected". Furthermore, the State Supreme Court places the responsibility for ensuring a lawful jury selection process squarely on the trial court. See State v. Tingdale, 117 Wn.2d 595 (1991), holding a Court Clerk's excusal of potential jurors without judicial review or voir dire by the parties violated the defendant's right to a randomly selected jury. This case is analogous to Langford and Tingdale in that the Court, not the parties, must ensure compliance with Constitutional protections in matters of venire summons, challenges for cause, and, the Appellant would argue, the right to a jury "of the county in which the crime is alleged to have been

committed". The trial court failed in this. Mr. Barnhart's conviction must be overturned.

Respectfully Submitted January 7, 2010.

A handwritten signature in black ink, appearing to read 'Mark R. Stephens', written over a horizontal line.

Mark R. Stephens, Attorney for the Petitioner  
WSBA #26110

63494-1

IN DIVISION ONE OF THE COURT OF APPEALS  
STATE OF WASHINGTON

JAMES K. BARNHART,	)	
	)	08-1-07319-6-SEA
Petitioner,	)	(King Co. Sup. Ct.)
	)	
vs.	)	DECLARATION OF
	)	MAILING
THE CITY OF BOTHELL,	)	
Respondent.	)	
_____	)	

Wendy Cochinella declares:

1. I am a citizen of the State of Washington, over the age of eighteen years and not a party to the above-entitled action.

2. That on the 7<sup>th</sup> day of January, 2010, I deposited in the United States Postal Service a properly stamped envelope containing Appellant's Reply Brief, addressed as follows:

Court of Appeals, Division I  
600 University St  
One Union Square  
Seattle, WA 98101-1176

Rhonda Giger  
City of Bothell Prosecutor  
18410-101<sup>st</sup> Ave. NE  
Bothell, WA 98011

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2010 JAN 11 AM 11:07

DECLARATION

ORIGINAL

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

1/7/10, Everett, WA  
DATE AND PLACE

Wendy Cocharella  
WENDY COCHINELLA

DECLARATION