

No. 66223-6-I

COURT OF APPEALS, DIVISION I
OF THE
STATE OF WASHINGTON

CITY OF AUBURN
Petitioner

v.

RONALD J. CRAWFORD
Respondent

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 OCT 18 AM 11:02

BRIEF OF RESPONDENT

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ORIGINAL

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I. INTRODUCTION.

COMES NOW Respondent RONALD CRAWFORD to respond to the City of Auburns opening brief.

II. STATEMENT OF THE CASE.

Respondent adopts the recitation of the Petitioner City of Auburn, as outlined in §D of the Petitioner's opening brief, and incorporates the same herein.

It is the rebuttal provision of the Petitioner's closing that the RALJ Court found offended the Respondent's right to a fair trial; specifically:

MR. BOESCHE: Folks, this case isn't about DNA; it's not about fingerprints. That's not where the evidence comes from in this case. It comes from his own daughter. That's where the evidence comes from in this case. And how do we treat her as that source of evidence? What do we do with his own daughter? What did he do at the scene? What's he doing to her today? Throw her to the wolves. Throw her under the bus. When the police officers arrive to try to investigate, what does the Defendant do? What does he tell the officers? She's the problem. She's a runaway. She stays out all night.

MR. JOHNSON: Objection, Your Honor. He's making arguments from evidence that was not submitted. There was no testimony that my client ever spoke to the police other than the lines were given.

MR. BOESCHE: Officer [inaudible] testimony.

THE COURT: It's argument. I'll -- the objection will be overruled.

MR. BOESCHE: So that's what he says. Blames it on her. Dad, I want you to get these people out of the house. I

can't make them leave; you go make them leave.
You call 911. You do it.

What are we doing today? Blaming her. You heard the arguments from the Defense. Many of the arguments are really insulting to the intelligence, and I won't go into most of those. But it's really unfortunate that that's what's happening here. His own daughter is the source of the evidence. She's being fed to the wolves in this case by her own father.

And there is an emotional impact in this case. You know what that emotion is that you're feeling, that sort of anger, that sort of aspect to the evidence, that feeling that you get? You know what that is? That's you being convinced beyond a reasonable doubt that he's guilty. That's exactly what that is.

VRP 306-308 (emphasis added).

III. ARGUMENT.

The intentional inflaming of the jury during the City of Auburn's rebuttal closing is prosecutorial misconduct. The Court should affirm the RALJ Court's decision.

In order to establish prosecutorial misconduct, a defendant must prove that the prosecutor's conduct was improper and that it prejudiced his right to a fair trial. A defendant can establish prejudice only if there is a substantial likelihood that the misconduct affected the jury's verdict. We review a prosecutor's comments during closing argument in the context of the total argument, the issues in the case, the evidence addressed in the argument, and the jury instructions. If defense counsel fails to object to the prosecutor's statements, then reversal is required only if the misconduct was so flagrant and ill-intentioned that no instruction could have cured the resulting prejudice.

State v. Jackson, 150 Wn.App. 877, 882-883, 209 P.3d 553, 557 (Div. II, 2009) (citations omitted). Admittedly, the Appellant did not adequately object at trial. VRP 306-308. However, such shortcoming does not deprive the Court from reviewing the prosecutor's statement and reverse. The focus becomes whether the alleged misconduct was "so flagrant and ill-intentioned that no instruction could have cured the resulting prejudice," i.e. mistrial. Id.

First, the City of Auburn's comments were designed to inflame the passion of the jury. In rebuttal to the Respondent's closing, the Petitioner inflames the jury by accusing the Respondent of abusing his daughter in the courtroom:

That's not where the evidence comes from in this case. It comes from his own daughter. That's where the evidence comes from in this case. And how do we treat her as that source of evidence? **What do we do with his own daughter? What did he do at the scene? What's he doing to her today? Throw her to the wolves. Throw her under the bus.** When the police officers arrive to try to investigate, what does the Defendant do? What does he tell the officers? She's the problem. She's a runaway. She stays out all night.

VRP 306-307 (emphasis added). The Respondent, like all citizens, has a right to a trial by jury, the right to force his accuser to prove their case, a right to confront and cross-examine his accuser, a right to put on a defense and place that defense before the jury, etc. The Petitioner equates

Respondent's exercise of his Constitutional rights to public abuse of his daughter.

The City insinuates that the Appellant's legal team is abusing his daughter:

What are we doing today? Blaming her. You heard the arguments from the Defense. Many of the arguments are really insulting to the intelligence, and I won't go into most of those. But it's really unfortunate that that's what's happening here. *His own daughter is the source of the evidence. She's being fed to the wolves in this case by her own father.*

VRP 307-308 (emphasis added). Who are the "wolves" that Respondent is feeding his daughter too? Petitioner City of Auburn? The jury? The comment of the Petitioner herein alludes to two parties—the Defense (and its arguments) and the Petitioner ("her father"). This is a comment that identifies the Respondent's legal team as "the wolves" to which Petitioner "feeds" his daughter to. Again, the Petitioner equates Respondent's exercise of his constitutional rights to public abuse of his daughter.

Finally, after inflaming the passions of the jury, the Petitioner tells the jury that the anger they have ginned up against the Respondent is sufficient to convict him:

And there is *an emotional impact in this case*. You know what *that emotion is that you're feeling, that sort of anger*, that sort of aspect to the evidence, that feeling that you get? You know what that is? *That's you being*

*convinced beyond a reasonable doubt that he's guilty.
That's exactly what that is.*

VRP 308 (emphasis added). The trial court, in Instruction No. 3 to the jury, told the jury to make their decision from the evidence or lack of evidence, not their anger or other emotions:

A reasonable doubt is one for which a reason exists and may arise from the evidence or lack of evidence. It is such a doubt as would exist in the mind of a reasonable person after fully, fairly, and carefully considering all of the evidence or lack of evidence. If, from such consideration, you have an abiding belief in the truth of the charge, you are satisfied beyond a reasonable doubt.

CP 14. See also, WPIC 4.01. The City's comments are so flagrant and ill-intentioned as to stagger, reel, astound, shock, and astonish simple due process. The Petitioner appealed to the jury's base emotions, to take sympathy upon Ms. Crawford to the prejudice of the Appellant. The Petitioner's attacks on the Respondent were tantamount to avouchment of her credibility. The Petitioner prejudiced Appellant's right to defend himself, and have counsel defend him—which necessarily requires challenging witness credibility. The Petitioner told the jury to substitute their outrage and unbridled passion to convict rather than an analysis of the evidence—if you are angry, then you are convinced beyond a reasonable doubt of Appellant's guilt. To claim that such prosecutorial

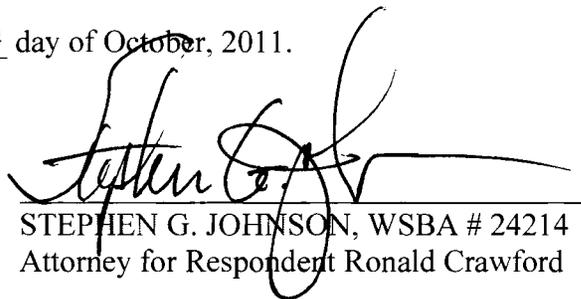
misconduct is allowable because they felt “provoked” by the Respondent’s defense is an insult to the Constitution, and a step toward mob rule.

No curative instruction would have been satisfactory to cure the flagrant and blatant prejudicial actions of the Petitioner. The only remedy on the trial level would have been a mistrial, and the RALJ Court’s ruling is consistent with that remedy.

IV. CONCLUSION.

For the reasons stated above, the Respondent RONALD CRAWFORD respectfully requests that the Court AFFIRM the RALJ decision, and remand this matter to the Auburn Municipal Court for further proceedings.

DATED THIS 14th day of October, 2011.



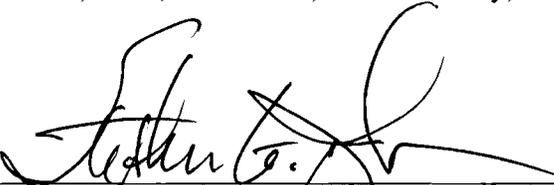
STEPHEN G. JOHNSON, WSBA # 24214
Attorney for Respondent Ronald Crawford

CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington that on this day I placed into the mails of the United States of America a true and correct copy of this document, first class postage prepaid, and addressed the envelope to the following person(s):

City of Auburn
Mr. Daniel Heid
Auburn City Attorney
25 West Main Street
Auburn, WA 98001-4998

DATED THIS 14th day of October, 2011, in Tacoma, Pierce County,
Washington State.



STEPHEN G. JOHNSON, WSBA # 24214
Attorney for Ronald Crawford