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In the Court of Appeals of the State of Washington

Division one

67913-9

State of Washington
Respondent

v.

Alfonso Senior
Appellant

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 JUN -8 AM 11:58

On appeal from the Superior court of the State of Washington for King County

pro se Brief
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Constitutional Provisions

U.S. Const. Amend V.
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Fifth Amendment of U.S. Const

Argument, point 1 Biased Juror

Mr. Senior Comes to this court to contest a biased Juror. Juror number 43, was the Jury foreman. R.P. 9-22-11. pg. 43

As in the past, Juror number 43 Son was shot and Killed. That will make her a biased Juror against Mr. Senior. R.P. / 9-22-11 pg. 43

Mr. Senior contest the trial court abuse of discretion when the court didn't exuse Juror 43 Just for cause. 9-22-11 / 43 pg.

The defendant has the right to trial by an impartial Jury is guaranteed by the Sixth Amendment of the United States Constitution and Article 1, section 22 of the Washington Constitution. To protect this right, a Juror will be excused for cause if his / her views would "Prevent or Substantially impair the preformance of his or her duties as a Juror in accordence with her instructions of Oath. Quoting State v. Gonzales 111 wash. App 276, 45 P.3d 205 (2002).

Actual bias is "the existence of a state of mind on the part of the Juror in reference to the action, or to either party, which Satisfies the court that Challenging person cannot try the issue impartially and without prejudice to the Substantial rights of the party challenging. Therefor the Judge Abused his

discretion, for letting the Juror sit down.

Under U.S. V. Gonzales 214 F.3d 1108 9th cir (2000) The court guarantees criminal defendants a Verdict by an impartial Jury.

Accordingly, the Supreme Court held that prejudice is to be presumed "where the relationship between a prospective Juror and some aspect of the litigation is such that it is highly unlikely that the average person could remain Impartial in (his) or (her) deliberations under circumstances".

The Supreme Court in Gonzales also stated that the relevant Question is whether (the) case present(s) a relationship in which the potential for Substantial emotional involvement, adversely affecting impartiality.

When a Juror is unable to State that she will Serve fairly and Impartially being asked repeatedly, for such assurances, We can have no confidence that the Juror will "Lay aside" her biases or prejudicial personal experiences and render a fair and impartial Verdict. C.R/ 9-22-11 / pg. 43

Quoting Gonzales in that case, Given Camacho's responses to the court's questions and the similarity between her traumatic familial experience and the defendant's alleged Conduct, the Supreme Court conclude that the failure to excuse her for cause under either an express or implied bias theory requires reversal. Also Quoting State V. Fire 145 Wash 2d 152, 34 P.3d 1215 (2001).

Mr. Senior Comes to this court to contest the double Jeperdy clause. The Jury found Mr. Senior Guilty of 2(two) homicides and there was only one victim. It was Murder 2 and felony Murder as the alternative. C.R/ 10-24-11 pg. 501-503 C.R/ 11-10-12 518-524

A Jury is generally instructed not to return a verdict on a lesser included offense once it has found the defendant guilty of the greater offense. Enhancing a sentence for a future conviction under a recidivist Statute. C.R/ 10-24-11 pg 501-503

Double Jeperdy (1) prosecuted a second time for the same offense after acquittal (2) prosecutoed a second time for the same offense after conviction and (3) punished multiple times for the same offense. Quoting State V. Turner 238 P.3d 461 2d 448 (2010)

Double Jeopardy claims raise questions of Law, which the courts review de novo. State V. Kelly, 168 W.n 2d 72, 76, 226 P.3d 773 (2010)

Both our federal and State Constitions protect persons from being twice put in Jeopardy for the same offense. See U.S. Const. Amend. V.; Wash. Const. art I § 9. The courts have held that Washington's double Jeopardy clause is given the

Same interpretation the Supreme court gives to the Fifth Amendment." State v. Eggleston, 164 Wn.2d 61, 70, 187 P.3d 233 (2008). Consequently, both clauses have been interpreted so as to protect against the same triumvirate of Constitutional evils.

The last of these three protections, the prohibition against imposing multiple punishments for the same criminal conduct, is implicated here

The term "punishment" encompasses more than just a defendant's sentence for purposes of Double Jeopardy. See State v. Womac, 160 Wn.2d 643, 656-58, 160 P.3d 40 (2007). Indeed, even a conviction alone, without an accompanying sentence, can constitute "punishment" sufficient to trigger double Jeopardy protections. As the U.S. Supreme court clarified in Bell v. U.S. 470, 856, 105 S.Ct 1668, 84 L.Ed 2d 740 (1985)

The separate conviction, apart from the concurrent sentence, has potential adverse collateral consequences that may not be ignored. For example, the presence of two convictions on the record may delay the defendant's eligibility for parole or result in an increased sentence under recidivist statute for a future offense. More over the second conviction may be used to impeach the defendant's credibility and certainly carries the societal stigma accompanying any criminal conviction. CR. / 11-10-12 P.518-524

Conviction in itself, even without imposition of Sentence, carries an unmistakable face which has a punitive effect--

The leading Federal case on the issue of double Jeopardy and multiple convictions is Rutledge v. U.S. 517 U.S. 292 116 S.Ct 1241, 134 L.Ed 2d 416 (1996) In Rutledge, a Jury found the defendant guilty of Conspiracy to distribute a controlled Substance and conducting a continuing criminal enterprise (distribution of Cocain), the "in concert" element of the latter was based on the same agreement as the former. On Appeal, the Supreme Court held that the Conspiracy offense was a lesser included offense of the criminal enterprise offense, It also held that double Jeopardy barred Convictions for both offenses and remanded for Vacation of one of them.

As in Mr. Senior case the Situations are the Same, So if that case was reversed, So Should this case.

Conclusion

For the reasons set forth above, Mr. Senior respectfully requests that this court reverse his convictions and remand for a new trial.

Dated this 7th day of June, 2012

Respectfully submitted,

Alfonso Senior 6/7/12
Alfonso Senior