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Clerk of Superior Court

CLERK OF SUPERIOR COURT

STATE OF WASHINGTON

NO. 34021-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

SW

STATE OF WASHINGTON, Respondent, v. RODI PETER YACAPIN, Appellant.
FROM THE SUPERIOR COURT FOR CLARK COUNTY THE HONORABLE ROBERT L. HARRIS CLARK COUNTY SUPERIOR COURT CAUSE NO. 05-1-00888-1
BRIEF OF RESPONDENT

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I. **STATEMENT OF FACTS**

The State accepts the Statement of Facts as set forth by the defendant in the Brief of Appellant. Where additional facts are necessary, they will be supplemented in the argument portion of this brief.

II. **RESPONSE TO ASSIGNMENT OF ERROR NO. 1**

The first assignment of error raised by the defendant is a claim that the trial court erred when it refused to admit evidence of the victim's bias towards the defendant. Specifically, a claim that the victim had bias at the time of trial against the defendant and that he had demonstrated this by having damaged his home and stolen items from him subsequent to the assault and prior to the trial.

All of the evidence at trial indicated that this altercation arose from the defendant wanting to use the oven when the victim was already using it. The defendant indicated that he had come home from the movies with his children and wanted to make them

a pizza in the oven. The oven was being used by the victim and a shouting match and later pushing was the result of this dispute over using the oven.

The defendant attempted to make an offer of proof to indicate to the court that there was some relevancy about these people not getting along. The defendant was the landlord and the victim was one of his two tenants. The other tenant was not home on the evening of this altercation.

The victim, when he testified, indicated that he and the defendant had gotten along alright prior to this particular dispute. (RP 53, l. 6). He further indicated that this whole thing appeared to be a dispute over the use of the oven. (RP 42-43). He further indicated that after this incident, he was evicted from the residence. (RP 54).

When the defense made its offer of proof concerning bias of the victim toward the defendant, the trial court noted that there was no evidence or information of any types of problems before this incident, other than the use of the stove. (RP 85). Further, the court noted that there was nothing that was presented that would indicate that this was a landlord-tenant dispute or that the victim was waiting to get the defendant out of the house for some reason.

(RP 78). In fact, the court made comment that it didn't appear that this was much of an offer of proof and denied the claim of bias as just not being relevant to any issues in the case. (RP 80-81).

The defendant when he testified, and on cross-examination, was asked whether or not he was upset because the victim was ignoring his requests for the use of the oven. He indicated on cross-examination that this was the cause of his anger. (RP 104).

Although evidence of bias is not considered impeachment on a purely collateral matter, it does follow the same rules. In other words, there must be some showing of a bias and that it has some type of relevance to the issues in the case. State v. Carlson, 61 Wn.App. 865, 876, 812 P.2d 536 (1991); State v. Roberts, 25 Wn.App. 830, 834, 611 P.2d 1297 (1980).

The State submits that there simply has been no evidence of any kind to establish that this was a bias by this particular victim directed toward this particular defendant. There was nothing in the offer of proof to establish that nor was there any testimony at trial to present this information to a jury. In fact, there are indications that this is certainly a confused issue even in the mind of the defendant.

For example, the defendant discusses that he was having issues about the stove with both tenants, the victim and his

roommate. As indicated previously, the roommate was not there the night of the altercation. (RP 87). He refers to "they" when discussing difficulties or problems that he has been having. On cross-examination, he gave an example of how "they" were upsetting him. (RP 103-104). This becomes even clearer when we review one of the allegations that the defendant makes in his statement of additional grounds for review that he has filed with the Court of Appeals. Many of the things he talks about here, the State would submit are not really subject to review but he does discuss the incidences after the assault and prior to trial dealing with the eviction of both of his tenants.

"She told me of the plea bargain the prosecutor had offered, no prison time, I get to keep my concealed weapons permit, but forfeit the firearm, with one year probation, I rejected the offer because I sincerely believe within my heart that I am totally innocent of all the charges, the tenant was in retaliation, I think because I had asked both of them to move out. They could not be trusted to follow rules. We came to an agreement that they would move at the end of April, 2005, but they had no real intentions to move at all, for they had to be evicted, and with a lawyer's help, the eviction did not take place until three months later, at the end of July, 2005. They both owe rent for those months.

While Michael James Cornell and Kenneth Sucher, the other tenant who had recommended Michael, stayed in my home unlawfully, they and their friends trashed my home, and burglarized my children's toys,

video tapes destroyed, personal family video tapes, and we are traumatized by this behavior, \$11,000.00 of tools, household goods were taken.” (Statement of Additional Grounds for Review, unnumbered pages but at approximately pages 3-4).

When we review this type of information from the defendant, it becomes obvious that he is unable to distinguish or differentiate between the tenants or their friends as to the individuals involved with possible trashing of the residence. Nor, is there any indication that this in some way constitutes a bias at the time of trial. Differentiate this situation from the one found in State v. Dolan, 118 Wn.2d 323, 73 P.3d 1011 (2003), where the parties involved were in the middle of a bitter custody dispute. There, bias at the time of trial becomes obvious. Here, there is absolutely no evidence to support a contention that there was some ulterior bias to get the defendant out of the home or to allow a trashing or destruction of a home. Further, at the time of the offer of proof, there was no other evidence supplied, other than statement of counsel. When we look at what the defendant is maintaining in his statement of additional grounds for review, it is obvious that even he is not aware of who, if anyone, caused the damage that he is complaining of or how that relates to testimony at the time of trial. These matters are properly left with the trial court to decide in its discretion to whether or not

the statements are relevant, probative or have been established.
State v. Harmon, 21 Wn.2d 581, 590-591, 152 P.2d 314 (1944).

III. RESPONSE TO ASSIGNMENT OF ERROR NO. 2

The second assignment of error raised by the defendant is a claim that the trial court erred by not giving a Petrich instruction related to the conviction for Assault in the Fourth Degree. This claim does not appear to involve the conviction for the Assault in the Second Degree with the deadly weapon enhancement.

A unanimity instruction is not necessary where the evidence of multiple acts indicates a continuing course of conduct. State v. Handran, 113 Wn.2d 11, 17, 775 P.2d 453 (1989). Evidence tends to indicate a continuing course of conduct if each of the defendant's acts promotes one objective and occurred at the same time and place. State v. Love, 80 Wn.App. 357, 361, 908 P.2d 395 (1996). To determine whether criminal conduct constitutes one continuing act, the appellate court evaluates the facts in a commonsense manner. Handran, 113 Wn.2d at 17.

The defendant, when he testified, made it quite clear to the jury that there was only one incident of any type of assaultive behavior. That was at the doorway of the tenant's room where there was pushing back and forth between the two of them. (RP 88-89; 92). Thus, the defendant is only indicating that there was one isolated incident of assaultive behavior. He denied any other type of assaultive behavior, including the incident with the firearm, even though the majority of the assaultive behavior which took place at or about one time was recorded on a 911 tape which was played for the jury.

The State submits that the defendant should not be allowed to raise an argument of unanimity when no exceptions were taken to the instructions, and the defendant denied, at the time of trial during his testimony, that multiple actions occurred. He never maintained or made this complaint at the time of trial. He should not be allowed to make it now on appeal.

**IV. RESPONSE TO STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

The defendant has submitted his Statement of Additional Grounds for Review. The State submits that this would be very

difficult to respond to because the defendant makes a lot of claims that are not supported by any record nor are they part of the case. The State submits that there is nothing to respond to.

V. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 6 day of July, 2006.

Respectfully submitted:

ARTHUR D. CURTIS
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By:


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Clark Co. Cause No. 05-1-00888-1

RODI PETER YACAPIN,
Appellant.

DECLARATION OF TRANSMISSION
BY MAILING

STATE OF WASHINGTON)
) : ss
COUNTY OF CLARK)

On July 6, 2006, I deposited in the mails of the United States of America properly stamped and addressed envelopes directed to the below-named individuals, containing a copy of the document to which this Declaration is attached.

DATED this 6th day of July, 2006.

	Rodi Peter Yacapin DOC #888009 c/o Washington State Penitentiary 1313 N. 13 th Avenue Walla Walla, WA 99362	Lisa E. Tabbut Attorney at Law 1402 Broadway Longview, WA 98632
TO:	David Ponzoha, Clerk Court Of Appeals, Division II 950 Broadway, Suite 300 Tacoma, WA 98402-4454	

DOCUMENTS: BRIEF OF RESPONDENT

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

Charles J. Cupford
Date: July 6, 2006.
Place: Vancouver, Washington.