

COURT OF APPEALS  
DIVISION II

No. 36884-6--II

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STATE OF WASHINGTON  
BY *[Signature]*

DEPUTY

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON

JAMES NANCE ,JR.

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STATEMENT OF ADDITIONAL GROUNDS  
RAP 10.10  
SUPPLEMENTAL BRIEF

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## STATEMENT OF THE CASE

On October 5, 2005, I was arrested and spent 90 days in the Kitsap County Jail. While in the Kitsap Jail, I found out that my ex-girl friend, who is the mother of my son Jamaal were living in the same building as her mother and her boy-friend Jeffrey, who is a sex offender.

On November 18, 2005, I filed a child protective services report, because of my fears of my son being molested. RP136L1-25;RP139L7-11.

I was released January 6, 2006 and on this day I saw Shelly McGlaun at a 7-11 store down the street from her mother's apartment; she came up to my car and started talking. Later that night, she called my cell phone. The very next day, I was at Aurora Thomas' house having lunch and Shelly McGlaun called me again, and asked, if I wanted to see my son, I said, "yes!"

After that McGlaun brought Jamaal over to Ms. Thomas' house, where we sat and talked for about a hour, then we left together in my car and we went to Lyons Field, where we sat and talked more. That night, I spent the night at her place.

I spent every night of that week from January 6, 2006, to January 12, 2006, at Shelly McGlaun apartment. January 13, 2006, I got up to go to some temporary work, that I had out by the Hood Canal, when I got off, I called McGlaun from Labor Ready to see when I could come over and to ask her if she wanted to get a room. Because i was uncomfortable because of the no contact order and because of her mother didn't like me, because, I am black. I got in touch with McGlaun, while I was at Labor Ready. I told her I wanted to get a motel room she agreed. So, I left and went to the Chieftan to get a room McGlaun have told me to come and pick her up around 10:00P.M..I did that, her and Jamaal and myself all left and went to the Cheifton. We played with Jamaal a while and also had some drinks.

When Jamaal fell asleep we took a bath together, then we have sex, after that we sat around talking and watched television. McGlaun asked me, "Why I wrote C.P.S. a letter and I told her I was afraid of my son being molested. An argu-

STATEMENT OF THE CASE

argument started and I pushed McGlaun off of me and I held her against the wall. I couldn't make her be quiet, so I left. I tried calling McGlaun several times that night after I left, she avoided my calls every after that on 1-13-06. I was driving North on Callahan Drive and I noticed a white pickup truck and a white Camaro following me. I didn't stop by the time I saw the B.P.D car I was Perry and Riddell and I had no where to pull over. Because on both sides of the streed there are ditches, so when I got to Perry and Silvan, I made a left and just as I pulled over the B.P.D. did the pit manuver and rocked my car. I didn't know there was a warrant for my arrest.

I WAS AFFRAID TO PULL OVER THERE HAVE BEEN CASES WHERE GUYS WENT AROUND IMPERSONATING POLICE OFFICERS. THERE WAS A CASE IN QUEEN ANNE AND IN BREMERTON 2007. SO WHEN I SAW THESE TWO VEHICLES FOLLOWING ME I DIDN'T PULL OVER. THERE WASN'T ANY MARKED POLICE CARS BEHIND ME UNTIL I WAS ON RIDDELL AND PERRY. I DIDN'T ELUDE THE POLICE ON PURPOSE I DIDN'T EVEN KNOW THERE WAS A ARREST WARRANT OUT FOR ME.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the court error by not allowing the telephone records in?  
McGlaun called me all week, and I also called her. McGlaun returned my call at the Chieftains Motel on January 13, 2006. this was all on record.
  
2. Did the court error by granting the states motion in timeline?  
RP. 96 lines 10-25, RP. 98 lines 12-15, RP. 139 lines 8-11
  
3. Did the trial court error by not giving <sup>EDUCATIVE</sup> corative instruction?  
When Ms. Montgomery use the word "kidnapping" RP. 11 line 1-2. They withdrew the kidnapping charge and added Un<sup>LAWFUL</sup>lawful Imprisonment, but through out the trial the word "kidnapping" was used. Did the state confuse or mislead the jury with the word "kidnapping"? Is "kidnapping and unlawful imprisonment the same crime?
  
4. Did the prosecuter error on the court for trying me on 1° Rape?  
Don't the State need two elements? 1. A weapon 2. Kidnapping  
With out these two elements how can the state charge me with Rape in the first degree? (State vs. Derye, 110 WN. App 815, 41 P.3d 1225 "pg 816") Did Ms. Montgomery use the Assult 2° strangle her statement, for there deadly which they didn't have? Was that court error RP. <sup>1049</sup>~~104~~ lines 16-20.  
SM
  
5. Did the trial court error by using the charge "kidnapping" in the jury instruction? RP. 974 lines 13-25, RP. 975 lines 1-25  
Did the prosecuter withdrew the kidnapping and later used it during closing arguments.
  
6. Read RP. 982 lines 1-25. Is Ms Montgomery trying to make the kidnapping charge the same as unlawful imprisonment?

7 Is it a conflict of interest if one of my old attorney on this case whom I fired<sup>CLIENT</sup> testifies in this case?

Craig Kibbe was my second attorney on this case. I had to fire this guy because he tried to convince me to plea to rape and kidnapping charge. A year later one of his clients Emmanuel <sup>WASHINGTON</sup> Wasltinston came up with a wild story about <sup>ME</sup> telling him about the case, and I gave him some food not to tell. My attorney could have prove him that he was <sup>NOT</sup> at the scene of the crime by asking the motel for that room receipt because you and the other persons name have to be on it. Now my attorney never establish the fact that he was there.

8 8. Did the prosecuter error by allowing evidence in my case to be sold?

I was charged with first degree kidnapping. For 1½ years before the trial, the state withdrew the kidnapping charge. My car was sold two months after my arrest. RP. 11 lines 1-2.

9. Did the court abuse its discrestion by not making the state make one of their witness testify, and did the court violate my six amendent right to confront witnesses?

The state subpoena Loraine Anderson to testify, she was present in the courtroom but Ms. Montgomery refuse to let her testify, This lady is McGlaun's mother. She told police she left my son over her mom's apartment while she walked to 7-eleven. Ms Anderson told Jim Harris she never babysitt Jamal 1-12-06. See her testimony was very important in my case.

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Exculpatory evidence is evidence that can prove the defendant innocence.

C.P.S. records, telephone records, Andersons testimony, State Vs. Jordon 106 Wn. App. 291 23 p3.d 1100. This case is similar to mine, because of one reason. I am reading from page 301 paragraph 2 line 8. During Mr. Jordon's trial in response to his offer of proof that Mr. Ramirez's hearsay statement should be admitted at trial through a defense witness testimony. The court looked at the reliability factors cited in State Vs. Gee 52 Wn. app 357, 760 p2d 361(1988) It determines that the factors were fairly even balanced in favor of the statement's trust worthiness. RP. 461 This decision when combined presumption of reliability. Test from Roberts lead us to conclude that the trial court abused its discretion when it did not allow Mr. Ramirez's statement into evidence at trial. Accordingly, we must reverse the decision and remand for a new trial on this issue. As such, we need not reach the merits of Mr. Jordon's claim that the evidence did not support the verdict. Reverse and Remanded. Go back to page 292 (12) a statement against interest offered by a defendant in a criminal trial in support of the defense theory of the case is to be reliable. This part of this case is similar because Shelly McGlaun's mother was supposed to testify for the state. She was at the trial and ready to testify but Ms. Montgomery wouldn't allow her because she told two investigators that she didn't babysit Jamal 1-12-06 but McGlaun told the police her mom was watching Jamal while she walked to 7-eleven. See Ms. Anderson out of court statement could have really help my case. RP. section 13, In determine the reliability or trust worthy of an out of court statement sought to be admitted in a criminal trial. under the declaration against-interest- exception to rule against hearsay (er804(b)(3) a court may consider (1) whether the declarant had a apparent motive to lie, (2) whether general character of the declarant suggest trust worthy. (3) whether more than one

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person heard the statements. whether the statements was made spontaneously  
and whether trust worthy is suggested from the timing of the statement and  
the relationship between the declarant and witness. Ect.

9. Did the trial court error by not giving curative instructions?

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When Ms. Montgomery was flagrantly appealing to the passion and prejudice of the jury. RP. 999 lines 19-25, RP. 1001 lines 20-22, RP. 1010 lines 13-25. Is this prosecuter misconduct? RP. 1011 lines 2-25, RP. 1012 Lines 1-25, RP. 1016 lines 10-13. This prosecuter gave her own opinion. (State V. Belgarge 110 Wn. 2.d 504, 755. P.2d 174.

10. Did the trial court error by not giving Ms. Montgomery Curative Instructions?

11.

RP. 1046 lines 6-25, RP. 1048 lines 17-25. Did Ms Montgomery give the jury the wrong information? Right here RP. 1049 lines 16-20, Was this misconduct by telling the jury what to put on the verdict form? RP. 1050 lines 14-18

MY ATTORNEY ISSUES NOW

1. Did the court violate my six amendment rights "THE RIGHT TO HAVE A CONFLICT FREE REPRESENTATION"

When the Hon. Judge Haberly appointed Ms. LaCross to me I objected in open court, because I fired her brother David LaCross who was my fist attorney on this case and whom I filed a bar complaint against. The Hon. Judge Haberly told me I should think about going prose and i was going to keep LaCross. The Sixth Admendment requires automatic reversal when the trial court fails to conduct an inquiry after either a timely conflict objection, or if the court knows or reasonably should know that a particular conflict exist (Armienti Vs. State 234 F.3d 820, 823 2nd Circ. 2000)

2. Is it ineffective not to subpoena witnesses to testify on clients behalf?  
I asked my attorney to subpoena this alleged victims mother to testify because she was telling a different story than Ms. McGlaun.
3. Is it ineffective not put my investigators on the witness list?  
RP. 862 lines 6-10 (Glasser Vs. United States. 315 U.S. 60,92,62, S.CT, 457, 475, 86 L. Ed, 1942) RP. 946 lines 20-25, RP. 947 lines 1-6 (United States V. Croneic 104 S. CT. 2039 1984) (Cuyler V. Sullivan 100 S.Ct. 1708(1980)
4. Was my counsel's advice reasonable or <sup>IN</sup>competent when she tried to ~~get~~ me to plea to a persistent offender offense.

Ms. LaCross brought me a plea agreement for assault 2. with sexual motivations and a deadly weapons enhancement, and unlawful imprisonment, felony elude, no contact order, and felony harassment under RCW 9.94a.030 Section (28) (b) (s) (t) If I would of taken the plea, I would of been <sup>SENTENCE</sup> under the persistent offender act which carries a sentence of life in prison with out the possibility of parole.(McMann v. Richardson 397 U.S. 52,56,57,1985). Ms. LaCross never did investigate my case properly. I asked her to send my investigators to Labor Ready to Verify if I worked on 1-12-06 at 6:30am. That would of been public record. Two other witnesses who lived in public housing in Bremerton. I was told they couldn't be found. How many people have a new car living the projects, and this car was a unique color.

STATE OF WASHINGTON.

Petitioner,

JAMES N. NANCE, JR.,

Respondent.

DECLARATION OF MAILING

FILED  
COURT OF APPEALS  
DIVISION II

COV 11-3 PM 1:22

STATE OF WASHINGTON

BY  
DEPUTY

CAUSE NUMBER 36884-6-II

I, James Nance Jr., declare that on the sixth of  
JUNE, 2008, I deposited the foregoing (name documents sent below)

or a true copy thereof, in the internal mail system of the MONROE CORRECTIONAL COMPLEX - WSR-UNIT and made arrangements for postage, addressed to:

THE COURT OF APPEALS  
DIV II 950 BROADWAY  
STE. 300 TACOMA WASH.  
98402-3694

LAW OFFICES OF THOMAS  
E. WEAVER P.O. Box 1056  
BRECKENRIDGE, WA 98336

PROSECUTOR'S ATTORNEY  
OFFICES 614 DIVISION  
STREET, MS 35A PACT ORCHARD  
WA. 98366

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

Dated this sixth day of JUNE, 2008.

James Nance Jr.  
Petitioner pro se

JAMES NANCE  
Doc # 794237  
P.O. Box 777  
MONROE, WA. 98272  
W.S.R.U

THE COURT OF APPEALS  
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