

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

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DIVISION II

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STATE OF WASHINGTON

BY _____
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STATE OF WASHINGTON,

Respondent

v. Samuel R. English

NO. 37047-6-11

STATEMENT OF ADDITIONAL

GROUND FOR REVIEW

RAP 10.10

Appellant

I, Samuel English, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Whether the Trial Court allowed the alleged victim Lorin Riddle of committing perjury when she changed her testimony from the original statements made in Court at the Competency Hearing and testimony given at actual Trial by Jury?

Appellant had a Competency Hearing on January 7th, 1999 which his counsel cross-examination of Lorin Riddle certain questions were directed to the victim.

Appellants Counsel asked the Victim under direct cross-examination: at \ R.P. Volume 1, page 19, Line 17-18,, 01/07/1999. in contradiction with \ R.P. Volume 1, page 26, Line 24 and 25.

01/07/1999.

Whether the Trial Court erred finding Lorin Riddle Competent by other directing her how to answer questions by the State.

Statements already made by the victim, which concerned activities of the crime charged and future statements, but which were not made in effort to implicate appellant to join in the alleged crime, did not achieve proving prima facie. Were appellant of the crime, and were therefore inadmissible against appellant. The State did not establish a prima facie case made out by independnet evidence, only independent of proposed hearsay that the crime existed at time statements were made, and upon at least slight-coerced of appellant participation, it the statements were made during the course and in furtherance of Two Court proceedings being in contrary, making them null and void at the appellant Trial by Jury.

Confessions and admissions of a victim, mere conversation between victim and appellant or mere narrative declarations are not admissible under hearsay rule since the Statements CANNOT meet condition for admissibility that statements must further common objective of the crime charged.

The Trial Court allowed uncorroborated testimony of victim, it is the duty of the State to corroborate such testimony in so far as it can by competent and relevant evidence.

FOUND AT STATE V. DOW, 176 P.3d 597 Wash. App. Div. 2 at Head note [50] and [63], 2/05/2008 as the instant case before this Court, and Further See: STATE V. ATEN, 103 Wn.2d 640,655, 1996, "Uncorroborated confession/Statement is insufficient evidence to sustain conviction.

Which the appellant contends before this Court, a conviction may not rest on the Uncorroborated testimony of a victim, Testimony of victim must be viewed with caution and according to it the appropriate weight, exercising it with discretion. The Trial Court admissibility and effect of testimony being in front of the jury DID prejudice the appellant, since the victim statements were conflicting at pre trial and before the jury, making undue prejudice upon the appellant.

THE STATEMENTS MADE BY THE VICTIM BEING IN CONTRARY DID MISLEAD THE JURY AND INFLAME PASSIONS OF THE JURY, THUS DENING APPELLANT DUE PROCESS.

Additional Ground 2

Whether the trial courts ruling prohibiting the defense from presenting evidence on sexual normalcy denied the defendant Due Process?

Defendant English a Defense witness was not allowed to testify to Appellants sexual normalcy, in that he currently had a girlfriend, 36 years old and has had normal relationships Throughout his life. Defense attorney Evansen questions the defendant with jury present at trial , R.P.volume 5 Page 478 line 1-3, \ 10/20/2007,.

This information would help the trier of fact to understand the defendant has had a normal sex life. This information was important enough to be put in the Pre-Sentence Investigation: "English is single and lives alone. He has never married nor had children. He currently has a girlfriend who resides in Candada. \ Pre-Sentence Investigation, Page 5 of 8,.

In this case, the state's charges are of an abnormal sexual nature. By excluding the facts of sexual normalcy, The trier of fact can only see the one-sided picture the state paints. The trial courts errors caused prejudice and therefore the defendant is entitled to a new trial.

Additional Ground 3

#3 Whether the Trial court caused prejudicial error in not allowing testimony relative to this case?

That would help the trier of fact to understand that the defendant was abiding by the rules of the Canadian Courts, by signing in, in person, every week at the North Surrey Probation/Bail office in British Columbia, and that he had no police contact in seven years. The defense attorney Evansen questions the defendant at trial with jury present See R.P. Volume 5, page 477 line 10-14, 10/20/2007,. During closing arguments, State prosecutor Mr.Farr: And what does he do? He flees. he flees. He runs away, and he stays away for nine years. Nine years. ... What does that show you? Consciousness of guilt. This man has run on every single occasion... R.P. Volume 5, Page 522 line 25, page 523 line 1-2 and 10-11, and:... brought to court, he ran and stayed away as long as he possibly could, as a consciousness of guilt. R.P. Volumes 5, page 523, line 25 and page 524 line 1, 10/20/2007,.

The trial court made prejudicial error by not allowing the defendant to answer and defend himself with this line of questioning. Throughout this trial the state accused

the defendant was always running away, and this is a way of disputing that claim, but it was not allowed. Had it been allowed the jury would have heard that the defendant had voluntarily surrendered himself to the Canadian courts to face these charges. \ R.P. volume 5, page 455 line 9-25, and page 456 line 1-11,.

Defense attorney Evansen then asks for a brief sidebar to ask the court why she was not allowed that form of questioning after the state opened the door:\ R.P. volume 5, page 456 line 21-25, and page 457 line 4-25, and page 458 line 1-2,.

The court committed prejudicial error by allowing the state to question the defense expert witness, Dr. Larsen, on the effect that alcoholic blackouts have in forming specific intent as the court had stated were the issues in this case. The court then did not allow the defense the same line of questioning to prove the defense's case, even after the state had clearly opened the door, thus denying the defendant due process as guaranteed under defendant, due process as guaranteed under article 1§22 of the constitution of the State of Washington, and 5th and 14th Amendments of the constitution of the United States of America. To elicit an emotional response, rather than a rational decision. State V. Stackhouse, 90 Wn.App. 344, 356, 957 P.2d 218, review denied, 136 Wn.2d 1002 ,1998,

In order to sustain this fundamental Constitutional guarantee to a fair trial, no witness, whether a lay person

or expert may give an opinion as to the defendants guilt either directly or inferentially" because the determination of the defendants guilt or innocence is solely a question for the trier of fact. " State v. Carlin, 40 Wn.App. 698, 701, 700 P.2d 323 ,1985,.

The expression of an opinion as to a criminal defendant's guilt violates his Constitutional right to a jury trial, including the independent determination of the facts by the jury. See Stepney v. Lopes, 592 F. Supp.1538, 1547-49,D. Conn. 1984,.

The prosecutor's vouching for the credibility of witnesses and expressing his personal opinion concerning the guilt of the accused pose two dangers: Such comments can convey the impression that evidence not presented to the jury, but known to the Prosecutor, supports the charges against the defendant and can thus jeopardize the defendants right to be tried solely on the basis of the evidence presented to the jury, and the prosecutor's opinion carries with it the imprimatur of the Government and may induce the jury to trust the Government's judgment rather than its own view of the evidence. See Berger V.United States, 295, U.S., at 88-89.

"Expressions of personal opinion by the prosecutor are a form of unsworn, unchecked testimony and tend to exploit the influence of the prosecutor's office and undermine the objective detachment that should separate

a lawyer from the cause being argued. " Id., at 3.89.13
 See also United States V. Bess, 593 F.2d 749,755 , CA 6
 1979, ," Implicit in a prosecutor assertion of personal
 belief that a defendant is guilty, is an implied Statement
 that the Prosecutor, by virtue of his experience, knowledge
 and intellect, has concluded that the jury must convict.
 The devastating impact of such "testimony" should be
 apparent,.

In State V. Gurrola, 69 Wn.App. 152, 156-157, 848 P.2d
 199 ,1993, Division three reached a similar conclusion.
 It first observed that offenses such as child molestation
 or indecent liberties reasonably require a showing of sexual
 gratification because the touching may be inadvertent.

" Intent is the mental step of planning to achieve
 a goal. " State V. Roby, 67 Wn.App. 741, 746, 840 P.2d
 218 ,1992,.

If you find from the evidence that at the time the
 alleged crime was committed, the defendant had substantially
 reduced mental capacity, whether caused by mental illness,
 mental defect, intoxication, or any other cause, you must
 consider what effect, if any , this diminished capacity
 had on the defendants ability to form the requisite intent.
 Thus if you find that the defendants mental capacity was
 diminished to the extent that you have a reasonable doubt
 whether he acted with the requisite intent you cannot find
 him guilty of statutory rape in the first degree. State
 v. Swaggerty, 60 Wash. App. page 837 , 1991,.

ER 702 provides: If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill experience, training or education, may testify in the form of an opinion or otherwise.

In conclusion, I believe that expert witness Dr.Larsen, is saying that the defendant had a lesser mental state than is required to form the specific intent. The facts prove that the trial court erred in not dismissing this case for insufficient evidence. There is no proof beyond reasonable doubt what so ever of a person in alcoholic ~~ba~~ckout, lost in a house he had never been in before the night in question, but that is not enough to convict on these charges.

The Court:... An attempt of such crime is committed when a person intends to touch someone in a sexual or intimate place at the same time intending to do so for sexual gratification, and that person takes a substantial step.

So what the state has to prove here is that the defendant intended at some point during that contact to have sexual contact with a sexual or intimate part. R.P volume 5, page 391 lines 7-22,
The state failed to prove that the defendant intended sexual contact with a sexual or intimate part for sexual gratification. Even The alleged victim Lorin Riddle stated

she did not consider the rubbing of her back to be sexual as she thought it was her grandmother. See \ R.P. volume 4, page 248 line 2-5 and page 254 Line 5-25 and page 255 line 1-10, \10/19/2007, ... The Court:

The substantial step need be one which is strongly corroborative of the intended purpose, the purpose to have sexual contact, and is not just mere preparation. \ R.P. volume, 5, page 392 line 10-20,

The court uses the arguments that the defendant made a statement that he lust's after all women. Berit Riddle testified to that, but said she took it as a joke and that the defendants dad had made jokes to that effect. The key word there is "WOMEN", not children. Then the court states that the defendant went into the room and closed the door behind him. This is new evidence that was never mentioned anywhere in police reports, or testimony made in 1998 or 99. No where is it mentioned until the jury trial in Sept. 2007. The fact is that everyone in the house was asleep so how could they know , and the defendant was in a ~~back~~backout.

Please examine pages 382 line 8 through to page 395 line 11, which is the defense motion to dismiss the charge for insufficient evidence.

ATTACH TO APPEAL BRIEF

ADDITIONAL GROUND 4

WHETHER THE CUMULATIVE ERROR DOCTRINE APPLY IN THIS CASE BEFORE THIS COURT?

The cumulative error doctrine applies where there have been several Trial errors, individually, not justifying reversal, that, when combined, deny a defendant a fair trial, State v. Greiff, 141 Wn.2d 910, 929, 10 P.3d 390 (2000); State v. Hodges, 118 Wn.App 668, 673-74, 776 P.3d 375 (2003).

The appellant contends that the Trial Court denied him due process, violating his Constitutional Rights, Washington Constitution Article I, Section 22, et., seq. Rights of the Accused being a protected Right and having an impartial and fair trial by a jury hearing the truth.

Appellant raises Grounds to be attached to his Direct Appeal having merit and well established and demonstrated to this Court for review. Appellant has stated grounds for which relief can be granted. Based upon the fact Appellant's Trial for alleged crimes, his Counsel did not properly prepare a defense due to the crime charged.

~~appeal attorney~~ John A. Hays
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in

If there are additional grounds, a brief summary is attached to this statement.

Date: Sept. 15 2008 Signature: Samuel English

Additional Ground #. 5

Whether the defendant was denied due process when the court allowed the state to take advantage of defense expert testimony that was denied to the defense concerning the effect alcoholic blackouts have on forming specific intent. Also the court seems unclear as to what the issues are in this case.

Facts - Intent is an element of the charges against the defendant. The court questions defense expert witness, Dr. Larsen, without jury present, at a hearing to determine whether his testimony meets the requirements of the Washington State rules of evidence:

The Court: So you've been recognized as being permitted to have the expertise to give expert opinions on such issues.

Dr. Larsen: That's correct.

The Court: And you're aware of the issues in this case; correct?

Dr. Larsen: I am.

The Court: That is whether or not the defendant was in an alcoholic blackout, whether he was under the influence of alcohol to the extent that he couldn't formulate specific intent.

Dr. Larsen: Yes

(R.P. volume 5, page 407 line 7-18, 10/20/2007)

The court then contradicts itself on what the issues are. Still during the hearing without jury:

The Court: Well, my ruling is that there's

No evidence of diminished capacity and inability to formulate intent in this record, either one, if they're different.

(R.P. volume 5 page 431 line 24-25, page 432 line 1-2)

The State prosecutor Mr. Farr, confirms this contradiction with the court: (page 433 line 15-23)

Defense expert witness Dr Larsen clearly states that the defendant could not have knowingly engaged in the accused behavior, on page 5 of his report, but this was not allowed at trial:

"Sam is charged with attempted child molestation which is by definition a knowing, intentional act. Intent is clearly defined as engaging in a specific behavior designed to produce a predictable outcome. In my medical psychiatric opinion, given his intoxicated state and history of blackouts, he could not have knowingly engaged in the accused behavior."

Also: (R.P. Volume 5 page 412 line 11-25, page 413 line 1-3)
 (R.P. volume 5 page 454 line 12-25, page 455 line 1)
 (R.P. volume 5 page 455 line 15-24)

The state was allowed to question defense expert Dr. Larsen on the effect alcoholic blackouts have on forming specific intent, and yet denied the defense this line of questioning even though it is pertinent to the defenses argument, thus denying the defendant due process.

Additional Ground #6

Was The defendant denied his right to effective assistance of counsel, when defense counsel made unfairly prejudicial statements during closing arguments?

Facts - Defense counsel Ms. Evansen's (partial) closing statements:

"If we can review the testimony that the evidence that the state has presented. They brought Lorin in, and after this happened back in 1998, she said she was crying hysterically And I can believe that. Today or yesterday she was still crying hysterically, when she left the courtroom, nine years later."

"She knows he was drunk. She told us he only rubbed her back. She told us she told him to get out or she would call her grandparents, and he did."

"My question is why is she still crying?
(R.P. volume 5 page 527 line 14-24)

Defense counsel Ms. Evansen's (partial) closing statements talking about police officer Waddell:

"He didn't arrest him. He did say he detected the odor of intoxicants in his report. And he thinks he gave him the advice not to drive because you're dropping an intoxicated person off at the truck on the side of the I-5, better make sure you're not -- they're not going to be driving away. Last thing you need is another crime on your watch, another allegation."

(R.P. volume 5 page 533 line 21-25, page 534 line 1-3)

Conclusion —

Defense counsel caused unfair prejudice and was ineffective counsel to state that Lorin was crying hysterically back in 1998, because, as stated in (R.P. volume 1 page 19 line 17-18) 1/7/1999, Lorin Riddle herself states she was not crying. Counsel also vouched for the credibility of witness Lorin Riddle by stating "And I can believe that."

Also, counsel was prejudicial in closing to say, "last thing you need is another crime on your watch, another allegation," when speaking of officer Waddell, as it implies that a crime was committed in the first place, and now you don't need another crime on your watch.

Samuel English