

No. 39869-9-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

REGINALD BELL, SR.,

Appellant,

FILED
COURT APPEALS
DIVISION II
MAY 13 10:54 AM '04
STATE OF WASHINGTON

On Appeal from the Pierce County Superior Court
Cause No. 08-1-00994-9
The Honorable James Cayce, Visiting Judge
The Honorable Vicki Hogan, Judge

APPELLANTS
STATEMENT OF ADDITIONAL GROUNDS

REGINALD BELL, SR.,
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A. SUMMARY OF COUNSELS BRIEF

The Rules of Appellate Procedure authorizes an Appellant/Defendant to file a pro se statement of additional Grounds for review to identify and discuss those matters which the appellant/defendant believes have not been adequately addressed by appellant counsel. RAP 10.10. Washington Constitution Article I § Section 22 and the United States Constitution Amendment VI guarantees a defendant shall receive effective representation and assistance of appeal counsel. see STRICKLAND, 466 U.S. at 694. IN RE PRP OF WOODS, 154, wn.2d. 400, 420, 114 P.3d 607 (2005). Counsel assistance becomes ineffective when counsels performance is deficient and the deficient performance prejudices the appellant. see STATE V THOMAS, 109 wn. 2d 222, 225, 743 P.2d 816 (1987). Deficient performance occurs when counsels performance falls below an objective standard of reasonableness. see STATE V STENSON, 132 wn.2d. 668, 705 940 P.2d 1239 (1997) cert denied, 523 U.S. 1008 (1998). prejudice exist where but for the deficient performance there is a probability the verdict would have been different. see STATE V B.J.S 140 wn. app. 91, 100, 169, P.3d 39 (2007). A reasonable probability is a probability sufficient to

Undermine confidence in the out-come. I have recieved and reviewed the opening brief prepared by my attorney and I find her performance to be deficient falling well below the the objective standard of reasonablness. There exist any tactical reason for her to choose not to request this court to examine the sufficiency of evidence used to convict the appellant of Possession with intent to deliver and the Bail Jumping crime making her decisions unreasonable. Threfore, summarized below are material facts and procedural history that she has erroneously neglected to include demonstrated in additional grounds for review that are not addressed in that brief. It is my understanding the court will review this statement of additional grounds for review when my appeal is considered on the merits. Please nots, a small portion of the facts revelant to those additional grounds for review are set forth in my attorney's opening brief at 3-4 all other revelant facts are set forth in the additional grounds below. For this courts convience the multiple volumes of verbatim are referenced herein the same as my attorney's opening brief.

B. PROCEDURAL HISTORY

In addition to the facts provided by appellant counsel at procedural history, the State by information, also

Charged co-defendant, Shirley Butts, with Possession of a Controlled Substance. (RCW 69.50.401)(2 2RP204) both Butts and Bell was charged with Constructive Possession of the same cocaine based upon a dominion and control theory over the premises on which it was found. Prior to trial Butts was convicted by " guilty plea " of possessing the (60) grams of cocaine found at her residence and was sentenced (2RP204-05). In September 2009, after trial by jury Bell was convicted of Possession with intent to deliver the same (60) grams of cocaine that Butts had been convicted of possessing several months prior.(CP 123-26; 4 RP 508). Bell moved the trial court to arrest jury verdict of guilty pursuant to CrR 7.4 (a)(3) on the grounds the evidence used to convict him is not sufficient to support a conviction for possession with intent to deliver because the State had not met its burden of proving the essential elements of possession by the appellant or that he intended to deliver the cocaine. (R P 515) failing to prove beyond a reasonable doubt Bell had dominion and control over either the cocaine or over the premises on which it was found. On October 5, 2009 the trial court denied that motion and sentenced the appellant to the statutory maximum of 120 months. (R p 518-527 thru 530).

A. ADDITIONAL GROUND ONE

MR. BELL WAS CONVICTED WITHOUT SUFFICIENT EVIDENCE TO SUPPORT THE CONVICTION OF POSSESSION WITH INTENT TO DELIVER BASED UPON CO-DEFENDANTS PLEA OF GUILTY OF ACTUAL POSSESSION THE TRIAL COURT ERRED WHEN IT DENIED BELLS MOTION TO ARREST JURY VERDICT WHICH CONVICTED HIM OF BEING IN ACTUAL POSSESSION OF THE SAME COCAINE AT WHICH BUTTS HAD BEEN CONVICTED OF BEING IN ACTUAL POSSESSION THEREOF VIOLATED BELLS RIGHT TO DUE PROCESS AND HIS RIGHT TO A FAIR TRIAL UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO UNITED STATES CONSTITUTION AND ARTICLE 1, SEC 3 and 22 OF THE STATES CONST.

The review of a Trial Courts decision denying a motion for arrest of Judgment requires the appellate court to engage in the same inquiry as the trial court. see STATE V CEGLOWSKI, (2000), 103 wash.app.346, 12 P.3d 160. In reviewing a trial courts decision denying a motion for arrest of Judgment, the appellate courts applies the same standard as the trial court, i.e., whether there is sufficient evidence that could support a verdict for non-moving party. see STATE V LONGSHORE, (1999) 97 wash.app. 144, 982 P.2d 1191, review granted, 139 wash.2d 1015, 994 P.2d 849; affirmed 141, wash.2d 414, 5 P.3d 1256. The evidence is sufficient if, any rational trier of fact viewing it most favorable to the State could have found the essential elements of the charged crime beyond a reasonable doubt, see STATE V GREEN, 94 wn.2d.216, 221-22, 616 P.2d 628 (1980) (citing JACKSON V VIRGINIA, 443 U.S. 307 319, 61 L.Ed.2d 560, 99 S.Ct. 2781 (1987); STATE V REMPEL, 114 wn.2d.77 82, 785 P.2d 1134 (1990); STATE V BINGHAM, 105, wn.2d 820, 823 719 P.2d 109 (1986); STATE V BAEZO, 160 wn.2d 487, 490, 670 P.2d 646 (1937).

Evidence is not sufficient to support a conviction for possession with intent to deliver unless a rational trier could find that the defendant possessed the same cocaine he intended to deliver .

To convict a defendant of the crime of possession with intent to [Deliver] a controlled substance, each of the following elements of the crime must be proved by the state beyond a reasonable doubt.

1. THAT ON OR ABOUT FEBURARY 24, 2008 MR. BELL POSSESSED [A CONTROLLED SUBSTANCE][COCAINE]
2. THAT MR. BELL POSSESSED THE SUBSTANCE WITH THE INTENT TO [DELIVER][ACONTROLLED SUBSTANCE][COCAINE]
3. THAT THIS ACT OCCURED IN THE STATE OF WASHINGTON

see WPIC, 50.14. It is contended by Bell, the State did not meet its burden of establishing any of the elements of RCW 69.50. 401 (1) and WPIC, 5014, failing to establish Bell had actual possession of the drugs he was convicted of intending to deliver. see STATE V STALEY, 123 wn.2d 794, 872 P.2d 502 (1994) STATE V ADAMS, 56 wn.app.803, 785 P.2d 1144 review denied, 114 wn.2d 1030, 793 P.2d 976 (1990). Failing to sustain its burden proving beyond a reasonable doubt that Bell had dominion and control over either the cocaine or the premises on which it was found. see STATE V SAINZ, 23, wn.app.532, 596 P.2d 1090 (1979).

The State set out to prove Bell possessed cocaine with the Intent to deliver it based on a constructive possession theory because the illegal contraband was not discovered on his person. (1RP 108;RP109;) The illegal contraband was discovered by Fife Police Officer, Eugley and Menicieko, in various locations within Co-defendants, Shirley Butts residence.

LOCATIONS OF CONTRABAND

(1) Butts told Officer Eugley that there was in a box under-neath a table (1RP72)

(2) Butts told Officer Eugley that there was crack cocaine in a closet above a coat rack. (1 RP72)

upon searching the locations Butts indicated that their were illegal contraband Officer Eugley discovered what he described as small and large pieces of cocaine in those exact locations. (1RP78); Officer Eugley also discovered illegal contraband in various locations not identified by Butts such as,

(3) Officer Eugley discovered illegal contraband in what he described as a T-shirt pocket where he observed a plastic bag sticking out of the pocket which contained the fist size rock. (1RP73, RP221-226)

(4) Officer Eugley than discovered a pill bottle containing cocaine cut in pieces that was discovered by officer Menicienko located on the table directly above the box with stuff in it described by Butts. (1RP221-226)

At the conclusion of Officers Eugley testimony he narrated for the Jury all the locations where the illegal contraband was found consistant with the description above. (1RP71-76,78,79).

ARGUMENT POINTS AND AUTHORITY

One not having actual possession presumptively has constructive possession when he has dominion and control over the premises where the illegal contraband is found. see STATE V PERRY, 10 wn. app.159,576 P.2d 1104 (1973) review denied, 43 wn.2d 1011 (1974) Actual possession means that the goods are in the personal custody of the person charged with possession. Where as, Constructive possession means that the goods are not in the actual physical possession, but that the person charged with possession has dominion and control over the goods. see STATE V STALEY, 123, wn.2d 791 872, P.2d 502 (1994). To prove its dominion and control theory the state introduced testimony from Bates Motel manager, Bonnie Berker. (919RP5) However, Ms. Barker, testified to "BUTTS" was the sole tenant registered to room 25 at the Bates Motel where the illegal contraband was discovered. (919RP6). Barker also stated that she called law enforcement because "BUTTS" just would not follow the policy of the motel.(919RP6,7,12-13). The state called five police officers Eugley and Meniencko whom offered testimony consistent with Barkers concerning "BUTTS" tenancy, her failure to comply with policy and rules of the Bates Motel, and they had been dispatched to the Motel because Barker had requested that they be sent to force compliance by "BUTTS" with motel policy and directives concerning registering her guest. (919RP16); (1RP98-99);

The state then called "BUTTS" as a witness whose testimony validated that Bell was not a tenant at the Bates Motel in room 25, (2RP250) did not reside or stay with her in room 25, and that she had been staying in room 25 at the Bates motel for over a month, paying weekly in cash. (2RP226) and as a result of this incident motel management compelled her to terminate her tenancy. (2RP242)., in fact "BUTTS" indicated that Bell lived in a different Motel in the city of Puyallup (2RP251) no other person stayed with her in room 25 (2RP248-489) and she had plead guilty to possession of the cocaine found in her residence, room 25, at the Bates motel on January 24, 2008, in Pierce County Washington. (2RP223). The state conceded that this was its case in chief and rested. (4RP411). In view of the testimonial evidence presented to prove dominion and control over the premises on which the illegal contraband was found (2) the trial court's ruling with respect to automatic standing issue,² (3) BUTTS plea of guilty which placed actual, care, control and management in her possession³ and (4), after weighing all the evidence offered as proof to prove the matter asserted, and conferring with counsel demonstrated to the appellant, the state had not met its burden of proving the elements of the crime charged, Bell rested.⁴ (4RP412). There was no issue of credibility and nor did Bell offer any conflicting evidence. Upon Jury verdict of guilty, Bell moved

2 THE TRIAL COURT CONCLUDED THAT BELL DID NOT HAVE STANDING TO CHALLENGE THE SEARCH OF THE MOTEL ROOM BECAUSE BELL WAS NOT LEGITIMATELY AND LAWFULLY ON THE PREMISES WHERE THE SEARCH OCCURRED.... THE COURT FOUND FURTHER EVEN IF BELL WAS LEGITIMATELY ON THE PREMISES, HE STILL DOES NOT HAVE AUTOMATIC STANDING TO CHALLENGE THE SEARCH OF THE MOTEL ROOM BECAUSE HE DID NOT HAVE A REASONABLE EXPECTATION OF PRIVACY IN THE PREMISES BECAUSE HE WAS A CASUAL VISITOR. "IN OTHER WORDS THE COURT FOUND BELL DID NOT HAVE DOMINION AND CONTROL BUTTS DID (CP(7)(8)RP278)

The trial court to arrest judgment of jury on the grounds of insufficient evidence to prove the material elements of RCW 69.50.401(1) which is authorized by CrR 7.4(a)(3) see STATE V BELL (1974), 10 Wash. app.957,521 P.2d 70 review denied (4RP515-518). The trial court is inherented with the authority, pursuant to CrR 7.4(a) to arrest a Judgment on motion of the defendant for the following causes, (3) insufficient proof of a material element of the crime. see STATE V WOLF,134 wn.app.196,139 P.3d 414 (2006). where there is no proof of the material elements of the crime charged the trial court had the authority to arrest the jury verdict and order the release of the defendant/appellant. see CrR 7.4(c), STATE V HUVNH,107 wn.app. 68,26 P.3d 290 (2001). and it abused its discretion when it denied Bells motion. (4RP530).

STANDARD OF REVIEW

A trial courts order denying a motion to arrest judgment is reviewed for abuse of descretion only. see STATE V DAILY,93 wash 2d 454, (citing STATE V BURRI,87 wash.2d 175, and STATE V SULGROVE, 19 wash.app. 860) to reverse this court must find that the trial court exercise of descretion was manifestly unreasonable or exercised on unteneable grounds or for unteneable reasons. see state ex rel carroll v junker, 79 wash.2d. 12, 26, 482.

3. " TO POSSESS MEANS TO HAVE ACTUALL, CARE, AND MANAGEMENT OF NOT A PASSING, FLEETING, OR SHADOWY IN NATURE. CITINF Landry at 431 (citing U.S. V WAINY, 170 F.@D 603,606 (7thCIR 1948); THE U.S. SUPREME COURT HAS HELD THE FACT OF POSSESSION MAY BE SHOWN BY CIRCUMSTANTIAL EVIDENCE. SEE U.S. V PINNA (7th CIR) 229 F.2d 216,218 HOWEVER, NO COURT HAS HELD THAT PROOF OF POSSESSION BY ONE PERSON MAY BE ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE WHEN THE UNDISPUTED DIRECT PROOF PLACES THAT POSSESSION IN SOME OTHER PERSON. SEE U.S. V LANDRY at431

It cannot be concluded otherwise, the trial court abused its discretion, constructive possession is established by proof that the defendant had dominion and control over the premises where the drugs are found. see STATE V CALLAHAN, 77 Wash.2d. 27, 31, 459. here, no evidence of dominion and control was presented in fact evidence was presented to the contrary the trial court and the jury heard testimonial evidence that BUTTS was the sole registered tenant to room 25, in-fact the trier of fact heard testimony that BELL just dropped by at around 8:30 am and ask Butts if he could hang out, was an unregistered guest, lived in another motel in the city of fife and no one else stayed with BUTTS in room 25. (1RP250-49). the trier of fact also heard testimony the only thing Bell had that belonged to him at the residence was a coat he wore and a DVD player he brought with him (1RP242-243) The trial court knew from the testimony presented Butts plead guilty to possession of the cocaine found in her residence, had a conviction and served a sentence, it was her room and it was registered to her, it knew that the drugs were found, by her own testimony, on a plate that belonged to her, an in a shirt pocket that belonged to her, in a pill bottle on top of a table in a room registered to her. The trier of fact knew that butts, according to officer Eugley testimony, attempted to

4 THE APPELLANT ASSERTED THE AFFIRMATIVE DEFENSE OF UNWITTING POSSESSION ALLEGING HE HAD NO KNOWLEDGE OF KNOWING WHAT BUTTS HAD IN HER HOME. STATE V STALEY, 123 Wash.2d 794, 799 872. THE STATE HAD THE BURDEN OF PROVING THE ELEMENTS OF UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE AS DEFINED BY STATUTE- THE NATURE OF THE SUBSTANCE [AND] THE FACT OF POSSESSION. THE DEFENDANT [THEN] CAN PROVE THE AFFIRMATIVE DEFENSE OF UNWITTING POSSESSION. SEE state v bradshaw, 152 Wash.2d 528, 98 RP 433

Grab the marijuana feeling that she was going to destroy the evidence entered the room and arrested her for that then and only than did she volunteer information about Bell and the drugs she knew was situated in her room claiming that they all belong to Bell (1RP241-223-4RP471) the trial court also knew that Butts has over 180,000 dollars at her disposal. (2RP248-250-238-223-241 4RP471) In comparrison of this case with the signal case of STATE V CALLAHAN SUPRA the supreme court held the following evidence was insufficient to prove constructive possession by the defendant of a house boat.

- (1) two books and two guns belonging to the defendant was found on the houseboat
- (2) defendant had stayed two to three days on the houseboat but had not been a tenant.
- (3) drugs were found near the defendant and he admitted to handling the drugs

There is less evidence in the case at hand to prove dominion and controll by Bell than thier was to prove dominion and controll in CALLAHAN notwithstanding the fact the state had already convicted Butts of actual possession of the cocaine found in room 25 at the Bates Motel on Feburary 24, 2008 in Pierce County Washington, thereby finding all the elements of that crime committed as a result of this incident. The trial courts abuse of descretion is manifested further in light of the tests set forth in STATE V GREEN, 94 wash.2d 216,616 and STATE V RANDECKER 79, wash.2d 512, 487

The RANDECKER test for granting a motion in arrest of Judgment is whether there is substantial evidence from which the jury could reasonably conclude that there was some proof of the elements of the crime. The GREEN test for appellate review of sufficiency of evidence in a criminal case is whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Viewing the evidence of Bells constructive possession in the light most favorable to the prosecution, one cannot conclude that there is substantial evidence from which a jury could find some proof of constructive possession nor can it be concluded that from this evidence a rational juror could find constructive possession by Bell beyond a reasonable doubt.

CONCLUSION

Dismissal of this action for insufficient evidence is not only fair to the defendant/appellant but also just for society which requires that no person be convicted of a crime " unless " each element of such crime is proved by competent evidence beyond a reasonable doubt. RCW 9A.04.100 here there exist any evidence which proves the elements set forth in RCW 69.50.401(1) not only was this an arbitrary action by the prosecutor but a blatant disregard to the principles of Due Process and must be reversed.

B. ADDITIONAL GROUND TWO

THE PROSECUTORIAL MISCONDUCT DENIED MR. BELL HIS RIGHT TO A FAIR TRIAL UNDER SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 22 OF THE WASHINGTON STATE CONSTITUTION.

Prosecutorial Misconduct may deprive the defendant of a fair trial and only a fair trial is a Constitutional trial. see **STATE V CHARLTON**, 0 wn.2d 657,655, 585; In cases of prosecutorial misconduct, the touchstone of due process analysis is the fairness of the trial, i.e., did the misconduct prejudice the jury thereby denying the appellant a fair trial guaranteed by the due process clause. see **SMITH V PHILLIPS**, 455 U.S. 20 , 224 71 L.ed.2d 78,102; **STATE V WEBER**, wn.2d 158, 16 ,65 , Thus the legal error, if it exists exists in the fact that defendants trial was unfair, **WEBER**, at 16 . Therefore the ultimate inquiry is not whether the error was harmless or not harmless but rather did the impropriety violate the defendants due process right to a fair trial an examination of the record shows the jury may have been affected by the States misconduct, thus, Mr. Bell's was denied a fair trial. First, the misconduct by the state is of a very serious nature, Mr. Bell was charged with possession of a controlled substance with the intent to deliver it as a result of drugs that were found in a residence where he did not reside.

1. THE WASHINGTON SUPREME COURT HAS OFTEN STATED THAT WHILE THE PROSECUTOR IS VESTED WITH BROAD DISCRETION AS TO WHETHER OR NOT TO CHARGE A PERSON WITH A CRIME, HE OR SHE IS NOT WITHOUT STANDARDS. **STATE VEX REL SCHILLBERG V CASECIDE DISTRICT COURT** , 4 wash.2d 772,280; THE PRINCIPLE STANDARD FOR THE CHARGING DECISION IS THE PROSECUTOR'S ABILITY TO PROVE ALL THE ELEMENTS OF THE CHARGE. **UNITED STATES V LOVASCO**, 431 U.S. 783,7 0- 1; **STATE V JUDGE**, 100 wash.2d 706,713, -675;

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The State, as noted in additional ground 1, also charged as co-defendant, the registered renter of the motel with possession of a controlled substance the same containe that Bell was charged with possessing to deliver. By the co-defendants own admission, the State convicts her of the possession allegation but maintains its prosecution against Bell by using the same evidence and same facts.² Inorder to make this work, the State forces co-defendant to conjure testimony that she witnessed powder cocaine being made into crack cocaine when the evidence showed the opposite. RP 64-94 ; 214-216 228-231; 238 - 247; than make her unavaliabile for interviews prior to trial so that the substance of her testimony cannot be determined prior to trial the trial court erred in not excluding her as a witness. 1RP 20-30.

2. IT IS UNPROFESSIONAL CONDUCT FOR A PROSECUTOR TO INSTITUTE, OR CAUSE TO BE INSTITUTED, OR TO PERMIT THE CONTINUED PENDENCY OF CRIMINAL CHARGES WHEN IT KNOWS THAT THE CHARGES ARE NOT SUPPORTED BY PROBABLE CAUSE . A PROSECUTOR SHOULD NOT INSTITUTE, CAUSE TO BE INSTITUTED, OR PERMIT THE CONTINUED PENDENCY OF CRIMINAL CHARGES IN THE ABSCENCE OF SUFFICIENT ADMISSABLE EVIDENCE TO SUPPORT A CONVICTION. I AMERICAN BAR ASSN, STANDARDS FOR CRIMINAL JUSTICE SID 33 a 2d.ed.

In addition to the above, there were several other instances of misconduct. When considered as a whole with those above, the resulting cumulative prejudice violated Mr. Bell's right to a fair trial. First, we have the forged " Court Soda Order " 1RP 28-40 this document was admitted into evidence at 3.6 hearing to show that Bell had a court order prohibiting him from being in the fife area along Pacific Highway alleging that it was enter by Fife Municiple Court. The trial court based its ruling regarding Mr. Bell's motion to suppress the evidence obtained from the search of Butts residence on this forged court order admitted into evidence by the State ruling that as a consequence of this order Mr. Bell could not challenge the search of Butts residence because he was not lawfully on the premises and than the State used this same order at trial to mislead the jury to show a profit motive on the part of Mr. Bell for being at the Bates Motel. Facing this seeming insurmountable task, the prosecutor simply blurred the line between argument and misconduct, beginning with vouching for a court order that did not exist prohibiting Bell from being at the Bates Motel and ending with using the perjured testimony from officer Meniceko corroborating that forged court order to bootstrap Butts single possession conviction into a more serious offense of possession with the intent to deliver against Bell, to show that Bell risked being arrested for profit. The following portions of his closing argument brings Mr. Bell's Claims sharply into focus;

I WILL JUST POINT OUT, YOU KNOW, DEFENSE COUNSEL SAID MAYBE HER CLIENT, MAYBE MR. BELL WAS JUST AN INNOCENT VISITOR THAT MORNING. MAYBE HE JUST POPPED IN, In order to believe that MR. BELL JUST POPPED IN, YOU HAVE TO BELIEVE THAT, FIRST OF AL, SHIRLEY BUTTS IS COMPLETELY THAT EVERYTHING SHE SAID WAS COMPLETELY MADE UP, OR MISREMEMBERED. IS THAT REASONABLE? NO, IT'S NOT. FURTHERMORE, YOU HAVE TO BELIEVE THAT YOU HEARD OFFICER MICENKO TESTIFY ABOUT THERE WAS A COURT ORDER, THERE WAS A COURT ORDER PROHIBITING MR. BELL FROM BEING AT THAT MOTEL, HE COULD BE ARRESTED, JUST FOR PHYSICALLY BEING THERE. SO YOU WOULD HAVE TO BELIEVE THAT MR. BELL JUST CASUALLY BROKE A COURT ORDER THAT COULD SUBJECT HIM TO ARREST. DOES THAT MAKE SENSE? NO. WHAT DOES MAKE SENSE? WHAT IS REASONABLE? WHAT IS A REASON WHY SOMEBODY WOULD BREAK A COURT ORDER, RISK ARREST, WHAT IS A GOOD REASON? I WILL TELL YOU WHAT: PROFIT. YOU HAVE POWDER COCAINE 6,000 WORTH OF COCAINE THAT YOU NEED TO MAKE INTO CRACK COCAINE, AND YOU NEED SOMEPLACE TO DO IT AT, AND YOU HAVE TO GET THAT ON THE STREET. AND THATS A REASON TO IGNORE A COURT ORDER, TO SHOW UP AT A MOTEL, AND SUBJECT YOURSELF TO ARREST. CASUAL VISITOR? NO, ITS NOT REASONABLE.

4RP 501; However, the testimony from Officer Mecencko should have never been given, and nor should have the court soda order been allowed to be admitted into evidence over the objection of counsel, and definately should not have been reiterated and highlighted by the prosecutor during closing argument for two reasons. 1; Revelancy, profit to be gained from the sales of cocaine may be revelant to the issue of distribution. STATE V HUTCHIN, 73 wn.app.211,808. and 2; the court erred in allowing the court soda order admitted over the objections of Mr. Bell whom moved the trial court to reconsider its 404b ruling which allowed the state to make

Mention of the order to the jury alleging that the order was a forge and was not entered by the fife municipale court and that all subsequent charges as a result of that case was dismissed. 1RP52-54; The trial court ordered recess in order for the state and appointed counsel to verify the substance of Mr. Bell's claims. After recess the matter was re-addressed counsel for Mr. Bell indicated that her office represented Mr. Bell on the underlying charges and there was a soda order violation filed based on the order that the state filed and it was later dismissed, however, she also indicated, from her office files, the fife court orders does not indicate a " soda order " was entered prior to this incident they were entered after this incident. 1RP 56; Counsel for the defense verified for the court that 1; that there existed any soda order that prohibited Mr. Bell from being at the Bates Motel prior to this incident on February 28, 2008, but rather the arresting officers in this incident filed a soda order violation as a result of this incident. 2; Counsel for the defense verified for the court the fife court orders that are in thier files did not indicate that such order was entered prior to this incident all the fife court orders were entered after this incident. 3; Counsel for the defense also verified for the court her office did not have a copy of fife soda court order that the state filed in thier files and no~~R~~ did the state offer any proof of its existence.

Although the main reason for the courts recess was to verify the existence of the alleged soda order entered by fife municipale court inorder to possibly reconsider its 404b ruling objected to by Mr. Bell on the grounds that it was a forge and the state was practicing fraud on the trial court the trial court denied Bells motion to reconsider its ruling and allowed the state to introduce the fraudulent court order although

defense counsel verified for the court to an extent that the court order does not exist in its files, and the state provided any offer of proof rebuting counsels indications thereby abusing its discretion and allowed forged document and the prejudicial testimony admitted. 1RP 58

The misconduct of prosecutor and the improperness of the original testimony aside, every prosecutor is a quasi-judicial officer Of the court, charged with the duty of insuring that an accused recieves a fair trial. **STATE V COLES**, 28 wn.app.563, 573,625.; **STATE V HUDSON**,73 wn.2d 660,663,440 P.2d, cert denied U.S. ; The prosecutor has the responsibility of a minister of justice and not that simply of a advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural fairness and that guilt is based upon the basis of sufficient evidence. Prosecutor are not to engage in conduct involving dishonesty, fraud, deciet, or misrepresentation. RPC 3.8a. It is the prosecutors duty to remain under appropriate restraint and to avoid partisanship partiality, and misconduct which may tend to deprive the

Defendant to a fair trial to which they are entitled. **GINSBERG V U.S.**, 257 F.2d 50 U.S. Highlighting testimony known to be improper and admitting forged documents into the tribunal can hardly be considered "insuring that an accused receives a fair trial". The prosecutor's misconduct even extended to the evidence used to convict co-defendant Butts know being used to convict Bell this was the linchpin of the states case, and once removed, the whole story falls down like a house of cards. The admittance of the cocaine and the court soda order was critical, and violated the appellants due process rights and his right to a fair trial.

C. ADDITIONAL GROUND THREE

MR. BELLS SPEEDY TRIAL RIGHTS WERE VIOLATED IN VIOLATION OF HIS SIXTH AMENDMENT RIGHT TO THE UNITED STATES CONSTITUTION AND CrR 3.3

It shall be the responsibility of the court to ensure a trial in accordance with CrR 3.3 to each person charged with a crime. CrR 3.3 a 1; This rule provides that a defendant who is detained in jail shall be brought to trial within the longer of 60 days after the commencement date specified in this rule. CrR 3.3 b 1i; in accordance with CrR 3.3 c, the initial commencement date is specified as the date of arraignment as determined under CrR 4.1. A charge not brought to trial within the time limit determined under this rule shall be dismissed with prejudice. CrR 3.3 h;

On February 24, 2008, the prosecutor filed information charging both Butts and Bell with Violations of the Uniform Controlled Substance Act RCW 69. 50. After posting bail and re-arrest, Bell was detained in King County Detention Center, on October 20, 2008, where he made numerous contacts with his court appointed counsel via through his counsel on the King county matter. The defendants whereabouts were known throughout his intire confinement in King County. On April 7, 2008, Mr. Bell was transported to Pierce County Detention Center where he was arraigned. from April 7, through September 20, date of trial the court, over the objections of Mr. Bell allowed seceral contenuances at which set the trial date outside of the 60 days reuired by rule at which Mr. Bell within the 10 day provided by CrR 3.3 d 1; moved the trial court to set the trial date back within the time limits provided by CrR 3.3 b i;⁴ the trial court refused to reset the trial date back within the period prescribed by rule on the grounds of court room congestion. iRP 21-22 and pursuant to CrR 3.3 h, Bell moved the trial court to dismiss with prejudice at which the trial court denied.

ARGUMENT POINTS AND AUTHORITY

The United States Supreme Court has said that the right to a speedy trial, guaranteed under the sixth Amendment to

4. THE APPELLANT IS UNABLE TO PROVIDE THIS COURT WITH CP OR RP PERTAINING TO THIS GROUND BECAUSE COUNSEL DID NOT PROVIDE CP OR RP OF THESE PARTICULAR PROCEEDING ALL THAT WAS PROVIDED THE APPELLANT WAS RP FROM THE TRIAL ONLY NONE OF THE CP WERE PROVIDED THE APPELLANT WHICH DEMONSTRATES APPELLANTS COMPLIANCE

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To the United States Constitution, which was made applicable to the states in **KLOPPER V NORTH CAROLINA**, 388 U.S. 213, 18 L.ed.2d 1, attaches when an indictment or information is filed or when the defendant is arrested and held to answer, whichever ever occurs earlier. **UNITED STATES V MARION**, 307,30 L.ed.2d 468, This concept has been embodied in the ABA Standards Relating to Speedy Trial § 2.2 approved draft, 1 68, which provides the time for trial should commence to run the date the charge is filed, A speedy trial in criminal cases is not only a personal right protected by the federal and states constitutions, art 1, § 22, it is also an objective in which the public has an important interest. Some of the considerations which affects the interests of society generally are mentioned in a note, Speedy Trials; Recent Developements Concerning a Vital Right 4 Ford. Urb. L.J.351,353 The author states;

" A DEFENDANT IN A CRIMINAL CASE CAN ACHIEVE DEFINITE ADVANTAGES THROUGH DELAY. ONCE TRIAL STARTS, SIMILAR CASES ARE MORE EASILY CHALLENGED BY DEFENSE ATTORNEYS ON CROSS EXAMINATION. JURIES ARE OFTEN DISENCHANTED WITH OFFENSES THAT OCCURED IN THE REMOTE PAST. IF PROSECUTION WITNESSES BECOMES UNAVAILABLE OVER LONG PERIODS OF TIME OR PROSECUTORIAL ARDOR SHOULD WANE, THE BENEFIT AT SOCIETY EXPENSE. ASIDE FROM AFFECTING THE PROBABILITIES OF OBTAINING A CONVICTION, THE SPEEDY TRIAL RIGHT HAS SIGNIFICANT IMPACTS UPON THE QUALITY OF JUDICIAL ACTION AND THE POSSIBILITY OF FUTURE CRIMINAL CONDUCT. THE TENDENCY TO POSTPONE TRIALS ADD TO COURT CONGESTION AND THE BACKLOG OF CASES. TO DISPOSE OF SUCH BACKLOG OF CASES, PLEA BARGAINING IS FREQUENTLY UTILIZED. IN THE INTEREST OF EXPEDITING MATTERS ACCUSED PERSON RECEIVES LIGHTER SENTENCES THAN THOSE THEY ACTUALLY MAY HAVE DESERVED. A SECOND IMPACT OF DELAY IS TO WEAKEN THE DETERRANT EFFECT THAT THE CRIMINAL JUSTICE SYSTEM SHOULD HAVE ON WOULD BE CRIMINALS. FINALLY THE SPEEDY TRIAL RIGHT, IS INTRICATELY RELATED TO THE NEEDS OF A WELL ORGANIZED SOCIETY IN SEVERAL OTHER RESPECTS. GUILTY PERSON RELEASED ON BAIL FOR TO LONG TEND TO COMMIT OTHER CRIMES OR FLEE THE JURISDICTION OF THE COURTS ALL TOGETHER. DEFENDANTS WHO ARE NOT BAILED MUST SPEND DEAD TIME IN LOCAL JAILS EXPOSED TO CONDITIONS DESTRUCTIVE OF HUMAN character. FOR THOSE WHO ARE EVENTUALLY FOUND INNOCENT, THEIR POTENTIAL TO BE CONTRIBUTING MEMBERS OF SOCIETY THROUGH ANY KIND OF EMPLOYMENT IS

STATEMENT OF ADDITIONAL

**IS LOST DURING PRE-TRIAL INCARCERATION. ON THE OTHER HAND
THE POSSIBILITY OF REHABILITATING THOSE WHO ARE EVENTUALLY
FOUND GUILTY IS DEMINISHED SINCE CORRECTION PROCEDURES
CANNOT BE STARTED UNTIL AFTER TRIAL. THESE NON-PRODUCTIVE
CONDITIONS ARE ACHIEVED AT A GREAT FINANCIAL EXPENSE TO SOCIETY.**

The appellant was obviously prejudiced by the delay because the state used the delay to facilitate fraud onn the trial court as well to conceal its witness, Butts, from being properly interviewed prior to trial at which she provided testimony inconsistent with that she provided in her original statement mad eto fife police officers on the day of this incident in violation of the appellants 5, 6, and 14th amendment rights to the United States Constitution.

CONCLUSION

The history of speedy trial rules has shown that unless a strict rule is applied, the right to speedy trial as well as the integrity of the judicial process, cannot be effectively preserved. The rule applies where, after the information has been filed a defendant who has not been brought to trial within the prescribe period on motion the prosecution must be dismissed with prejudice this is in harmony with the intent and spirit of the rules which are designed to afford a speedy trial and therefore this matter must be ordered reversed and dismissed with prejudiee accordingly.

D. ADDITIONAL GROUND FOUR

THE EVIDENCE THAT WAS INTRODUCED WAS INSUFFICIENT THAT THE JURY COULD FIND THAT MR. BELL HAD NOTICE OF THE COURT DATE AND THE TRIAL COURT ERRED BY NOT GRANTING DEFENSE MOTION NOTWITHSTANDING THE VERDICT

Trial Court erred when it denied Bell's motion, notwithstanding the verdict, on the bail jumping charges on the grounds that the evidence introduced was sufficient that the jury could find that Mr. Bell had notice of the court dates or sufficient evidence to support he was not there. 4RP 512-13; Defense counsel argued that the witnesses who testified could not, verify his signiture, did not have any memory of either of those court dates, when Bell was given notice, or failed to appear. No one could verify that he was actually given a copy, or he was present in court. In response to counsel motion the state argued the motion was inappropriate because there was ample evidence to find beyond a reasonable doubt that based on the documents bearing a signiture that " purports to be his " 4RP 513; however, the August 14th date states exhibit No.27 bears no signiture where the defendants signiture is suppose to be and nor did the state offer as proof to show that Bell was actually brought before the court to be notified of the August 14th date,

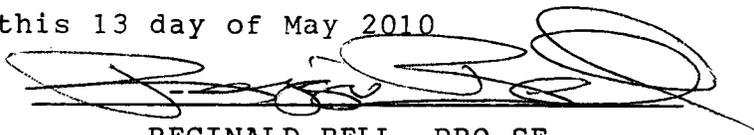
The State argued knowledge of the requirement of a subsequent personal appearance by a defendant is ascertainable by scheduling orders which are accompanied with signatures filled out in open court, before a judge at the hearing. The state offer of proof Bell had knowledge was because of signatures as Ms. Ward testified to that, the Judge, the prosecutor, the defense attorney, and the defendant, are suppose to sign this document in court and its filed. 1RP 167; This document as noted bears no signature it reads " refused to sign ", to show offer of proof Bell had knowledge of this court date the state called Mr. Curtis a state prosecuting attorney, who testified to he had no knowledge of Mr. Bell or this court hearing 2RP 302; however he did indicate the procedure done when a defendant refuses to sign a document such as this. Mr. Curtis indicated that what happens is the defendant gets physically brought before the judge, on record, and the judge will tell the defendant he is required to appear. 2RP 276-280; but yet, providing that that is the procedure, the state failed to designate the verbatim report of proceedings for that date to simply verify that Mr. Bell was actually before the court and was actually notified of that court hearing. The state offered any evidence that the trial judge did verbally order Mr Bell to appear.

This so with the March 11th date, the state offer any proof that the signiture on the scheduling order is infact Mr. Bells. Exhibit 26; The signiture signed on this document is not legible, however, the state did not attempt to prove that this signiture is infact Mr. Bells by ordering an hand writing analysis, or again by designating the report of proceedings for that date, or by pulling the oral tape of the proceedings.

CONCLUSION

From the states on concession knowledge of a court hearing is shown by signitures on the scheduling , order by the defendant, the judge, the prosecutor, and defense counsel filled out in open court, so when you look at knowledge, that proves knowlegde. 4RP 461; the state cannot have its cake and eat it too, by saying knowledge exist if no signiture is signed on the scheduling order, its one or the other, and with regard to the signiture prong, the state is still required to prove that the signiture is actually the defendants signiture, in circumstances such as these I mean, forged documentation has been admitted into evidence. The state has failed to meet its burden in poveing its case and it must be dismissed with prejudice.

dated this 13 day of May 2010

A handwritten signature in black ink, appearing to read 'Reginald Bell', written over a horizontal line. The signature is somewhat stylized and cursive.

REGINALD BELL, PRO SE

THE STATE OF WASHINGTON COURT OF APPEALS
DIVISION TWO

IR RE THE MATTER OF
REGINALD BELL V.
STATE OF WASHINGTON,

No. 39889-11

DECLARATION OF SERVICE

I Reginald Bell, being first duly sworn on oath depises and says; that on this 10 day of May 2010, I did cause to be mailed the following documents ;

1. APPELLANTS STATEMENT OF ADDITIONAL GROUNDS

To;

1. COURT OF APPEALS AT DIVISION TWO
2. Ms. PROCTOR PIERCE COUNTY PROSECUTOR , APPELLANT
DIVISION
3. STEPHANIE CUNNINGHAM, ATTORNEY AT LAW

FILED
COURT OF APPEALS
DIVISION TWO
10 MAY 13 AM 10:56
STATE OF WASHINGTON
BY [Signature]

Under the penalty of perjury of the laws of the State of Washington.


REGINALD BELL, PRO SE