

COURT OF APPEALS # 39992-0-11

CLARK CPOUNTY # 09-1-00952-0

STATE OF WASHINGTON

Respondant

.v.

John Clark Powell

Appellant

FILED
COURT OF APPEALS
10 JUN -2 AM 11:54
STATE OF WASHINGTON
BY

STATEMENT OF ADDITIONAL GROUNDS

John Clark Powell
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Airway Heights Cor. Cen.
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COVER PAGE

ADDITIONAL GROUND # 1.

A. Assignment of error.

The Trial Court violated the "Appearance of Fairness Doctrine" thereby denying Mr. Powell a fair Trial.

B. Issues pertaining to assignment of error.

1. Judge Wulle violated the appearance of fairness doctrine when he gave a bias opinion as to a defense objection, and failing to rule on said objection.

Statement of this error.

During direct of the states expert witness Ms. Tiffany Barr, the prosecution used the terminology of "Culprits" to describe Mr. Powell, to the Jury.

Defense counsel objected, and the result was a bias opinion statement by Judge Wulle; "We" probably shouldn't characterize it that way." RP I, Pg 166.

State.V.Mabry, 8 WnApp. 61, 70, 504 P.2d 1156 (1972), states:The law requires that not only must a Judge be impartial, yet goes further in requiring that a Judge also appear impartial....

Judge Wulle's failure to instruct the jury as to Mr. Powell's right to be presumed innocent until the conclusion of all evidence, coupled with the bias and a ambiguous statement was highly prejudicial and bolstered the credibility of the outrageous governmental conduct which caused a substantial likelihood that the jury's verdict was affected.

ADDITIONAL GROUND # 2.

A. Assignment of Error.

1. Mr. Powell was denied a fair trial by outrageous government conduct, by the prosecutor.

B. Issue pertaining to assignment of error.

1. The prosecutor denied Mr. Powell a fair trial when at the beginning of the states case, the prosecutor called Mr. Powell a "Culprit" in the presence of the jury.

2. The sole trier of fact in a jury trial is the jury.

When the prosecutor used the term "Culprit", "RP" I @ 165, the prosecutor became the trier of fact, leading the jury to perceive that the state had already viewed the evidence and found Mr. Powell guilty.

The following Reference case may be pertinent: Brady.v.Maryland, 373 US 83 (1963), "By requiring the prosecutor to assist the defense in making it's case, the Brady rule represents a limited departure from a pure adversary model.

The Court has recognized, however, that the prosecutions role transcends that of an adversary; he, is the representative not of an ordinary part to controversy, but a sovereignty ... who's interest ... in a criminal proceeding is not that it shall win, but that justice shall be done. Burger.v.US, 295, US 78 (1935).

In conclusion, the outrageous government conduct alluded to by the prosecution had an enduring and highly prejudicial effect on the jury which could not be remedied by a curative instruction thereby affecting the jury the inability to be fair and impartial adversely affecting the outcome of the trial.

ADDITIONAL GROUND # 3.

A. Assignment of Error.

1. The trial Court violated Mr. Powell's Fourteenth Amendment right to Due Process.

B. Issues pertaining to assignment of error.

1. The Trial Court violated Mr. Powell's Due Process rights when it allowed the prosecutor to allude to Mr. Powell as a "Getaway Driver", using analogy and elements to a crime not charged and allow the misstatement of law by prosecutor.

The Trial Court allowed the prosecution to use the terminology of "Getaway Driver" "RP" III @ 402, alluding to facts not proven; helping plan the crime of theft, "RP" III, @ 403, again misdirecting the jury as to the "Getaway Driver" theory, "RP" III, @ 403. Then the prosecutor goes into a summary of elements and behavior that needed to be proven "Beyond a Reasonable Doubt" as to accomplice liability in a bank robbery case, "RP" III, @ 404.

The defense objected, "RP" III, @ 404.

The trial Court overrules allowing the prosecution to continue to misdirect on the elements of the crime Mr. Powell charged with, "RP III, @ 404.

Then the prosecutor instructs the jury as to the law, stepping outside the authority of his office, "RP" III, @ 404.

In conclusion:

Mr. Powell has the fundamental right to the presumption of innocence until all the evidence is submitted by both the prosecution and defense.

By the trial Court allowing the prosecution to use the continued terminology of "Getaway Driver" with full knowledge that the "Getaway Driver" analogy was not an element to the crime charged, violated Mr. Powell's right not only to be presumed innocent of robbery, but goes further by allowing the jury to be misdirected, misled, and the law misstated by the prosecution.

The enduring errors committed by Trial Judge Wulle, and the prosecutor denied Mr. Powell a fair Trial, Due Process of law, and a fair and impartial jury.

The State, using the transactional view, See; STATE v. Robinson, 73 WnApp. 857, 872, P.2d. 43 (1994), in the crime of theft there is no "Getaway Driver" element, the use of force or the threat of force to retain & immediately flee, MUST be proven beyond a reasonable doubt to convict on accomplice liability. For robbery, not theft, which is the crime in this case.

In the case at bar, Yes, Mr. Powell was the driver of the vehicle, yet Mr. Mackay re-entered the vehicle with the stolen cloths concealed under his shirt, there was no way for Mr. Powell to know a theft had been completed before that time, at best, Mr. Mackay had completed the crime of theft at the moment ne crossed the threshold of the door, subsequently denying J.C. Penny's of the stolen cloths...

Any act on Mr. Powells part after that undisputed fact could amount, at best, to rendering criminal assistance.

Mr. Powell contends that Minus the, Misdirection of the elements of the crime, the Misstatement of the law, and the disparaging terminology, the jury had a substantial likelihood as to rendering a not guilty verdict,

The undisputed physical evidence, expert testimony and law testimony by all states witnesses, save Mr. Mackay, did not rise to a prima facia case of guilt.

The state relied solely on un-corroborated, impeached testimony of an alleged accomplice.

ADDITIONAL GROUND # 4.

A. Assignment of error.

1. The Trial Court violated Mr. Powells right to proof beyond a reasonable doubt.

B. Issues pertaining to assignment of error.

The Trial Courts abuse of discretion in denying Mr. Powells motion to vacate judgement, "RP" III, @ 439-448, was a violation of Mr. Powells right to proof beyond a reasonable doubt.

Statement of this error.

1. See direct appeal brief @ 2.

2. Trial Testimony

(a). Michelle Powell testified that it was her idea to go shopping, and that Mr. Powell, would be her ride. "RP I, @ 70.

That Mr. Powell was only in the store approximately 5 minutes, and then came out alone, to the car, "RP" I, @ 72.

Michelle Powell testified that she was in shock, "RP" I, @ 74.

Michelle Powell testified that her uncle, Mr. Powell, appellant, made an excitable utterance like, "Whats he doing ! "or" "What are you doing", "RP I, @ 77. *infering no prior knowlege.*

Mr. Powell made no reference to the cloths, "RP" I, @ 78.

She testified that she is aware of Mr. Mackays drug use, "RP" I, @ 83, and that she used drugs with Mr. Mackay, "RP" I, @ 83. That Mr. Mackay had used and possessed drugs in her presence, "RP" I, @ 84.

Additionally, and of great significance, Michelle Powell testified that NO CONVERSATION took place between Mr. Mackay, and Mr. Powell, before leaving longview, prior to going to J.C.Penny's, or, *of a plan to steal clothes* "RP" I, @ 86.

Michelle Powell testified that she did not see the keys to the glove box being passed, or thrown, through the air by Mr. Powell, "RP" I, @ 93.

Michelle Powell testified that she, "changed her story", "because she thought her boyfriend sat in Jail", "RP" I, @ 101.

Michelle Powell, additionally testified that she has never seen Mr. Powell, use drugs, "RP I, @ 108.

(b). Angie Carey testifies that she had called Michelle Powell and went to the home occupied by Michelle Powell, and Danny Mackay, "RP" I, @ 111.

Angie Carey wanted to go to Michelle Powells, and upon arrival, Michelle Powell had a plan, to go to Vancouver, shopping, "RP I, @ 112.

Only after Michelle Powell and Angie Carey had made the plans to go shopping, did Mr. Powell arrive, "RP I, @ 112.

Michelle Powell testified, also, that the car Mr. Powell was to drive them to shopping, was actually owned by Michelle Powells Father, Duane, "RP I, @ 112.

Angie Carey testified that herself, Michelle Powell, and Mr. Mackay decided to go to Vancouver, with Mr. Powell only agreeing to being their "Ride", "RP" I, @ 113.

Angie Carey testified that Mr. Mackay ran to the car, with nothing in his hands, yet after Mr. Mackay re-enters the car vehicle, he lifts up his shirt and clothing falls out, "RP" I, @ 117.

Angie Carey testified that Mr. Powell told Mr. Mackay, that he would have to take responsibility for his actions, "RP" 1, @ 118.

Angie Carey testified that no conversation took place about the cloths, "RP" 1, @ 119, and that she thought that Mr Mackays actions were random, and not planed, "RP" 1, @ 119.

Angela Carey testified; "I've read my statement today and I -- I did recall "some of the stuff." I was a little less detailed though because in the statement I wrote that I was, you know, disconnected an confused and upset." "RP 1, @ 121.

Angie Carey testified: Yeah, I saw him run with the cloths --- the cloths were under his sweater, like I saw him run to the car.

He wasn't carrying all the cloths ... "RP 1, @ 123. Angie Carey testified that "Right then and their I knew he (Mr. Mackay) had stolen ... and he was laughing about it, "RP" 1, @ 123. Angie didn't here a conversation about clothing until after, "RP" 1, @ 125.

Angie says that Mr. Powell pointed to the glovebox and said; My dopes in the car ... yet that Mr. Mackay is warned that everyone in the car was going to be in trouble for "His Drugs" ... so Mr. Mackay ran, "RP" 1, @ 127.

She did not witness Mr. Mackay retrieve anything from the glovebox, "RP" 1, @ 128.

Angela testifies that Mr. Powell told Mr. Mackay that he would have to take responsibility for his actions, "RP" 1, @ 128-29. She testifies that her best friend, Michelle Powell, needed to choose between Mr. Powell, and Mr. Mackay, "RP" 1, @ 141.

(c). Officer Viles testifies to the following:

....No drugs were found in the possession of Mr. Powell....Nor in the vehicle driven by Mr. Powell, "RP" II, @ 204-05.

The drugs were located 10-15 minutes away from Mr. Powells location, "RP" II, @ 194.

(d). Officer Donaldson testifies to the following:That NO drugs were found in the possession of Mr. Powell, nor was Mr. Powell in the proximity to where the drugs were located, "RP" II, @ 230-31, and Mr. Powell was nowhere near to where the drugs were located, "RP" II, @ 232.

(e). Corporal Burgara testified to the following:....That Mr. Mackay fled the scene with his "Hand Deep in his pocket," "RP II, @ 272.

In addition Corporal Burgara testifeid, "No furtive movement took place in the vehicle, "RP II, @ 283-84.

(f). Mr. Mackay testifies to the following:....That himself, his girlfriend Michelle Powell, and Angie Carey, were together at Mr. Mackays house.... and then Mr. Powell picked them up, "RP" II, @ 292.

That Mr. Powell picked out ... helped him pick out the cloths, "RP" II, @ 292-94.

That the plan occurred on the way to vancouver, "RP" II, @ 295. Yet on the drive to vancouver, conversation took place, but he didn't remember what, "RP" II, @ 296-97.

Mackay testified that Mr. Powell helped him pick out the cloths, "RP" II, @ 299. Mr Mackay testified that Mr. Powell told him there was dope in the glovebox, that the glovebox was locked, and that Mr. Powell threw the keys ... Mr. Mackay unlocked the glovebox, grabbed the dope and fled, "RP" II, @ 303, that he didn't want the girls to get in trouble ... "RP" II, @ 303, but that he wanted to get away to consume the drugs, "RP" II, @ 323.

Mr. Mackay admits to drug use...in fact he admits to being up for a couple of days ... and was nervous, "RP" II, @ 325. Mr. Mackay and Michelle Powell not only at Mr.Mackays house, but Michelle Powells residence as well, "RP" II, @ 336.

Mr. Mackay charges his testimony to when this plan took place "RP" II, @ 337.

(g). States expert, Ms. Tiffany Barr, testifies to the following....That she is the J.C. Penny's sales manager ... and has worked in loss prevention for 5½ years, with over 300-350 dealings in loss prevention, "RP" I, @ 145-46.

That she is familiar with J.C. Penny's video surveillance, "RP" I, @ 156.

That video shows Mr. Powell enter the store with Mr. Mackay, "RP" I, @ 165, but that Mr. Powell is "alone" in the store, "RP" I, @ 166, and Mr.Powell leaves the store alone talking on his cell phone, "RP" I, @ 167.

Ms. Barr testified that Mr. Powell never touched any J.C. Penny's merchandise, doesn't cause any diversions, is not a lookout, nor selects anything for anyone else to steal, "RP" I, @ 170.

Ms. Barr testified that she witnessed another individual walking through the store, and walking out with clothing, "RP" I, @ 172.

Ms Barr testified that at no time did Mr. Powell exhibit any behavior that would have caused him to be detained, inside, or outside the J.C. Pennys store, "RP" I, @ 173.

(h). Ms. Koralev, the J.C. Penny's jewelry specialist testified that Mr. Mackay was "alone" in the back of the store shopping around, filled a cart full of items, walked to the front of the store, selected items out of the cart, and fled the store, "RP" I, @ 177.

ARGUMENT

Viewing the evidence most favorably to the state; State.v.Salinas, Mr Powell contends that the state failed to offer proof beyond a reasonable doubt of Mr. Powells guilt, US .v. Winship (1970).

Winship Doctrine guaranties that proof beyond a reasonable doubt must be offered in all state cases.

In order to prove "accomplice liability" the state must prove beyond a reasonable doubt one of two, specific prongs to convict, by accomplice liability, the crime of Organized Retail Theft in the second degree.

Prong One is, did the state prove beyond a reasonable doubt that Mr. Powell helped plan the crime.

The States case is as follows

Michelle Powell, and Angie Carey gave testimony that they were together discussing a plan to go shopping, [P]rior to Mr. Powell's arrival.

Additionally, Mr. Powell was simply going to be a ride, mere presents at the scene insufficient establish accomplice liability; See: State.v.Landon, 69 WnApp 83, 848 P.2d 124 (1993).

Mr. Mackay claimed first that the plan was discussed on the way to Vancouver, yet Michelle Powell, and Angie Carey, testified that no such discussion took place.

So the state relied solely on Mr. Mackay's inconsistent, and as the Court will see, false testimony and/or perjured testimony as evidence that Mr. Powell was involved in any such plan.

Seeing that Mr. Mackay changed his testimony as to when the plan took place, the Court should take note that:

WPIC: Accomplice Testimony ... "Testimony of an accomplice, given on behalf of the state should be subjected to careful examination...."

"You should not find the defendant guilty upon such testimony alone, unless after carefully considering the testimony, you are satisfied beyond a reasonable doubt of it's truth."

Inconsistent, and totally contradicted testimony, that appears to be false and/or perjured testimony, can hardly be considered to be "truthful," "beyond a Reasonable Doubt."

The state failed to prove "beyond a Reasonable Doubt" that Mr. Powell, helped plan, or participate in the specific crime charge here.

Prong two of the states case was to prove beyond a reasonable doubt that any action on the part of Mr. Powell helped to commit the specific charged crime of theft.

The states evidence and/or lack of evidence, combined, did not in fact prove beyond a reasonable doubt that Mr. Powell that Mr. Powell committed, or participated, in the specific crime of theft.

There was four people inside the store who, attended, and testified at the trial.

Mr. Powell testified that he did not do it ... and that ... i'm not guilty...

"The states expert witness, Ms. Barr, testified that"...Mr. Powell was seen in the store, but at no time did Mr. Powell act in any manner, or in concert, with any crime committed by Mr. Mackay...

In fact J.C. Pennys loss prevention experts testified they had no reason to detain Mr. Powell, inside or outside the J.C. Penny's store.

"Even presents, combined with assent, insufficient to establish accomplice liability."

See: State.v.Ferreira, 69 WnApp. 465, 850 P.2d 541 (1993).

J.C. Penny witness, for the State, Ms. Kovalev, actually witnessed Mr. Mackay, alone in the store, snopping around, in 3 (Three) separate departments within J.C. Penny's which impeached Mr. Mackay's testimony that Mr. Powell was present, and that, Mr. Powell "Picked-out" the cloths that Mr. Mackay stole from J.C. Penny's, while being watched by the states J.C. Penny witness, and watched on state of the art surveillance equipment, as testified to by the state J.C. Penny witness, Ms. Kovalev.

Actually, and in addition, Mr. Mackay's testimony concerning, "who picked out the clothing to steal", and thus the allegation of Mr. Powells complicity, raises the issue of false testimony, and/or perjury, RCW 9A.72.020.

See: Smalls, 63 WASH 172; Huddleston, 137 wn2d. 560, (Perjury was established though no direct testimony of two witnesses.)

In the case at barr, Mr. Powell has the 2 (two) J.C. Penny witnesses to establish perjury on the part of Mr. Mackay, and the materiality of the testimony by Mr. Mackay is a fact, See: State.v.Abrams, 163 wn2d. 277, (materiality is an element of perjury.)

When viewed in light of the, 2 (two), J.C. Penny state witnesses, Ms. Kovalev and Ms. Barr, testifying to completely different facts, about Mr. Powell's culpability and complicity, in this crime, unequivocally impeaching, and/or at a minimum casting serious doubt on Mr. Mackay's truthfulness, i.e. Mr. Mackay's testimony that Mr. Powell was picking out clothing to steal, the state failed to "Prove beyond a Reasonably Doubt" that Mr. Powell helped to commit the specific crime of theft.

See: State.v.Boast, 87 Wn.2d 447, 553 P.2d 1322 (1976).

"(Must be shown that person giving aid shared in criminal intent and participated in the commission of the crime.)"

It's not there, i.e. the evidence that Mr. Powell committed the crime of theft, or participated in the crime, of theft.

Instead, the state appears to have used, probable, perjured testimony and/or false testimony, in light of Ms. Barr's and Ms. Kovalev's, testimony.

There may have been, additionally, a knowing use of perjured testimony to convict Mr. Powell of the crime of theft.

The undisputed testimony, and fact pattern, in this case, against Mr. Powell falls way below the issues raised in State.v.Boast, 87 Wn2d. 477, 552 P.2d 1322 (1976).

[For purposes of perjury, a false statement must relate to facts, and must also be susceptible to proof, as to the falsity, or truth], U.S .V. ENDO, 635 F.2d 321, 323, (9th cir (1980). These statement of Mr. Mackay are susceptible to proof.

[A statement is material if it had the effect of impeding, interfering with, or influencing the [Court] [Jury] in the matter it was considering]. These statements of Mr. Mackay surely did have the effect above.

In light of State.v.Robinson, 73 WnApp. 851, 872, P.2d 43 (1994), where the higher Court reversed the conviction for accomplice liability against Robinson, the state in this case,

similarly failed to prove "Beyond a Reasonable Doubt" that Mr. Powells actions, helped plan the crime, nor by his actions assisted in the commission of the crime, keeping in mind that Mr. Mackay concealed the stolen items until he re-nntered the vehicle.

Furthermore, and in addition, the lack of evidence in this case, with the expert testimony in regards to video surveillance excluding Mr. Powell as a suspect, corroborated Mr. Powells claims of innocence.

Mr. Mackay's testimony was not only contradicted, but effectively shown to be "Not" Credible, "Unreliable," and most definitely "Not Truthful," self serving testimony bordering on treachery.

This particular J.C. Penny's had just been recently been completed and opened for business, 2009, April.

The store had state of the art video surveillance equipment, in all departments.

This most definitely raises the question of, "Why was there no video of Mr. Powell accompanying Mr. Mackay through 3, [T]hree, separate departments, picking out cloths, or any other items, to steal ?

Mr. Powell, respectfully submits the reason, and inescapable conclusion that be drawn from this, "FACT":

...."Mr. Mackay, lied, when he testified that Mr. Powell, picked out the items that were to stolen !" The STATE could not produce video of something that did not happen.

Mr. Powell submits, also, that, Mr. Mackay was the only one seen in all the store departments picking out items to steal, pushing the cart to front of the store, and stealing the items.

Why was this State of the art video surveillance, not produced at the trial ? Because it would have impeached Mr. Mackay's testimony, and proven Mr. Powell innocent, with no culpability or complicity on Mr. Powell, in reference to this case,

Viewing the evidence most favorably to the state as to the possession of a controlled substance, the evidence, and/or, lack of evidence to convict Mr. Powell was insufficient to convict on Count II. Not one states witness could or did testify that Mr. Powell was ever in possession of, or dominion and control of any drugs.

Only Mr. Mackay testified to the contrary, but Mr. Mackay testified in contradiction to all other states witnesses, as he had about Mr. Powells culpability in the theft charges, as stated above.

Mr. Powell will outline this for the Court, below:

Mr. Mackay claims that there was drugs in the glovebox of the vehicle owned by his girlfriends father.

Although Mr. Powell drove the vehicle, that is insufficient to establish constructive possession; State.v.Davis, 16 WnApp. 657, 558 P.2d. 263 (1977), (Temporary residence, personal possessions or knowledge of the presence of drugs is insufficient to show the dominion and control necessary to establish constructive possession.

It's undisputed that, Corporal Burgara, Michelle Powell, and Angela Carey, did not see any furtive movement by Mr. Powell, although, Mr. Mackay claims that Mr. Powell through the key's to the glovebox.

Yet passing, or momentary, handling the drugs is not sufficient to establish dominion or control, State.v.Werry, 6 WnApp. 540, 494 P.2d. 1002 (1972).

The three states witnesses in the vehicle said that Mr. Powell said that theres dope in the glovebox, this is double hearsay.

That testimony was given by a witness who testified as to being confused, disoriented, and nervous, Mr. Mackay, who, if the court remembers, "fled" with something deep in his pocket, showing actual physical custody of whatever was in his pocket.

Mr. Powell submits, Mr. Mackay possessed the drugs found, 10-15 minutes away from Mr. Powells location, but at the exact location of Mr. Mackay, after fleeing from police, according to the police sworn testimony.

The state could not produce any fingerprint evidence of the scales, pipe, or the baggie the drugs were discovered in, at the location of Mr. Mackay. The state claimed, when asked why no fingerprint evidence was submitted, that, it was not worth the money.

Michelle Powell and, Angie Carey, never saw the keys passed to Mr. Mackay for the glovebox, never saw the glovebox open, although sitting right there, and never saw any drugs in the car, or the glovebox, or on Mr. Powell.

"WHY" ?

"Because only Mr. Mackay possessed drugs, deep in his pocket, as the police testified, he fled the police.

The state relied, solely, upon the unreliable, un-corroborated, not credible, testimony of Mr. Mackay to convict Mr. Powell of possession of drugs.

Mr. Powell challenges sufficient evidence to convict, and lack of credible, reliable, physical and testimonial evidence to convict, or support the states case.

Please see additional cases:

State.v.Galizia, 63 WnApp. 833, 840, 822 P.2d 303 (1992).

State.v.Knapstad, 41 WnApp. 781, 784, 706 P.2d 238 (1985).

State.v.Gutierrez, 50 WnApp. 583, 749, P.2d 213 (1988).

State.v.Wilson, 51 Wn 2d. 491, 588, P.2d 1161

CONCLUSION

The cumulative effect produced by Judge Wulle's bias opinions, by which he created an unfair playing field, coupled with his appearance of impartiality towards the side of the prosecution was reversible error.

Furthermore, the blatant prosecutorial misconduct, misdirection of the elements by prosecution, and flagrant references towards Mr. Powell led to an unfair and less than impartial jury.

In addition, the below standard performance and conduct by defense counsel, not only failing to object, but for not being prepared to offer argument on behalf of Mr. Powell, denied Mr. Powell his right to effective assistance of counsel, with the resultant prejudice.

Considering the obvious violations of Mr. Powell's rights, coupled with the overwhelming evidence which negates Mr. Powell's complicity, and lack of evidence to support a conviction, Mr. Powell seeks relief of reversal and dismissal.

If the Court is of the opinion that the relief requested is excessive, Mr. Powell asks for a new trial in front of a new Judge and Prosecutor, respectfully.

ADDITIONAL GROUND # 5.

A. Assignment of error.

1. The Trial Court violated Mr. Powell's right to a fair and impartial jury.

B. Issues pertaining to assignment of error.

1. Judge Walle violated Mr. Powell's right to a fair and impartial jury when he allowed the prosecutor to Voir Dire a prospective juror in the presents of the jury pool about former jury misconduct and highly prejudicial and bias opinion about jury trials.

C. Statement of the error.

1. Voir Dire not transcribed.

2. During Voir Dire the prosecutor questioned prospective juror # 9 about her former experience on a jury trial.

The prospective juror testified that she had in fact been on a jury prior to this case.

She then went on to testify in presence of the entire jury pool that she had in fact rendered a quick verdict, "because we were tired of sitting around."

Next the prosecutor solicited her prior education where she admitted going to law school.

The prosecutor then asked her if she was now a lawyer, and the prospective juror looked right at me and said:

...."No, because I realized during law school that only guilty people ask for jury trials...."

D. CONCLUSION

1. Although this person was dismissed, the enduring affect caused by her admission to former juror misconduct and outrageous highly biased and prejudicial comments could not be remedied by a curative instruction, creating a substantial likelihood that the jury's verdict would have been different.

E. Relief Sought.

1. Mr. Powell asks that this Court cause to be transcribed the Voir Dire, determine the facts, determine if a violation of Mr. Powell's right to a fair and impartial ^{Jury} was effected, and if the remaining jurors were infected by this error.

Dated, June 24, 2010

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Certificate of Mailing

I, John C. Powell, certify that on 06/24/10, I caused to be placed in the mails of the United States, a copy of this document addressed to: 1) Mike Kinnie P.O. Box 5000 Vancouver, WA. 98666; 2) Anne Cruser P.O. Box 1670 Kalama, WA. 3) David Ponzona, Clerk, Court of Appeals, Division II, 950 Broadway, Suite 300, Tacoma, WA. 98402

X John C Powell
06-29-10

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10 JUN -2 AM 11:54
STATE OF WASHINGTON
BY 

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS

STATE OF WASHINGTON)

Respondent,)

v.)

JOHN CLARK POWELL)

(your name))

Appellant.)

10 JUN -2 AM 11:54

STATE OF WASHINGTON

No. 39992-0-11

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, John Clark Powell, 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

SEE ATTACHED BRIEF

Additional Ground 2

SEE ATTACHED BRIEF

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

Date: 06-24-10

Signature: John Clark Powell