

COA NO. 40069-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

ANDRE BONDS,

Appellant.

FILED - 2 FEB 25 11 AM '11
STATE OF WASHINGTON
BY _____
DEPT. OF COMMUNITY AFFAIRS

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Frank Cuthbertson, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

IMPROPER ADMISSION OF GANG EVIDENCE REQUIRES REVERSAL.

The State asserts Bonds failed to preserve the issue for appeal because he did not object below. Brief of Respondent at 12-14. The record shows otherwise.

Defense counsel moved in limine "to limit the State to present any evidence from any law enforcement witnesses or any civilian witnesses that indicates that the defendant Andre Bonds is a known gang member or associate of any gangs." CP 27. The defense specifically moved to "exclude any alleged admissions of Mr. Bonds about being an 'Original' from Tacoma, pursuant to ER 403." CP 28. The defense specifically argued the statement in which Bonds described himself as an "original" should be excluded. 2RP 36.

The trial court excluded evidence regarding Bonds' gang history and precluded Detective Ringer from speculating or giving his opinion about what being an "original" meant. 2RP 41-43. The court determined gang affiliation evidence was more prejudicial than probative. 2RP 42-43. As part of that pre-trial ruling, however, the court allowed the State to elicit evidence of Bonds' actual verbatim statements to Ringer, which included the statement that he was "an original." 2RP 43-44.

A motion in limine's purpose is to avoid the requirement that counsel object to contested evidence when it is offered during trial. State v. Powell, 126 Wn.2d 244, 256, 893 P.2d 615 (1995). The party who loses a motion in limine is deemed to have a standing objection where a judge has made a final ruling on the motion unless the trial court indicates that further objections at trial are required when making its ruling. Powell, 126 Wn.2d at 256.

The trial court denied counsel's motion to exclude Bonds' statement that he was an "original." The trial court did not indicate that any further objections were required. Counsel therefore had a standing objection. Id. The error is preserved for review.

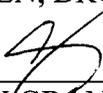
B. CONCLUSION

For the reasons stated above and in the opening brief, Bonds respectfully requests that this Court reverse the conviction and remand for a new trial.

DATED this 14th day of March 2011.

Respectfully Submitted,

NIELSEN, BROMAN & KOCH, PLLC.



CASEY GRANNIS

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FILED
MAR 14 2011
CLERK OF COURT
JENNIFER L. HARRIS
COURT REPORTER
COURT REPORTER
COURT REPORTER

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 1ST DAY OF MARCH 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

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SIGNED IN SEATTLE WASHINGTON, THIS THE 1ST DAY OF MARCH 2011.

x Patrick Mayovsky