IN THE WASHINGTON COURT OF APPEALS
DIVISION II
No. 41468-6-II

STATE OF WASHINGTON
Respondent,

v.

BILLIE JO FELLAS
Appellant.

STATE OF WASHINGTON
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APPEAL FROM THE CLALLAM COUNTY SUPERIOR COURT

The Honorable George L. Wood, Judge

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STATEMENT OF ADDITIONAL GROUNDS

Presented by:
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FORM STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

STATE OF WASHINGTON Respondent, v. BILLIE JO FELLAS Appellant.	)))))))))	No. 41468-6-II STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, Billie Fellas, 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 that the court will review this statement of additional grounds for review when my appeal is considered on the merits.

A. ASSIGNMENTS OF ERROR

The appellant's Sixth Amendment Right to Effective Counsel and a fair trial was violated due to ineffective assistance of counsel and numerous irreversible errors.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Was the Petitioner's Sixth Amendment Right to a fair trial violated due to ineffective assistance of counsel?

2. Did the trial court abuse it's discretion by admitting rebuttal hearsay statements diring trial?

3. Did the trial court error when Detective Grall nodded in approval during testimony?

4. Is it considered jury misconduct by allowing a friend of the Detective to be on the Petitioner's jury?

C. ARGUMENT

The Petitioner's Sixth Amendment Constitutional Rights were violated based on the fact that she received an unfair and impartial trial.

1. Was the Petitioner's Sixth Amendment Right to a fair trial violated due to ineffective assistance of counsel?

According to **CrR 7.5 (a)(8)** attorney must have an evidentiary hearing. If defense counsel does not ask for a hearing a new trial must be granted. Defense counsel was ineffective for failing to object to court's decision not to hold the hearing. If there was an evidentiary it would have resolved disputed factual issies.

P.R.P. of Nichols, 151 Wn. App. 262, 211 P.3d 462 (2009), in the Petitioner's case it is proven that counsel's performance was deficient because it fell below an objectice standard of reasonableness. During the Petitioner's trial, defense counsel failed to challenge the conflicting statements of one of the witnesses. Defense counsel also failed to call witnesses, and did not allow statements and records to be presented during trial.

For purposes of a claim of ineffective assistance of counsel, the reasonableness of counsel's performance is evaluated from counsel's perspective at the time of the error, in light of all circumstances. An assessment of attorney's performance requires that every effort be made to eliminate the distortingeffects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.

U.S. v. Strickland, 290 F.3d 648 (5th Cir. 2002), "the court held that defense counsel's alleged failures of performance at specific points of trial." The court has noted, "the aspects of counsel's performance challenged by the Petitioner " the failure to adduce mitigating evidence and the failure to investigate is the same as other attorney errors is the same as **U.S. Cronic**, 466 U.S. 648, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984).

State v. McDaniel, 155 Wn.App. 829, 230 P.3d 245 (1992), the fact that the Petitioner's attorney allowed the charge for resisting arrest in her trial proves that the jury's decision was tainted as her presumed guilt. The resisting arrest charge led the jury to believe that she was guilty eight months after the crime had occured. The Petitioner had witnesses on her behalf as to her knee injury, proving that she had a medical condition verses resisting arrest. The attorney's failure to object to seperating the charges in trial or submitting evidence to the contrary gave the jury a presumption of guilt by believeing she was resisting to the allegation of the charges that she was on trial for.

2. Did the trial court abuse it's discretion by admitting rebuttal hearsay statements during trial?

The Petitioner's 6th Amendment Constitutional right was violated by the admission of hearsay statements given by a confidential informant. The court allowed testimony into the record that should have been considered inadmissable. When considering **Forbus v. Knight**, 24 Wn. App. 297,

163 P.2d 822 (1994), it is evident that stable foundation and witness credibility are extremely important. In this case the judgment was reversed because of the lack of foundation in the facts during the trial. The determination depends upon the credibility of witnesses. In the Petitioner's case a re-trial is necessary. **ER 613 (b).**

The trial court abused it's discretion by allowing Michelle to present rebuttal testimony after being present for the rest of the other testimony. See **State v. Smith,** 67 Wn. App. 838, 841 P.2d 76 (1992), prosecutorial misconduct requires a reversal of a conviction when prejudice is shown. A prosceuting attorney has a duty to see that a criminal defendant receives a fair trial. **State v. Suarez-Bravo**, 72 Wn.App. 359, 864 P.2d 426 (1994): "the interests of justice require that the prosecutor act impartially and seek an unprejudiced verdict which is based on reason." It is impossible to receive a fair and impartial trial when a witness is allwoed to hear all the prior testimony and then testify again at the end of trial.

State v. Coleman, 155 Wn. App. 951. 231 P.3d 212 (2010) "for a convicted defendant to raise prosecutorial misconduct on appeal when no objection was made at trial, the defendant must show that the misconduct was so flagrant and ill-intentioned that no curative instruction would have cured the resulting prejudice". It is evident that the prosecutor allowed the rebuttal testimony proceed although it was extremely prejudicial. By allowing the witness to proceed with her testimony it was proven that the prosecutor vouched for the witnesses testimony to be credible. **State v. Jackson**, 150 Wn. App. 877, 209 P.3d 553 (2009). The entire rebuttal

testimony that was presented shifted the burden of proof to the prosecutor. The only remedy for prejudicial misconduct by the prosecutor in a criminal trial is reversal of the conviction.

The prosecutor's remarks that the Petitioner led the informant to a secluded place in the park was prejudicial to her character. The informant was already in the park before the Petitioner's arrival. The Petitioner's arrest for the alleged crime denied her the opportunity to obtain witnesses on her behalf. There were other in the vicinity of where the alleged crime took place. The state failed to seperate her charges and the state presented witnesses and/or evidence on both accounts that was never checked out or submitted on her behalf. The Petitioner was left to prove her innocence based on how the State protrayed their version. The Petitioner was not permitted to do so. See **State of Washington v. McConville**, 122 Wn. App. 640, 94 P.3d 401 (2004). See also **CrR 8.3 (b)**.

3. Did the trial court error when Detective Grall nodded in approval at the confidential informant's testimony?

It is for the trier of fact to evaluate witnesses and weight the evidence. It is up to the defense attorney to object or ask for a new trial when a Detective nods in approval or coaches what to say under oath. The Petitioner was denied a fair trial because the entire jury was influenced by Detective.

4. Is it considered jury misconduct by allowing a friend of the Detective to be on the Petitioner's jury?

When selecting a jury the process must be random under **RCW 2.36.** The Sixth Amendment guarantees a criminal defendant the right to trial by an impartial jury. In a criminal trial, the trial court's failure to excuse for cause a juror who demonstrates "actual bias" within the meaning of **RCW 4.44.170(2).** The juror in the Petitioner's case should have been excused from jury duty.

D. CONCLUSION

Ms. Fellas asks this Court to reverse and remand this case for a new trial.

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