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CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

Defendant Teddy Pyle Statement of additional grounds for Review

by Teddy G Pyle June 4-012

42807-5-II

after a "short distance (0938-89) of 3½ Blocks, without four way stop intersections, (map) and pulling into a friends residence, an argument over who was driving and if the conduct was a "felony elude" between the arresting officer ensude. Knowing it was Labor day weekend, and that there was no bail possible on a felony, and argument on that issue between officer and defendant was what transpired. the defendant was as he suspected unable to bail out for 3 days and missed out on Labor day Event which he was to attend. the officer called for Backup to Search for other suspect (Pg 49-24-25 Pg 122 1-12) later "amended" his version to the dog was the movement not a person he saw.
defendant Pyle would not plead guilty to eluding in exchange for dropping the other non felony charges a trial ensude. With as little time as two hours with client before trial, no evidence presented, one day before trial motion over jurisdiction, without research, the case went to trial. the jury bought the amended version of because they couldn't find him there was only one suspect. id wanted my council to defend that no one commited felony Elude,

reckless driving or "failure to obey" that
might as a defense to the charge of felony
elude. Even if they bought the amended version.
He failed to object to the pictures didn't even
look at them "I don't need to see them" (Pg 90 1-5)
failed to argue that they did not Represent
what could be seen in the night time, the time
of the incident and that the parking aluded
to pictures taken at least the next day, broke (456 P2d 359)
the chain of Evidence and should have not been (92-4-5)
admitted for the purpose they were submitted. (415 P2d 86)
By testifying in the questions over and over (890 P2d 535)
"those were places he could have safely pulled over (377 P2d 231)
but didn't", he could have pulled over "(363 P2d 133)
and creating phantom non existing victoms (ER 402.23)
of oncoming traffic, Pedestrians and children.
Prosecutor was able to with the help of the (Criminal Law 1147-1169(2))
court which sustained such evidence as
"necessary to show where driven" (Pg 93 1-25 Pg 94-1-25)
a false sense of Recklessness was created in the
mind of the jury. Without proper argument,
uncontested such misrepresentations appealing
to the emotions of the Jury won the day. I.A.C.
hypothetical questions not admitable 363 P2d 133
Without Jury Being instructed on the in the
statue defense of reasonable under the circumst
defense and lesser included offence of failu
obey RCW 46.61.024(2) RCW 10.61.006 WPIC 9

(Pg 96-14-18)
(Pg 97 8-9
(Pg 89-24-25
Pg 177 1-25
178 1-2
(Pg 92 15-18)
(Pg 90 1-13)
(Pg 93 1-25)

Lessor included offense is a statutory right, with supporting Case Law to prevent over charging.
RCW 46.61.022 is a lessor offense of RCW 46.61.024 Felony Elude
241 P3d 720 RCW 10.61.006
Defense Councils failure to Request Jury instructions on lessor included offense, Because of weak evidence and significant differences in penalties RCW 9.92.030
9A 52.025 (2) 9A 52.020 (2) 10
Workman test 6 P3d 1150 (2000)
criminal Law Key 1144.14, 1950 lessor instruction in favor of moving Party
State v. Pittman 166 P.3d 720
ineffective assistance of Council for failure to include instruction on lessor included offense.
not giving the Jury the option other than to convict OR Aquit. NOT A Legitimate trial strategy, under the circumstance [21] Penalties FOR LESSOR CRIMES may vary significantly.
State v. Ward – Prevent all or nothing strategy 104 P3d 670
Likely to Resolve in favor of Convicting not given A Lessor Charge. ie Some wrong doing but which better fits the evidence.

State v. Workman 584 P2d 382
where evidence supports it, an instruction on lessor included should be given – we hold it error to fail to give such instruction.
Defendant Can give inconsistent defenses (mcClam 850 P.2d 1377)

D

when determining if evidence at trial was sufficient to support giving an instruction, the appellate court is to view the supporting evidence in light most favorable to party that Requests the instruction. Criminal Law 1144.14 Defendant was prejudiced I.A.C. By failing to Request an instruction on lesser offense. Criminal Law 1950

WASHINGTON PATTERN JURY INSTRUCTIONS W.P.J.I. 94.10
It's a defense to the charge of attempting to Elude a police vehicle that a reasonable person would not have believed that the signal to stop by a police officer and that the defendants driving after the signal to stop was Reasonable under circumstances. the same language as RCW 46.61.024 (2)
the defendant has the burden of prove this defense by preponderance of Evidence. Preponderance means that you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. IF you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty of this charge. ie shift Burden from Beyond reasonable doubt to a preponderance standard. Both the court and defense Council failed to present, this in the statue defense and Jury Instruction. Allowing prosecutor to argue only immediate was a defense which he did over and over and in closing argument (Pg 92 4-5)(Pg 89 15-20)(Pg 90 11-13)(Pg 97-7-9) (97-18-20)(96-14-15)(1998-13-15)(201-16-18) State v. Prulle 940 P2d 245 Stier 27 P.3d 184 Faulty Jury Instructions Piche 430 P2d 522

E

I.A.C

5

unless such incompetence appears affirmatively on review of the whole Record so clearly to show that the accused was thereby deprived of a Constitutionally fair trial (State v. Piche 430 P2d 522)
Criminal Law key 1144.14, 1950,
Defendant was predjudiced by element of I.A.C. Failing to Request instruction on lesser offense
the court is to view the supporting evidence in light most favorable to the party that requests the instruction

A Jury instruction that relieves the state of its Burden to prove every element of Crime is an error of Constitutional magnitude that may be reviewed for first time on appeal
Stien 144 WASH 2d 241 27 P3d 184
Challenge to Jury instruction de novo State v. Prudhl 904 P2d 245 (1995)

Claims of ineffective Assistance of Coucncil Reviewed de novo State v Cross 132 P.3d 80 (2006) Grace 236 P.3d 914

Cumlative Errors Hodges 77 P3d (2003) criminal Law 1186.1

Jurisdiction
1

The issue of Jurisdiction was never aggressively
persuade by council, never introduced zoning map
filed motion day before trial (Pg) never found
or read mutual assistance agreement, untill
prosecutor gave it to him at trial. then when
court granted him time to research it at lunch,
came back to court and never argued it. the
entire discussion was between prosecution and court.
the issue of weither city officers could operate with
out notification and if officer involved met the
Requirements of Passing the certification test were
never Explored. Unlawfull arrest would bar prosecution
P.R.P. petition or reversal is only remedy in Law.
ineffective assistance of Counsil is Constitutional
magnitude violation reviewable on appeal. See I.A.C.
in Brief. 947P2d 700, 27P3d 184 106P3d 196(2005)
24P3d 1006 (2001) C/ARK
the court instructed police not to comment on issue
of guilt or conclusion on "ultimate issue" but the police
I.A.C. did so anyway on elude and Recklessness several times
the court having (to do the work of) the defense.
other times it went unnoticed by both court and
council.

I.A.C.

ineffective assistance of Council I.A.C.

defense council commited a plethora of grave errors which under any reckoning undermines confidence in the out come of defendants trial

I.A.C.

- It is also unknowable how evidence might have been developed and presented had defendant recieved the assistance of a competent attorney.
Where the trial "process has lost its character as a confrontation between adversaries" the defendants right to council is violated and Prejudice presumed (1984)
U.S. v Cronic 466 U.S. 648 104 S.Ct. 2039 80 L.Ed 2d 657
Hendrickson 917 P2d 563 (1996)
Adversary Process Criminal Law 641.13(1) 13.1(1)

unless such incompetence appears affirmatively, on review of the whole record, so clearly to show that the accused was thereby deprived of a constitutionally fair trial State v. Piche 430 P2d 522

Claims of I.A.C. reviewed de novo State v. Cross 132 P.3d 80
Grace 236 P3d 914

Criminal Law 1035(7) ineffectiveness of Council is an issue of Constitutional magnitude, which can be raised for the first time on appeal

CASE LAW ON INEFFECTIVE COUNSEL I

Both 6 amendment U.S. Constitution article 1 sec 22 of 10th and state constn. gaurantee Right to effective assistance of council Strickland v. Wash 466 U.S. 668, 684-86, 104 S. Ct. 2052, 80 L.ed. 2d 674 (1984); State v. Hendrickson ~~129 Wn 2d 61, 77, 917 P.2d 563~~ (1996) Counsel is ineffective when his other performance falls below an objective standard of reasonableness and the defendant thereby suffers prejudice, Strickland 466 U.S. at 687-88. Prejudice is established when "there is a reasonable probability that, but for counsels errors, the result of the trial would have been different" Henderson 129 Wn. 2d at 78 (citing State v. Thomas 109 Wn 2d 222 226 743 P2d 816 1987)
the inquiry in determining wether counsels performance was Constitutional deficient is whether counsels assistance was Reasonable considering all of the circumstances. Strickland 466 US at 689-90. To provide Const. adequate assistance "Counsel must, at a minimum, conduct a reasonable investigation enabling (counsel) to make informed decisions about how best to represent the client." Sanders v. Ratelle 21 F. 3d 1446, 1456 (9th cir. 1994) (citing Strickland, 466 U.S. at 691)
A personal restraint petition will be granted if the petitioner establishes actual and substantial predjudice resulting from a violation of his or her constitutional rights or a fundamental error of law. In re Personal Restraint of Benn 134 Wn 2d 868, 884-85, 952 P. 2d 116 (1998) rev'd sub nom. on other grounds by Benn v Wood No C 98-531 RDB, 2000 WL 1031361 (W.D. June 30, 2000) Brett v. Wash (Brett, supra at 880) *
Williams v. Taylor, 529 U.S. 368 (2000)

Recklessness
1.
False victoms

prosecutor misconduct

To create the illusion of recklessness in the incident prosecutor, repeatedly testified in his questions and appealed to Jurys Emotion in presenting Phantom non existant victoms, under conditions where they would not have been in danger even if they were there under the circumstances. this prosecutorial misconduct was supported by the courts decision to include it as "it would indicate where has driven" against the Rules of Evidence ER 201 203 204 and contrary to case law cumulative error weber 149 P3d 646 79 P3d 432

these non existant, hypothetical, victoms oncoming traffic Pedestrians, and Bicyclists after thanking the court for there admision was repeatedly hammered into Jury. (92 -25) (93 5-6) (94 1-3) (99 12-25) (204 24-25) (205 10-11)

Also in closing arguments. 183 P3d 307 criminal law 2077 Prosecutor not to make statements unsupported by Evidence Boehning 111 P3d 899 weber 149 P3d 646 Hudson 440 P2d 192 twice the officer after being instructed by the court not to comment on the ultimate issue" Labeled the conduct "Recklessness" an Element that the Jury was to decide (104 19-21)(87 7-8) Recklessness is an opinion. Rogenkamp (Pg 106 3-5)

LISA

Council and the court failed to catch these errors and correct them as the court, not defense did on Elude.

case law calls for recklessness to require more than negligence, more than infraction and a higher state of mind and circumstances i.e. likelyhood. all traffic laws are designed to prevent injury and destruction. Speeding, stop sign running, swerving going in other lane or driving the wrong way are all infraction, but not recklessness.

tations MacAllister 806 P.2d 772 Rowda 941 P.2d 661 Ridgley 174 P.3d 105

in this case scenario negligence and or infractions should have been instructed as a lesser of fence. the defense of feud and argued the lawfull and Reasonable explanation for this conduct as what is done to get out of the way and or to pull over

(Pg 150 18-19) (Pg 55 15-23)

citations criminal Law 550 hill 739 P2d 707 criminal Law 1038.1

Also the Language called For willfull, Needless, wonton in cases on recklessness were not included in Jury instructions I.A.C.

I submit that there was insufficient Evidence of Recklessness after lights were on, sufficient to support a conviction of felony Elude. Probably not enough to support negligence or infraction.

Jury Inv.
1

the Jury Instructions

the examination of defects in jury instructions must be examined from two directions what was in the instructions and what wasn't because of I.A.C. that should have been. The discussion begins with the observation that no jury instructions were presented by the defense, the court also did not include some of the obvious instructions this type of a case required such as WPII 94.10 RCW 46 61 024 (2) defense written into the statue and a lack of instructions on the Elements of Recklessness (Heedless, wanton, willfullect). Also missing In the Instruction ARE Lessor included offense Language also challenges of I.A.C. and the courts input.

As instructed the Jury was left with the opinion that only "Immediate stop" was the only defense to the stop. Hodges 77 P.3d 325 (2003)

Court is not to decide which theory or instruction was followed Mac Master 778 P.2d 1037 (1989) (s-Sheen 616 P.2d 628) (97 P3d 11 (2004)

Jury instructions de novo Criminal Law 770 (3) 809-798 (7)

no misleading Jury on LAW OR INFORM

Not including 46.61.024 (2) AND RCW 10.61.006 is tantamount to omitting A essential Element of Charged crimes Stien 27 P3d 184

no fair trial if Element missing criminal Law 722 (2) U.S. const. Amend 6

Failure to instruct on Element is constitutional magnitude issue may be raised first time on appeal R.A.P. 2.5 (a)(3) Wrenchel v. Washington

Jury Inst
2.

Lessor included offense

As provided by statue RCW 10
and by W.P.J.I.
and case law Pitman 166 P3d 720 ward 104 P3d 670
Workman 584 P2d 382 : Keeble 412 U.S. 212 93 Sct (1993)

Defense council failure to Request a lessor included instruction is ineffective assistance of Council I.A.C. Keep Jury from a "all or nothing" "convict or acquit" frame of mind. Failure to instruct on lessor included offense is trial Error. 947 P2d 700 (200)

the errors of Evidence Rulings, Jury instructions, Poor Presentation and Rebutal denied defendant a fair trial 77 P3d 375 (2003) Criminal Law Key 1186.1

WPIC 94.10
It is a defense to the charge of attempting to elude a police vehicle that a Reasonable person would not have Believed that the signal to stop was not given by a police officer and that the driving after the signal to stop was reasonable under the circumstances.

the defendant has the burden of proving this defense by the preponderance of the evidence, Preponderance means that you must be persuaded, considering

Lesser included offence
RCW 46.61.022 Failure to obey OFFICER
any person who willfully fails to stop when Requested or signaled to do so by a person reasonably identifiable as Law enforcement or comply with RCW 46.61.021(3) is guilty of a misdemeanor.

Defendant introduced Evidence and argument to explain conduct being described as reckless and unlawfull (as conduct of trying to get out of the way Pg 150 11-25 Pg 151-1-5)
Also council tried to show conduct as reasonable in examination of officer (Pg)

Misleading and False Testimony And Pictures

the pictures were presented to show what could be seen in terms of the blocks to pull over safely in the night time at 35mph. However the pictures were taken the next day Both Breaking the chain of Evidence and not depicting what could be seen and what the parking situation was the night before the parking situation during the next day was presented as same as time of incident. the next day and what could be seen were both misrepresentations favorable to state and pivotal in getting a conviction. asked if pictures showed numerous locations to have safely pulled over

Pg 176 18-25 A. yes there is (at the time of the pictures not the time of incident which would have been answered yes there was) this obvious deception

Pg 177 1-25 was missed by defendant Council I.A.C.

Pg 178 1-5 that pictures have to accurately depict time of incident especially for what they are submitted to prove, is long established in Rules of Evidence and Case Law

Pg the prosecutor Repeated testimonial Questions regarding places to pull over and he did not and closing argument shows how key this misrepresentation was to the prosecution ((89- 15-20)(90 11-13)(95 14-17)(96 14-15) (97 7-9)(97 7-9)(97 18-20)(198 13-15)(201 16-18) Prosecutors are not allowed to testify in these questions and Council failed to object and point it out I.A.C.

Evidence Rule 702-704 inappropriate testimony opinions
on guilt or intent ER701 Criminal Law 450
officers impression of defendants conduct can Constitute
an improper opinion as to defendants guilt or innocence ER704
970 P2d 313 opinion Evidence on Recklessness and Eluding
grounds for Reversal

Williams 154 P.3d 322 Criminal Law 1169(1)
Reversal based on use of inadmissable evidence is required
only when there is any Reasonable doubt or possibility
that the use of the inadmissable evidence was necessary
to reach a guilty verdict

nen T

argument

Were it not for evidence which should have been suppressed for misleading, arguments which lacked evidence, incomplete and misleading instructions poor rebuttal, there would have been a fair trial and equital.
the court turned the rules of Evidence upside down in admitting Evedence that should have been suppressed and arguing that after the damage was done the defense was free to try To fix the damage. the case would have been very short.
the jury would have been convinced that no one was in danger, there was no after the lights recklessness, that without usalubly time and distance to shot to convict for Eluding

the quick draw presentation with little preparation and short closing (14 pg. To 4 pg defense) made poor defense.
I am grateful for the concept of I.A.C. and Supplemental Brief procedure, because I believe this case is a clear example of the need for Both.
I would request oral arguments if permitted

In regards to Obstruction charge, other than the standard void for vagueness the statute under the circumstances (as applied) constitutional challenge, and I.A.C. in defense, it would raise the argument that the conduct was described by police both times as resisting." (P.9114 ln-9 Pg 62 1-2) and resisting should have been instructed so Jury could have decided frustration was better fitted to crime of resisting and the determination of protected lawfull questioning and deciding what to do, clearer required in the lesser offense. Obstruction being max 364 days while resisting only 90 days.
The maximum sentence for minimal conduct is feel excessive, especially when previous convictions were only a few days.

On the Harrassment, which was denied, but only entailed "kick your ass when u get out" Yaid also overkill conviction, which should have been reduced to city charge of assault 4° simple threat a misdemeanor with a max of 90 days. Since the city made the arrest, and the last petty harrassment charge was a few days, this one being the maximum was vindictive sentencing. Because I elected to trial Because of the felony (RP. Sentencing).

Submitted By Freddy Yoyle
June 4-012

Where to Find It in Report of Proceedings

Jury instruction

0 9-11 willfully failed or refused to immediate
bring the vehicle to a stop after being
P signaled to stop

202 2324 the defendant did not as required by law
ng Inst did not immediately pull over when signaled
osing Arg. to do so (misrepresenting law)
Stop

96 - 14-15 where there's plenty of space on the side of Roadway
pict to accomodate a car

(Pg 97 8-9) showing more space off the side of Roadway and
the close proximity of Parked vehicles and what not.

p97 18-20 there are numerous locations for the defendant to
have safely pulled over A. yes there is
(not not yes there was (at time of incident)

(Pg 99 12-25) Q By chance there wasn't a person in dirt driveway
A. no there was not.
Q or another car A. there was not
Q or a bicyclist
MR Bennett Well your honor - -
A. there was not
MR. Bennett none of those things were there so
we could speculate forever what might have been
Prejudicial.

-3-5 the jury is to disregard the comment about the
ete eluding, just to the facts, thats a decision they
ultimately have to make.

D 18-19 Get out of our way so we get to where
DIAMATION Conduct we're going"

16. 18-25 And the other objection I have is pictures taken
in the daylight of a street that was in night
Picture time with headlights, to me is a complete
Objection distortion and should have been object to.
and there going to slap them up there and say
you know, "look here during the day light, there
could have been a parking place last week when
Pg 177 1-5 this incident happened," which, you know,
pictures that picture wasn't taken even that day, I'm
Sure And its not the same cuumstances
under which the distance was traveled.

Pg 177-25 P. they could have taken a vidio at night with headlights
Pg 178 1-5 and that would have been much more accurate

Pg 204 24-25 At numerous points along the way he could have
Victoms struck some one another car, a bicyclist, a Pedestrian.

P 198-13-15 that the defendant willfully failed or refused to
Immediate Stop immediately -- to immediately bring the vehicle
to a stop after being signaled to.

Pg 201 16-18 when he willfully fails or refuses to bring vehicle
Jury Inst. to a stop.
Stop

that people there is foot traffic even at night ✓
in that area
24-25 at numerous points along the way, he could ✓
have struck someone, another car, a bicyclist
a pedestrian.

4 24-25 I would just ask the officer you need to be careful
15 1-10 about giving opinion evidence on the
Opinion
Ultimate issue
Pg 62 1-2 trying to Resist

Pg 55 15-23 trying to get out of way of Police ✓
Explanation
of Conduct
Pg 38 8-9 Short Pursuit

Pg 87 2-8 I believe the vehicle was driving recklessly
Recklessness at that point. ✓

95 14-17 there were locations to safely pull over is that
Pictures what the pictures depict A. yes they do.
150 12-25 we weren't aware of police until about 1/2 way
to BoBs place the First thought get out of the way
24-25 the action he was describing was being uncertain
Conduct as to where to pull over
Explination
92 25 Q Did that include swerving into oncoming traffic
Victoms A if there would have been -- it would have been definitely
into oncoming Traffic.
Victoms Q Based on driving that you observed - could hit a pedestrian

21-25 the court I'am going to allow the answers
Courts that the officer has given would indicate
tom testomy where he has driven. your going to be Free to
ision argue other wise.
F
vcxistant thank you your Honor
tons

4 - 7 he was Resisting me
94 19-21 I observed the vehicle in motion constituted
Reckleness Reckless driving and being a reckless driving
Ultimate incident.
issue

99 6-9 Had there been a pedestrian would that pedestrian
Pedestrian
Victom

84. 5-6 Were those locations in Clark County, State of Washington
out of City
Juristiction A yes they were

122 10-12 and you called for help in Locating another person isn't
other suspect that correct A. yes we did.

49 22-25 somebody else had bailed from the van
other suspect Yes that was initial understanding yes sir

P90 4

P90 11-13 once the defendant did not immediately Pull over safely
Testimony as he could have, what you observed
By Prosecutor

89 15 Q and you indicated that the defendant could have immediatel
testimony pulled over safely. He didn't do so. we am going to
By Prosecutor Ask you states Exibits 2 through 10 are those photographs
That you took?

PP5

104 19-21 Reckless Conclusion	I observed the vehicle in motion Constituted Reckless driving. And Being reckless driving incident
73 24-25 Jurisdiction	What that statute is saying is that Law Enforcement that are, you know, dually Commissioned -- I forget the exact language, but our VPD officers going to the academy and such fit their definition of that,
Pg 74 1-3 Jurisdiction	Can operate outside their territorial bounds in response to emergencies involving immediate threat to human life or property, one of the exceptions.
Pg 84 6-7	Q were those Locations in Clark County, State of Washington. A. yes they were
Pg 92 4-5 pullover	Q did the defendant immediately pull over A NO he did not
94-1-3 victoma	you mentioned regarding pedestrians, Regarding Bicyclists. what about other vehicles A. Absolutely this is a residential area that this was taking place in and there were several houses on either side

Lessor Offense Finding
RCW 16.58.020
when an offense has been proven against him or her,
and there exists a reasonable doubt as to which of
two or more degrees he or she is guilty, he or she
shall be convicted only of the lowest.

Conviction of attempts or lesser or included crimes
RCW. 10.61.006, 003, 010.
upon an indictment or information for an offense
consisting of different degrees, the jury may find
the defendant not guilty of the degree charged in
the indictment or information for an offense
consisting of different degrees, the jury may find
the defendant not guilty of the degree charged in
the indictment or information, and guilty of any
degree inferior thereto or for an attempt to
commit the offense.
10.61.010
Whenever so charged, they shall in there verdict specify
the degree or attempt of which the accused is guilty.
9A.04.100 (2) when a crime has been proven against
a person, and there exists a reasonable doubt as to which
of two or more degrees he is guilty, he shall be
convicted of only the lowest.
Criminal or 795 (2.55)