

FILED  
COURT OF APPEALS  
DIVISION II

CRAIG H. WALLACE II

2013 APR 29 AM 9:37

STATEMENT OF ADDITIONAL GROUNDS 1 & 2 REVISED

STATE OF WASHINGTON

APRIL 24th, 2013

BY [Signature]  
DEPUTY

Appeal #43781-3-II

STATEMENT OF ADDITIONAL GROUNDS 1

Prosecutorial Misconduct

1: A) D.A. Wevodau Misstates Dep. Ditrich's testimony at closing arguments

Prosecutorial Misconduct is, "a prosecutors improper or illegal (or failure to act) especially involving an attempt to avoid required disclosure or to persuade the jury to wrongly convict a defendant." "Whether the prosecutor deliberately tried to mislead the jury or did it inadvertently ordinarily is irrelevant (U.S. vs. Small)." "A prosecutor invades the province of the judge and misleads the jury when [she] misstates the law of intent, burdens of proof (U.S. vs. Trapnell) and other legal issues.

During the Direct examination by Wevodau, she asked Deputy Ditrich, "...How far did you chase him?" [p.73 RP 19]. He replied, "He went between two buildings, and before I got in between the two buildings, which I couldn't see down, because it was beyond my scope of view. By the time I turned into the two apartments, he was out of sight. So I don't know which way he went" [p.73 RP 20-25]. Ditrich also testifies on record that the assailant he identified as Mr. Wallace, had his back turned to him [Ditrich] as he was pulling in [p.71 RP 20-25]. At cross examination, Defense Attorney Mr. Smith, then asked Dep. Ditrich, "At what point did you make contact with defendant Wallace?" [p.93 RP 17-19]. Ditrich answers, "I never made contact with him" [p.93 RP 20-21]. Ditrich testifies to "not noticing the defendant right as I turned in..." [p.98 RP 16-17]. And shortly after Mr. Smith asked Ditrich, "...You didn't have time an opportunity to see his face at that point. He had his back to you correct?" [p.102 RP 11-13]. Ditrich answers, "Yeah. Correct, at that point all I could see was his jacket, pants, and his arms... He was moving" [p.102 RP 14-16].

Later, in D.A. Wevodau's closing arguments, she misstates the record of testimony <sup>given</sup> ~~giving~~ by Ditrich saying, "Ditrich testified that he was familiar with the defendant, Craig Wallace and that he recognized him as he pulled up to Mony Leap's apartment" [p.396 RP 1-4], after Ditrich clearly stated, "I don't think I noticed him like right as I was turning [p.98 RP16-17] and "all I could see was his pants, jacket, and arms" [p.102 RP14-16]. D.A. Wevodau misstates Ditrich's testimony about being familiar with Mr. Wallace three times in her closing arguments [p.396 RP 1-4],[p.428 RP 20-22],[p.429 RP 18-21]. She also misstates the record by telling the jury during

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closing arguments, that Ditrich had ample time to identify the assailant fleeing between the buildings [p.429 RP 1-5] when he already testified to being unable to see the perpetrator because *"his [the assailant's] back was turned to him [Ditrich]"* [p.71 RP 20-25] and *"all he could see was arms, a jacket, & pants"* [p.102 RP 14-16] and upon arrival, that the suspect ducked in between two apartments and he was *"beyond my [Ditrich's] scope of view"* and by the time Ditrich got between the buildings [he] *"did not know which way he went"* [p.73 RP 20-25]. It is only evident that Ditrich admitted to never being able to identify Mr. Wallace at the scene when he pulled in or when he got out his police car and gave chase. By Wevodau misstating the record, she removes doubt a reasonable jury would consider and adds prejudice within the jury to render a verdict.

#### 1: B) D.A. Wevodau Misstates Detective Claridge's testimony at closing arguments

Another misstatement of the record was by D.A. Wevodau misquoting Det. Claridge's testimony in the rebuttal of her closing argument. Before Det. Claridge gave any testimony, The Court [Honorable Judge James Dixon], asked Wevodau, *"If the state were to ask Det. Claridge, are you familiar with Mony Leap's voice, what would his response be?"* [p.145 3-5] Wevodau answered *"I think he would answer "yes" but I would need to clarify with him."* [p.145 RP 6-7]. Then Claridge took the stand momentarily when The Court asked him, *"Are you familiar with Mony Leaps voice?"* [p.147 RP 5] Claridge: *"No."* [p.147 RP 6] Subsequently after, in Wevodau's direct examination of Claridge she inquired, *"Did you listen to any of the phone calls,...[made by Mony Leap?]"* [p.148 RP 2]. Claridge responded: *"No."* [p.148 RP5]. Wevodau: *"Have you ever spoke to Mony Leap on the phone before listening to the phone calls?"* [p.271 RP 12-20]. Claridge: *"No."* [p.271 RP 21]. Throughout Wevodau's direct examination, it was clear that Det. Claridge was not familiar with the victim nor her voice. Defense Attorney Mr. Smith, then cross examined Claridge by again asking him, *"Did you have the occasion to speak to Ms. Leap at all?"* [p.280 RP 5-8], *"You never heard her voice personally?"* [p.280 RP 12], *"In person?"* [p.280 RP 15], *"So you couldn't identify her voice if you heard it?"* [p.280 RP 17]. Claridge answered *"No"* to all inquiries [p.280 RP 9, 13, 15, 17].

At closing arguments, Wevodau misstated the record to the jury by saying that, *"...He (Det. Claridge) didn't need to do that because he already was familiar with Mony Leap"* [p.430 RP 17-18]. It is apparent that Wevodau misquotes the record to the jury at closing arguments by saying Det. Claridge was familiar with Mony Leap after he stated on numerous occasions to Ms. Wevodau, Mr. Smith and to The Court, that he was not at all familiar with Ms. Leap nor her voice. D.A. Wevodau mislead the jury by misstating the record.

After the jury was excused to deliberate, Defense attorney Mr. Smith, objected to Wevodau's rebuttal of her closing arguments and motioned The Court for a mistrial as a result of Wevodau mischaracterizing the evidence [p.433 RP 12-25, p.434 RP 1-8]. The court denies the motion partially because "the jury has been advised they are to disregard any remark, statement, or argument that is not by the evidence or the law, and that lawyers remarks, statements and arguments are intended to help them understand the evidence and to apply the law, and to remember that the lawyers statements are not evidence"[p. 434 RP 16-24]. D.A. Wevodau failed to disclose accurate testimony of Det. Claridge & Dep. Ditrich from the record which is serious violation of Rules of Professional Conduct that often results in mistrial and reversals [U.S. vs. Reyes], [U.S. vs. Azubike 504 F.3d 1<sup>st</sup> Cir. 2007], [U.S. VS. Carter 236 F.3d 777],[U.S. Watson 171 F.3d 695, 51 Fed.]

"It is improper to argue that the jury should be governed by the moral law rather than legal standards [People vs. Fields]." And that is what has been illustrated after the jury was misled by Wevodau to wrongly convict Mr. Wallace due to her mischaracterizing the evidence. Material misstatements of fact or law have received judicial condemnation for many of the same reasons forbidding extra-record comments in general. A prosecutors misquote is a prejudicial error to the defendant Wallace's rights and to the jury's thought process during a deliberation to render a verdict.

## STATEMENT OF ADDITIONAL GROUNDS 2

### Conflict of Interest

Conflict of Interest is defined as, "An incompatibility between one's private interests and one's fiduciary duties (Rules of the Court)." The Court, (Honorable Judge James Dixon), was a public defender that represented the material witness and victim Mony Leap, in the trial of December 2011, cause# 11-1-01530-4. During pretrial discussions, Wevodau indicated to The Court that she heard Mony Leap mention that she spoke to Judge Dixon in the past on the recorded phone calls [p.7 RP 1-2]. Wevodau made a record of addressing that issue to The Court and inquired if there were any office procedures taken [p.7 RP 6-10]. Judge Dixon denied the allegation of speaking to Ms. Leap on the phone that day [p.7 RP 11-16] but omitted the fact that he did represent Ms. Leap in the trial of December 2011 when she was the material witness and victim. Dixon also, went on to say, "...I don't think this poses a conflict of interest as far as the court is concerned. But I will let council respond. Mr. Smith?" [p.8 RP 7-9]. Rather than to object to have the judge conflicted out, Mr. Smith concurs, "I have no comment" [p.8 RP 10].

Whether the judge omitted the fact he represented the victim prior to this case deliberately or inadvertently is also irrelevant and whether the defense counsel was ineffective by not

objecting to Judge Dixon residing over the case is again, irrelevant. *"A lawyer who has served or is currently serving as a public officer or [judge] is personally subject to the Rules of Professional Conduct including the prohibition against concurrent conflicts of interest stated in Rule 1.7"*

Rules of Professional Conduct 1.11 (D)(2) states, *"Except as may otherwise expressly permit, a lawyer currently serving as a public officer or judge shall not participate in a matter in which the lawyer participated personally and substantially while in private practice or non-governmental employment unless appropriate government agency gives its informant consent, or confirmed writing."* There wasn't adequate proof of any consent for the judge to continue residing over the trial presented to either party. Prejudice may have played a part in Judge Dixon's ruling by making a biased decision and the courts should reconsider the ruling by fault of a mistrial.

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON )

Respondent, )

v. )

CRAIG WALLACE II )

(your name) )

Appellant. )

No. 43781-3-II

STATEMENT OF ADDITIONAL  
GROUND FOR REVIEW

I, CRAIG WALLACE II, 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

An act of prosecutorial misconduct occurred in trial during District Attorney, Caileen Wevoda's, closing arguments when she improperly summarized the witnesses testimony from Detective Claridge and Deputy Ditch to the jury. (see "additional ground 1" on attached copy)

Additional Ground 2

A conflict of interest also occurred when the trial was heard before Judge James Dixon, whom was an attorney at law and represented the victim, many Leap in a prior trial of December 2011. (see "additional ground 2" on attached copy)

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

Date:

4/10/13

Signature:

Craig Wallace