

FILED

SEP 14, 2012

Court of Appeals
Division III
State of Washington

COA No. 30651-8-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW GAROUTE,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF GRANT COUNTY

The Honorable John Antosz

REPLY BRIEF

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TABLE OF CONTENTS

A. REPLY ARGUMENT 1

B. CONCLUSION 4

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Gonzales, 111 Wn. App. 276, 45 P.3d 205 (2002), review denied, 148 Wn.2d 1012 (2003) 1

State v. Wilson, 141 Wn. App. 597, 171 P.3d 501 (2007) 2

A. REPLY ARGUMENT

Juror 19 stated openly that he would be biased against the defense side of Mr. Garoute's drug prosecution, and further stated that he would not want himself as a juror in the trial, if he was the accused. Juror 19's specific bias was against people who openly violated the drug laws, just as the defendant was accused of. The defense challenge for cause should have been granted, even under an abuse of discretion standard.

The Respondent fails to acknowledge or distinguish Gonzalez, a case relied on by the appellant which is directly similar to the present case. State v. Gonzales, 111 Wn. App. at 281-82, 45 P.3d 205 (2002), review denied, 148 Wn.2d 1012 (2003). There, the challenged juror had expressed a belief that the police officer would count more than the defendant claiming innocence, and later responded "I don't know" when the prosecutor asked, "So, in your mind, does [the defendant] still have a presumption of innocence regardless of the fact that it is an officer that has taken the stand to testify?" Gonzales, 111 Wn. App. at 279. The Court of Appeals held that the juror had demonstrated actual bias. Gonzales, at 282.

Instead, the Respondent attempts to argue that Juror 19 was somehow rehabilitated. But as Gonzalez shows, rehabilitation comes (or may come) after a juror shows bias. See also State v. Wilson, 141 Wn. App. 597, 606-07, 171 P.3d 501 (2007) (noting normal effort is to rehabilitate juror to see if he or she can put aside strong feelings she expressed, and instead follow the judge's instructions that the defendant is presumed innocent). Here, the Respondent relies on general questioning of the jurors as a group by the judge as to whether they could be fair, which occurred before the specific juror in question made the admission of bias and the statements describing that bias. Brief of Respondent, at 1-2. After those statements were made by Juror 19, there was not even any *effort* by the prosecutor to rehabilitate the Juror.

Notably, it makes no difference that the bias of Juror 19 was revealed during the prosecutor's own questioning of the juror. See Brief of Respondent, at 4. The defense counsel was not required to make efforts to rehabilitate the Juror himself, and there is of course no rule stating that a defendant may remove a juror for cause only if the juror's bias was revealed through the defense's own questioning.

It also makes no difference that the defense did not later use a peremptory strike to remove Juror 19. See Brief of Respondent, at 8,

11. Indeed, it is the very fact that Juror 19 sat on the defendant's cause that permits appellant to appeal the issue.

Finally, the trial court's closing *admonition* to the selected jurors, telling the petit jury members to be fair, coming as it did after the panel had been selected, is certainly not "rehabilitation" of a biased juror. See Brief of Respondent, at 2.

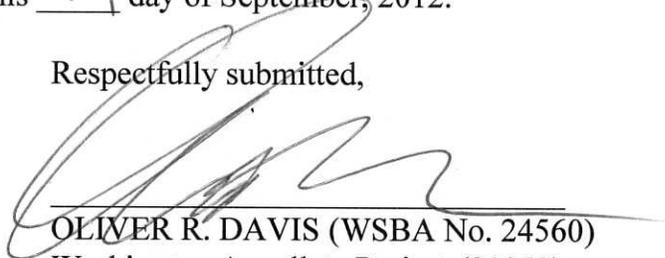
The Respondent's arguments should be deemed unavailing. Juror 19 expressed a particular bias against defendants in drug cases and suggested they were being let off too easily, and allowed to violate drug laws openly. His bias went directly and dramatically to the particular alleged facts of Mr. Garoute's case. Juror 19 was a classic example of a juror who should be removed for cause. No rehabilitation saved him, since even the trial prosecutor declined to even *try* to do so. The trial court erred when it denied Mr. Garoute's constitutional right to an impartial jury by denying his challenge for cause to Juror 19, and reversal is required.

B. CONCLUSION

Based on the foregoing and on his Opening Brief, Mr. Garoute respectfully requests that this Court reverse his convictions for possession of a controlled substance and use of drug paraphernalia.

DATED this 14 day of September, 2012.

Respectfully submitted,



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	NO. 30651-8-III
)	
MATTHEW GAROUTE,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 14TH DAY OF SEPTEMBER, 2012, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] D. ANGUS LEE, DPA GRANT COUNTY PROSECUTOR'S OFFICE PO BOX 37 EPHRATA, WA 98823-0037	(X) () ()	U.S. MAIL HAND DELIVERY _____
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SIGNED IN SEATTLE, WASHINGTON THIS 14TH DAY OF SEPTEMBER, 2012.

X _____ 

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