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Apr 30, 2013
Court of Appeals
Division III
State of Washington

30944-4-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, APPELLANT

v.

JOSE RUIZ-ALCALA , RESPONDENT

APPEAL FROM THE SUPERIOR COURT
OF YAKIMA COUNTY

RESPONDENT'S BRIEF

Janet G. Gemberling
Attorney for Respondent

JANET GEMBERLING, P.S.
PO Box 9166
Spokane, WA 99209
(509) 838-8585

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A. ISSUE

1. Defense counsel failed to object to highly prejudicial testimony. The trial judge recognized that this testimony was arguably irrelevant, determined that he would have sustained timely objections, and concluded that without this evidence the result of the trial would probably have been different. The court granted a defense motion to vacate the verdict and retry the case. Is the court's ruling an abuse of discretion?

B. STATEMENT OF THE CASE

In the summer of 2011, Jose Ruiz-Alcala occasionally participated in a volleyball game. (Bell RP 41)¹ Two men who were employed by his uncle also sometimes played. (Bell RP 41) The men also joined in social events that involved drinking beer and having barbecue with Mr. Ruiz-Alcala's uncle. (Bell RP 42-43) One evening, Mr. Ruiz-Alcala drove one of the men, whom he knew as Devanada, up to Terrace Park in his

¹ The first two volumes of the trial transcript were prepared by a court reporter. Reference to those volumes is in the format (RP nn). The last day of trial was recorded and transcribed by Patricia Bell. That volume is separately paginated, so references to that volume are in the format (Bell RP nn).

brother's truck. (Bell RP 44-45) They had a few beers and returned home. (Bell RP 44)

On July 9, the men told Mr. Ruiz-Alcala they were going camping and asked him to pick them up the next evening. (Bell RP 45-46) He agreed to do so and they gave him directions to the location in the same area as Terrace Park and described a gated area where he would find them. (Bell RP 68-69)

The next day Mr. Ruiz-Alcala arrived at the gate and a short while later the two men joined him. (Bell RP 69-70)

Earlier in the summer law enforcement officers had located a large "marijuana grow" which could be reached by an old logging road. (RP 159-162) They set up surveillance cameras at the end of the logging road, which was presumed to be a drop point for reaching the marijuana. (RP 162) The video tapes showed a pattern of vehicles arriving and dropping off passengers on Fridays and returning to pick them up on Sundays. (RP 165-66) Officers obtained license plate numbers for the vehicles and photographs of the faces of some of the drivers. (RP 165-66) One of the vehicles was registered to Mr. Ruiz-Alcala's brother, Gerardo Alcala. (RP 166-67)

The marijuana growing operation was eradicated on August 9, 2011. (RP 28) Plants were within 2 weeks of harvesting. (RP 33) At that time the odor of marijuana was very strong. (RP 31-32)

Officers executed a search warrant at Mr. Alcalá's address. (RP 167-69) Mr. Ruiz-Alcalá was at the residence, and officers determined he was the driver of one of the suspect vehicles. (RP 167-69) In the course of the search, officers found various household items that they associated with packaging marijuana, and some twine and blue tarps that were similar to items found at the "marijuana grow." (RP 46-47, 59-61)

The officers also found a small bag of seeds hanging in the bedroom occupied by Mr. Ruiz-Alcalá and his family. (RP 56-61) The bag contained a small quantity of green material later identified as marijuana. (RP 141)

They also found a bag of seeds on top of a nearby shed. (RP 56-61) Officer Robert Tucker thought these seeds were marijuana seeds. (RP 47) Later forensic examination of those seeds by a qualified expert did not disclose the presence of any controlled substances. (RP 151)

Finally, a drug recognition canine, trained to alert on the odor of marijuana, cocaine, methamphetamine or heroin, alerted on several of the vehicles parked at the residence. (RP 230)

The State charged Mr. Ruiz-Alcala with the manufacture of a controlled substance. (CP 1) At trial, the State introduced into evidence the twine, tarp, scales, plastic baggies, both bags of seeds, and testimony describing the behavior of the drug recognition canine. (RP 46-47, 56-61, RP 141, 230) Defense counsel did not object to the admissibility of any of this evidence. During examination, defense counsel asked Mr. Ruiz-Alcala whether he knew that his brother had a gun in his room. (RP 62)

A jury found Mr. Ruiz-Alcala guilty. (CP 98) Following the verdict, the trial court granted Mr. Ruiz-Alcala a new trial. (Bell RP 10) The court found that if defense counsel had sought to exclude the evidence of a small baggie containing trace amounts of marijuana, the conduct of the drug-sniffing dog, and the blue tarp, the evidence would not have been admitted and the result of the trial would have been different. (CP 128-29) The court also found that defense counsel's mention of the presence of a gun was prejudicial error. (CP 129) The court concluded that these errors, in combination with defense counsel's conduct and demeanor during trial, constituted ineffective assistance and violated Mr. Ruiz-Alcala's right to a fair trial. (CP 129-30)

The State filed this appeal. (CP 127)

C. ARGUMENT

1. EGREGIOUSLY INADEQUATE REPRESENTATION DENIED DEFENDANT A FAIR TRIAL

The State does not challenge the court's assertion that it would have granted motions to exclude any of the evidence cited in the court's decision. Rather, the State contends that defense counsel's acquiescence in the introduction of this evidence was a legitimate trial tactic and, in any event, did not result in denial of a fair trial.

The State challenges the court's conclusion that the prosecution failed to show the defendant was ever personally at the "grow" site. App. Br. at 15. The State cites evidence that on one occasion the defendant drove to the "drop point" where he picked up two "individuals who appeared to be coming from the grow site" as sufficient to present a factual issue of accomplice liability. App. Br. at 15.

A person is legally accountable for the conduct of another person when he or she is an accomplice of such other person in the commission of the crime. A person is an accomplice in the commission of a crime if, with knowledge that it will promote or facilitate the commission of the crime, . . . aids or agrees to aid another person in planning or committing the crime.

(CP 34) The evidence cited by the State is wholly insufficient to establish that Mr. Ruiz-Alcala had any knowledge of the marijuana growing operation or that in giving a ride to two acquaintances he was promoting

or facilitating the commission of any crime. Evidence that on one Sunday Mr. Ruiz-Alcala picked up two individuals at a point some distance from a location where law enforcement had found marijuana growing does not give rise to an issue of accomplice liability.

If trial counsel had made the objections that the trial court states it would have granted, the remaining arguably admissible evidence showed that Mr. Ruiz-Alcala shared a home with his wife, children and brother, and that a search of the premises established the presence of scales, baggies and twine. The additional evidence counsel permitted the state to present was essential to the state's theory of the case.

Defense counsel's trial strategy was apparently to acquiesce in the introduction of numerous items of irrelevant evidence and hope that he could sufficiently minimize the significance of marijuana in his client's bedroom, evidence that many of the vehicles outside the residence had at some time in the recent past contained one or more controlled substances, and that several items found in the home were "consistent" with the manufacture of marijuana. Such a strategy cannot constitute effective assistance of counsel.

While there is a presumption of reasonableness in a failure to object as legitimate trial strategy, "in egregious circumstances, on testimony central to the State's case . . . the failure to object

[will] constitute incompetence of counsel justifying reversal.”
State v. Dawkins, 71 Wn. App. 902, 910 n. 3, 863 P.2d 124 (1993)
(quoting *State v. Madison*, 53 Wn. App. 754, 763, 770 P.2d 662, review
denied, 113 Wn.2d 1002 (1989)).

The repeated failures to object to irrelevant evidence that a jury would find highly incriminating, and that formed the substance of the State’s case, constituted egregiously inadequate representation and denied Mr. Ruiz-Alcala a fair trial.

D. CONCLUSION

The trial court did not abuse its discretion in vacating Mr. Ruiz-Alcala’s conviction. The trial court’s decision should be affirmed.

Dated this 30th day of April, 2013.

JANET GEMBERLING, P.S.


Janet G. Gemberling #13489
Attorney for Respondent

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,)	
)	
Appellant,)	No. 30944-4-III
)	
vs.)	CERTIFICATE
)	OF MAILING
RAFAEL RUIZ-ALCALA,)	
)	
Respondent.)	

I certify under penalty of perjury under the laws of the State of Washington that on April 30, 2013, I served a copy of the Respondent's Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

Kevin Eilmes
kevin.eilmes@co.yakima.wa.us

I certify under penalty of perjury under the laws of the State of Washington that on April 30, 2013, I mailed a copy of the Respondent's Brief in this matter to:

Rafael Ruiz-Alcala
1416 S. 16th St.
Yakima, WA 98901

Signed at Spokane, Washington on April 30, 2013.


Janet G. Gemberling
Attorney at Law