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IN DIVISION ONE OF THE COURT OF APPEALS

STATE OF WASHINGTON

JAMES K. BARNHART

Petitioner,

v.

THE CITY OF BOTHELL

Respondent.

APPELLANT'S REPLY BRIEF

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(King County Superior Court # 08-1-07319-6 SEA)

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2010 JAN 11 AM 11:07

ORIGINAL

Cases

State v. Langford, 57 Wn.App. 572 (1992) 4

State v. Tingdale, 117 Wn.2d 595 (1991) 4

REPLY

Mr. Barnhart challenges the King County Superior Court decision dated April 10, 2009 allowing the City of Bothell to seat jurors who were residents of King County in a criminal case in which the offense was committed in Snohomish County.

Article One, Section 22 of the Washington Constitution guarantees an accused's right to trial by an impartial jury of the county in which the offense is charged to have been committed. Prior to trial, the defendant filed a written demand for a jury drawn exclusively from Snohomish County. The defendant renewed his effort to get the court to comply with its constitutional mandate by asking to have King County residents from the venire excused for Cause. The motions for removal of non-Snohomish County residents from serving as jurors at a criminal trial alleging a crime committed entirely within Snohomish County were denied or ignored at every stage.

For the first time in the history of this case the City of Bothell argues, in effect, the defendant waived his Article One, Section 22 right to trial by a jury of the county where the crime is alleged to have been committed. The City argues by failing to exercise the three Peremptory Challenges available to the defense, presumably in an attempt to mold a

lawful jury from an unlawful venire. This argument fails for a number of reasons. CrRLJ 6.3 (e)(1).

First, the Fourteenth Amendment to the U.S. Constitution guarantees due process and equal protection of the law. The City argues the Bothell Municipal Court be allowed to draw a venire of potential jurors who would otherwise be prohibited from serving on the jury. Then the City may exercise peremptory challenges for any reason the prosecutor feels gives the government an advantage at trial. While weeding out potential jurors by way of peremptory challenges, the Defendant must follow a single criteria in order to enforce the Article One, Section 22 mandate. When faced with a potential juror from outside the county in question, the Defendant is placed in the unequal position of having to exercise peremptory challenges **based solely on the residency of the potential juror**. Such a system is abhorrent to equality of law, equal treatment of the parties, and the due process of law.

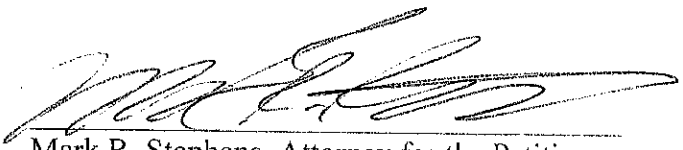
Second, the City has not established that exercise of any of the defendant's peremptory challenges would have led to a jury of Snohomish County. The argument fails on the thin record provided. See City's Appendix 1. The record does not establish that exercise of any of the defendant's peremptory challenges would have cured the Constitutional violation of Article One, Section 22's jury panel by necessarily resulting

in a jury made up entirely of Snohomish County residents. The trial court's error lies in the summoning of potential jurors from a pool which includes residents of King County, despite a written objection to the seating of King County jurors nearly six months prior to trial. The trial court also denied the defense challenges to King County residents sitting on the jury for cause. City's Appendix 1.

Finally, State v. Langford, 57 Wn.App. 572, 582-84 (1992), discusses jury selection at some length. The Court quotes Ferguson from *Criminal Practice and Procedure* emphasizing "the point at which to consider the constitutionality of the [jury] selection process is at the selection of the master list from which the panel of each jury term is selected". Furthermore, the State Supreme Court places the responsibility for ensuring a lawful jury selection process squarely on the trial court. See State v. Tingdale, 117 Wn.2d 595 (1991), holding a Court Clerk's excusal of potential jurors without judicial review or voir dire by the parties violated the defendant's right to a randomly selected jury. This case is analogous to Langford and Tingdale in that the Court, not the parties, must ensure compliance with Constitutional protections in matters of venire summons, challenges for cause, and, the Appelllant would argue, the right to a jury "of the county in which the crime is alleged to have been

committed". The trial court failed in this. Mr. Barnhart's conviction must be overturned.

Respectfully Submitted January 7, 2010.



Mark R. Stephens, Attorney for the Petitioner
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STATE OF WASHINGTON

JAMES K. BARNHART,	)	
	)	08-1-07319-6-SEA
Petitioner,	)	(King Co. Sup. Ct.)
	)	
vs.	)	DECLARATION OF
	)	MAILING
THE CITY OF BOTHELL,	)	
Respondent.	)	
	)	

Wendy Cochinella declares:

1. I am a citizen of the State of Washington, over the age of eighteen years and not a party to the above-entitled action.

2. That on the 7th day of January, 2010, I deposited in the United States Postal Service a properly stamped envelope containing Appellant's Reply Brief, addressed as follows:

Court of Appeals, Division I
600 University St
One Union Square
Seattle, WA 98101-1176

Rhonda Giger
City of Bothell Prosecutor
18410-101st Ave. NE
Bothell, WA 98011

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STATE OF WASHINGTON
2010 JAN 11 AM 11:07

DECLARATION

ORIGINAL

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

1/7/10, Everett, WA — Wendy Cochinella

DATE AND PLACE — WENDY COCHINELLA