

FILED
SUPREME COURT
STATE OF WASHINGTON
5/2/2018 3:20 PM
BY SUSAN L. CARLSON
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
Respondent,)
)
)
)
V.)
)
TYREE JEFFERSON,)
Petitioner.)
_____)

NO. 94853-4

SECOND
STATEMENT OF ADDITIONAL
AUTHORITIES. RAP 10.8

Mr. Jefferson *cites Irvin v. Dowd*, 366 U.S. 717, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961) for the premise that for a pre-verdict challenge to a tainted jury, the court must conduct an objective as well as a subjective analysis to determine if the extrinsic evidence was so prejudicial that it denied the defendant his 6th Amendment constitutional right to a fair and impartial jury.

Mr. Jefferson *cites United States v. Wood*, 299 U.S. 123, 145-46, 57 S.Ct. 177, 81 L.Ed. 78 (1936) for the premise that ‘Impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular tests and procedure is not chained to any ancient and artificial formula.’ (fitness to serve as jurors-women).

Mr. Jefferson *cites Flyte v. Summit View Clinic*, **Not Reported**, 199 Wn. App. 104 (July 18, 2017), Under GR 14.1 as persuasive authority- not

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LAW OFFICES OF LISE ELLNER
POST OFFICE BOX 2711
VASHON, WA 98070
TEL (206) 930-1090
Fax (206) 463-0758

binding authority for the premise that under *Kuhn v. Schall*, 155 Wn. App. 560, 228 P.3d 828 (2010) and *Richards v. Overlake*, regardless of the timing of a challenge to extrinsic evidence (pre verdict or post-verdict) the court must conduct an objective inquiry to determine if a defendant is prejudiced by the introduction of extrinsic evidence in to the jury deliberation process.

“The trial court did not abuse its discretion in denying the Clinic’s motion for mistrial because there was no possibility that the extrinsic evidence could have affected the jury’s verdict. In determining whether to grant the Clinic’s motion for mistrial, the trial court based its decision on an objective inquiry, reasoning that there was no possibility that extrinsic evidence could affect a jury’s verdict when jurors do not read and digest such evidence. While the trial court did make a subjective inquiry into whether the evidence had an actual effect on the jurors, it nonetheless conducted the requisite objective inquiry in denying the Clinic’s motion.”

Flyte, 199 Wn. App. 104.

Respectfully submitted,



LISE ELLNER
WSBA No. 20955
Attorney for Petitioner

I, Lise Ellner, a person over the age of 18 years of age, served the Pierce County Prosecutor pcpatcecf@co.pierce.wa.us and Tyree Jefferson DOC# 305122 Clallam Bay Corrections Center, 1830 Eagle Crest Way, Clallam Bay, WA 98326, on May 2, 2018 a true copy of the document to which this is attached. Service was made by depositing in the mails of the United States of America, properly stamped and addressed to Mr. Jefferson and electronically to the prosecutor.

A handwritten signature in blue ink that reads "Lise Ellner" followed by a horizontal line.

Signature

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VASHON, WA 98070
TEL (206) 930-1090
Fax (206) 463-0758

LAW OFFICES OF LISE ELLNER

May 02, 2018 - 3:20 PM

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Appellate Court Case Title: State of Washington v. Tyree William Jefferson
Superior Court Case Number: 13-1-02796-0

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