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NO. 63992-7-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

REC'D
JUN 21 2010
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

WILLIE WHITFIELD,

Appellant.

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FILED
CLERK OF SUPERIOR COURT
KING COUNTY

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Regina S. Cahan, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

1. THE ERRONEOUS EXCLUSION OF IMPEACHMENT EVIDENCE DEPRIVED WHITFIELD OF HIS CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE AND CONFRONT THE WITNESSES AGAINST HIM.

The State maintains the trial court's decision not to allow evidence impeaching Detective Martin is reviewable only for abuse of discretion. Brief of Respondent (BOR) at 7. A claimed violation of a defendant's Sixth Amendment right to present a defense is reviewed de novo. State v. Jones, 168 Wn.2d 713, 230 P.3d 576, 579 (2010). Jones came out after the opening brief was filed but before the State filed its response brief.

2. THE LACK OF A LIMITING INSTRUCTION FOR PRIOR BAD ACT EVIDENCE REQUIRES REVERSAL.

Whitfield had the right to limiting instruction for the stipulated prior conviction evidence. State v. Ortega, 134 Wn. App. 617, 625, 142 P.3d 175 (2006). The State claims Ortega does not support this argument. BOR at 13-15. The State misreads Ortega.

The relevant citation, as set forth in Whitfield's opening brief, is to that section of the decision addressing Ortega's right to a limiting instruction to stipulated prior conviction evidence had such instruction been requested. Brief of Appellant (BOA) at 35 (citing Ortega, 134 Wn. App. at 625). The State cites to a different section of the decision, which addresses the separate issue of whether the evidence was sufficient to

convict under the law of the case doctrine due to an instruction limiting the use of a previous conviction for impeachment purposes. BOR at 13-15 (Ortega, 134 Wn. App. at 621-23). That issue is irrelevant to Whitfield's argument. The State ignores the relevant section of Ortega.

The State claims Whitfield cannot show a reasonable probability that lack of a limiting instruction affected the outcome in part because "Detective Martin, Sergeant Babauta, Detective Morrell, Detective Tighe, Detective Mulligan and Dorothy Aguilar all identified Whitfield as the person they observed in the course of the narcotics investigations on October 26 and November 9." BOR at 17. From this representation of fact, the State concludes "The evidence was overwhelming that those transactions took place and that Whitfield was the seller." BOR at 17.

This description of the record warrants clarification. Only one officer, Detective Mulligan, saw an exchange occur between Whitfield and Thomas on October 26. 4RP 162-64. Mulligan did not see what Whitfield gave Aguilar. 4RP 164. No other officer testified to witnessing the October 26 *transaction*. See 2RP 31-32; 4RP 51-53, 89, 102-03. No officer witnessed the alleged *transaction* on November 9. See 2RP 39-40; 4RP 53, 90-91, 104, 164. As the State recognizes elsewhere, the informant Aguilar (a.k.a. Thomas) had credibility problems. BOR at 10; BOA at 21-22; 6RP 39, 41-42, 52-55, 57-59, 60-64. Aguilar was the only

witness that testified Whitfield gave her drugs in exchange for money.

6RP 46, 49. The evidence was not overwhelming.

B. CONCLUSION

For the reasons stated above and in the opening brief, Whitfield respectfully requests this Court reverse his convictions.

DATED this 21st day of June 2010.

Respectfully submitted,

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DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	COA NO. 63992-7-1
)	
WILLIE WHITFIELD,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 21ST DAY OF JUNE, 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

WILLIE WHITFIELD
DOC NO. 948482
AIRWAY HEIGHTS CORRECTIONS CENTER
P.O. BOX 2049
AIRWAY HEIGHTS, WA 99001

SIGNED IN SEATTLE WASHINGTON, THIS 21ST DAY OF JUNE, 2010.

x Patrick Mayovsky

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