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NO. 68661-5-1

C O U R T O F A P P E A L S
Division -I
O F T H E S T A T E O F W A S H I N G T O N

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STATE OF WASHINGTON
2013 MAY -9 PM 4:53

STATE OF WASHINGTON,
Respondent,

COA NO. 68661-5-1

Vs.

Petitioner's S.A.G,
Addendum To Issue

13- Prosecutorial Misconduct

PARAMJIT SINGH BASRA,
Appellant,

1. IDENTITY OF MOVING PARTY

Appellant, Paramjit Singh Basra, Pro Se, seeks the relief sought in Section two.

2. Relief Sought

Mr. Basra request this Court of Appeals to consider his additional Prosecutorial Misconduct Argument and grant a new trial.

3. Relevant Facts

On March 21,2013, Mr. Basra filed his S.A.G. And raised several grounds, including prosecutorial misconduct. Mr. Basra is a native of India and speaks little English. Mr. Basra had some new case law interpreted to him at the law library and realizes, he must expand his misconduct claim based on new case law made available through interpretation.

As of the date the State has not responded to his S.A.G. No prejudice will arise to the State if this court hears additional argument.

4. ARGUMENT

The prosecutor vouched and bolstered for credibility of a State expert witness, while making comments that discredited the defense expert witness, violating Basra's right to present a defense, due process of law and right to fair trial.

Mr. Basra submits, where his sole defense was diminished capacity to form an intent to kill, that the prosecutor's comment to the jury, "urging the jury to believe the State's expert over the defense's expert, invaded the jury's province to determine who believe and denied him a fair trial.

In trial, Mr. Basra put on Dr. Glogally, in support of his diminished capacity defense. Dr. Glogally specifically testified that; Mr. Basra suffered from anxiety disorder with features of panic disorder and that Mr. Basra had diminished capacity to form an intent to kill or assault his wife. RP 518,525. The defense shortly rested after the testimony. RP 690 The State then put on Dr. Judd to refute Mr. Basra's diminished capacity claim. Dr. Judd agreed that it was still possible to suffer from major depressive disorder and form the intent to premeditate their actions. RP 762;783.

In closing arguments the prosecutor stated the following without objection from the defense. Does Dr. Glogally's testimony really overcome the clear facts that were presented such that it makes you think the defendant had this severe mental illness that was flipped on and off such that he couldn't intent or premeditate for those few minutes.

Or, Dr. Judd's common sense tells you, that something that you couldn't have figured out by yourself. But if you want to accept the testimony of one of the experts, I would submit to you that the one that would be most reliable would be that of Dr.Judd... But in this case I would say Judd did the better job because he interviewed collateral witnesses. RP 934-35.

Dr. Judd applies a common sense approach, combined with the type of thorough review you would expect to do something for you...

Jodd's conclusion that there's no impairment that would interfere with the ability to intend or premeditate is reliable, credible one. But you knew that yourselves from listening to the evidence. RP 937-38.

Prior to sentencing Mr. Basra, the trial judge stated on the record that, " the other fact is that there was testimony at the trial concerning the mental state of Mr. Basra at the time of this particular event. And although, the jury did not accept the fact that there was any diminished capacity, I am satisfied based on my observation of Mr. Basra, in listening to the testimony of the experts in the case, I am satisfied there is some mental issues." The trial judge then gave a low end sentence. RP 16-17 of 4-20-2012.

These finding by the trial judge, bolsters the prejudice from the prosecutor's comments. The right to a fair trial is a fundamental liberty secured by the Sixth and Fourteenth Amendment to the United States Constitution and Article 1 Sec. 22 of the Washington State Constitution. Estelle V. Williams, 425 U.S. 501 (1976) ; State V. Finch, 137 Wn.2d 792 (1999). Prosecutorial misconduct might deprive a defendant of his constitutional right to a fair trial. State V. Davenport, 100 Wn.2d 757 (1984); Donnelly V. Dechristoforo, 416 U.S. 637,643

It is misconduct for a prosecutor to personally vouch for the credibility of witnesses State v. Brett, 126 Wn. 2d 136 (1995); State V. Brooks, 508 F.3d 1205 (9th Cir. 2007). Whether a witness testifies, truthfully is for the jury to determine. Brooks, 508 F.3d at 1210.

Nevertheless, a prosecutor has wide latitude to draw inferences from the evidence, including inferences about witness's credibility. State V. Smith, 162 Wn. App.833 (2007) review denied 173 Wn.2d 1007 (2010).

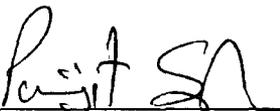
Here the prosecutor's comments were well outside of his latitude and provided the jury a direct opinion on cerdibility. Telling the jury that, "Dr. Judd's conclusion that there's no impairment that would interfere with the ability to intend or premeditate is the reliable one, credible one" had a substantial and injurious effect upon the jury's deliberations. In a case, where the defense's doctor or State's doctor medical opinion was a critical factor, telling the jury the State's doctor's opinion is the credible one, constitutes misconduct that prejudiced Mr. Basra's right to a fair trial.

CONCLUSION:

For the going reasons, Mr. Basra is entitle to a new trial.

Dated This ___ Day of May, 2013,

Respectfully Submitted,



Appellant, Pro Se

I declare under the penalty of perjury, the facts in this notion and Addendum are true and correct to the best of my knowledge.

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Respectfully Submitted,



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