

69238-1

69238-1

NO. 69238-1-I

THE COURT OF APPRALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,  
Respondent,

v.

JOHN SHELBY  
Appellant,

200 SEP 27 11:41:59  
CLERK OF SUPERIOR COURT  
KING COUNTY  
1000 4TH AVENUE  
SEATTLE, WA 98101

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

APPELLANT'S ADDITIONAL GROUNDS

John Shelby #358919  
Appellant

Monroe Correctional Complex  
Washington State Reformatory  
P.O. Box 777  
Monroe , Washington 98272

TABLE OF CONTENTS:

---

A. PROSECUTORIAL MISCONDUCT.....	1
B. ISSUES PERTAINING TO PROSECUTORIAL MISCONDUCT ....	2
B*2 ISSUES PERTAINING TO INEFFECTIVE COUNSEL.....	3
C. STATEMENT OF CASE.....	4
D. ARGUMENT .....	5&6
E. CONCLUSION .....	7
F. LIST OF AUTHORITIES .....	ii

A. Prosecutorial Misconduct

The Prosecution and its office violated my Sixth Amendment Rights, preventing and or interfering in the "Due Process Clause", access to a Fair and Impartial Jury, in violation of the Sixth Amendment ensuring this unbridged right.

- 1). This Prosecutorial Misconduct occurred during the Jury pool selection process. The misconduct occurred in not protecting the integrity of the Grand Jury. The courts instructions regarding unwarranted communication with respect to the participants in this case, whether it be frivolous communication or serious communication, all parties involved, (attorneys, defendants, witnesses, ect.), should make no or in response to no contact with sworn -in Jurors. This was violated.
- 2). Juror 45 along with an employee of the prosecution team violated this order as well as the mandate on the "Abuse Of Process" §2:46. ( people v Groh). Also the Courts instructions, (1d.pg.21 line 20-25).

3). Violation Of Due Process:

Dismissal of indictment or reversed of the conviction on constitutional grounds is so ordered in instances whereby:

- a). Prosecutorial misconduct that violates constitutional or statutory commands, courts have invoked their supervisory powers over the administration of criminal justice to dismiss an indictment or reverse a conviction. (U.S. v Hogan 712 F. 2d 757).
- b). Usually arises on pre-trial motion to dismiss an indictment, an appeal from conviction, or an application by Grand Jury Witness for an order protecting him/her from alleged Grand Jury or Prosecutorial overreaching, such as being required to comply with an overboard subpoena, divulging privileged information, or being subjected to other improper tactics. ( U.S. v Schell 775 F. 2d 599).

B. Issues Pertaining To Prosecutorial Misconduct:

The dismissal of Juror 37 along with the decision to strike to dismiss the entire Jury Pool. This violated my Sixth Amendment Right, as the accused has the right to a Fair and Impartial Jury. There were evident intrusion by the Prosecution by accepting a phone call from a prospective Jury as also divulging privileged information discussed inside closed session in the Jury room.

- 1). The Prosecutor's office accepted a phone call from prospective Juror 45. Phone call was accepted by a member of the Prosecution team, Wendy Ross. Juror 45 also happens to be the mother of the recipient of this phone call communicating to the Prosecution team about a conversation that took place inside the Jury room. The conversation regarding Juror 37 stating, "she was bad-mouthing the Prosecution", stating in part that, 'they prosecute people with no evidence and calling all prosecutors liars, and make false accusations'. ( Id. June 5, 2012 pg. 2 line 13 & 14 ).
  - a). This undermined the integrity of this Juror Pool and also created a Conflict Of Interest by the Prosecution Team. Juror 37 rights were violated as well regarding the First Amendment Right of Free Speech, and as well the rule of secrecy.

The Jury Pool selection process, the initial and most crucial stage in the deliberation process. The rule of secrecy is to ensure the most basic freedom of actions among Jurors necessary for the fair and effective discharge of it's duties, this include freedom to deliberate, even if its an unpopular opinion. ( People v Groh).

- 2). In Johnson v Williams, 113 S. C.T. 1088 (Feb. 20, 2013), Stated on appeal to the California Court Of Appeals, Williams argued that the discharge of Juror 6 violated his Sixth Amendment Rights .....the Ninth Circuit reversed. The Ninth -Circuit took this approach because it thought it "Obvious" that the State Court Of Appeals had overlooked or disregarded Williams' Sixth Amendment claim.
- 3). Clearly a violation of "Due Process" has been entrenched upon in this case. Not only Courts commands, Statutory edicts, but also Supreme Courts violations and Amendments to the United States Constitution.

B-2). Ineffective Counsel:

Jury was dismissed due to Improper Conduct by a Juror:

Jury 37 was expressing her opinion in the Jury room exercising her duties as a citizen of the state called upon to express her intellectual concerns and deliberate the facts of this case albeit not being a popular opinion being expressed, nevertheless, this did not compromise her civic duties to warrant a discharge without the Process of Voir Dire being utilized to strike or dismiss this Juror and as well the entire Jury Pool kept from their citizenry obligations to uphold their respective duties.

On June 5, 2012, coming to court being approached by my Attorney, Ms. Tracey Lapps, whom accosted me to see her outside the court room, where upon she explained an issue with the Jury Pool involving Juror 37 stated, " Prosecutor informed her via e-mail that she will be making a motion today to strike the entire Jury Pool and begin fresh tomorrow I therefore informed Ms. Lapps that I feel that we were entitled to an Evidentiary Hearing to learn as to what was said and how would this have potentially affected the other Jurors She stated that this could potentially hurt me, however I disagreed with her advise and therefore wanted a hearing on this cause. Entering into the court room again before the Honorable Judge Casey, The Judge asked her if this is what you agree to as well regarding the striking of the remaining Jurors, and the response given was not only contrary to what I wanted to pursue, but incoherent and contradictory speech, seems like she was trying to ask for an evidentiary hearing without directly challenging the motion made by the Prosecution. (Id. June 5, 2012 pg. 3 line 14-25 & pg.4 line 1-3).

Ineffective Counsel deprives the accused the right to an aggressive defense, passiveness and unassuredness would limit the confidence of a Judge or Jury in your ability to present a case in a persuasive manner.

This motion presented on this day should have been challenged and my Attorney did not offer up a challenge, despite my objection to the motion. I feel this was Ineffective Counsel to my Defense.

C). Statement Of The Case:

I and my wife, LaTonya Pratt-Shelby have been living in the Seattle area since approximately 2003, when we moved to Washington from Kansas City. Due to the incarceration of my sister-in-law me and my wife offered to raise two of her children including J.P.

In February 2010, a CPS intake was received regarding J.P., who at the time was eight years old in the third grade. Due to noticeable marks on J.P.'s face, arms, and back, along with J.P.'s statements that her Aunt LaTonya regularly beat her with an extension cord, J.P. was removed from the home and law enforcement was contacted.

A few weeks later, J.P. underwent a full examination at Harborview. Dr. Naomi Sugar, who conducted the interview, is the Director of Sexual Assault and Traumatic Stress at Harborview. While Dr. Sugar was interviewing J.P., she asked her whether anyone ever hurt her on her privates in a way she didn't like. J.P. told her that her Uncle had done so when he was drinking.

I was charged with two counts of child molestation in the first degree.

D. Argument:

C.A. 9 (Ariz.) 1999.

U.S. v Symington (195 F. 3d 1080) "Juror Views & Opinions".

In attempting to determine whether a problem between or among deliberating jurors stems from disagreement on the merits of the case, a court may not delve deeply into juror's motivation inasmuch as it may not intrude on the secrecy of the jury's deliberations.

- a). As stated under the subheading on "Issues Pre-~~senting~~ -taining to Prosecutorial Misconduct". Juror 37's rights to secrecy regarding her views was violated therefore violated my rights to a fair and impartial Jury. Conversation was leaked out by juror 45 to the prosecution and that privileged information was forthcoming.

If the recorded evidence discloses any reasonable possibility that the impetus for a Juror dismissal following the sort of deliberations stems from the juror's views on the merits of the case, the court must not dismiss the Juror; under such circumstances, the trial Judge has the right to:

- 1). Send the Jury back to continue deliberating.
- 2). Declare a mistrial.

Neither happened.

- a). Under violation of Due Process, I cited: U.S. v Hogan ( 712 F. 2d 757 ): The court has supervisory powers over the administration of criminal justice to dismiss or reverse a conviction. The lack of the court to utilize their discretionary supervisory authority was neglectory error due to the fact that the court was unable or unwilling to uphold their own rules regarding unwarranted communications between prospective jurors and all court participating parties such as the defense and prosecuting attorneys...i.e.

C.A. 9 (Cal.) 1998.

Harris v Folk Construction Company (138 F. 3d 365). "Evidentiary Hearing Required".

continues from section D:

C.A. 8 (Ark) 1998.

Harris v Folk Construction Co. (138 F. 3d 365 ). "Evidentiary Hearing Required".

- a). The District Court was required to hold a hearing before dismissing juror who sent note to magistrate judge indicating that she feared her safety in the juror room. (Fed. rules civ. proc. Rule 47(c) 1). Dismissing juror or jurors for good cause is proper under the Rule 47(c). However the good cause process venue for this action is covered under Voir Dire for use of pre-emptive challenges whereby to address these very issues of improper juror biases to either party. This venue was not utilized properly therefore violated my Sixth Amendment rights. Juror 37 was dismissed improperly. An Evidentiary Hearing was not adhered to

C.A. 9 (Cal.) 1998.

Dyer v Calderon (151 F. 3d 970).

A court confronted with a colorable claim of juror bias "must" undertake an investigation of relevant facts and circumstances.

- a). Under B-2 "Ineffective Counsel": Juror 37 was dismissed and all other jurors in pool was dismissed regarding the alleged improper conduct by juror 37. Because of the communication violation that all parties involved were to adhere to, Juror 45, who via telephone conversation violated this order. (Id. pg. 88 line 11-17) and (June 5, 2012 pg 2-3, line 1-13).
- b). Absolutely no "investigation nor an" evidentiary hearing" offered in relation to the above citation Dyer v Calderon since this was in fact an alleged "colorable claim of juror bias" the 'must' undertake an investigation of relevant facts and circumstances. I requested that my Attorney counter the prosecution motion to dismiss juror 37 and strike the entire juror pool, however my request was not assisted or adhered to by my counsel. When asked: her position on this matter by the trial judge she stated: "We don't know what was stated or how did it potentially affect the juror pool?" In my opinion this is Ineffective assistance of counsel, therefore violates my rights to an "effective assist

E). Conclusion:

One juror, not two, not three, not even 12; but one, expressed an opinion, albeit unpopular, however an opinion nevertheless in the secrecy and confines amongst her peers inside the jury room. She no doubt believed in the process during jury selection that she along with other members of the jury would be free to express and be unafraid to exercise her free speech rights in relations to upholding her citizenry duties, although an unpopular one chose to share irregardless of her peers opposing views.

This I feel is the most ultimate test of being "Fair and Impartial", because it reflects ones honesty and ones most opened and penetrable thoughts, "lets put it all on the table and "lets discuss these issues openly", confronting and challenging our unspoken thoughts and fears, our innermost feelings, though unpopular, though it risk exposing our most trusted and sacred form of democracy "Our Justice System", to be more specific, "Our Criminal Justice System".

Juror 37, I want to conclude on a gratitude note, on behalf of "Our" Justice System I would like to say, "Thank You, thank you for expressing your unedited thoughts in challenging our System Of Justice in our country. You are the reason why democracy works, whereby so many of us forget the very backbone and essence behind our inalienable rights to speak up and speak out courageously about a wrong or an unfairness in our ever-progressive nation. I thank and honor YOU.

However, it does not have to end on this very note, from the perspective of the defendant and from the perspective of the people, the Jurors. Thankfully there are higher courts to remedy these harmful errors and unfairness in our Criminal Justice System. Remedies that can only counter-balance the trustworthiness of our most precious "Product" in our free and democratic society that being of Our Justice System a model to the world.

With this in mind I would like to implore the courts to Reverse this conviction and or Remand it for further proceedings.

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

2013 AUG 16 PM 1:22  
STATE OF WASHINGTON  
COURT OF APPEALS  
1000 4TH AVENUE  
SEASIDE WA 98138

STATE OF WASHINGTON )  
 )  
 Respondent, )  
 )  
 v. )  
 John Shelby )  
 \_\_\_\_\_ )  
 (your name) )  
 )  
 Appellant. )

No. 69238-1

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, John Shelby, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

Prosecutorial Misconduct: The Prosecution and its office violated Mr. Shelby's (Appellant) Sixth Amendment Rights, preventing him access to a "Fair and Impartial Jury" in violation of the "Due Process Clause" ensuring the accused of this unabridged right.  
The prosecutorial intrusion occurred when accepting a telephone call from potential Juror 45 regarding her peer Juror 37, whom expressed some opinions in the juror room among her peers - this "privledged information."

Additional Ground 2

Ineffective Counsel: Lack of an aggressive defense or challenge and failed to object to striking the entire Juror Pool. (Id. May 5, 2012 pg. 3 line 14-24), (See court transcript). At side bar off the record when confronted regarding the Juror 37 alleged misconduct issue I immediately requested an evidentiary hearing to investigate the matter, against my wishes My Attorney Advised otherwise.

If there are additional grounds, a brief summary is attached to this statement.

Date: 8-14-2013

Signature: 

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

---

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 69238-1-I
v.	)	
	)	
JOHN SHELBY,	)	
	)	
Appellant.	)	

---

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 27<sup>TH</sup> DAY OF SEPTEMBER, 2013, I CAUSED THE ORIGINAL **STATEMENT OF ADDITIONAL GROUNDS (WITH COVER LETTER)** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] LINDSEY GRIEVE, DPA		
KING COUNTY PROSECUTING ATTORNEY	(X)	U.S. MAIL
APPELLATE UNIT	( )	HAND DELIVERY
KING COUNTY COURTHOUSE	( )	_____
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		

**SIGNED** IN SEATTLE, WASHINGTON THIS 27<sup>TH</sup> DAY OF SEPTEMBER, 2013.

X \_\_\_\_\_ 

RECEIVED  
STATE OF WASHINGTON  
SEP 27 11 4: 54

**Washington Appellate Project**  
701 Melbourne Tower  
1511 Third Avenue  
Seattle, WA 98101  
Phone (206) 587-2711  
Fax (206) 587-2710