

Case # 328261

**Statement of Additional Grounds
for Review**

**State of Washington
v.
Christopher M. Tasker, II**

COPY

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

32826-1

COURT OF APPEALS
DIVISION THREE
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)

Respondent)

v.)

CHRISTOPHER M. TASKER II,)

Appellant.)

NO. 13-1-00940-0

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Christopher M. Tasker II, 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, Trial was unfair due to improper arguments, Phrasing of personal opinion, Testimony and the cumulative effect. For my Introduction, Table of Authorities, Arguments of Error plus Issues pertaining to assignments of error and the conclusion shall be attached to this brief with a continuance of error;s of additional ground's.

Additional Ground 2

Abuse of discretion, the court error-ed in motions plus allowing police officer opinion testimony, witch prejudiced defense theory of facts. The court failed to protect and to uphold defendants right to put on a defense. Evidence that suggest other, crimes, "bad acts" or a Guilty character. Was so flagrant and ill-intention-ed that it caused enduring and resulting prejudice.

Additional Ground 3

Ineffective Assistance of Counsel, failure of counsel to properly argue false testimony, to object timely and for not having proper to-convict instruction ready to present to the court.

Additional Ground 4

There is insufficient evidence to support Count 3-First Degree Unlawful possession of a Firearm, due to lack of substantial evidence, lack of details and inconsistent testimony.

Additional Ground 5

There is insufficient evidence to support Count 2-Attempted First Degree Robbery, due to lack of substantial evidence, lack of direct evidence and inconsistent testimony.

Introduction

Mr. Tasker challenges the convictions of count 1-First Degree Kidnapping, Count 2-Attempted First Degree Robbery and Count 3-First Degree Unlawful Possession of a Fire Arm due to Prosecutorial Misconduct, Abuse of discretion, Ineffective Assistance of Counsel and insufficient evidence to support Count 3 and 2.

Table of Authorities

United States Constitution

U.S. Constitution amend. 5,6,8,14,16

Washington Constitutional

West's RCWA Const.; Art., 1,522

State v. Lindsay, 180 Wn. 2d 423,326 P. 3d. 125

State v. Reed, 102 Wash. 2d. 140, 145,684 P. 2d 699 (1984)

State v. Fedoruk, 184 Wn. App. 866,339 P. 3d 233 (2014)

State v. Hecht, 179 Wn. App. 497,319 P. 3d 836 (2014)

Glasmann, In re 175 Wn. 2d. 696,289 P. 3d 673 (2012)

U.S. v. Prantil, 764, F. 2d 548,764, F. 2d 548 C.A. 9 (1985)

U.S. v. Hosford, 782 F. 2d 936,782 F. 2d 936 C.A. 11 (1986)

State v. Farr-Lenzini, 93 Wn. App. 453,970 P. 2d 313 (1999)

State v. Peters, 163 Wn. App. 836,261 P. 3d 199 (2011)

State v. Kunze, 97 Wn. App. 832,988 P. 2d 977 (1999)

State v. George, 150 Wn. App. 110,206 P. 3d 697 (2009)

State v. Hayward, 152 Wn. App. 632,217 P. 3d 354 (2009)

State v. Kirkman, 159 Wn. 2d 918,155 P. 3d 125 (2007)

State v. Slocum, 183 Wn. App. 438,333 P. 3d 541 (2014)

State v. Bashaw, 169 Wn. 2d 133,234 P. 3d 195 (2010)

State v. Martinez, 161 Wn. App. 436,253 P. 3d 445 (2011)

State v. Argue-Masters, 265,138 Wn. App. 86,156 P. 3d 265 (2007)

State v. Wilson, 144 Wn. App. 166,181 P. 3d 887 (2008)

State v. Russell, 154 Wn. App. 775,225 P. 3d 478 (2010)

Rogers Patato Service, LLC. v. Countrywide Potato, LLC, 119 Wn. App. 815,79 P. 3d 1163 (2003)

Theonnes v. Hazen, 37 Wn. App. 644,681 P. 2d 1284 (1984)
Walker v. State, 121 Wn. 2d 214,848 P. 2d 721 (1993)
Safeco Ins. Co. v. McGath, 63 Wn. App. 170,817 P. 2d 861 (1991)
State v. Humphries, 181 Wn. 2d 708,336 P. 3d 1121 (2014)
State v. Haney, 125 Wn. App. 118,104 P. 3d 36 (2005)
State v. Frasquillo, 161 Wn. App. 907,255 P. 3d 813 (2011)
State v. Turner, 103 Wash. App. 515,520-21,13 P. 3d 234 (2000)
State v. Carter, 138 Wn. App. 350,157 P 3d 420 (2007)
State v. G.M.V., 135 Wn. App. 366,144 P. 3d 358 (2006)
State v. Raleigh, 157 Wn. App. 728,238 P. 3d 1211 (2010)
RCW 9,41.040 (1) (a)

1. Prosecutorial Misconduct

The prosecutor abused its position, and violated the defendant's rights to a fair trial, 5th Amendment. State v. Hecht, 3.) To prevail on a claim of Prosecutorial Misconduct, a defendant must show that the prosecutor's conduct was both improper and prejudicial. (P.G. 794); (Judge), "but there is one obvious argument that the defense is undoubtedly going to raise on appeal and that the prosecution in closing focused a substantial amount of argument on the strength of the victim's belief --- I'm sure it's going to be raised on appeal because it's obvious issue and the argument is that the prosecution was asking the Jury to make an emotional decision as opposed to a logical decision. In fact, it is not logical to say that the stronger somebody believes something the more likely it is true." State v. Lindsay, 17.) It is impermissible for a prosecutor to express a personal opinion as to the credibility of a witness or the guilt of a defendant, such opinion constitutes misconduct, and violates the advocate-witness rule, which prohibits an attorney from appearing as both a witness and an advocate in the same litigation. (P.G. 755); (Chen), "Everything, basically, it's reasonable about what had happened. And I submit to you Miss Campos- white's testimony is credible about what had happened to her, about who did it. Again, credibility, Miss Campos – White testified about the robbery and kidnapping --- common sense, her behavior is consistent with someone who had a gun pointed at her" (Swan), " Judge, I'm going to object to that" (Chen), "That's fine, object if you want" (P.G. 756) (Judge), "the objection is overruled." U.S. v. Prantil, 3.) Advocate-Witness rule prohibits an attorney from appearing as both a Witness and an advocate in the same litigation.

Throughout the prosecutor's closing arguments Chen is expressing to the jury he is an expert of common sense, he determines his opinion as fact as to the credibility of Miss Campos-White it is clearly inappropriate for Chen to manifest his personal opinion or personal knowledge as fact. U.S. v. Prantil, 5.) Prosecutor, who asserted "personal knowledge" of a testimonial rather than an argumentative character, exceeded bounds of proper argument in his summation and it was more probable than not that his improper remarks materially affected the verdict. Fed. Rules C.R. Proc. Rule 52 (a) 18 U.S.C.A

The defense object as shown above (P.G. 755), the prosecutor vents "that's fine, object if you want." appearing, distraught or showing excessive grief. The prosecutor's remarks are unreasonable, when an objection is made Chen demonstrates improper comments. No reverence for the law by exceeding his role of prosecutor, comments to an objection is for the Judge. As for the response for the Judge to overrule is allowing the jury to consider the advocate-Witness rule and the law states differently and for that the defense was prejudiced and that affected the verdict.

State v. Lindsay, 4.) The Prosecutorial Misconduct inquiry when the claim is based on improper comments consists of two prongs: (1) Whether the improper comments caused prejudice. In Re Pers. Restraint of Glasmann, (2) Prosecutorial misconduct may deprive a defendant of his Constitutional

rights to a fair trial; U.S.C.A Const. Amends. 14. West's RCWA Const. Art. 1 and 22.

State v. Fedoruk, 10.) The jury instructions would not have cured the prejudice for the Judge overrules allowing the prosecutor express to the jury he is a expert, the overrule by the Judge is suggesting to the jury his argument's are appropriate when law states it is improper and should not be considered by Jury. State v. Lindsay, 10.) Arguments by the prosecution that shift or misstate the state's burden to prove the defendant's guilt beyond a reasonable doubt constitute misconduct. (P.G. 208, line 14), (P.G. 210, line 9), (P.G. 211, line 3), (Objection line 24), Misstate of law again (P.G. 213 line 20), (P.G. 215 line 12), (P.G. 217, line 5). In regards to the state's burden is (has to prove) only beyond a reasonable doubt and not all doubt. It was a continuation of the cumulative effect. Another phrase used was whether it was "fair" the state "only" had to prove beyond a reasonable doubt. The objection was sustain. The court never fixed the issue. The prosecution then refers to this issue in his closing arguments (P.G. 758 line 10-15), "This is not beyond all doubt". The state has minimize their burden and has suggested to the jury beyond a reasonable doubt isn't a very high burden that they have to meet. The prosecution was minimizing the standard or trivializing. Case Law states this as grounds for a New Trial in regards of misconduct that deprives the defendant of his constitutional rights.

2. Abuse of Discretion

State v. Ague-Masters 17.) Trial court commits an "abuse of discretion" - when it's decision is unreasonable or based upon untenable grounds or reason. (Rule 402) Evidence which is not relevant is not admissible. (P.G. 580, Line 9-12), (P.G. 582, line 2-4) Objection on (P.G. 571, line 20-23), "Officer Lewis wasn't a eyewitness to this case. He wasn't there. He wasn't present. He's going based of the video and giving what he thinks is his best guess, um, as to this person being. I think that's for the jury to decide". He is a police officer from another city then the city the alleged crime took place, his department was not connected to this alleged case. Evidence was presented to show that I lived in another city then this officer. There was no foundation laid how this officer knew the defendant or even why the city of Selah would call the City of Moxee for the officer to identify the defendant. (P.G. 567) (Judge), "testimony that he was a person of interest because of the vehicle, because of the ID in the vehicle". The ID presented to the jury has a address of the city of Naches. This officer is from a city different then the alleged crime and were the defendant lives. Suggesting to the Jury Officer's of Law know the defendant from surrounding city's of Yakima, as a criminal. The defendant was prejudice by the fact that officer Lewis never arrested the defendant and why was he even called by the city of Selah? What kind of a Witness was officer Lewis "Expert"? Then Rule 702.

State v. Hayward 18.), "Expert testimony is admissible if the witness qualifies as an expert and the expert testimony would be helpful to the Jury". Walker v. State 4.), It is abuse of discretion to admit expert testimony if it lacks adequate foundation (Er 702). Rogers Potato Service, LLC v. Countrywide Potato, Llc 7.). Safeco Ins. Co v. McGrath, A foundation as to how officer Lewis qualifies as a expert to identify the defendant was never laid. The Judge (P.G. 572, line 4-5), "He can say, you know, I thought I recognized that person". Rogers Potato service, LLC v. Countrywide Potato, LLC 6.) "The opinion of an expert must be based on facts; opinions based on assumptions are not sufficient. Theonnes v. Hazen 4) Was officer Lewis a Lay witness. State v. Kunze, "An opinion is admissible only if it has a rational basis, which is the same as to say that the opinion must be based on knowledge". Does officer Lewis have knowledge to recognize the defendant? The officer's of the City of Selah could not identify the defendant as the person in the surveillance. Why was officer Lewis even called to identify the defendant? Does he even know the defendant that well to recognize him? (P.G. line 4-18) (Chen), " of Mr. Tasker, Whether or not he was actually physically in that area, no. Nothing has shown other than the victim's statement. But this one, then, I guess corroborates that he was there". (Judge), " well, wait a minute. It only corroborates it if officer Lewis testifies one way or the other that I believe that's

Christopher Tasker in the video"-- (Chen), "Right, Yes".

State v. George 5.) Opinion testimony identifying individuals in a surveillance photo runs the risk of invading the province of the Jury and unfairly prejudicing the defendant, but opinion testimony may be appropriate when the witness has had sufficient contacts with the person or when the person's appearance before the Jury differs from his or her appearance in the photograph.

State v. Farr-Lenzin 16.) "court uses two tests to determine whether constitutional error is harmless: the "contribution test" and the "overwhelming evidence test" 17.) "under the "contribution test" constitutional error is harmless if it can be said beyond a reasonable doubt that it did not contribute to the verdict".

(P.G. 32826 1 – 000000039), Question from the Jury " can we view the Video again?", Court's response "NO." The jury asked to view the Video again. So it is reasonable to say they were not sure if that was the defendant in the video. They base that decision on officer Lewis testimony.

State v. Hayward 13.) "constitutional error is presumed to be prejudicial and the state bears the burden of proving that error was harmless." (P.G. 568 line 19-24), Judge, officer Lewis said, "I recognize that person". Even if he doesn't say the name. If that is the testimony, that's why we arrested him ultimately and this is the same thing as saying, "In my opinion the person was Christopher Tasker." (P.G. 569 line 22-25), (Judge), "I saw the Video. I thought I knew the person and we did other things which resulted in the arrest of Mr. Tasker." I mean that's the same thing as saying. "I saw the Video and I thought that was Mr. Tasker." Rule 403, "Evidence may be excluded if it's probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury or waste of time." Unfair prejudice it was, the Jury asked to re-see the video. Confusion and misleading the Jury. Law enforcement officer who was not a eye witness to the case, suggesting he has had previous contacts, suggests the defendant is a criminal type who would have lots of contacts with law enforcement.

State v. Wilson 2.) Evidence of other crimes, wrongs, or acts by a defendant are not admissible to show that it is likely the defendants committed the alleged crime, acted in conformity with prior bad acts when committing the crime.

ER 404 (b) 7.) A court's ruling on other -acts evidence is reviewed for an abuse of discretion, in close cases, the balance must be tipped in favor of the defendant, ER 404 (b) State v. Russell. The motion to suppress evidence on First Degree Unlawful Possession of a Firearm should have never been allowed to be charged in this alleged crime. Allowing the evidence of other crimes, and that was prejudicial to the defendant. (P.G. 240 line 6-10), (Judge), "Jurors --- they're not told about what the prior record is. Because quite honestly, they would probably be more likely to convict somebody if they knew they had prior criminal convictions. Regardless of what those convictions might have been for." These issues are grounds for a New trial in regards of abuse of discretion that deprives the defendant of his constitutional rights, for reasons stated above.

3 Additional Ground 3.

There is insufficient evidence to support Count 3, First Degree Unlawful Possession of a Firearm. In every criminal prosecution, due process requires that the State prove, beyond a reasonable doubt, every fact necessary to constitute the charged crime.

State v. Frasquillo, A Jury can find that a defendant constructively possessed a firearm if he had dominion and control over the premises where it was found, (P.G. 702 lines 13-16), (Chen) "Was there any, uh, firearm or weapons, uh, located during the search either by you or law enforcement?" (Martin), "NO, there was not." (P.G. 705-706 lines 24-2), (Swan), "Okay. How long do you think that search was? That search went? With the metal detector?" (Martin), "We were there probably with...close to an hour, I'd say."

State v. Turner, Jury may infer that a defendant has constructive possession of an item when that person has dominion and control over the premises where an item is located.

State v. Carter, There was No firearm or weapon ever found and case law states for constructive possession the defendant need to have dominion and control over the premises where it was found.

State v. G.M.V. 6.) "constructive possession" means that the defendant exercised dominion and control not only over the premises in which an unlawful weapon is found, but also over the weapon itself.

"Possession" means having a pistol or firearm in one's custody or control. It may be either actual or constructive. "Actual possession" occurs when the item is in the actual physical custody of the person charged with possession. "Constructive possession" occurs when there is no actual physical possession but there is dominion and control over their item. There is No Case Law to support First Degree Unlawful Possession of a Firearm when there was No Firearm ever found.

State v. Humphries 2.) Under the due process clauses of the Fifth and Fourteenth Amendments, a criminal defendant has the right to require the state to prove every element constituting the charged crime. U.S.C.A. Const. Amends. 5 and 14.

RCW9.41.040 (1) (a); To convict the defendant of the crime of First Degree Unlawful Possession of a Firearm, each elements of the crime must be proved beyond a reasonable doubt. (1) That on or about June 13, 2013, the defendant had a "firearm" in his possession or control; A "firearm" is a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

State v. Haney 3.) The court of appeal assumes the legislature means exactly what it said. It is neither the function not the prerogative of courts to modify legislative enactments. There was No testimony or a weapon found that could allegedly shot a projectile by means of explosive such as gunpowder.

"Every" element of the crime "must" be proved beyond a reasonable doubt. The Element of a Firearm was not proved. Even in State v. Raleigh "a firearm was found to be a gun in fact for a police officer identified the firearm as a 9mm pistol, the firearm held a magazine with ammunition in the chamber, had a working safety and slide was quickly made operable. The firearm was found in the shoe box." There is no item, firearm that could be proved to be a gun in fact there is no testimony that any alleged item found could be quickly made operable. There is No case law to support the states case nor is there legislature. For this reason the defendant has proved that the state did not prove every element of the crime. The matter sentence should be reversed and remanded for re sentencing without First Degree Unlawful possession of a firearm.

Conclusion

For reasons above, the court must reverse Mr. Tasker's convictions or remand Mr. Tasker for a New Trial without the charge of Fist Degree Unlawful Possession of a Firearm.

Dated this July of 20. 2015

Respectfully Submitted,

Ch Tasker