Case # 312089

Statement of Additional Grounds for Review

State of Washington
v.
Adrian Bentura Ozuna

31208-9

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON)
)
Respondent,) No. 111015292
)
v.) STATEMENT OF ADDITIONAL
) GROUNDS FOR REVIEW
)
ADRIEN.B.OZUNA)
(your name))
Appellant)

I, Adrien B Ozuna, 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

#1 abuse of discretion

#2 insufficient evidence

insufficient factual nexus

Additional Ground 2

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

Date: 9-8-13 Signature: Adrien B Ozuna

RULE OF APPELLATE PROCEDURE 10.10
STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

(a) Statement Permitted. A defendant/appellant in a review of a criminal case may file a pro se statement of additional grounds for review to identify and discuss those matters which the defendant/appellant believes have not been adequately addressed by the brief filed by the defendant/appellant's counsel.

(b) Length and Legibility. The statement, which shall be limited to no more than 50 pages, may be submitted in handwriting so long as it is legible and can be reproduced by the clerk.

(c) Citations; Identification of Errors. Reference to the record and citation to authorities are not necessary or required, but the appellate court will not consider a defendant/appellant's statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors. Except as required in cases in which counsel files a motion to withdraw as set forth in RAP 18.3 (a) (2), the appellate court is not obligated to search the record in support of claims made in a defendant/appellant's statement of additional grounds for review.

(d) Time for Filing. The statement of additional grounds for review should be filed within 30 days after service upon the defendant/appellant of the brief prepared by defendant/appellant's counsel and the mailing of a notice from the clerk of the appellate court advising the defendant/appellant of the substance of this rule. The clerk will advise all parties if the defendant/appellant files a statement of additional grounds for review.

(e) Report of Proceedings. If within 30 days after service of the brief prepared by defendant/appellant's counsel, defendant/appellant requests a copy of the verbatim report of proceedings from defendant/appellant's counsel, counsel should promptly serve a copy of the verbatim report of proceedings on the defendant/appellant and should file in the appellate court proof of such service. The pro se statement of additional grounds for review should then be filed within 30 days after service of the verbatim report of proceedings. The cost for producing and mailing the verbatim report of proceedings for an indigent defendant/appellant will be reimbursed to counsel from the Office of Public Defense in accordance with Title 15 of these rules.

(f) Additional Briefing. The appellate court may, in the exercise of its discretion, request additional briefing from counsel to address issues raised in the defendant/appellant's pro se statement.

(December 5, 2002)

(Statement of the case)

"appellant adopt's and incorperate's the statement of the case as presented by appellant counsel in the brief of appellant. additional fact's will be presented as they relate to the issue's presented herein."

Summary of argument

1. The court abused it's discretion when it admitted gang evidence before establishing the "yarbrough test" on the record before entering evidence.

2. The court failed to find by a preponderance of the evidence that misconduct occured and failed to conduct this anylisis on the record before entering the gang evidence.

3. The court failed to identify the purpose for wich the evidence is sought to be introduced & failed to do this anylisis on the record before entering gang evidence.

4. The court failed to determine wether the evidence is relevant to prove an element of the crime charged and failed to do this anylisis before admitting gang evidence.

5. The Trial court failed to weigh the probative value agianst the prejudicial effect and failed to do this anylisis on the record before introducing the gang evidence.

6. The Trial court abused it is discretion for admitting gang evidence before finding a nexus between gang evidence & the charged crime & failing to do this anylisis on the record.

7. The State failed to present sufficient evidence that alleged victim was in fact a gang member and failed to do this anylisis before admitting gang evidence.

8. The State failed to show any evidence of gang confrontation, where both parties flashed gang colors, gang sighns, gang talk before, during or even after victim was assaulted, nor was the victim, the Defendant and David Soto identified as "rival" gang members.

9. The State failed to establish a nexus between David Soto and the Defendant (Mr Ozuna) and wether in fact they were working together.

10. Trial court abused discretion and ~~violated~~ violated due process and my right to a fair and impertial jury wich violated my 5th and 14th amendments.

Argument

Before a trial court may admit evidence of other crimes or misconduct, it must first 1) find by a preponderance of the evidence that the misiconduct occured. 2) Determine wether the evidence is relevant to a material issue. 3) State on the record the purpose for wich the evidence is being introduced, and 4) balance the probative value of the evidence agianst the danger of unfair prejudice. State V. mee 275 p. 3d 1192, 168 wn. App. 144, See also State V. Yarbrough, 151 wn. App. 66, 75-76, 80, 84-87, 210 p. 3d 1029 (2009) under rule of evidence governing admission of evidence of other crimes, wrongs, or acts a trial court must balance the probative value of the evidence against it's potential prejudicial effect and must conduct this analysis on the record. State V. Johnson 297 p. 3d 710, 172 wn. App. 112.

In determining wether the probative value of evidence outweighs it's unfair prejudice, a trial court should consider the availability of other means of proof and other factors. State V. Mc Creven 284 p. 3d 793, 170 wn App. 444 (wash. App. Div. 2 2012) The danger of unfair prejudice exists when evidence is

likely to stimulate an emotional rather than a rational response. State v. McCreven 284 p.3d 793, 170 wn. App 444 (Wash. App. Div. 2 2012), See Asaeli, 150 wn. App. at 579 (Gang expert's testimony "not probative due to it's general and conclusory nature) accordingly, the trial court abused it's discretion in addmitting the gang evidence because the danger of unfair prejudice substantially outweighs it's probative value, accord. mee, 168 wn. App. at 159 a trial court base's a discetionary decision on untenable grounds or make's it for untenable reason's if it rest's on fact's unsupported in the record. State v. [redacted] Quismundo, 164 wn. 2d 499, 504, 192 p.3d 342 (2008) also, appeal's review a trial court's decision to admit gang evidence under ER 404(b) under that section, evidence of prior bad act's is presumptively inadmissable. State v. DeVincentis, 150 wn. 2d 11, 17, 74, p.3d 119 (2003); see also State v. McCreven, wn. App. 284 p.3d 793, 800 (2012)

ER 404(b) provide's "Evidence of other crime's, wrong's, or act's is not admissable to prove the character of a person in order to show action in comformity therewith. it may, however, be admissable for

other purpose's, such as proof of motive, opperturnity, intent, preperation, plan, knowledge, identity, or absence of mistake or accident."
In other word's, ER 404(B) "prohibit's" admitting evidence to show a person's character to prove the person acted in comformity with that character on a particular occasion. State v. Everybody talk's about, 145 Wn.2d 456, 466, 39, p.3d 249 (2002) see also State v. Mc creven, 284 p.3d at 800 (stateing the same) State v. mee, 168 Wn. App. 144, 153-54, 275 p.3d 1192 (2012) (stateing the same)
ER 404(B) is not designed to deprive the state of relevant evidence neccessary to establish an essential element of it's case, but rather to prevent the state from suggesting that a defendant is guilty because he or she is a criminal-type person who would likely committ the crime charged." State v. mee, 168 Wn. App. at 154 (internal quotation mark's ommitted) quoting State v. Foxhoven, 161 Wn. 2d 168, 175, 163 p.3d 786 (2007)
ER 404(B) "forbid's" the state from suggesting this inference to the jury because it contradict's the Fundemental American criminal Law belief in "innocence untill proven guilty", not guilty untill proven innocent! a concept that confine's

the fact-finder to the merit's of the current case in judgeing a person's guilt or innocence. State V. wade, 98 wn. App. 328, 336, 989 p.2d 576(1999)

(Insufficient factual nexus)

court of appeal's consider gang evidence prejudicial due to it's general-"inflammatory nature"- State V. asaeli, 150 wn. App. 543, 579, 208 p.3d 1136(2009) Before the trial court can admit gang evidence, it must find the nexus between the gang evidence and the charged crime's. State V. Scott, 151, wn. App. 520, 526, 213 p.3d 71(2009) c.f. State V. moreno, no 29692-0-III, 2012 WL 4841317 at *10-11 (holding that substantial evidence did not support finding that crime was gang-related); State V. Buchanan, 159 wn. App. 410, 429-31, 248 p.3d 537(2011) (holding the same)

Thus,

Generalized evidence regarding the behavior of gang's and gang member's 1) evidence showing adherence by the defendant or the defendant's alleged gang to those behavior's and 2) a finding that the evidence relateing to gang's is relevant to prove the element's of the charged crime, serve's no purpose but to allow the state to "suggest that the defendant

is guilty because he or she is a criminal-type person who would be likely to commit the crime charged"
State v. Mee, 168 Wn. App. at 159 (quoting Foxhoven, 161 Wn.2d at 175); see also Moreno, 2012 WL 4841317, at *10 (Testimony from police or other gang experts is insufficient, standing alone, to support a finding that the charged crime was gang-related) State v. Bluehorse, 159 Wn. App. at 431 (stating the same)

(motive and premeditation)

For Example, in State v. Yarbrough, 151 Wn. App. 66, 75-76, 80, 84-87, 210 P.3d 1029 (2009) court of appeals held that gang evidence was admissable to establish Yarbrough's motive and mental state where: 1) Yarbrough was a crip's gang member; 2) Yarbrough percieved the victim as a member of a "rival" gang; 3) members of the gang's had identified themselves in a confrontation four days earlier and a crip threatened to open fire on a rival gang; 4) and Yarbrough shot the victim after uttering "This is Hilltop crip, cuz, what you know about that." Yarbrough, 151 Wn. App. at 75-76, 80, 84-87.

Similarily, in State v. Camhell, 78 Wn. App. 813, 815-17, 822-23, 901 P.2d 1050 (1995) court of appeal's held that gang-evidence was admissable to establish premeditation, motive and intent where: 1) Camhell was a Los angele's Santana Block crip's gang member and a crack cocaine dealer; 2) the victim's were member's of a local "rival" Bremerton Crip's gang who sold crack cocaine in the same location as Camhell 3) Camhell and his partner's, also a Los angele's crip, percieved the Bremerton crip's as inferior "wannahe's" 4) Camhell confronted the victim's and threatened to kill them some time before this murder; 5) the night before the murder's, Camhell and his partner discussed "fixing the "wannahe's" and 6) while together after the murder's Camhell or one of his partner's siad "I told you we were gonna get those n**** F******, I told you we was the baddest one's in Bremerton. Camhell, 78 Wn. App. at 815-17, 822-23. In both Yarbrough and Camhell, the State proved gang activity and gang talk just before, during and after the shooting's, it proved that both parties were "rival" gang member's, It then presented expert testimony to explain the gang terminology, the

gang's hierarchical structure and it is more's. In Yarbrough, 151 Wn. App. at 79-80 Detective Ringer testified about the importance of respect in gang culture, that gang members could earn and maintain respect by their willingness to use firearms and that gang members excepted that other gang members could not show disrespect to there gang. In Campbell 78 Wn. App. at 818, 822 expert testimony established that in gang culture, the "rival" gang members victims displays of disrespect toward campbell and intrusion on his drug selling turf were grounds for retaliation and murder.

So first of all, The Trial court abused it's discretion when admitting gang evidence without conducting an analysis on the record of the "4 prong test" done in State v. Yarbrough, 151 Wn. App. 66, 75-76, 80, 84-87, 210 p.3d 1029 (2009) also see State v. Mee 275 p.3d 1192, 168 Wn. App. 144. The court was suppose to first 1) find by a preponderance of the evidence that misconduct occured 2) Determine wether the evidence is relevant to a material issue 3) State on the record the purpose for wich the evidence

is being introduced and 4) balance the probative value of the evidence against the danger of unfair prejudice. never did the court conduct this analysis! under rule of evidence governing admission of evidence of other crimes, wrongs or acts, a trial court "must" balance the probative value of the evidence against it's potential prejudicial effect and must conduct this analysis on the record. State v. Johnson 297 p. 3d 710, 172 Wn. App. 112. also the court of appeals considers gang evidence prejudicial due to it's general - inflammatory nature" - so before a trial court can admit gang evidence, it must first find the "nexus" between the gang-evidence and the charged crime. State v. Scott, 151, Wn. App. 520, 526, 213 p. 3d 71 (2009) The trial court in my case did none of that. (See pgs 174-75 of trial transcripts) (also on pg. 185) - I "adrien & Ozuna" "object" to the court admitting evidence of my alleged gang affiliation. In State v. Scott 213 p. 3d 71, 151 Wn. App. 520 Wash. App. Div. III (2009) court of appeals held that trial court errored when it admitted evidence of defendant's

gang affiliation and error was not harmless. They reasoned that like membership in a church, social club or community organization, affiliation with a gang is protected by the First amendment right to association; therefore, evidence of criminal street gang affiliation is not admissable in a criminal trial when it merely reflects a person's beliefs or association. U.S.C.A Const. Amend. 1 Dawson v. Delaware, 503 U.S. 159, 112 S. Ct. 1093, 117 L. Ed. 2d 309 (1992) There must be a "connection" between the crime and the organization before the evidence can become relevant and this analysis must be conducted on the record.

Washington courts likewise have recognized the need for this connection before admitting evidence of gang membership. State v. Johnson, 124 Wash. 2d 57, 67, 873 P.2d 514 (1994) accordingly, to admit gang affiliation evidence there must be a nexus between the crime and gang membership. State v. Campbell, 78 Wash. App. 813, 822, 901, P.2d 1050 review denied, 128 Wash. 2d 1004, 907, P.2d 296 (1995) evidence of gang affiliation is considered prejudicial due to it's general & inflammatory nature. State v. Asaeli 150 Wash. App. 543, 208

p.3d 1136, 1155-1156 (2009) admission of such evidence is measured under the standards of ER 404(B). State v. Boot, 89 Wash. App. 780, 788-790, 950, p.2d 964 review denied, 135 Wash. 2d 1015, 960 p.2d 939 (1998); State v. Yarbrough, 151 Wash. App. 66, 210 p.3d 1029 (2009) (151 Wn. App. 527) Evidence of other prior bad acts can be admitted under ER 404(B) when a trial court "identifies" a "significant reason for admitting the evidence and determines that the relevance of the evidence outweighs any prejudicial impact. State v. Lane, 125 Wash. 2d 825, 831, 889, p.2d 929 (1995) The balancing of these interests must be conducted on the record. The decision to admit or deny admission of ER 404(B) evidence is reviewed for abuse of ~~discretion~~ discretion, discretion is abused when it is exercised on untenable grounds or for untenable reasons. State ex. rel. Carroll v. Junker, 79 Wash. 2d 12, 26, 482 p.2d 775 (1971)

"ER 404(B) provides,

"Evidence of other crimes, wrongs or acts is not admissable to prove the character of a person in order to show action in conformity therewith,

it may, however, be admissable for other purposes such as proof of motive, opperturnity, intent, preperation, plan, knowledge, identity, or absence of mistake or accident"
The trial court never identified any of these purposes to enter gang expert's testimony wich was extremely prejudicial to my case. The "alleged" gang expert's testimony was not probative due to it's general and conclusory nature! officer ortiz (gang expert) testifies on pg. 430: 12-25 that the way he keep's up on gang intelligence is from his day-to-day contact with the individual's, the "O.G.'s" he's talked to, that he know's thier families, thier kid's and that he goes onto the media site's such as, "facebook", "my space" and "you tube" and that, that's how he keep's up with gang intelligence, recource's that cannot possibly be reliable. Sound's like his "expertise" is based on information that he heard from another person, "Hearsay." He has based his knowledge and testimony on "Hearsay." never does he testify to collecting intelligence by investigateing or infiltrateing these gang's he testify's to being an "expert" on. He does not base his

intelligence on any recordings, documents of the structure or hierarchy, legal statements, phone recordings, video recordings, nothing!
(Question? what is a gang expert? what criteria do they need to fall under before being considered a gang expert?) To my understanding, in order to be an expert, you need to have (10 years) of experience in that particular field, which in this case would be in "gangs", in the culture, structure, habits, all that. (on pg. 428) officer Ortiz testifies to have been on the force since november 25th 1994, (pg. 429) he further states to being on patrol for "11 years" untill 2005, then went to being detective and specialized in doing interviews, homicides. but never does he testify to have specialized in being a gang "expert." he was on patrol untill "2005", patroling does not consist of specializing in gangs, he is been a detective since "2005" so from 2005 to 2012 is only 7 years, would he still be considered a gang expert? and he testifies that his ways of keeping up on gang "intelligence" is by what people have told him. (pg. 430)

See Asaeli, 150 Wn. App. [redacted] at 579 (Gang expert's testimony not probative due to it's general and conclusory nature) accordingly, the trial court abused it's discretion in admitting the gang evidence because the danger of unfair prejudice substantially out weighs it's probative value, accord. Mee, 168 Wn. App. at 159

State v. Mee, 168 Wn. App. at 159 (quoting Foxhoven, 161 Wn. 2d at 175); see also Moreno, 2012 WL 4841317 at *10 (Testimony from police or other gang expert's is insufficient, standing alone, to support a finding that the charged crime was gang-related) State v. Bluehorse, 159 Wn. App. at 431 (stating the same) Ortiz (gang expert) goes on to testify on (pg. 437: 2-14) that he is familiare with how gangs handle instances of being disrespected and how "they" retaliate if somebody does disrespect them, he states, being disrespected is one of those that "will not" go unanswered, there "will" be some retaliation! period! and that if it is done eternally, that retaliation is done pretty quick, it is on sight, That a green light is given, wherever they see them, they "will" be assaulted or shot at. (on pg. 437: 15-25) he state's he's aware of a "snitch code" within the [redacted]'s and that all gang's conduct

them selves with this "snitch code", that, that is one of our main staples: "The no Snitch creche" and that even if were shot, we will not "snitch" or talk.
(The "no snitch code" refrences a code of conduct, therefore is character evidence.)
pg. 438 he testifies to not being an expert on how gangs tamper or Threaten witnesses, that he has only been on the priphery of it. pg. 438: 8-25 he testifies to the primary activities of the BGL gang as a criminal organization and state's that we do pretty much everything that has to do with self glorification and furtherance of the group wich would involve any criminal activity from vehicle prowls, breaking into people's house's, assault's, robberies, drive-by's (pg. 438) 19-25 he testifies to this &GL "organization", this "structure" "doesn't" have a territory or jurisdiction? Then on pg. 440: 6-25/441: 1-2 he testifies to him comeing across me and I was Lil Downer then, then threw some case's that he had he "guesse's" that I went up within the group and became "Downer". he says that is the

typical progression of riseing in the rank's going from Lil to mr. he says the gang can have 4 member's. one with baby Downer, then Lil Downer, Downer, and then mr. Downer... and that all can raise up the rank's and become mr. Downer so to speak? So basically that they can all be "mr. Downer" and that's his testimony. mr. Ortiz (gang expert) does not know what he's talking about, he is making things up as he goes.
officer Ortiz goes on to testify (on pg. 433 - ~~434~~ 434) quoting: Q) okay. and do you have criteria to establish wether somebody is a gang member or a gang associate? A) yes, actually we do. Q) and - I guess can you explain the difference for the jury - "a member versus associate"? A) a member is one that pretty much - and my thing is that I - basically - I have a gang documentation sheet from Sunnyside. Q) okay. A) and this sheet actually, - I kind of wind up putting together a couple - several year's ago in order to make sure that we don't mislabel anyone because - I really truly hate trying to - or label someone that truly isn't. and - I went threw the process of

looking through several large cities that have already gone to court and get there criteria and based on that, I kinda of made it kinda stringent for our individual's. So in order to be catogorized as a gang member you have to meet three of these and specific you have to meet one, two, three, four and five - so at least one of those. and it - it pretty much self-explanatory, the page-sheet here. (pg. 434) For law inforcement, for us, again, were more, I gather a little bit more strict for us and so we have a "gang member" him self and then the "associate's." The associate's, the reason why were occu-"worried about them is because it could be your child" with this individual that's a - a gang member. Bullet's don't have name's, they stray, and - the opposeing gang member's will pass by, see your child with this individual and it's basically black & white with them; you're with us or you're with them. There's no inbetween. So and then were also had shooting's where these associate's wind up getting hit in the crossfire. and so that's

the one's that use - you know -, the - just associate; they're not really claiming - they're on the pripheny - and that could be also girlfriend's - the same - so.
(pg. 441: 3-9) gang expert goes on to say and quote: Q) okay. and are you familure at all with an individual by the name of (victim avalos)? A) I know who he is, yes. Q) okay. Do you know if he belongs to any gang's or is associated with any gang's? A) He was "associated" with - and you got to remember - let's see, "BLS and 86L".
Gang expert testifies that he has a strict criteria that goes by to identify gang member's and to seperate them from associate's and testified that (victim avalos) (victim) is only an "associate"! not a gang member!
See For Example: in State v. Yarbrough, 151 Wn. App. 66, 75-76, 84-87, 210 p. 3d 1029 (2009) court of appeal's held that gang evidence was admissable to establish yarbrough's motive and mental state where 1) yarbrough was a crip's gang member 2) yarbrough percieved the victim as a member of a "rival" gang 3) member's of the gang's had

identified them selves in a confrontation four days earlier and a crip threatened to open fire on a "rival gang." 4) and yarbrough shot the victim after uttering "This is Hilltop crip, cuz, what you know about that. yarbrough 151, Wn. App. at 75-76, 80, 84-87. Similarly in State v. Campbell, 78 Wn. App. 813, 815-17, 822-23, 901 p.2d 1050 (1995) 1) campbell was a gang member 2) The victim's were "rival" "gang member's". But yet in this case court failed to establish that fact and State failed to present sufficient evidence that case was actually gang related.

("Harmless Error)

(prejudicial effect)

The court abused it's discretion for admitting gang evidence cause the evidence intended to distract the trier of fact from the main question of what actually happened on the particular occasion. It subtly permit's the trier of fact to reward the good man and to punish the bad man because of their respective character's dispite what the evidence in the case show's actually happened. U.S.V. Curtin.

489 F.3d 935, 944 (C.A. 9 2007)

Gang Expert's testimony established that a "BGL" gang member (pg 439)(pg 459) and threw some "case's" that he's had - I rose from Lil Downer to ~~was~~ mr Downer (pg 440) and that by committing crimes a can rise up in the criminal organization and those crime's consist of: vehicle prowl's, breaking into people's house's, assaults, robberies and doing drive-by's and shooting people (pg 438) and that if somebody disrespect's, it is one of those things that will not go unanswered! there "will" be retaliation! there will be a green light put on them, they become a target and they will get assaulted and shot at (pg 437) The BGL gang and "all" other gang's have a "no snitch code" and it is one of our main staple's (pg 437) and if somebody "snitched" there will be retaliation! (pg 443) otherwise it's a show of weakness within the rank's. - It is more or likely one of a higher rank to take action if somebody snitche's (pg 444)(pg 447) & the one that is actually going to make the call is somebody from the upper echelon's (pg 448)

The person that wrote the letter has to be in the mid to upper levels in rank but he's not sure (pg 455) a tank boss would be synonymous with a shot caller, the guy that calls shot's, anything that happens this individual is directing it or has his fingers in it (pg 456) officer testifies that I'm in fact a shot caller when there is no bases to his accusation (pg. 492) (pg 456) The "EJJ" gang is a a branch of the "mexican mafia" (pg 435) we consider our selves soldiers, enforcers & generals and yet our soldiers can bounce out and kinda of do our own thing (pg. 453-454) note's can get passed around in the jail to call shot's (pg. 489, pg 491)

So basically, the State used the "gang expert" to identify me as a head person that is most likely guilty of this crime cause I'm a gang member / shot caller / tank boss who is high ranking in a criminal organization, that passes note's in the jail to assault people and if your a "snitch" I will call a shot to have you assaulted! It is not propable but most deffinate! I have committed many

crime's in the past and so has the gang that I associate with and am apart of. I get into shoot out's and your child could be with me and get shot in the crossfire. I'm apart of the "mexican mafia" and my gang has a structure and is organized in a hierarchy which consists of soldier's, enforcer's & general's! But yet the focus was taken off the real question of this case... Did I write the letter and if yes, did I "communicate" a threat indirectly or directly to the witness?

So I would hold that admitting the Gang evidence was harmful with respect to this case. The ~~erro~~ erroneous admission of evidence under ER 404(B) requires reversal only if the error, within reasonable probability materially affected the out come of the trial. State v. Halstien, 122 Wn.2d 109, 127, 857, P.2d 270 (1993)

Here without the gang evidence, the State proved only that I "might" of wrote a letter that was "not communicated" (pg 252) writer's analysis expert testifies that

the conclusion was that I could not be identified nor excluded from being the writer.

(Insufficient probative value)

Even "if" the gang evidence was relevant for an admissable purpose, it is prejudicial affect outweigh's it is probative value. In balancing the evidence probative value against it's prejudicial affect under ER 404(B) the trial court must read ER 404(B) in conjunction with ER 403 State v. Smith 106 Wn. 2d 772, 775, 725 P.2d 951 (1986); mee, 168 Wn. App. at 154. "ER 403" "require's" exclusion of evidence, even if relevant, if it's probative value is substantially outweighed by the danger of unfair prejudice. Smith, 106 Wn. 2d at 776, see also mee, 168 Wn. App. at 154.

See asaeli, 150 Wn. App. at 579 (Gang expert's testimony not probative due to it's general & conclusory nature) accordingly, the trial court abused it's discretion in admitting the gang evidence because the

danger of unfair prejudice substantially outweighs it's probative value accordmee, 168 Wn App at 159.

(conclusion)

my (Ozuna) defendant's conviction should be reversed and dismissed do to insufficient evidence, or reversed and remanded for a new trial cause case was not gang related, the court abused it's discretion in admitting gang related evidence cause it was very prejudicial to this particulare case and changed the outcome of my trial

note: Read gang expert's testimony for better understanding if neccassary pg. 428-453

NO. 31208-9-III

COURT OF APPEALS

DEVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON PLAINTIFF RESPONDANT, V. ADRIEN B. OZUNA DEFENDANT APPELLANT	YAKIMA COUNTY NO. 11 1 01529 2 CIRTIFACATE OF SERVICE

I CERTIFY UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT ON THIS 8th DAY OF SEPT. 2013, I CAUSED A TRUE AND CORRECT COPY OF "ADDITIONAL GROUND'S" OF APPALLATE BRIEF TO BE SERVED ON:

COURT OF APPEAL'S, DIVISION III — U.S MAIL
ATTN: RENEE TOWNSLEY, CLERK
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SPOKANE, WA 99201

SIGHNED: Adrien B Ozuna
ADRIEN B OZUNA # 885957
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CERTIFACATE OF SERVICE