

V.R.P (Hearing dates)

(P.1)

~~August 1st, 2013~~
August 1st, 2013

My attorney filed an opening brief without asking me what concerns I may of had, so now I am forced to file an S.A.G prematurely. First off and foremost, the following is a brief summary of all the additional grounds that I ^{feel} were not adequately if at all, touched upon in my attorney's brief. I never recieved my copy of the voir dire but will continue with this S.A.G. to the best of my abilities. Even though the voir dire proved to be of exceptional relevance in one aspect of my additional grounds. Due to correctional staff's inconsistency and ineffectiveness with providing me with support with the most basic legal materials to write this S.A.G, I was forced to write this S.A.G at the last second. ~~Since the corrections officers did not provide me with a Manilla envelope this letter will be within two separate envelopes. Now down to business.~~

Concern #1: Let it be remembered that on September 25th, 2012, in the state of Washington, county of Lewis, city of chehalis, in the Superior courtroom of the Honorable Judge Nelson Hunt, within the Verbatim Transcript of Proceedings, titled Hearing Dates/subject topic 'preliminary matters' at the bottom of the page, pages 5-7, there was mention of one of the jurors (Ms. Williams) having given information pertaining to one of the other jurors about previously withholding information that ultimately affected the decision

upon the verdict. Within the pages of 5-7 there was allegations of misconduct and omission made by Ms. Williams against Juror # 14. Within these pages the allegations brought upon by Ms. Williams aren't looked upon in depth but on pages 12-18 they are to a certain extent.

On pages 5-7 the judge voiced his opinion of this being irrelevant but I'd like you guys to be the judge of that. Also, just for the record, not that it's of any relevance or anything, but the court on page 11 in sentences 3-10 referred to the fact that Ms. Williams was an intern in drug court for about two months previously and that the Court knew her and that she was in the University of Washington - Tacoma Criminal Justice Program.

Now, to the matter at hand.

To my second concern: On pages 12-18 the trial record shows that the court proceedings went into depth on the allegations set forth by Ms. Williams against juror # 14. Those allegations were in regard to juror # 14 withholding information and engaging in 'misconduct'. For the first time, on page 13, sentences 17-25 and page 14, sentences 1-9, it is shown that one of the jurors (juror # 14) did indeed withhold information regarding her previous employment at Green Hill.

This is clearly germane because juror #14 did not disclose ~~this during jury selection~~. And this is exactly the reason jurors #19 and #41 were not permitted to be upon the jury panel in order to try my case.

Jurors #19 and #41 specifically stated that they had had or have relatives that worked at the facility of Green Hill. With this being the case, jurors #19 and #41 were dismissed from being able to be apart of the jury. And to back things up a bit, juror #14 did not reveal this type of information during the jury selection.

This I believe is a big issue because if jurors #19 and #41 got dismissed from the jury panel for simply having relatives who work for or used to work for Green Hill then it'd only be logical to come to the conclusion that juror #14 would have also gotten dismissed from the jury panel for having been directly employed by Green Hill.

If this fact would of been revealed by juror #14 instead of withheld by this juror, I believe the outcome of this whole situation would of been different.

Like it says on p.13, sentences 15-16: "To what extent wasn't disclosed really related to the voir d'ine."

To quote my defense counsel Mr. Baum,

And to the same issue, on page 15, sentence 20, the State, Mr. Halstead, said: "I think that's important."

Now, to issue number three.

Concern #3: This essentially relates to concern number two.

On page 17, sentences 2-8, the judge talks about not knowing what question was asked; whether who was or was not employed at Green Hill, therefore: ~~two~~

"not being able to make a determination as to whether there was a disclosure or not, a failure to disclose.

But more important, the voir dire was reported here, and there's no verbatim record. That would answer the question immediately. And the fact that it isn't there, that makes me concerned." And with this

being the case, this makes me concerned. The writing inside the quotation marks was the judge, to quote the judge.

The issue here is that the court somehow managed to lose evidence or they did not effectively document everything that occurred during trial.

This is a big issue because if the question would of been on the verbatim report of proceedings the juror who withheld information would of more likely than not been dismissed and there would of been a trial record as to what occurred throughout the whole trial.

On page 18, sentences 18-20, the judge attempts to make it a point that Ms. Williams made bare allegations which could of been corroborated if the alleged conduct actually occurred if it would of been on the verbatim report of proceedings. But that's just the point, how could they prove Ms. Williams allegations if they weren't documented in the verbatim report of proceedings.

Like the judge said: "can't make a determination as to whether there was a disclosure or not, a failure to disclose. But more important, the voir dire was reported here, and there's no verbatim record. That would answer the question immediately. And the fact that it's not there, that makes me concerned."

To quote the judge on page 17, sentences 2-8.

Another issue worth mentioning is that on page 23, sentences 15-25 and page 24, sentences 1-25, it is shown that on these pages of the verbatim report of proceedings juror # 14 did reveal she was previously employed at Green Hill and this in turn "nullifies" my previous attorney's argument because the case he cited essentially goes to the fact that someone didn't disclose something during jury selection. And this in turn was relevant.

And to quote the State, Mr. Halstead, "You did, but for purposes of appeal, this is a big issue."

On the same page, page 24, sentences 15-16: "I think it's also kind of a way this thing was handled." To quote Mr. Baum. And to quote the judge "on sentences 23-24, "I know it's relevant". In other words, the reason why I let this build up was because I wanted to show you guys (court of appeals) that I firmly believe that I received ineffective assistance by the judicial legal law system (the court) to having a fair trial.

Because evidence was lost, destroyed, nonexistent, undocumented, unprofessionally handled and not taken care of properly, I feel I received an unfair trial.

And now, to bring to light one of my main concerns: concern #4: On page 25, sentences 16-25 and page 26, sentences 1-12, the trial record shows that the court was talking about my score points and how that affects my sentencing range. As a juvenile I committed 3 counts of robbery in the 1st degree and 1 count of attempted robbery in the 1st degree, all in the same incident.

And what happened was, apparently from what the trial record shows, the court agreed to give me a score of $8\frac{1}{2}$ points. 2 points per robbery, half a point for assault in the 3rd degree on a separate charge. Now, if I'm not mistaken, as a juvenile your committing offenses do not count for 2 points a piece. Even if they are robberies.

V.R.P (Hearing dates)

(P.7)

If I am not mistaken, since all of these robberies occurred in the same incident, not consecutive, I should of only gotten ① one point a piece per robbery. Not ② two. I should of had 4 points to go off for my sentencing range, not 8 points! I'd like you guys to really look into this and let me know your results.

I firmly believe that this case was not handled appropriately. Certain avenues of approach weren't taken.

Evidence was nonexistent. Evidence was not properly handled, (p.62,63,64,6

Evidence wasn't properly documented (p.17, sentences 2-8)

Evidence was lost. Evidence was destroyed (p.62, p.63, p.64, p.65)

Another thing that I would like to bring to your attention is that the judge vowed to give me the maximum of my sentence because this alleged offense was committed in an institutional facility (see page 28, sentences 15-25) and (page 29, sentence 1-3), but then going on to say that it didn't matter. To quote the judge: "First, this did occur (p.28, sentence 2) in a correctional facility. In my mind, that does make judges and nonstatutory aggravating factor, I guess, at least justifies going up." Another issue I have with this particular concern is that on p.29, sentences 1-4, the judge says that he found this fight premeditated simply because I did not stop fighting. To quote the judge: "had he just stopped, But he didn't. He continued on. And that's what made it --- ended up with felony assault. So, clearly, premeditated in my view."

How could you just jump from 'not stop fighting' to premeditation? I believe the judges reasoning was faulty when he made this comment.

And to back things up a bit, by the judges own admission, one can see that on p. 17, sentences 2-8, my concerns of evidence not being properly documented upon the verbatim report of proceedings (the trial record) were to be proved correct.

And now, to one of my other main concerns.

Concern # 3: This concern ties in with the previous concern mentioned above. To me this is one of the main reasons why I firmly believe I was biased and prejudiced against and not privy to a fair trial.

To quote the judge, on page 29, sentences 4-8, the judge said: "The fact that this was a gang involvement, well, that's unfortunate for Mr. Lazaro. He made the choice to be in a gang, and he made the choice to continue associating in it and behaving like that, top of the range."

From looking at the verbatim report of proceedings, this colorful choice of words made by the judge before giving me the maximum of my sentence leads me to believe that I was thoroughly prejudiced against because of my gang association and preferred affiliations.

Not only that but with the judge saying what he said and then proceeding to give me the maximum of my sentence,

I believe I was denied my right to assistance to a fair trial. I believe my right to a fair trial was both biased and prejudiced. Because of my gang association. I feel that my 1st amendment rights were violated because if I'm not mistaken, I have the right to associate with any group of individuals I choose to do so with, without getting reprimanded and or suffering from prejudice. As a citizen of the United States of America I believe and feel that my rights as an American citizen were violated due to bias and prejudice at my trial.

From looking at the verbatim report of proceedings one can clearly see that the judge was prejudiced in his decision making when it came to my sentencing. (p. 29, sentences 4-8)

Do to my preference of association with a particular group, I was given the maximum of my sentence range.

It's all right there on the trial record, p. 29, sentences 4-8, as quoted previously. I feel that this in itself is an sufficient amount of evidence to show I was prejudiced and biased against.

And now, to leave the verbatim transcript of proceedings titled Hearing Dates behind, its time to move on to the second section of the verbatim transcript of proceedings. This section is titled "Jury Trial".

Concern #6:

Another issue that I would like to bring to light is that the State's main argument was that this was a gang related incident. The state needed to make this point in order to establish motive. Well there was not any other evidence other than Mr. Hughes testimony that this was a gang related incident. The alleged victim and myself never made any statements or filed any type of reports to the police or anybody for that matter, or gave any kind of assertion that this was indeed a gang related incident. And not only that but to back things up a bit, on the verbatim transcription of proceedings labeled: jury trial, page 5, sentences 15-19, the State needed to insinuate that this was indeed a gang related offense or otherwise they apparently wouldn't of had a case. To quote the State, Mr. Halstead, p.5, sentences 15-19: ~~to quote~~

" but it leaves open this question of why they were fighting. Because, as Mr. Baum did explain, the evidence that the State anticipates is as soon as they got into the yard, the two of them ran off to the site together and started to fight."

So the point I am trying to make is that I firmly believe that I was prejudiced against when the court allowed the state to include any reference to this altercation being an gang related incident or me being involved in a gang.

And I say I was prejudiced against by the court when it allowed the State to introduce any reference to gang association because from a 'reasonable persons' perspective, automatically when you hear the words 'gang related' or 'gang member', I think it is reasonably safe to infer from this that a 'reasonable person' would be more likely than not, susceptible to be predisposed to find that particular 'gangmember' in question guilty of one thing or another.

Seeing in how the news media and judicial court systems tend to paint 'gangmembers'. I believe that this in turn put me in a position to have the juries be predisposed to convict me of this alleged offense because of my gang affiliation and not because they were certain beyond a reasonable doubt that I was ~~guilty~~ guilty of Assault in the 2nd degree.

I believe that when the witness Mr. Hughes provided the court with 'expert' testimony of this altercation being gang related, it completely clouded the juries way of thinking.

And to quote Mr. Baum, on p. 6, sentences 5, 11: "Well, I guess

I will take issue with the fact that essentially it sounds (elicit) like the State may be even attempting to elicit ^{expert testimony} from, I'm assuming one of the two individuals that works at Green Hill." I believe it would be somewhat difficult to prove

this was a gang related incident without any of the parties involved asserting this was indeed a gang related incident. I believe I was prejudiced and biased against drastically when the

court allowed the state to elicit gang involvement.

Another issue I have is that the judge said that they (the state) established motive to convict me but on p.6, Sentence 25, and page 7, sentence 1, the judge said that :

" And I know motive is not an element, but its part of the story, and I am going to allow the state to do it."

So with this being the case, the judge let the state introduce the gang involvement/testimony because it establishes motive, but as quoted above, the judge said: "Motive is not an element," So how could the judge allow the gang involvement angle to come into play when the judge said: "Motive is not element," Is it because "it's part of the story". This, I believe prejudiced me drastically when the judge allowed the 'gang evidence' to come into play at trial because it put the jurors in a position to be predisposed to convict me because of my gang affiliation.

Not only that but when the judge said ~~it's part~~ "it's part of the story" it sounded like he was convinced that this altercation was gang related beyond a reasonable doubt, thus causing prejudice.

Verbatim Transcript of Proceedings (Jury Trial)

Concern #7: Another of my main concerns is as follows: on p. 9, sentences 22-25, p. 10, sentences 18-25, and p. 26 sentences 1-6, there was mention of a video, but that it's no longer in existence. This right here is a big issue because it goes to show that the state was ineffective in conserving evidence. If this video would have been collected by the state it could have laid many questions to rest. I firmly believe that this is a spoliation issue or something to that effect because the state didn't collect that piece of evidence. It may have been exculpatory. I believe the state did an ineffective job in preserving evidence that could of ultimately changed the decision upon the verdict.

Concern #8: Another of my concern's is that the main witness, the victim, didn't and wouldn't, testify against me.

If I'm not mistaken, this is of great importance. As the trial record shows, on p. 14, sentences 1-15, and ~~the~~ p. 13 sentences 1-25, the main witness, the victim, refused to testify against me. From looking at the record, one can see that the judge and court are unclear as how to proceed. To quote defense counsel Mr. Baum, on p. 14, sentences 11-12, "I'm not entirely sure the State can prove their case without him testifying."

Concern #9: Another one of my main concerns is that on p. 62, sentences 14-25, p. 63, sentences 1-25, p. 64, sentences 1-25, p. 65, sentences 1-25, in all these pages the subject is evidence being lost and not collected. Due to the fact that the State didn't collect evidence, (the video of the fight) this complicates everything. Look all this up. These listed

sections above, all pertain within the boundaries of my argument.

After this being the case, I am going to ask the court of appeals, (you guys), to dismiss the charge or reduce my sentence under 8.3(b) for essentially mismanagement as it relates to the State and the possibility of the prejudice to myself. And because of the fact that the State failed to collect and conserve evidence (footage of the fight) that could of been exculpatory. And of the State's failure of collecting evidence of the video, I don't know (or anybody else) if the video was exculpatory because I have (we) never seen it.

With this being the case, ~~I believe~~ I believe that there very well may be a spoliation. The State failed to preserve evidence.

To continue this on a separate page ...

Verbatim Transcript of Proceedings (Jury Trial)

To resume with concern #9

And if I am not mistaken, to cite a case,

Youngblood vs Arizona, was about exactly this:

Evidence which somehow disappears. And that's exactly what happened to me. The video of the fight was 'destroyed'. The State failed to preserve evidence which ended up ~~so~~ somehow disappearing. Evidence that could of been exculpatory. And to reinforce the point of me suffering from prejudice because the State was allowed to introduce testimony regarding gang involvement: On p. 81, sentences 1-10 and p. 80, sentences 14-25, my previous attorney asked Mr. Coward on p. 80, sentences 14-25 and p. 81, sentences 1-10 that, : Mr. Baum:

"Did you ever make the comment that he acted as if it was no big deal?" And to jump around a bit.

Mr. Coward: "To him, it was no big deal. I mean yeah.

It's part of the gang life. It's just, you take the lumps,
I guess, is what I am saying, you know,

The outcome is, you know, pain I guess, and you just
soak it up is what I'm trying to say. To quote Mr. Baum and Coward.

These kinds of comments I believe got me prejudiced by the jury because it puts into the jury's minds that 'gangmembers' are something basically inhuman and have no emotions so they deserve whatever they get. I think it would be safe to say that the jury would be predisposed

to convict me due to my gang associations and the juries preconceived notions and ideas about the 'ganglifestyle' and 'gang member'.

Concern #10: My last and final concern is that on p. 116, sentences 6-16 the judge said that the jury could understand why Mr. Mora didn't want to cooperate with the State and testify against me because of 'potential ramifications' to taking the stand against me. Which brings me to the point of 'potential ramifications' for not engaging in mutual combat with Mr. Mora. ~~So~~ So looking at the trial record, seeing Mr. Hughes testimony corroborating the potential ramifications if I wouldn't of fought Mr. Mora, why should it be any different between Mr. Mora not taking the stand and me not fighting Mr. Mora? This is clearly biased. I am clearly prejudiced and biased against by this because how could the jury understand the potential ramifications for Mr. Mora testifying against me and not see or understand the potential ramifications of me not fighting back with Mr. Mora?

One more thing is whether it's possible for the judge to give me the maximum of my sentence because of my gang association without giving me gang enhancements.

Well that's it with my issues and concerns.

I wrote this with the utmost urgency seeing in how I only had one day to do this.

The staff's ineffectiveness cost me to lose valuable time. My handwriting was a little off track because I wrote this S.A.G. all in one sitting,

My justice prevail.

FILED
COURT OF APPEALS
DIVISION II
2013 AUG -5 PM 1:15
STATE OF WASHINGTON
BY DEPUTY

If you guys (the court of appeals) don't choose to over turn my conviction completely can you guys at least consider ~~my~~ ~~red~~ modifying my sentence to a lesser sentence?

Salvatore Lanzetta

wrote this S.A.G. on August 1st, 2013