

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY [Signature]
CLERK

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
ARNOLD BRIONES FLORES)
(your name))
)
Appellant.)

No. 44952-8-11
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, ARNOLD B. FLORES, 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

Please see attachments.

Additional Ground 2

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

Date: January 7, 2014

Signature: [Signature]

No. 44952-8-11
COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON
Respondent,

vs.

ARNOLD BRIONES FLORES
Appellant,

On Appeal from the Pierce County Superior Court
Cause No. 12-1-03352-0

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

FACTS

Twenty seven and a half years of what I thought was a normal family vanished all because of gambling, deceits, lies, and manipulations. Yonhee Flores was in too deep in gambling and everything that came with it. She knew for many years that her gambling disease will finally surface for people to see. She couldn't accept the fact that her gambling disease was destroying everything we had. Instead of getting the help she needed, her mind was set to cover up her gambling disease and false domestic violence claim on April 2012 is what she did in doing so.

One thing led to another, the disease was not cured but instead it got worst because the State of Washington allowed Yonhee Flores in manipulating domestic violence system and used it for her own selfish will without remorse. Record will show that I've never been convicted of any crime until April 2012 when false domestic violence was placed on my head in an effort for Yonhee Flores to hide her true identity.

I took a plea deal on April 2012 false domestic violence claim in an effort to have my family back. I followed State's instructions, attended classes and acquired the necessary certificates to satisfy states requirements. In the end it was nothing but a wasted efforts because Yonhee Flores's whole purpose and intension was to use and intimidate me with domestic violence law.

Due to ineffective assistance of counsel, I was prejudiced in the court of law and was convicted unfairly with 211 months of prison confinement. If only the defense counsel was efficient with his duties and responsibilities, the outcome would have been different.

* Defense counsel deliberately confined or covered up Yonhee Flores's gambling problem and her manipulation of Domestic Violence law. He refused to make these facts known to the jury.

* Deliberately declined to pursue or introduce Rule 404(a)(2) Character of Victim relating Yonhee Flores.

* Undermined direct court order in using psychological and psychiatric evaluation *on the time of the incident* by an expert and declined to use diminish capacity for defense. (see verbatim report Vol. 1-2, page 80 line 5-17)

* Counsel failed to suppress false claimed interviewed on me in the hospital by Detective Bryan Johnson and Sgt. Richard Hall. There are no factual evidence that this interview took place in the hospital after major surgery from bullet wounds. The Miranda Right form was not signed by me and the interview should have been video or audio taped regardless to prove that interview actually took place as they claimed. (Their interview dates conflicting among each other).

- * Defense counsel rendered unprofessional conduct when throughout the trial he was more concern about if the police shooting was rightfully justified or not.
- * Defense counsel allowed the State prosecutor to intimidate and retaliate against me for exercising my due process right to jury trial (see Motion to Dismiss page 582 line 5-7 and Sentencing page 19 line 6-15).
- * The counsel allowed trial court make numerous errors on judgement and sentencing specifically on page 2 of 12 where an X mark deliberately placed where it indicates "...where the victim is a minor and the offender is not the minor's parent RCW 9A.44.30. This particular conviction falls under "child molestation" and "sex offender" crimes. Trial court knew that this kind of crimes are not welcome in the prison general environment but deliberately marked of the said conviction for the purpose of imposing tormenting punishment on me during prison confinement.
- * The counsel failed for not obtaining witnesses in favor of the defense. This is part of defense counsel in retaliation against me for not agreeing to file a lawsuit against Lakewood Police and also for replacing him with another counsel in the beginning part of this case.

The purpose of effective assistance of counsel is to simply ensure that the defendant receives a fair trial, it is not to improve the quality of legal representation. U.S. Const. Amend. 6. The reviewing court should reverse a conviction of Assault in the Second Degree and allow retrial due to ineffective assistance of counsel. *Strickland v. Washington*, 466 U.S. 688, 687, 104, S.Ct., 2052 80 L.Ed. 2d, 174 (1984), *State v. Thomas*, 109 Wash, 2d, 222, 226, 743, P.3d 816 (1987).

State prosecutor acted vindictively and retaliated against me after exercising my due process right in jury trial instead of signing a plea deal. Prosecutor added kidnapping in the first degree and Aggravating Circumstances charges as part of the illegal sharp horse trading procedure that they do in the court of law.

As a proof of this, the following statements are from defense counsel's own words and they are as recorded in this verbatim report.

*(see verbatim Motion to Dismiss, page 582, line 5-7)

"Your Honor, this kidnapping charge came well after the fact and was added for whatever reason by the State."

*(see verbatim Sentencing, page 19, line 6-5),

"Your Honor, see from the fillings in this case, it was an afterthought. I believe that it was part of the effort to get Mr. Flores to come to the negotiation table, something that wasn't going to happen, and that did not -- did not happen. And instead Mr. Flores went to trial and he ended

up getting convicted of kidnapping in the First Degree with a deadly weapon sentencing enhancement."

Prosecutor may not vindictively file more serious crime in intentional retaliation for defendant's lawful exercise of a procedural right. *State v. Korum*, 120 Wash. App. 686, 26, P.3d 166 (2004).

The Ninth Circuit has stated, "it is the appearance of vindictiveness rather than vindictiveness in fact, which controls []" when there is an increase in the severity of charges after a defendant exercises a statutory or constitutional right. *United States v. Groves*, 571, F.2d 450, 453 (9th Cir. 1978) (emphasis in original) *United States v. Motley*, 655 F.2d 186, 189 (9th Cir. 1981) *United States v. Shaw* 655 F.2d 168, 171 (9th Cir. 1981).

In addition to the State failing to prove an essential element of kidnapping in the First Degree and Aggravating Circumstance were added vindictively after exercising my right to due process constitutional right in going to jury trial. These convictions should be reversed and dismissed.

It is unjust and unfair for the State prosecutor and trial court to look at the "slippery slope" of this case to implement unjustified convictions. (See Motion to Dismiss, page 209, line 24-25 and pag 10, line 1-4) "And I suppose my position is, is that really "knowledge" under WPI C is known or should have known." "So I understand that the Court is looking
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at slippery slope of, you know, how far down the chain of causality are willing to go to say it's reasonable that the defendant should have known?"

This is without any doubt, state prosecutor and trial court rendered erroneous error and deliberately undermined the statute and proper procedure of the court of law in looking at the slippery slope rather than the factual basis of this case to properly serve a conviction. This error is a violation of my Fourteenth Amendment U.S. Constitutional Right where, the due process clause protects the accused in a criminal case against conviction except upon proof beyond a reasonable doubt of every facts necessary to constitute the crime with which he is charged.

As a result of prosecutorial and trial court misconduct in looking for the slippery slope of this case the court made an erroneous error in putting back several unlawful imprisonment convictions without proof beyond reasonable doubt. In addition, if the trial court and the State prosecutor's role is "not to apply a burden of proof or proof beyond a reasonable doubt," but only "to consider the evidence in the light most favorable to the state" (see Motion to Dismiss page 595 line 11-12), if for fact the statement above is what constitute to convict a crime, shouldn't our Sixth Amendment U.S. Constitutional be revise accordingly?

None of the alleged victims testified that I was aware of their presence while the event was taking place in the lobby area.

The court itself acknowledges that there is no evidence that they ever were seen by me and even the prosecutor was in doubt when he said "there are people that we just don't know if the defendant saw them or not."

To further prove that the court and State prosecutor erred in putting back several unlawful imprisonment and to convict unconstitutionally, Anne Jones who was in the lobby with other customers along with Alyssa Luther and Hope Figueroa who were working on the coin machine as the commotion began. Anne Jones and all the customers in the lobby exited through the front without any problem. Alyssa Luther and Hope Figueroa could have exited through the front door also but they went back to the teller area on their own will.

Kelly Flynn who ended up in the back safety deposit boxes area was free to exit the building as David Ohts did without any problem. Brille Eldridge and Stephanie Crocket who were abandoned by David Ohts as he exited through the back door could have taken both of them to safety instead of leaving them behind.

Shawna Lammis who was able to move from one place to another while the event was taking place in the lobby. She ~~could~~^{ended} up in the same place with Brille Eldridge and Stephanie Crocket and told them to "get down" instead of taking them through the back door as David Ohts did. None of these people testified that I had knowledge of their presence.

Deanna Erwin who was in the teller area whom I never saw as she herself said "I was not noticed. He did not know I was there."

Albert Vital and Alison Odzeimek who were in the breakroom the whole entire event and charges on them were dismissed because

I did not know of their presence during the whole entire event. The same rule should apply to Deanna Erwin, Kelly Flynn, Shawna Loomis, Alyssa Luther, Hope Figueroa, Britte Eldridge, and Stephanie Crocket because I had no knowledge of these people's presence while the incident was taken place in the lobby of the bank.

If only the State prosecutor and trial court did not look for slippery slope rules and convicted me according to the statute of unlawful imprisonment, then the only unlawful imprisonment I should have been charged with was against Yonhee Flores because she was the only one that I was with during the incident. Because of State prosecutor and trial court's misconduct and discriminatory against me, not even against Yonhee Flores I was charged with unlawful imprisonment. The appellate court should dismissed all unlawful imprisonment charges due to violation of my constitutional right.

Sergeant Richard Hall and Detective Bryan Johnson from Lakewood police department along with the State prosecutor violated my Fifth Amendment right against self-incrimination law. Richard Hall and Bryan Johnson claimed that they rendered interview or interrogation on me after a major surgery from a gunshot wounds in the torso area and in the back of my head. This made up interview or interrogation by Richard Hall and Bryan Johnson has no factual proof. The interview should have been recorded inspite of all the excuses that they had and the Miranda Right form should have been signed by me even if I was

in soft restraint. There was no injuries on either one of my hands that could have prevented me from signing the Miranda Right form.

The interview or interrogation made up by Richard Hall and Bryan Johnson was taken and abused by the State prosecutor. He used the made up story and molded the juries and trial court judge into being bias and discriminated against me. There's no proof of the said interview and even their testimonies were in conflict among each other.

Peter Johnson of Lakewood police testified "...over the course of, I believe two weeks that I was there on and off he began to become verbal..." Peter Johnson was the person supposedly notified Richard Hall of my status in the hospital on August 30th or 31st. If I did not become verbal or aware of things around me until about two weeks after a major surgery then, the interview with Richard Hall and Bryan Johnson should have been around September 5th or 7th 2012.

Brian Johnson claimed the interview on me in the hospital was on August 30th. Richard Hall claimed the interview was on August 31st and then the State prosecutor said it was "a few day after the incident" (see closing argument page 661).

In addition to conflicting dates as claimed, Richard Hall and Bryan Johnson also claimed that I told them during the interview that I pointed the gun at the police and it was the reason that I was shot. This is the way they had justified the cops shooting at me, but they forgot that none of the police officers said that I pointed the gun at them. This is another conflicting statements

among themselves.

Trent Stephens from Pierce County Sheriff's testified that he clearly saw me having a handgun on my right hand (page 247) and that I raised my hand and pointed the gun directly at Yonhee Flores, Officer Osness and Officer Kolp took shots and shot me (page 249) This is in conflict with pointing the gun at the police officers as claimed.

Paul Osness from Lakewood Police testified that "After several times he let go of her hand, stepped back with his left foot and started raising the gun toward her." "I shot" (page 458). This is also conflicts with pointing the gun at the police officers as claimed by Richard Hall and Bryan Johnson to justify the shooting and, even with the testimonies by Trent Stephens and Paul Osness that I pointed the gun on Yonhee Flores still doesn't justify the shooting because the medical records would tell different stories to what has been claimed and said by the people of the law enforcement.

Facts as stated above proves that the Defense counsel was absolutely correct when he said "...they were in a hurry to go ahead and to reach a conclusion as to why this shooting was justified and the train had left the station." and also "It just shows you that there is bias and prejudice, even if you put on a uniform (page 685)

Sgt. Richard Hall and Detective Bryan Johnson of Lakewood police had all the necessary evidence and statements from alleged victims, witnesses, and police officers who were involved in the incident on August 25th 2017 and they used

all of these informations to match the story they have created regarding the interview or interrogation they claimed they had with me in the hospital. This also proves that Richard Hall was working for the prosecutor as he himself testified "... I did a lot of, you know, collecting of statements, ... everything for prosecutor. (page 229).

The reviewing court should find that these misconducts by law enforcement people and State prosecutor are proof of discriminatory acts against me and it is violation of my constitutional right. Fifth Amendment right not to be compelled in any criminal case and Fourteenth Amendment substantive due process rights to be free from coercive questioning. *Chaves v. Martinez* 123 S.Ct. 1994, 538 U.S. 760 (U.S. 2003); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 254, 110 S.Ct. 1056, 108 L.Ed. 2d 222.

Trial court erred for allowing the State prosecutor to even consider prior domestic violence case. Prior case was misdemeanor case to begin with and it was under a plea deal. Plea deal do not constitute any facts. The only fact that the prior case has was it was a false domestic violence claim and it's the reason, the only reason why Youhee pursue of it falsely, to use it against me and to cover up all the secret behaviour that she has been hiding for so many years even to the point where she forged my own signature and used my social security number for her own selfish motivation. As her own testimony proves when I said "They are not going to take

me alive", this is because of her manipulation of the domestic violence law that she threatened to use against me if I pursue in finding the truth about her secret life.

Just as her testimony said "He said that many times prior" (page 145) meaning "they are not going to take me alive" that is only because Yonhee Flores was given a tool by the authority to shield herself from revealing her true identity. The State should not allow for the domestic violence to be manipulated by anyone and to use it for their own selfish will without remorse. The reviewing court should reverse the conviction on prior case and revise judgement and sentencing form accordingly.

In conclusion, Due to deficiency of the defense counsel in failing to argue the real cost of the incident on August 25th 2012, conviction on Assault in the second degree should be reverse and allow re-trial.

In addition to State failing to prove all the elements on kidnapping conviction, the State prosecutor rendered retaliation against me and vindictively added kidnapping and Aggravating charges for exercising my due process right for jury trial. Kidnapping and Aggravating charges should be reversed and dismissed.

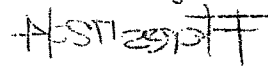
There are no evidence that I knowingly restrained bank employees and customers during the time of the incident and in addition, State prosecutor and trial court rendered misconduct in looking for slippery slope rule to justify their unlawful imprisonment conviction. All the remaining

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unlawful imprisonment charges should be dismissed.
Sgt. Richard Hall and detective Bryan Johnson rendered
an erroneous error with their false claim interview
on me in the hospital after the major surgery while
the State prosecutor took the false report and abused
it to mold the jury into being bias and discriminated
against me.

The reviewing court should be mindful that the
shooting on August 25th, 2012 involving Lakewood Police
department has failed its justification because the
medical records would surely prove them wrong.

Dated: January 7, 2014



ARNOLD BRIONES FLORES

Appellant,

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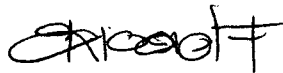
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STATE OF WASHINGTON

BY  DEPUTY

CERTIFICATE OF MAILING

I certify that on 1/7/2014, I caused to be placed in the mails of the United States legal mail log number 91759 a copy of Statement of Additional Grounds for Review No. 44952 - 8 - 11 addressed to: David C. Ponzoha Court of Appeals, Division II, 950 Broadway, Suite 300 Tacoma, WA 98402-4454



ARNOLD BRIONES FLORES, Appellant