

FILED
COURT OF APPEALS
DIVISION II

2014 FEB -4 AM 11:53

STATE OF WASHINGTON

BY C COURT OF APPEALS
DIVISION II

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)

Respondent,)

v.)

No. 45083-6-II

Joshua D.C. Rhoades
(your name)

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

Appellant.)

I, Joshua D.C. Rhoades have recieved 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 attached

Statement of Additional Grounds

Additional Ground 2

Please see attached

Additional Ground 3

Please see attached

ADDITIONAL Ground 4

Please see attached

ADDITIONAL Ground 5

Please see attached

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

Date: 1-29-2014

Signature: 

ADDITIONAL GROUND 1

DENIED CONTINUANCE

1. Denied continuance at trial confirmation hearing held on April 18, 2013 when my trial attorney, Chris Baum, hadn't even interviewed any witnesses against me, for me, or the alleged victim or conducted any kind of a pre-trial investigation. The Honorable Judge Richard Brosey denied my request for a continuance and instructed my attorney to get the interviews done by trial which was to start on April 24, 2013. That's only three working days for my attorney, Chris Baum, to do the interviews; plus prepare my defense. One of these days he was unavailable because he would be working in another county. No prior continuances had been given; also my speedy trial wasn't due to expire until May 8, 2013. This is all on record in the VRP's for my trial confirmation hearing that was held on April 18, 2013.

2. I was denied continuance the morning the trial was to begin on April 24, 2013. As stated above my trial attorney, Chris Baum, hadn't interviewed any witnesses against me, for me or the alleged victim as of trial confirmation (VRP's of trial confirmation hearing held April 18, 2013.) The Honorable Judge Richard Brosey instructed my attorney, Chris Baum, to get all the interviews done before my trial was to start on April 24, 2013, which was in only three working days. At the start of trial my attorney had only interviewed two people; the alleged victim, Dustin McLean and Co-defendant, turned state witness, Michael Daily. After these two interviews, in order to prepare my defense I needed to interview and call Ashley Huner, who was on the state's witness list. The state agreed she is a material witness but claims they have been looking for Ms. Huner and can't find her. The prosecutor has no evidence of looking for Ms. Huner but claims they went to an old address and had other witnesses looking for her. It's a little too convenient that the state with their resources and investigators are the only ones who didn't know her where about or couldn't locate Ms. Huner. The state had a perfect opportunity to serve Ms. Huner with their subpoena when she was booked into, processed and eventually bailed out of a jail in Eastern Washington but conveniently they failed to do so. I have a constitutional right for the opportunity to present a material witness in my defense so when The Honorable Judge Jim Lawler denied the continuance to do this my constitutional rights were violated. Please note the state didn't make their alleged victim available to interview until after trial confirmation (requested continuance at trial confirmation also VRP's pages 1-13 for hearing held April 18, 2013) and the state also admitted

ADDITIONAL GROUND 1

DENIED CONTINUANCE

Continued

to The Honorable Judge James Lawler that a continuance was inconvenient for the state (VRP's page 11--line 18 for trial held April 28, 2013). The interview with the alleged victim is what determines that I needed Ms. Huner as a witness to prepare my defense. The state has a duty to make their alleged victim available prior to trial confirmation in which they failed to do; The Honorable Judge Richard Brosey had to instruct the prosecutor at trial confirmation to make the alleged victim available (VRP's of trial confirmation held April 18, 2013); therefore causing me to need the continuance to begin with. The Honorable Judge James Lawler had a duty to protect my constitutional rights and violated them when he denied me a continuance. All of this is on the record in the VRP's of the trial --pages 5-13 held on April 24, 2013.

ADDITIONAL GROUND 2

CONSTITUTIONAL RIGHT TO AN IMPARTIAL JURY WAS VIOLATED

1. My constitutional right to an impartial jury was violated when The Honorable Judge James Lawler allowed Juror #19 to be part of the jury. In Voir Dire (VRP's (pages 38 & 39). The Honorable Judge Lawler asked the jurors if any one of them is acquainted with the parties, the attorneys or a potential witness. Juror #19 tells the judge that Officer Angie Humphrey, the main officer investigating me and testifying against me, is their sister and brother-in-law's next door neighbor and that Juror #19 has spent time with Officer Humphrey through that relationship. The Honorable Judge Lawler then asked Juror #19 if anything about their acquaintanceship that would cause Juror #19 to place any more or less weight on her testimony; would it impact Juror #19 in any way? Juror #19 replies "I think it would. I know Officer Humphrey well enough to have an opinion at least about her truthfulness." The Honorable Judge Lawler says all right and asks Juror#19, is this something that they could bring into the mix. You could weigh her testimony just as you would any other witness. Juror #19 then replies "I don't really know." This is all on record in the VRP's of Voir Dire (page 38, line 19 to 25) and (page 39, line 1 to 12). The Honorable Judge Lawler has a duty to protect my constitutional rights and should have dismissed Juror#19 to protect my constitutional right to an impartial jury. A claim that a defendant did not receive a fair trial before an impartial jury raises an issue of constitutional magnitude that may be considered for the first time on appeal under RAP 2.5(A) (3). The right is not waived for an abuse of discretion.
2. My constitutional right to an impartial jury was violated when The Honorable Judge Lawler allowed Juror #12 to be a part of the jury. In Voir Dire (VRP's—page 4—lines 14-18). The Honorable Judge Lawler asked the jury if any of them had any personal experience as a victim, as witnesses or as a defendant with a similar or related type of case in which Juror #12 answered yes (this is on record in VRP's of Voir Dire--page 4—lines 14-19). The Honorable Judge Lawler has a duty to protect my constitutional rights and should have dismissed Juror#12 to protect my constitutional right to an impartial jury. A claim that a defendant did not receive a fair trial before an impartial jury raises an issue of constitutional magnitude that may be considered for first time on appeal under RAP 2.5(A)(3). The right is not waived for an abuse of discretion.

ADDITIONAL GROUND 3

INEFFECTIVE ASSISTANCE OF COUNSEL

1. My trial attorney, Chris Baum, failed to interview any witnesses against me, for me, or the alleged victim by trial confirmation. At trial confirmation hearing, held April 18, 2013, The Honorable Judge Richard Brosey denied a continuance to do this and had to instruct my attorney, Mr. Baum to get the interviews done by trial which was in only three working days and one of them Mr. Baum was unavailable because he works in a different county on one of these (VRP's pages 1 to 13 for trial confirmation held April 18, 2013). At the start of trial. Mr. Baum had only interviewed the alleged victim, Dustin McLean, and co-defendant, turned state witness, Michael Daily but no other witnesses for or against me. He did briefly speak with two of the state's witnesses only moments before they took the stand. The witnesses were Caleb Capo and Aurora Contreras. Failing to interview any of these witnesses or the other ones he didn't interview at all to prepare my defense denied me my constitutional right to adequate representation. Mr. Baum's conduct fell way below the standard of a reasonable prudent attorney and cause me prejudice. Mr. Baum failed to conduct any kind of a pretrial investigation as the record obviously shows and not interviewing any witnesses against me, for me, or the alleged victim prior to trial confirmation cannot be looked at by the court a tactical decision. In fact failure to interview witnesses constitutes ineffective assistance of counsel. The courts have ruled this in the past (State vs Vistacion, 55 Wn. app. 166,716 P2d 1986 (1989)). My attorney. Mr. Baum is an officer of the court and has a duty to adequately represent me as well as protect my rights. He failed to do this when he failed to conduct any kind of pretrial investigation and failed to interview any witnesses against me, for me, or the alleged victim prior to trial confirmation. This is all on record in e VRP's for trial confirmation hearing held April 18, 2013 and VRP's for, my trial held April 24th, 25th and 26th 2013.
2. Mr. Baum failed to do an opening statement, again showing he didn't have my best interest in hand and didn't adequately prepare for trial which violates my right to effective assistance of counsel. This is all on record in VRP's of trial held April 24th, 25th and 26th 2013.

ADDITIONAL GROUND 3

INEFFECTIVE ASSISTANCE OF COUNSEL

Continued

3. My trial attorney, Chris Baum, failed to conduct any kind of a pre-trial investigation, interview or subpoena witnesses. He did not prepare a defense on my behalf violating my Sixth Amendment constitutional right to adequate representation and effective assistance of counsel. Mr. Baum did not investigate facts surrounding my charge or prepare a defense (VRP's for trial confirmation hearing held April 18, 2013 and trial held April 24th, 25th and 26th 2013). He clearly failed to adequately prepare for trial. This is clearly proved when at trial confirmation he hadn't even interviewed any witnesses against me, for me or the alleged victim. Plus he did not even attempt to do so. (VRP's of trial confirmation hearing held April 18, 2013). He did not retain an investigator to interview any witnesses, track down witnesses or to investigate any statements contained in the police reports (VRP's for trial confirmation hearing held April 18, 2013). Mr. Baum also failed to obtain an evaluation of forensic evidence. He even tells the jury no DNA was ever tested for on the alleged weapon, plus Mr. Baum failed to obtain our own expert (VRP's for trial held on April 24th, 25th and 26th, 2013). Mr. Baum's actions and performance fell below an objective standard of reasonableness and his deficient performance prejudiced me as the defendant resulting in an unreliable and fundamentally unfair outcome of the proceedings. This is all on record in the VRP's for the trial confirmation hearing held on April 18, 2013 and VRP's for my trial held April 24th, 25th, and 26th, 2013.

4. My trial attorney, Chris Baum, failed to submit or request a lesser included offense. The state charged me with assault second with a deadly weapon, a class C felony, and did not submit or request a lesser included offense to the jury. Mr. Baum submitted a lesser included offense of assault four, a gross misdemeanor, in which The Honorable Judge James Lawler accepted but Mr. Baum failed to submit or request the lesser included offense of assault 3rd a class C felony. Again Mr. Baum's performance fell below an objective standard of reasonableness and his deficient performance prejudiced me as the defendant resulting in an unreliable and fundamentally unfair outcome of the proceedings. This is all on record in the VRP's for trial held April 24th, 25th, and 26th, 2013.

5. My trial attorney, Chris Baum, failed to adequately represent me and defend me when all throughout the trial in open court to the jury and everyone else there he would refer to me as

ADDITIONAL GROUND 3

INEFFECTIVE ASSISTANCE OF COUNSEL

Continued

'Spooker' which is the states alleged gang moniker. I have a sixth amendment right to effective assistance of counsel in all criminal prosecutions and Mr. Baum violated this right when he would refer to me as 'Spooker' providing evidence to the states allegations and elements of gang membership as a part of the state's charge and gang aggravator. An attorney who had my best interest in mind would've only referred to me as his client, the defendant, or Mr. Rhoades and not bolster the state's evidence by referring to me as 'Spooker' the states alleged gang moniker (VRP's of trial held April 24th, 25th, and 26th, 2013). Mr. Baum's actions cannot be considered as defense strategy by the court. His conduct fell below an objective standard of reasonableness and his deficient performance prejudiced me as the defendant resulting in an unreliable and fundamentally unfair outcome of the proceedings. This is all on record in the VRP's of the trial held April 24th, 25th, and 26th, 2013).

6. My trial attorney, Chris Baum, failed to object to the states accomplice instruction. I was charged with assault in the second degree which read on or about the 31st day of January 2013, in the County of Lewis, State of Washington. The above named defendant did intentionally assault another and there by recklessly inflict substantial bodily harm and/or did intentionally assault another with a deadly weapon contrary to revised code of Washington 9A.36.021(1) (a) and or (c). I was never charged as an accomplice in the case. Mr. Baum's failure to object to the states accomplice instruction failed to provide me with effective assistance of counsel and adequate representation on all elements of crimes charge. This is all on record in the VRP's of trial held on April 24th, 25th, and 26th, 2013.

7. My trial attorney, Chris Baum, failed to have himself removed from representing me when the alleged victim, Dustin McLean, was a witness in another case he was representing, State v Angel Mendoza. This is clearly a conflict of interest and Mr. Baum violated my right to conflict free representation and effective assistance of counsel. Mr. Baum's conduct fell below an objective standard of reasonableness and his deficient performance, prejudiced me as the defendant resulting in an unreliable and fundamentally unfair outcome of the proceedings. Also again proving my best interests was never even considered by him.

8. My trial attorney, Chris Baum, failed to adequately represent me during sentencing. He called no witnesses for the sentencing part of my case and barely argued for the low range.

ADDITIONAL GROUND 3

INEFFECTIVE ASSISTANCE OF COUNSEL

Continued

Furthermore he did not argue that I didn't have the ability to pay legal financial obligations while incarcerated in DOC. In addition he ask for \$2400.00 in attorney fees when he conducted no kind of pretrial investigation, did not hire a private investigator, or prepare for a trial that would cost that much.

9. My trial attorney, Chris Baum, failed to have him removed from representing me on conflict of interest. Before is termination from The Lewis County Prosecutors, Mr. Baum prosecuted a juvenile, Guadalupe Solis Diaz that was allegedly a member of the same gang in my case. Mr. Diaz received a 92 ½ year sentence. Mr. Baum had been in the news several times giving statements about that conviction and prosecution of alleged members belonging to the gang alleged by the state in my case. Just days before being appointed to represent me, Mr. Baum was again in the news giving statements about the Solis-Diaz sentence, he's so proud of getting it over turned on appeal. Mr. Baum changed offices while he was representing me leaving me no kind of forwarding address or phone number with his old office, the jail, or the court. I wrote the jail kites (see attached) and the court letters for his new contact information but the jail had no new contact information for him+ and the court never responded. I've attached copies of the letters I sent to the court that they never responded to. I got copies of the letters through Public Disclosure. If you look at Mr. Baum's actions in all my ineffective assistance of counsel claims, it's obvious he allowed his past work history as the prosecutor prosecuting alleged members of the gang alleged by the state in my case to interfere with him adequately representing me and violated my right to effective assistance of counsel.

Although I understand I'm not entitled to perfect representation, I am entitled to fair, proper and conflict free representation. Mr. Baum's actions and performance fell way below an objective standard of reasonableness and his deficient performance prejudiced me as the defendant clearly resulting in an unreliable and fundamentally unfair outcome of the proceedings.

RESIDENT GRIEVANCE REPORT

Lewis County Jail
06/27/2013 12:33
OPR JMT

NAME NUMBER : 15985
Resident Name : RHOADES, JOSHUA DAVID CHARLES

Grievance # 83608 LEGAL QUESTIONS CLOSED UNFOUNDED

1 05/25/2013 10:09 RESIDENT
MY ATTORNEY CHRIS BAUM IS NO LONGER IN THE OFFICE OF WILLIAMS AND JOHNSON . HE LEFT NO FORWARDING ADDRESS OR ANY KIND OF CONTACT INFO WITH THEM. DOES THE JAIL OR COURT HAVE NEW CONTACT INFO FOR HM. THANK YOU

2 05/27/2013 08:51 SUPER
The jail does not have any new information for Attorney Baum. You can request legal writing material and inquire of the court directly.

Officer in charge rodkey

Received & Filed
LEWIS COUNTY, WASH
Superior Court

MAY 28 2013

Kathy A. Brack, Clerk
Deputy

ST

5/28/13
BMM
prosecutor

SCANNED

40

[Faint, mostly illegible handwritten text covering the majority of the page, possibly containing legal arguments or case details.]

ADDITIONAL GROUND 4

PROSECUTORIAL MISCONDUCT

1. Lewis County Prosecutor Joely O'Rourke failed to make the alleged victim available for my attorney to interview prior to trial confirmation; therefore not allowing time to prepare a defense, interview other witnesses, subpoena witnesses and prepare for trial which was in only three working days. She only made the alleged victim available to interview after trial was confirmed by The Honorable Judge Brosey. The Honorable Judge Brosey instructed the prosecutor to do so. This is all on record in the V.R.P.'s for trial confirmation hearing held April 18, 2013.
2. Lewis County Prosecutor Joely O'Rourke instructed jail officials to suspend my phone use causing me not to be able to call my attorney at critical stages of preparing for trial. Judge Brosey confirmed trial on April 18, 2013 giving my attorney, Chris Baum, only three working days, one of which Mr. Baum would be unavailable as he would be working in another county. No witnesses had been interviewed for me, against me or the alleged victim yet. At the same hearing Ms O'Rourke instructed jail officials to suspend my phone use. From then until way after trial was over I was not allowed to call my attorney. This issue was addressed to The Honorable Judge James Lawler at the start of trial on Wednesday April 24, 2013 in which Ms. O'Rourke denies having jail officials suspend my phone use. Judge Lawler said it's not a matter for the court. (VRP's of trial held on April 24th, 25th, and 26th 2013). The states prosecutor, Ms O'Rourke actions kept me from having contact with my attorney at critical stages of preparing for my trial and prevented me from preparing my defense violating my constitutional right to assistance of counsel. (V.R.P.'s of trial held April 24th, 25th, and 26th, 2013.) Also see attached documents obtained through public disclosure at the Lewis County Jail.
3. Lewis County Prosecutor, Joely O'Rourke failed to disclose that the states witness Aurora Contreras received a plea bargain on a drug charge for her testimony against me; denying me my constitutional right to impeach a prosecution witness with evidence of bias. Ms O'Rourke repeatedly told the jurors over and over that Ms Contreras was testifying on her own and received nothing from her testimony. If you pull her file at the Lewis County Courthouse, under public disclosure, you can see she received drug court on that drug charge. The sate voluntarily withheld this information in order to support their witness's credibility therefore violating my constitutional rights.

ADDITIONAL GROUND 4

PROSECTORAL MISCONDUCT

CONTINUED

Criminal Law 303.30(2) ---Government misconduct need not be of evil or dishonest nature to warrant dismissal in criminal charges in furtherance of justice, simple mismanagement is sufficient (CrR 8.3 (B)).

RESIDENT GRIEVANCE REPORT

Lewis County Jail
06/27/2013 12:35
OPR JMT

NAME NUMBER : 15985
Resident Name : RHOADES, JOSHUA DAVID CHARLES

Grievance # 79229 CLASSIFICATION CLOSED FOUNDED

1 04/20/2013 16:33 RESIDENT
SINCE IM NOT ALLOWED TO USE PHONE I NEED TO CALL MY ATTORNEY MONDAY MORNING BEINGS I
HAVE TRIAL ON WENDSDAY

2 04/22/2013 09:32 CLASS
I will give the request to the supervisor.

Haskins

RESIDENT GRIEVANCE REPORT

Lewis County Jail
06/27/2013 12:32
OPR JMT

A2DZ

NAME NUMBER : 15985
Resident Name : RHOADES, JOSHUA DAVID CHARLES

Grievance # 79399 GRIEVANCE CLOSED FOUNDED

- 1 04/22/2013 10:06 RESIDENT
I HAVE TRIAL ON WENDSDAY AND NEED TO CALL MY ATTORNEY BUT ACCORDING TO CLASSIFICATION PER THE PROSECUTOR IM NOT ALLOWED TO MAKE CALLS. I NEED TO TALK TO MY ATTORNEY
- 2 04/22/2013 21:07 OFFCR
Your request was forwarded to the dayshift supervisor

2300

RESIDENT GRIEVANCE REPORT

Lewis County Jail
06/27/2013 12:35
OPR JMT

NAME NUMBER : 15985
Resident Name : RHOADES, JOSHUA DAVID CHARLES

Grievance # 79741 CLASSIFICATION CLOSED FOUNDED

1 04/24/2013 19:13 RESIDENT
HASKINS. ME HAVING NO PHONE OR VISITING PRIVLAGES WAS ADDRESSED TO THE JUDGE AT THE END OF MY COURT TODAY I WAS ADVISED VIA THE FLOOR OFFICER THAT YOU SAID PER THE PROSECUTORES ORDERS I CAN NOT MAKE CALLS BUT ACCORDING TO THE PROSECUTOR TODAY IN COURT THE JAIL CALLED THEM TO DO IT. THERE IS NO REASON FOR THIS. I HAVE NOT AND AM NOT CALLING NO ONE THAT IM NOT ALLOWED TO. IN FACT THE ONLY PERSON IVE CALLED IS MY GIRLFRIEND WHO IS THE MOTHER OF MY CHILDREN. AND THIS IS BS.

2 04/25/2013 09:02 CLASS
Mr. Rhoades,
I have never lied to you and will not do so. I have no idea what the Prosecutors Office is doing, so I have made a copy of your request and will supply it to Lt. Pea for his advise and follow up. There is no reason the jail needs to initiate actions like this. I have too many things to do to pick on one inmate. If this issue can be resolved easily for every the better I will like it as it makes my job easier.

Haskins

RESIDENT GRIEVANCE REPORT

Lewis County Jail
06/27/2013 12:36
OPR JMT

NAME NUMBER : 15985
Resident Name : RHOADES, JOSHUA DAVID CHARLES

Grievance # 80121 CLASSIFICATION CLOSED FOUNDED

- 1 04/28/2013 08:19 RESIDENT
HASKINS. I SPOKE WITH THE PROSECUTOR AFTER MY TRIAL AND SHE AGAIN SAID SHE DIDNT PUT PHONE AND VISITING RESTRICTIONS ON ME SO IT MUST OF BEEN SOMEONE ELSE IN THE PROSECUTORS OFFICE BUT SHE SAID SHE WOULD DEAL WITH IT. I ALSO SPOKE WITH SGT MCCOY ABOUT THIS AND SHE WAS GOING TO CALL THE PROSECUTORS OFFICE TO SEE GET IT TAKEN OFF. I UNDERTAND THING DONT OR CANT HAPPEN INSTANTLY BUT CAN YOU TRY TO GET THIS BLOCK TAKEN OFF BY THE TIME I COME OUT FOR MY HOUR OUT AT 10 AM MONDAY. I HAVENT BEE ABLE TO TALK TO MY FAMILY OR MY KIDS IN OVER A WEEK. THANK YOU. MR. RHOADES
- 2 04/29/2013 09:35 CLASS
I will see what I can do.
Haskins

additional Ground 4 attachment 5 of 7

Jack Haskins

From: Joely O'Rourke
Sent: Thursday, May 02, 2013 10:20 AM
To: Jack Haskins
Subject: RE: Josh Rhoades

Please hold his calls and visitors. He has been intimidating witnesses and is known to call his gang members to start threatening witnesses. I was especially hoping this would happen after the verdict, as Mr. Rhoades was clearly upset and immediately wanted his calls turned back on. His girlfriend was in court for the verdict. Once he goes to DOC then they can deal with the issue of phone calls. Thank you.

Joely O'Rourke
Deputy Prosecuting Attorney
345 W. Main Street
Chehalis, WA 98532
(360) 740-1240
(360) 740-1497 fax

From: Jack Haskins
Sent: Thursday, May 02, 2013 9:26 AM
To: Joely O'Rourke
Subject: Josh Rhoades

Joely,

Recently I was told by one of our Transport Officers that you requested I suspend Rhoades phone and visitation privilege as he was intimidating and or bullying his victim/witnesses in his case. With his trial over, can he now call and visit people.

Note: I have let him call his wife/girlfriend, when the verdict came down.

Jack Haskins
Classification Officer
Lewis County Jail
740-2790

RESIDENT GRIEVANCE REPORT

Lewis County Jail
06/27/2013 12:37
OPR JMT

NAME NUMBER : 15985
Resident Name : RHOADES, JOSHUA DAVID CHARLES

Grievance # 81009 CLASSIFICATION CLOSED FOUNDED

1 05/05/2013 08:06 RESIDENT
ANY NEWS FROM THE PROSECUTOR ON ME GETTING MY FULL PHONE USE AND VISITING BACK
2 05/06/2013 15:23 CLASS
There is news. But you won't like it. She does not want you to have a phone of visit
until your tranfer to prison.

Haskins

RESIDENT GRIEVANCE REPORT

Lewis County Jail
06/27/2013 12:39
OPR JMT

NAME NUMBER : 15985
Resident Name : RHOADES, JOSHUA DAVID CHARLES

Grievance # 81247 CLASSIFICATION CLOSED FOUNDED

- 1 05/07/2013 11:32 RESIDENT
CAN YOU TELL ME WHO IS SAYING THIS . WHAT PROSECUTOR? AND GIVE ME A COPY OF IT SO MY ATTORNEY CAN FILE A MOTION WITH THE COURT. TAKE THE NECESSARY FUNDS OFF MY BOOKS FOR COPY COST
- 2 05/09/2013 15:37 CLASS
This has been referred to the Administration for reply.

Haskins

ADDITIONAL GROUND 5

Detective Patrick Fitzgerald testimony as an “expert” in street gangs was improper. His testimony that strayed beyond the generic testimony on street gangs was improper. His testimony about specific non-gang alleged tattoos I, the defendant have was improper.

1. I would first like to challenge Detective Fitzgeralds testimony as the states so called expert in the area of street gangs. The states prosecutor, Joely O’Rourke asked The Honorable Judge James Lawler to deem Detective Fitzgerald an expert in the area of street gangs in which my attorney, Chris Baum, objected. The Honorable Judge Lawler goes on to tell Ms. O’Rourke you can just ask the witness your questions. I’m not going to make that ruling (VRP’s of trial held April 24th, 25th, and 26th, 2013; Page 334 Lines 1-7). From that point on all testimony by Detective Fitzgerald was improper and shouldn’t have been allowed. This violated my constitutional rights.
2. Detective Fitzgerald’s purported expertise narrows from street gangs to me (the defendant) in particular and from gang tattoo’s in general to specific non-gang related tattoos, allegedly I have. His testimony strayed way beyond the generic testimony on street gangs that was allowed by The Honorable Judge Brosey in a prior hearing and crossed the line of being a so called expert on street gangs to an expert on me, the defendant. In many cases appeals courts have described how and why testimony such as Detective Fitzgerald is improper. In such instances it’s a little to convenient that the state had found an individual, who is allegedly an expert on those facts, the state must show to get the gang aggravator verdict. Even more so when that expert happens to be one of the state’s own investigators. The state cannot satisfy its burden of proof by taking the easy route of calling a so called expert in street gangs whose expertise happen to be me, the defendant. Also Detective Fitzgerald’s testimony regarding my alleged gang membership was introduced to prove an element of the crime and invaded the province of the jury. It is improper to admit gang evidence in order to establish an element of the crime. This all violated my constitutional rights.