

FILED
COURT OF APPEALS
DIVISION II

2014 MAR 12 PM 1:16

STATE OF WASHINGTON
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STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
 Jonathan Dunn)
 (your name))
 Appellant)

No. COA No. 44572-7-IF

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Jonathan Dunn, 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

see attached

Additional Ground 2

see attached

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

Date: 3-9-14

Signature: Jonathan Dunn

Additional Ground I

Firearm Enhancements

On count 1 the standered range (not including enhancements) is 100-120 months, with enhancements it is 196-216 months, which is correct, but count 2, is the same charge, which is Double Jeopardy, because I have been charged for the firearm in count 1. My sentencing range should be 192 months. RCWA const. Art. 1§9, U.S.C.A Const. Amend. 5. "No Person shall be compelled in any criminal case to give evidence against himself, or be twice in jeopardy for the same offence. Firearm Enhancement. RCW 69.50.435(1)(c). RCW 69.50.401(1) I was sentenced to 96 months x2 for the gun enhancement. I was given enhancements on each of the Controlled Substances, when I was convicted under one cause number.

U.S.V Ocampo, 919 F.supp.2d 898 (E.d.Mich.2013) Defendant's Convictions and concurrent 360-month sentences for being a felon in possession of a firearm and for being an unlawful drug user in possession of a firearm, which were based on a single act of firearm possession, violated the Double Jeopardy Clause.

U.S.C.A.Const. Amend.5, 18 U.S.C.A§922(g)(1,3).

The Double Jeopardy Clause, protects against multiple punishments for the same offence.

Here, based on the same firearm possession petitioner was convicted for violating § 922 (g)(1), which prohibits felons from possessing firearms. And he was convicted for violating § 922 (g)(3), which prohibits unlawful users of controled substances from possessing firearms. He was sentenced to concurrent terms of 360-months inprisonment for these convictions. These multiple punishments for the same offence violates his rights under the Double Jeopardy Clause.

Ball V.U.S., 5 S.ct.1672, 105 s.ct.1668, 470

U.S.856(U.S.Va.1985) Applying this rule to the Firearms statures, it is clear that Congress did not intend to subject felons to two convictions, proof of illegal receipt of a firearm necessarily includes proof of illegal possession of that weapon."United States V.Martin,732 F.2d

591,592 (CA71984) In other words Congress seems clearly to have recognized that a felon who recieves a firearm must also possess it, and thus had no intention of subjecting that person to two convictions for the same criminal act.

Additional Grounds 2 Due Process

On January 10,2013 I was seen by one or more of the jury, when I was in shackles being taken down the hall from the waiting room. See pg.3-4, and it shows that the Judge did not really know if the jury had made a verdict before i was seen. He assumed that they had reached a verdict. The Courts had violated the defendant's rights to Due Process under Washington Constitution Act.1§3, and United States Constitution fourteenth Amenment, when it entered judgement against him for a crime unsupported by substantial evedence. There was no forensic evidence to support there case. Presumption of innocence was lost when I was seen by the Jury.

Deck V.Missouri, 544U.S.622, 161L.Ed.2d 953, 73 USLW 4370.

The United States Supreme Court, Justice Breyer, held that;
(1) Due Process Clause prohibits routine use of physical restraints visible to Jury during guilty phase of Criminal trial.

(2)

Courts also may not routinely place defendants in visible restraints during penalty phase of Capital proceedings;

(3)

Shackling in instant case was not shown to be specifically Justified by Circumstances, and thus offend due process;and

(4)

No showing of prejudice is required to make out due process violation from routine use of visible shackles.

(1)

We first consider whether, as a general matter, the constitution permits a state to use visible shackles routinely in the guilt phase of a Criminal trial. The answer is clear: The law has long forbidden routine use of visible shackles during the guilt phase; it permits a state to shackle a criminal defendant only in the presence of special need.

First, the criminal process presumes that the defendant is innocent until proved guilty. Coffin V. United States, 156 U.S. 432, 453, 15 S.Ct.394, 39 L.Ed. 481 (1895)(presumption of innocence "Lies at the foundation of the administration of our criminal law") Visible shackling undermines the presumption of innocence and the related fairness of the fact finding process. Cf. Estelle, Supra, at 503, 96 S.Ct.1691. It suggests to the Jury that the Justice system itself sees a "need to separate a defendant from the community a larg. Holbrook, Supra, at 569, 106, S.Ct.1340, Cf. State V. Roberts, 86 N.J. Supra, at 162, 206 A.2d, at 202. [A] defendant ought not be brought to the bar in a Contumelious manner; as with his hands tied together, any other mark of reproach. Unless there be some danger of a Rescous [Rescue] or Escape ? "(Quoting 2w. Hawkins, pleas [544 U.S.631] of the Crown, ch.28 § 1 p308 (1716-1721)(section on arraignment)). Trial of Christopher Layer, 16 How. st. tr., at 99 (Statement of Mr. Hungerford)([T]. have a man plead for his life' in shackles before [544U.S.632]" a court of justice, the highest in the kingdom for criminal matters, where the king himself is supposed to be personally present," Undermines the dignity of the Court".

¶

Taylor V. Kentucky¶

436 21.5.478, 985.ct.1930, 56 L.Ed.2d 468(1978)

"The principle that there is presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." Coffin V United States, 156 U.S. 432, 453, (1895)

"[I]n a criminal case the term [presumption of innocence] doe's convey a special and perhaps useful hint and above the other form of the rule about the burden of proof, in that it

be ever watchful to prevent prejudicial occurrences and to determine the effects of such occurrences when they happen.
U.S.C.A.Const.Amends.14

[10]

The Court's duty to shield the jury from routine security measures used in a criminal trial is a Constitutional mandate, and therefore only if an inadvertant or unavoidable breach brings a jailed defendant's condition to the attention of the jury may the court give a Curative instruction.

U.S.C.A. Const. Amends. 14.

State V. Donery
131 Wn.App.697

A defendant in a criminal case is entitled to appear free from all bonds or shackles except in Extraordinary circumstances.

Additional Ground 3

School zone (Enhancements)

At the time of my arrest, School was on summer break. I was pulled over in an ally between 23rd and 124th of Alabama st. pg. 32-37. I had no knowledge of being in a school zone. State V. Becker, 80 wa.App. 364,105 Ed. Law Rg2.1274.

The Supreme Court, Sanders J., held that:

(1)

Do to inability of persons of ordinary intelligence to ditermine existance of school grounds in instant case, enhancement of sentences deprive defendants of due process.

(2)

Trial court's instruction on special verdict form for determination of wether to apply enhancements, in which court identified GED programs as school; was comment on evidence in violation of state constitution.

State V. Akers, 136 wn.2d 6421 (1998), Defendant cannot be convicted of a drug offence within 1000 ft. of a School if not readily ascertainable means available for defendant to know a school is nearby. Due Process requires defendant to have some notice of violation of the statue
U.S.C.A.Const.Ammend 14, RCW69.50.435(a).

Additional Grounds 4

Ineffective Assistance of Counsel

In my transcripts, on pg.14, My attorney stated that he would like at this time, and point out and acknowledge that he received photo's from, Mr. Smith that was alledgedly taken by officer McDaniels. I haven't had the opportunity to discuss the contents of these pictures with Mr. Dunn. These photo's are exstreamly important to my case, I feel that my Attorney should have asked for a continuance to further investigate the photo's.

These photo's were taken 10-15 minutes before I was pulled over. In these photo's, you can clearly see another individual getting in and out of my truck; Holding a grey backpack that was found under/behind the passenger seat. PR

Cautions the jury to put away from their minds all the suspicion that arises from the conclusion solely from the legal evidence adduced. In other words, the rule about burden of proof requires the prosecution by evidence to convince the jury of the accused's guilt; while the presumption of innocence, too, requires this, but conveys for the jury a special and additional caution (which is perhaps only an implied corollary to the other) to consider, in the material for their belief. Nothing But The Evidence, i.e., No surmises based on the present situation of the accused. This caution is indeed particularly needed in criminal cases".

And through out my trial, I was escorted down the hall past the jury deliberations room in shackles and unshackled then escorted in to the courtroom with two armed police officers standing on both sides of me at all times, there by undermining the fairness of the fact and finding process, influencing the jury. There by corrupting and misleading them and losing the presumption of innocence.

State V. Gonzales
Wn.App.859, 120 P.3d 645

[3]

The trial court's preemptive announcement to jury that defendant, charged with attempting to elude pursuing police vehicles and other related offenses, was in jail because he could not post bail, was being transported in restraints, and under guard in the courtroom, Violated defendant's constitutional right to an impartial jury and the presumption of innocence U.S.C.A Const.Amends.6, 14

[4]

A criminal defendant's right to a fair trial includes the right to presumption of innocence.

[5]

It is the duty of the court to give to the presumption of innocence by being alert to any factor that could undermine the fairness of the fact-finding process.

[6]

The Court of Appeals reviews de novo alleged violations of the right to an impartial jury and the presumption of innocence.U.S.C.A. Const.Amends. 6, 14

[7]

Whether a particular practice by the trial Court had a negative effect on the judgment of the jurors receives close Judicial Scrutiny; the reviewing court evaluates the likely effects based on reason, principle, and common human experience.U.S.C.A.Const.Amends., 14

[8]

The presumption of innocence guarantees every criminal defendant all the physical indicia of innocence, including that of being brought before the court with the appearance, dignity, and self-respect of a free and innocent man.

[9]

Due process requires the trial judge in a criminal case to

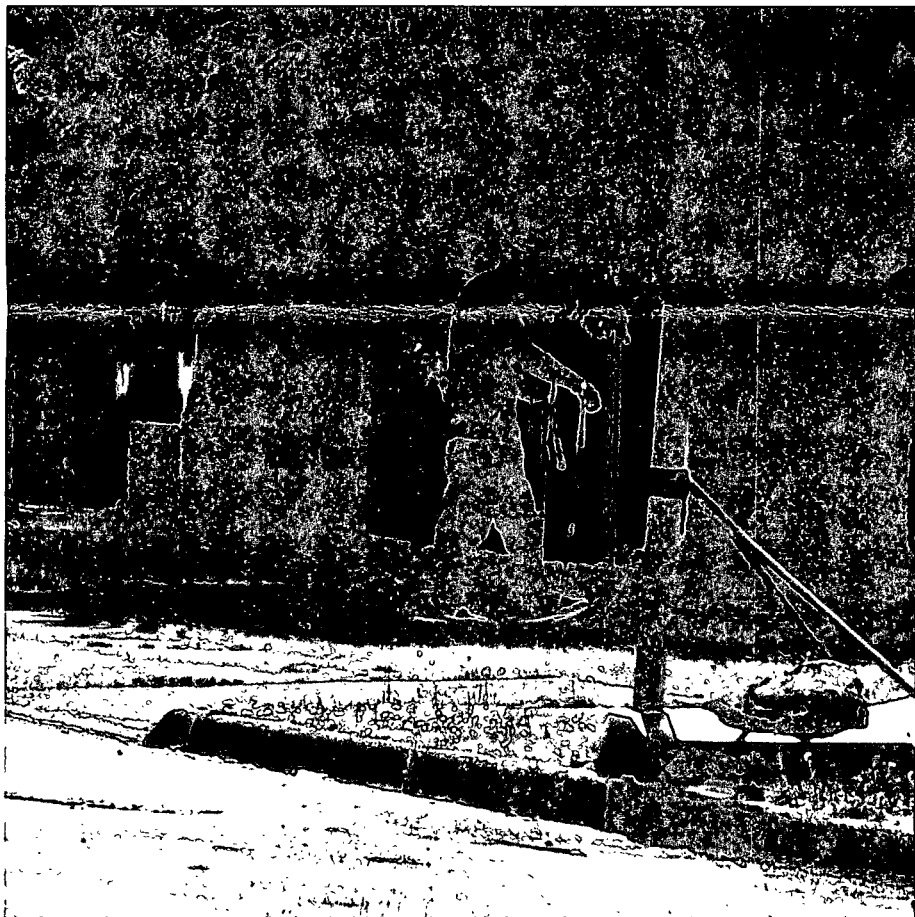
of Hubert, 138 Wa.app.924 (2007), Where defense counsel fails to identify and present the sole available defense to the charged crimes and there is evidence to support that defense, a defendant has been denied a fair trial due to Ineffective Assistance of counsel.

State V. Pittman, 134 Wa.App.376 (2006), defense counsel failure to request a lesser included offense instruction constitutes ineffective assistance of counsel, if the record supports giving the instruction and there is no legitimate strategic or tactical reason for not requesting the instruction. In the photo's you will see me getting in and out of my truck and another person getting in the passenger side with a gray backpack, see Exhibits 1-2

When they impounded the truck, they called my wife and had her pick it up, and inside of the truck was the gray and black backpack. I feel as the evidence shows, that they intentionally gave back the backpack because they had photo's of somebody else holding it. If my attorney would had more time to investigate these photo's; the time, and who they were taken by, he could have represented me better.

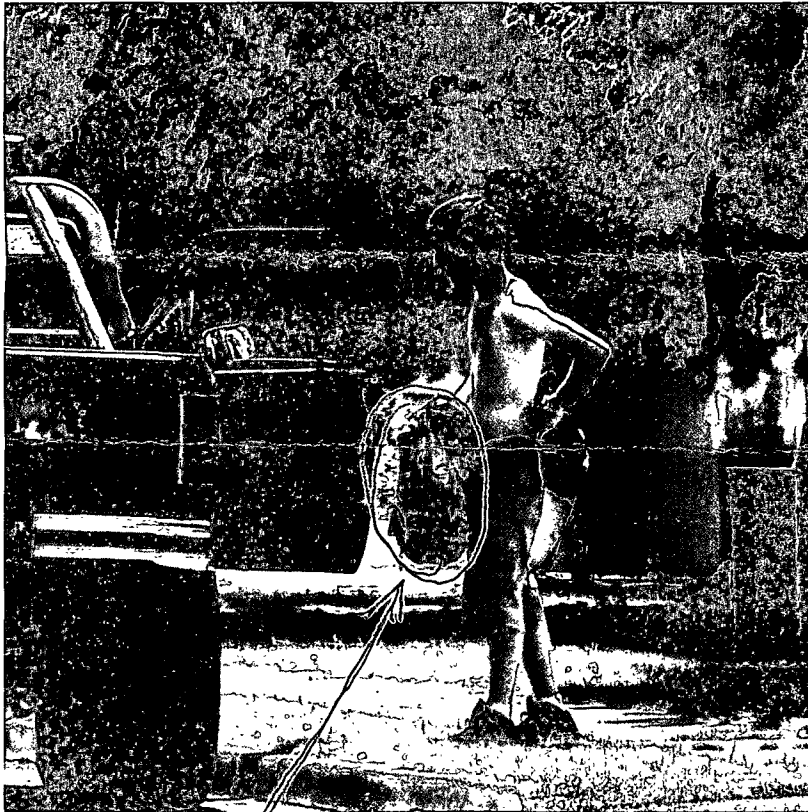
And during sentencing he asked for two (2) week continuances, so that he could do further research on my sentencing to better understand it. When my sentencing date came around again, the judge asked both counsels to explain to him my sentencing guidelines of it, so he could better understand it. My attorney could not give any answer. He left it all up to the prosecutor to explain. I chose not to get on the stand because, I didn't want my past history to prejudiced me; my attorney never once told me that by not Testifying; It would look like an admittance to the alleged crimes. I was poorly represented and advised..

Exhibit # 1



L12-21546, Item 3L21-1

Exhibit # 2



Black Backpack