

No. 73132-7-1

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON DIVISION ONE

STATE OF WASHINGTON
Respondent,
v.

EDILBERTO GUZMAN-MORALES
Appellant.

2015 DEC 30 AM 11:55

COURT OF APPEALS DIV 1
STATE OF WASHINGTON

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR WHATCOM COUNTY
THE HONORABLE CHARLES R. SNYDER, JUDGE

APPELLANT'S STATEMENT OF ADDITIONAL GROUNDS
FOR REVIEW

EDILBERTO GUZMAN-MORALES
Appellant
DOC # 380384
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P.O. Box 2049
AIRWAY HEIGHTS, WA. 99001

I, Editberto Guzman-Morales, have received and reviewed the opening brief by my attorney, and after carefully reviewing it, I have summarized bellow the additional grounds for review that are not addressed in that brief. I understand that the Court will review this Statement of Additional Grounds when my appeal is considered on the merits.

A. ISSUES PRESENTED FOR REVIEW.

1. Did both, defence counsel and prosecuting attorney, fail to properly cross-examine Mr. Guzmán-Morales about the alleged crime?
2. Was defense counsel ineffective for failing to interview and subpoena defense witness who was present at the scene of the alleged crime?
3. Did failure to properly cross-examine Mr. Guzmán-Morales, and Ineffective Assistance of Counsel violate Guzmán-Morales's constitutional right to a fair trial?

B. ARGUMENT.

1. BOTH DEFENSE COUNSEL AND PROSECUTING ATTORNEY FAILED TO PROPERLY CROSS-EXAMINE MR. GUZMAN-MORALES ABOUT THE ALLEGED CRIME.

At trial, during the process of cross-examining Mr. Guzman - Morales, he was not asked either by counsel or prosecuting attorney, about why he had hit Mr. Storr on the side of the leg, about why and at what moment Mr. Guzmán-Morales found himself in the need of using his knife. By improperly being cross-examined, Mr. Guzmán Morales had no chance to defend himself by testimony from the accusations against him. This resulting on Mr. Guzman-Morales being found guilty and convicted.

During direct examination by counsel (R.P. 331-339), counsel asks Mr. Guzmán-Morales many questions, questions about Mr. Guzmán-Morales' personal life such as, "how long have you lived in the States?", "how old is your daughter?", "Where do you work?" but no questions related to the matter in question.

Besides the only one question asked by counsel (R.P. 338 Ln. 24, 25) "Where did the knife come from, Eddie?", there are no other questions about the knife or the alleged assault with a weapon. Mr. Guzmán-Morales had no chance to defend himself in trial.

During cross-examination by Mr. Hulbert, the prosecuting attorney in the case (R.P. 340-354), prosecutor asks Mr. Guzmán-Morales about previous arrests, problems with alcoholism in the past and more, but again, as same as counsel, no questions were asked about the actual scuffle, or why did Mr. Guzmán-Morales hit Mr. Stairs in the side of the leg, or why and when did Mr. Guzmán-Morales use his knife.

If Mr. Guzmán-Morales would have been given the chance to defend himself at trial by being properly cross-examined, it is probable that the verdict would have been different.

2. DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO INTERVIEW AND SUBPOENA A DEFENSE WITNESS WHO WAS PRESENT AT THE SCENE OF THE ALLEGED CRIME.

Mr. Guzmán-Morales had talk to counsel about calling a few of his witnesses to testify in trial. These witnesses were present at the place and time of incident or alleged crime. These witnesses are seen in the video recordings as well and Mr. Guzmán-Morales had told defense counsel about the importance and the need of this witnesses' testimony.

One witness in particular had testimony that is important for the defense since, as mentioned above, was present and very

close to both Mr. Guzmán-Morales and Mr. Storrs, since the moment Mr. Guzmán-Morales was being taken out of the club, until the moment Mr. Guzmán-Morales was taken into custody.

Mr. Guzmán-Morales provided defense counsel with all information about the witness, name, address, phone number, and all needed in order for the witness to be reached.

Defense counsel never called this witness to testify in trial, did not call him for an interview at all, in fact, counsel decided the witness' testimony was not important or needed without even knowing what the witness had to say.

The witness testimony was and is very important for the defense because if such testimony had been presented at trial, in front of the jury, the verdict would have been different.

3. FAILURE TO PROPERLY CROSS-EXAMINE MR. GUZMAN-MORALES AND INEFFECTIVE ASSISTANCE OF COUNSEL BY NOT CALLING A VERY IMPORTANT DEFENSE WITNESS, VIOLATED GUZMAN-MORALES' CONSTITUTIONAL RIGHT TO A FAIR TRIAL.

Mr. Guzman-Morales was sent to prison, being charged with an assault in the second degree-with a deadly weapon-. Based on video evidence that shows Mr. Guzman-Morales throwing his hand behind, punching Mr. Storrs' side of his leg. Such video does not show a weapon present at the time that Mr. Storrs allegedly says to have been stabbed.

A specialist on video evidence was called to testify in trial, officer Richard Schwallie (R.P. 277-313), who testifies to have been a forensic Video Analyst for the Bellingham Police Department for eleven years (R.P. 278 Ln. 13-19). The analyst testifies that in the video, the evidence that can be seen is Mr. Guzmán-Morales right hand hitting "near the victim's right hip" (R.P. 301 Ln. 15). The analyst also testifies or affirms that "it is correct" that "from this video, you can't definitively say that that is the point at which Mr. Storrs was stabbed."

(R.P. 301 Ln. 15) (R.P. 304 Ln. 15, 16, 17, 18). Also, prosecuting attorney tries to make an argument about a "young lady who doesn't appear to have a nose at all" in this video (R.P. 305 Ln. 18, 19). And that "we all know that she obviously has a nose", well, the argument can be made that we also know that ladies wear make up on their face and that lady has clear skin that along with make up will make it very hard for her nose to be seen even though we know she has a nose.

On the other hand, a knife does not have make up, and a knife is not seen in that video because a knife is not present at that moment. There is no knife in Mr. Guzman-Morales right hand at the time he hits Mr. Storr on the side of the leg. The knife was in Mr. Guzman-Morales "left hand" and that is a proven fact do to the testimony of the witnesses (R.P. 166 Ln. 9) "I saw the knife in his (G.M.) left hand", (R.P. 170 Ln. 6, 7) "I could see it in his left hand".

- Not enough evidence to convict Mr. Guzman-Morales of Assault 2nd with a deadly weapon.

Mr. Guzman Morales was found guilty and sent to prison based on assumptions, not evidence, "The video does not show any stabbing" (R.P. 360 Ln. 20) "There is not sufficient evidence to convict him of stabbing him" (R.P. 362 Ln. 17, 18). So why is Mr. Guzman-Morales paying for the wrong charge?

If what is seen in the video evidence is an assault, is clearly not with a deadly weapon because there is not knife at the moment Mr. Guzman-Morales punches Mr. Storr in the leg.

It is not in question that what is seen in the video may be called an assault according to the definition (402-403 Ln. 23, 24, 25, 1) "an assault is an intentional touching or striking of another person that is harmful or offensive. A touching or striking is offensive if it would offend an ordinary person

who is not unduly sensitive^{ly}, and if this is the case, Mr. Storrs was the person who first intentionally touched Mr. Guzman-Morales since the very beginning (R.P. 41 Ln. 8) "I put my arm on him".

So the real matter in question in this case is who really committed an assault here? On R.P. 27 Lines 10 and 11 we can clearly see Mr. Storrs testify about his "techniques" to do his "job", "a hand on a back, a hand on the arm", these both clearly fit in the definition of ASSAULT, they are both - an intentional touching of another person - and the argument can be made that the ordinary person will find this very offensive.

So if these are the techniques that Mr. Storrs uses just to get somebody's attention, then the argument can be made that if someone punches him in the leg, his reaction would be a choke hold, given his Mix Martial Arts background. And on the other hand, Mr. Guzman-Morales has no MMA background or fighting training, he does not know how to escape from an arm around his neck that is stopping blood from going to his head and oxygen to breath, all he could do to save his life was get hold of his knife with his left hand, which was the only hand he had free during the choke hold, and use it, and only hope Mr. Storrs would stop choking him.

The argument can be made that Mr. Guzman-Morales' constitutional right to a fair trial was violated, that both State and Counsel failed to properly cross-examine the defendant and that Counsel was ineffective in assisting Mr. Guzman-Morales by providing the witness that the defendant had asked him to.

All this grounds led the defendant to be found guilty of an assault in the 2nd degree with a deadly weapon when there was not evidence, not enough to convict him of this charge. There was no knife at the moment of the punch

where Mr. Storrs allegedly says the stabbing occurred. Mr. Guzman-Morales was charged of a crime based on assumptions, suppositions, no facts or definitive evidence.

The Court said "The testimony will be the evidence in this case" (R.P. 249 Ln. 17) But apparently the only testimony taken into consideration for evidence was Mr. Storrs' testimony. The testimony of a person whose credibility is in question due to his "dishonesty" record. (R.P. 16 Ln. 5,6) (R.P. 18 Ln. 21,22). The testimony of a person who clearly had enough time to watch the video evidence and basically make a story according to what is being seen in the video.

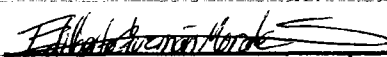
If testimony is the evidence in this case, then, why was Mr. Guzman-Morales' witness not called to testify? / why was the defendant not asked about why and when he had to pull his knife and use it? / why was the defendant not asked in trial about why he punched Mr. Storrs in the side of the leg? / Why was the testimony of the witnesses who affirmed to have seen the knife in the defendant's left hand not taken into consideration?

CONCLUSION

Mr. Edilberto Guzmán-Morales did not receive the constitutionally fair trial he is granted. It is being respectfully requested that this court grants Mr. Edilberto Guzman-Morales the following relief, vacate the sentence and reverse the conviction by remanding back to the Superior Court and grant a new trial.

Dated this 23rd day of December, 2015

Respectfully submitted,



Edilberto Guzman-Morales, Apellant.

DECLARATION OF FILING AND SERVICE BY MAIL

I, Edilberto Guzman-Morales, declare that, on December 24, 2015, I deposited the foregoing Appellant's Statement of Additional Grounds for Review and Declaration of Filing and Service by Mail, or copies thereof, in the international mail system of Airway Heights Corrections Center and made arrangements for postage addressed to:

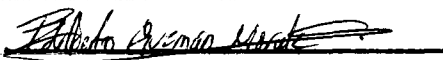
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: December 24, 2015 at Airway Heights, WA.


Edilberto Guzman-Morales.

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