

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II  
2012 SEP -5 PM 1:08  
STATE OF WASHINGTON  
BY W  
DEPUTY

STATE OF WASHINGTON )  
Respondent, )  
v. ) No.42849-1-11  
DANIAL R. HALVERSON )  
Appellant. ) STATEMENT OF ADDITIONAL  
 GROUNDS FOR REVIEW

I, Danial R. Halverson, 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

Ineffective Counsel:

- Along with Public Defender Ronald Sergi, Danial R. Halverson (DOC #353343) had to deal with Public Defender Foley in front of two judges and a commissioner. The confusion attendant with this parade of people at the outset of the proceedings materially impeded the defense.
- Mr. Halverson’s public defender, Ronald Sergi, told the court he was not “smart” enough to handle this case. The court approved the hiring of Richard Woodrow. Woodrow came to court once and got approval for a Campbell continuance. The only other action he took during court proceedings was to request the court to allow him to withdraw from the case before the first trial started.
- Sergi confirmed his inability to present a competent defense in the following points:
  - For over a year, Sergi told Mr. Halverson that he would call a gunpowder expert from California as an expert witness. Without any compelling reason, aside from County budget issues, he chose not to call this expert.
  - He presented half of the defense in the first trial & half in the second trial. Neither jury ever heard the entire defense.
  - Sergi failed to poll the jurors in the first trial, though he repeatedly assured Mr. Halverson that he would do so.
  - Sergi told Mr. Halverson that he "...had to kind of go easy in pointing out incompetence & bias of law enforcement & prosecution..." because he has to work with them every day.
  - Sergi introduced only one of twelve of Mike Okoniewski’s “excited utterances” that Mr. Halverson shot him in the back five times. This

failure to expose instances of the victim lying about the crime is bad defense.

- Sergi and defense expert Marty Hayes, both failed to notice that .380 and 9 mm were not included in the list of rounds that could have made the bullet strike in Hayes' report. The prosecutor found this error in the second trial.
- Sergi failed to call both officers who did the SWAT take down of Mr. Halverson on 9/14/10. In the first trial, an officer confirmed that Mr. Halverson was threatened with "lethal force" and was "taken down." In the second trial, another officer testified that there was no lethal force and that Mr. Halverson "hesitated" before putting himself on the ground. Both officers should have been called and the entire event reviewed, including the abuse of the disabled defendant (his feet were stomped & his tooth broken off).
- In the first trial Sergi failed to have his investigator, Fred Doughty testify about Jeremy Schintz' description to him of Schintz' meeting with Ricky Ting on 9/18/10. This is when they 'found' the .357 Ruger and other items on the right side of fence. Nor did Sergi have Doughty testify to Carol Rutledge and her son, Randles' report of seeing a silver truck parked beyond Mike's house on 9/14/10. Sergi failed to call Doughty to testify at all in the second trial although his testimony in the first trial did much to show reasonable doubt of the prosecution's version of the crime.
- Sergi did not have Jeremy Schintz testify how Ricky Ting stopped him on 9/18/10. Ting wanted Schintz to help search his property as Ting had seen footprints around his compost pile. He told Schintz that, "Dan might have hidden something." How they 'found' the gun and other items on the right-hand of the driveway. Compared with Morini's testimony about Ting's call to him 9/23/10 and finding the gun on the left-hand side of the drive would have made clear to the juries that Ting's story about the gun was not the truth.
- Sergi did not call Andrea Petrie because she had Oktoberfest things to do. Her two hours of 'lost' time were determined to be more important than strengthening the defense of a man facing life in prison. She could have confirmed that the Allen boys said they would do logging for the Halversons. She, Josh Evans (her son) and Mr. Halverson were on the upper deck when the Allens came by, said they would be done with their job Friday and would be walking the skidder back then. Mr. Halverson told them that in October he would give them \$100.00 per tree. This would have confirmed Mr. Halverson's reason for being up the road when Bobbie Paquette passed him on 9/14/10.
- Sergi did not clarify Bobbie Paquette's purposeful misrepresentation of Mr. Halverson's statement "Don't give anything to Mike; he'll just leave it in his yard" (referring to a drill press he had given to Okoniewski that he left rusting in his yard). She turned that statement into 'Don't ask Mike for anything.'

- Sergi should have questioned Ricky Ting as to why he wanted to have Schintz with him on 9/18/10. He said, "Footprints by his compost pile" and "Dan might have hidden something." The latter is amazing pre-cognition given what he claimed to 'find'.
- Sergi failed to question Sgt. Gardner in a manner that would confirm that Mrs. Sandra Halverson told him Mr. Halverson had gotten rid of her gun.
- Sergi did not stress how ill Mrs. Halverson is. A naturopathic doctor/registered nurse, acupuncturist, massage therapist and mental health counselor were all part of Mrs. Halverson's care team. He failed to stress that for two and a half hours she stood in her pajamas in the road with steel handcuffs closed behind her back, how she cooperated in every way and could have very easily been unaware of the fact Dan was gone for 20 minutes or so while she was asleep. The fact that Mr. and Mrs. Halverson's reports did not exactly line up after four and a half hours held outside with a dozen or more camouflaged, armed men is further proof we knew nothing about Okoniewski's shooting. No woman would remain in her pajamas if she thought the cops were coming.

## Additional Ground 2

### Prosecution Misconduct

- Prosecutors lied to get Okoniewski's marijuana grow suppressed. In the first trial, the Prosecutor claimed there was a 'meth pipe' in the gun cleaning kit. No evidence proved that assertion. During the second trial Prosecutor Richards claimed there was 'marijuana growing equipment' in the same cleaning kit. To what was he referring? Okoniewski's pot grow is quite obviously relevant. The defense is not required to complete the police investigation and find the actual shooter in order to show relevance of the grow.
- See page 41 in second trial's record. Scott argued to the court that the Schintz's gave Mr. Halverson a ride and that he made derogatory remarks about Okoniewski. This is a complete fabrication by Scott. Neither the evidence nor testimony supports his claims.
- The SWAT team saw Mrs. Halverson walking the dogs hours after they set up surveillance of the Halverson home, but the prosecutor tried to imply that she'd walked the puppy at 6 a.m.
- Prosecutors' request for more time to present their rebuttal of the defendant's appellate brief dated the day it was due could not have reached the Appellate Court on time.
- The map used by prosecution in both trials was incorrect. The defendant had to point this out to them at the end of the second trial.

Additional Ground 3

Appeals Court

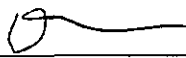
Appeals court has failed to provide copies of voir dire for both trials to Mr. Halverson.

Additional Ground 4

Courtroom Deficiencies

- See page 160 in first trial's record. Prosecutor Scott placed the easel board where it blocks the defense table. The court instructed the defense to "feel free to move down so that they can observe." Every time the defense wanted to see the easel board or the portable screen, we had to stand, wait for Morini to move his chair, approach within three feet of the jury box and stand there until the presentation ended. This happened at least 18 times during the trial. This flurry of movement created a distraction for the jury. Perhaps it even intimidated them, as Mr. Halverson is a large man at 6' 3" and 250 pounds. In addition, Mr. Halverson has multiple disabilities and such movement caused him severe pain. The jury likely misinterpreted Mr. Halverson's grimaces revealing that pain as anger or fear.
- See page 161 in first trial's record. The court talks about the courtroom's unsuitability to accommodate new technology. Yet new technology was used unwell and unwisely throughout the trial.
- See page 188 in first trial's record. More setting up of equipment so the jury could see and the defense could not (unless they moved).
- See page 90 in second trial's record. The Prosecution blocks defense view again. Once again the court tells the defense to "get up and move" and to "move over by the front" where the jury box is.
- See page 156 in the second trial's record. Defense again must move because of the small print on the Prosecution's exhibit. Everyone in the court could have easily seen the plasma screen the Prosecution used. Instead, they chose to use easels and the screen, blocking defense view of the entire trial and requiring them to wander the courtroom distracting the jury.

Date: 9/1/12

Signature: 


CERTIFICATE OF SERVICE

I certify that I have

1 copies of SAG

to T. Decker

& T. Whitehead

9/1/12 Date |  Signed

