No. 43878-0-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION Two

STATE OF WASHINGTON,

Respondent,

v.

Fred Carpenter,

Appellant.

STATEMENT OF ADDITIONAL GROUNDS (RAP 10.10)

I, Fred Carpenter, 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.

Here is Some Reference Case's for For 1, 2, and 3 that I Forgot to put after my Claims But I Feel it will Be important for you to See.

- State V. Leming, 133 WN. App. 875 (2006) The Crime of assault IN Violation of a Court order, RCW 26.50.11(4), and assault 2° do Not Violate double Jeopardy and Legislature INtended to punish Separately both, See: State V. Moreno, 132 WN. App. 664, 665 (2006), and do Not merge, se: State V. louis, 155 WN. 2d 563, 571 (2005); Convictions of Assault 2° with INtent to Comit felony harassment and felony harassment do Violate double Jeopardy, See: State V. Freeman, 153 WN. 2d 765, 778 (2005); II
- State V. Gohl, 109 WN. App. 817, 820-22 (2001) where offense is barred by double Jeopardy, the Conviction must be Vacated even where No punishment is imposed, Ball V. United States, 84. Ed. 2d 740 (1985), INre Davis, 142 WN. 2d 165, 171 (2000), See: State V. Weber, 127 WN. App. 879, 884-88 (2005). but See: State V. Womac, 130 WN. App. 450, 458-60 (2005); I
- State V. Womac, 130 WN. App. 450, 458-60 (2005) Defendant is Concurrently Charged with Alternative Crimes, One Greater and one lesser, is Convicted of both, moves to dismiss lesser; Held: Upon motion, trial Court Should dismiss the lesser Charge Conditionally allowing for its reinstatement if the greater Verdict and Sentence are Set aside, but See: State V. Gohl, 109 WN App. 817 (2001), State V. trujillo, 112 WN. App. 390, 480-12; II

① I was unlawfully placed in Double Jeopardy when The Jury Convicted me of both Felony harassment and Second degree assault Agnst Amanda Sreap. Because the Felony harassment Conviction was incidental to the Second degree Assault Conviction.

② For the two Counts of Second degree assault's agnst Amanda Sreap the Judge already ruled that they were incidental and Constituted the Same Criminal Conduct. I would argue that it also unlawfully placed me in double Jeopardy because the two Charges of Second degree Assault were incidental. This was one Argument I Should not have been Charged with so many felony's.

③ I was unlawfully placed in Double Jeopardy agaw when The Jury Convicted me of both Felony harassment and Assault 4th degree agnst Kerrie dolinski and Also it would be Same Criminal Conduct. Since the Convictions were incidental.

Here are Some Reference Case's For Claims 1, 2, and 3

- State of Washington, respondent V. Paul W. Leming Appellant No. 32843-7-II, July 11, 2006 As Corrected July 25, 2006 Back ground: Defendant was Convicted in the Superior Court, mason County, toni sheldon, J., of assault in violation of a court order, Second degree assault, Felony harassment, and the Jury returned a Special Verdict finding that these Convictions involved domestic violence. defendant appealed. Holdings: the Court of appeals, Hunt. J, held That: 1) Defendant Could be Convicted of both Assault

in violation of a court order and second degree assault with intent to commit felony harassment;

** 2) convictions of both felony harassment and second degree assault violated double jeopardy; and

3) merger doctrine did not preclude defendants convictions for both second degree assault and assault in violation of a court order vacated in part, affirmed in part and remanded.

P32 Leming next argues that he was unlawfully placed in double jeopardy when the jury convicted him of both felony harassment and second degree assault because the felony harassment conviction was incidental to the second degree assault conviction. we agree

** P47 Having held that Lemings convictions for second degree assault and felony harassment violate the State and federal double jeopardy clauses, we do not separately adress [133 wn. App. 892] whether the merger doctrine applies to these two offenses.

- my counsel provided ineffective assistance of counsel because he did not object to these errors.

④ Improper admission of evidence, when Amanda Sreap was on the stand She didnt recall much so the prosicution took it upon herself and was virtually testifying for her. Mr Ching objected. Here are some quotes from trial. "Mr Ching: Your Honor, I would object to this line of questioning. its become leading at this point and suggesting answers to the witness." (that was page 122)

"mr Ching" " I would like to renew my Objection, Your Honor." The Court: Just a minute, please. mr Ching! I would like to renew my objection The prosecutor is virtually testifying I would like to renew my objection." (that was page 124)

(5) improper admission of evidence; when officer brooks was on the stand he did not recall very much of the night. He was virtually testifying From a set of transcripts that the prosicution Gave him to read from. we objected to this.

Every Criminal defendant has the Constitutional due process right to a fair trial under Article 1, Section 3 of the washington Constitution and the fifth and fourteenth Amendments to the United States Constitution, State v Boyd, 160 WN.2d 424, 434, 158 P.3d 54 (2007); State V. Braun, 82 WN. 2d 157, 106, 509 P.2d 742 (1973), under the Cumulative error doctrine, a defendant is entitled to a new trial when it is reasonably probable that errors, even though individually not reversible error, Comulatively produce an unfair trial by affecting the outcome. State v. Greiff, 141 WN.2d 910, 929, 10 P.3d 390 (2000); state V. Johnson 90 WN. App. 54, 74, 950 p.2d 981 (1998). even where some errors are not properly preserved for appeal, the Court retains the discretion to examine them if their Cumulative effect denies the defendant a fair trial. State V. Alexander 64 WN. App. 147, 150-51, 822 P.2d 1250 (1992). in addition

The failure to preserve errors can constitute ineffective assistance of Counsel and should be taken into account in determining whether the defendant recieved an unfair trial. State V. Ermert 94 WN.2d 839, 848, 621 P.2d 121 (1980)

- This next part of my additional grounds will be my reasons why my Counsel was ineffective followed by each reason will be Reference Cases and for Sake of repeating things Some of my arguments are in my reference Cases because they have the Same arguments as I do.

(6) Counsel failed to put me on the Stand and let me testify. I told my Counsel that I wanted to testify on my own behalf. That this was the only way I could defend myself and tell the Jury myside of the Story. My lawyer advised me that he would Not put me on the Stand because of my prior Criminal history and then it would be brought to the Jury's attention that I was Just released from prison. He also stated that it was Some Sort of Cardinal rule that the defense Attorny Not put their Clients on the Stand. Needless to Say my lawyer rested without putting me on the Stand.
I wanted to point out that in mr Chings Closing arguments he told the Jury that it was my right to testify and they Should Not hold that agnst me. How Could they Not hold that against me. He

This Completly Contridicted what he told me at the time. He told me IN his OWN words that as a Lawyer it was at his discression whether he put me ON the Stand and let me testify or NOT.

- Nichols V. Butler, 953 F. 2d 1550 (11th Cir. 1992) (en banc) Trial Counsel's refusal to allow defendant to testify denied the Jury an opportunity to observe defendant's demeanor and to Judge his Credibility first hand agnst that of the prosecution's witness and Constitutes ineffective assistance and entitled defendant to a New trial.
- U.S. V. Butts, 630 F. Supp. 1145 (D. me. 1986) trial Counsels Conduct preventing defendant to testify IN his OWN behalf deprived defendant of a fair trial and Constitutes ineffective assistance of Counsel. The Court found that defendant's right to testify IN his OWN trial is So basic to a fair trial that Counsel's actions preventing defendant from testifying CAN Never be treated as harmless error.
- US. V. DiSalvo, 726 F. Supp. 596 (E.D. pa. 1989) DiSalvo made his attorny aware that he wanted to testify IN his OWN behalf, the Attorny did NOT inform DiSalvo he had a right to testify and failed to Call DiSalvo to the Stand. This Constituted a denial of due process and rendered DiSalvo trial fundamentally unfair.
- Blackburn V. Foltz, 828 F. 2d 1177 (6th Cir. 1987) Counsel's erroneous legal advice Concerning possible use of prior Convictions if defendant testifyed Compounded with other amounted to ineffective assistance of Counsel.
- Ferguson V. Georgia, 365 U.S. 570, 5 led 2d 783, 815. Ct. 756 (1961) Due process guarantees the defendant an opportunity for his Counsel to Question him IN open Court.

(7) No Opening Statement; my Counsel waived his right to an opening Statement. This deprived the Jury of an explanation of what our defense would be. leaving them in the dark and only allowing them to hear from the prosecutions side. giving the prosecution an unfair advantage.

- Jones V. Jones, 988 F. Supp. 1000 (E.D. La. 1997) Counsel waived his opening statment, which deprived the Jury of an explanation as to what the defense would be, and Compounded with other errors Constituted ineffective assistance.
- Jemison V. Foltz 672 F. Supp. 1002 (E.D. mich. 1987) Trial Counsels failure to make opening arguments and closing arguments to Jury in the defendants behalf, Compounded with other errors, Constituted ineffective assistance of Counsel
- United states V. Hammonds, 425 F. 2d 597 (D.C. Cir. 1970) trial Counsels Failure to make opening arguments, Compounded with others, can Constitute ineffective assistance of Counsel.

(8) No defense, my trial lawyer presented absolutly no defense for me. I informed him and even wrote down a very detailed Statment of exactly what happened on the 9th of June. I left nothing out and gave him more than enough info to have a Solid defense. He did Nothing with it. He failed to defend me and he abandoned any sort of defense that we had, By him Not presenting all the facts of my defense for the Jury

to hear. Only allowing the Jury to hear what the prosecution and her witnesses had to say against me. This made for an unfair trial and deprived me of effective assistance of counsel and due process.

- U.S. V. Swanson, 943 F.2d 1070 (9th Cir. 1991)
Trial counsel abandoned petitioner's only defense which was inherently prejudicial where counsel conceded only factual issue in dispute in closing argument's and, deprived petitioner of effective assistance of counsel and due process, thus, no showing of prejudice was necessary.
- Groseclose V. Bell, 130 F.3d 1161 (6th Cir. 1997)
Trial counsel's failure to have any defense theory compounded with other error's constituted ineffective assistance.
- U.S. V. Cronic, 839 F.2d 1401 (10th Cir. 1988)
Trial counsels inexperience and failure to present a good faith defense constituted ineffective assistance.

(9) Failed to raise intoxication defense, From the start I told Mr. Ching how much alcohol we all had to drink and that we all were very drunk. He failed to raise the intoxication defense. Because the fact is that if there was never any Alcohol involved than there would have never been an argument in the first place.

- Wood V. Zahradnick, 611 F.2d 1383 (4th Cir. 1980)
Trial counsels failure to present evidence that the defendant was an alcoholic and had drank too much and failure to investigate an insanity

defense, which would have explained the mental State of mind at the time of crime, constituted ineffective assistance of Counsel

- Ford V. Lockhart. 861 F. Supp. 1447 (E.D. Ark. 1994) trial Counsel's failure to raise intoxication defense may amount to performance Below an objective Standard of reasonableness.

(10) * No research or investigation, my lawyer did not research or investigate my Case. my first Court hearing the lawyer who represented me told me that he would send Someone to take pictures of my neck, my eye, and my arm, this would have helped my Case. to support a self defense Claim and my Story. No one ever Showed up. He also failed to bring my hospital report up at trial.

* I told les Ching who I wanted him to interview I told him to Contact Brandon Stevens and Amanda Sneap and he did not. If he would have talked to Brandon when I asked him to we could have gotten the truth. But by him not interviewing anyone gave Kerrie a Chance to Colaberate a Story that would benifit her and hurt me.

* I told mr ching about a false police report that Kerrie Made agiwst me and my girlfriend at the time back in 1998. Kerrie seen my Girlfriend and I driving down The road and Called the Cops and Said we had guns in the Car. We got pulled over and taken out at gun point. there was never any gun's.

This is just a little thing to prove what type of person that Kerrie is. I asked him to research this he did nothing to try and discredit anyone.

- Williams V. Washington, 59 F.3d 673 (7th Cir. 1995) Trial Counsel has a duty to investigate leads affecting the credibility of witness, which would serve to bolster his Clients Credibility and undercus The state's witnesses testimony
- Hyman V. Aiken, 824 F 2d 1405 (4th Cir. 1987) Trial Counsel's failure to do basic legal research, to review the testimony of key witnesses, including his own client, and to be familiar with readily available documents necessary to understanding of their Clients Case, Constituted ineffective assistance of Counsel.
- Miller V. Wainwright, 798 F.2d 426 (11th Cir. 1986) Trial Counsel's failure to investigate impeachment evidence for atacking the Credibility of States witnesses may Constitute ineffective assistance of Counsel.

* I asked mr Ching to get me my discovery for me on my case. He told me "that it is alot of stuff and alot of pages that he might go through and get me the important stuff" He never did

Over all mr Ching did not spend very much time with me going over my case. He would see me 5 or 10 minutes here and there. Not enough time to go over in detail exactly what went on the night or enough time to get Back ground on everyone

involved. So I had to write down in detail what happened on the night and he picked it up a couple weeks later, After that I wrote down alot of info about all of the witnesses things he should know things that would question the credibility of the witnesses. He did not take the info said that it was too much paper work in other words.

- Osborn v. Shillinger, 861 F.2d 612 (10th Cir. 1988) Defense Counsels performance was not only ineffective, but Counsel abandoned the required duty of loyalty to his Client; Counsel did simply make poor Strategic or tactical Choices; he acted with reckless disregard for his Clients best interest, and apparently with the intention to weaken his Clients Case.
- Harris by and through Ramseyer v. Wood, 64 F.3d 1432 (9th Cir. 1995) Trial Counsels failure to consult adequately with defendant amounted to ineffectiveness of Counsel.

(11) Lack of Crossexamination, My lawyer did not listen to any of my input. there was Countless times I pointed out where I could prove that the witnesses were giving false testimony he never adressed them he just shrugged me off. I also pointed out the landline phone cord where it ran from the living room to the Kitchen where the landline was. you can see it in one of the pictures that the officer took the one of the master bedroom door. that picture proves visually that Freddy was living and he still did not adress it.

There was a Landline that he could get to and Call 911 if he needed to But he did NOT use it. Mr Ching did Nothing to try and discredit the States witnesses when he did his cross examination I trusted in mr Ching as my lawyer to represent me to the Best of his ability even though I Could not afford to pay him top dollar.

- Miller V. Wainwright, 798 F.2d 426 (11th Cir. 1986) Trial Counsel's Failure to adequately Cross-examine States witness, may Constitute ineffective assistance of Counsel.
- Jemison V. Foltz, 672 F. Supp. 1002 (ED. mich. 1987) Defense Counsel Failed to Conduct an effective Cross-examination of the States only witness, Compounded with other error's Constituted ineffective assistance of Counsel.
- Pinnell V. Cauthorn 540 F.2d 938 (8th Cir 1976) Trial Counsel's failure to Conduct a proper Cross-examination may Constitute ineffective assistance of Counsel
- U.S. V Johnson, 995 F. Supp. 1259 (D. Kan. 1998) Trial Counsels failure to properly examine or Cross-examine witnesses required an evidentiary hearing to resolve ineffective assistance of Counsel Claim.

(12) NO objection to 911 Call, Mr Ching Failed to object to the admission of the taped 911 telephone Call.

- Sager V. maass, 907 F. Supp. 1412 (D. or. 1995) Trial Counsel's failure to object to the admission

of the taped 911 telephone Call and move to delete inflammatory reference to petitioner, Constituted ineffective assistance of Counsel.
I also want to point out that if you listen to the 911 Call you Can Clearly hear that Freddy is being told what to say.

(13) No Deal, Another one of my arguments would be that on The last day of trial Mr Ching and I had a brief Conversation and I asked him if he would try and get me the deal for 63 months. Not because I was guilty but because I did not feel the trial was going in my favor. He told me no he would not even ask her because She wouldn't go for it. He said that he really did not push the issue of trying to get me a deal because he belived my side of the story. I told him its not that I'm guilty But it felt like the trial was not going very good for me. I was never given a deadline to take the deal.
I belive it was my Counsels duty to try and get me a deal if I ask.
I was under the impression that a defendant has the right to Change his plea all the way until the Jury has Came back with a verdict Unless there was a deadline. and there was not.
During this same Conversation he made the Comment that he likes to Cut deals. that he would rather not go to trial. He should have told me this before trial That way I Could have tryed to get a lawyer that likes TO go to trial That way I Could have Stood a Chance

(14) During The Sentencing part mr Ching asked for the high end of the Standard range 84 months. "I'm asking the Court to impose the high end of the Standard range" I told him to ask For the low end of 63 months. Like I Said Before mr ching Just did Not listen to any of my imput.

(15) mr ching Conceded with prosecution, During the Sentencing mr Ching Conceded with the prosecution IN his own words "you've heard the evidence last week, and were not excusing my Clients behavior at this point. The Jury found him guilty. We accept that."
The Court recalls mr. Stevens Saw the Scuffle, Pulled my Client off, told my Client to man up and Not do this, to set a good example. Unfortunately he did Not. He Continued to Assault the ladies, but at least he did Not assault mr. Stevens, which he Could have done."
For what reason he felt he needed to Concede with the prosecution i's beyond me.
I Never Said I did any of those things So he Should Not have either. this i's Ineffective Assistance of Counsel.
- Young V. Zant 677 F.2d 792 (11th Cir. 1982)
Trial Counsel Conceded defendants guilt ON all three Crimes, which defendant was charged IN guilt phase of trial, based ON mistaken belief that Such action was Necessary IN order to plead for mercy Constituted Ineffective assistance.

- U.S. V. ACKLEN, 47 F.3d 739 (5th Cir 1995)
A Criminal defendant Can Meet the prejudice prong of Strickland in Non-Capital Sentencing Cases, by Showing he would have recieved a less harsh Sentence absent Counsels unprofessional errors or omission's

(16) Mr Ching failed to inform me of exceptional Sentence before trial, I recently discovered that by law mr. Ching was suppose to inform me before trial Started that the prosecution would be seeking an exceptional Sentence. he did Not inform me until the trial had started.
Prior to trial I was Under the impression that my range was 63-84 month's and I STill thaught that that was high because I only had 6 prior felony points.

(17) * Imposition of Sentence above Standard Range,
I think the exceptional part of my sentence is wrong and unjust. If you pay Close attention to all of the testimonys Given everyone places the Kids in different places in and outside of the house. the fact is the Kids were outside playing baseball and No where around when this Argument took place. the Kids were never in any Sort of danger. also if I remember right Kerrie did Not remember where the Kids were, another Said in the bedroom on the other side of the house/trailer, another says in the living room watching T.V., another says family rm

But Like I Said the Kids were outside! I do not think there was substantial evidence to Justify an exceptional Sentence.

- State V. Sturgis, NO. 36135-3-II (Wash. App. D.V.2. 06/03/2008) Violated his right to a Jury trial under the 6th Amendment by imposing an exceptional Sentence in Violation of Blakely and 2. erred by entering findings of fact not substantial evidence, to Justify an exceptional Sentence
- Sentences that depart from the standard presumptive ranges must be based upon substantial and Compelling reasons and may be Appealed by either the prosecuter or the defendant.

(18) When Ms. Nevadou was doing her questioning to the witnesses exspecially Freddy her line of questioning was very leading and Suggesting answers to the witnesses. This is unfair and Shald Constitute prosecutor misconduct.

(19) In Ms. Nevadou's Closing Arguments (pg 352) She Says "Again moments after the incident happened, you heard Freddy telling the 911 dispatcher what happened this is before anyone had the Chance to influence Freddy's testimony, before any of the Defendant's relatives talked to him about his testimony." She failed to point out the fact that when Freddy made the 911 Call Freddy was being told what to say you Can Clearly hear brandon in the background. Mr Chung pointed out in his

Closing argument's (pg 361) "His voice was actually rather kind of calm, almost nonchalant, actually. it was a calm, smooth voice. here's something interesting. if you listen carefully to the tape, everytime he was about to answer a question, you heard somebody in the background say something and he kind of parroted what that person said"
This also clearly points out that the prosecution new that Freddy did discuss the case with other people and was influenced and told what to say. which contridicts what was said during the trial. that Freddy never talked to anyone about the case period.

- Weygandt V. Ducharme, 774 F. 2d 1491 (9th Cir. 1985) Trial Counsels Failure to object to improper closing remarks amounted to performance below the Objective Standard of reasonableness
- United States V. Rusmisel 716 F.2d 301 (5th Cir. 1983) Trial counsel's failure to object to inflammatory remarks made by prosecution during closing arguments amounted to ineffective assistance of Counsel.

(20) On the Charge of obstruction Law enforcement mr. Chung did not defend me or make any argument about the Charge he conceded that I was guilty. I never said I was guilty he should not have either. this should Constitute ineffective assistance of Counsel.

(21) The Second degree assault Charges I would like to either get the charges reversed or have a new trial I did Not Straugle Amanda and if you pay close to everyone's testimony because they All Changed Alot And Lied Alot when they were on the Stand. I told my lawyer about there lies And he did Nothing to try and discredit them. And I dont think they had evagh evidence to convict me. And if you give me the chance to testify and tell myside of the Story I Can prove it.
I would like to point out that when officer brooks was up on the Stand he said that amanda told him that I Straugled her. But when mr Chung Cross-examined him he admitted that those were his words and Not amanda's. Amanda did Not Say that.
One more thing I would like to point out and that is how everyons Story Changed as to how many times Brandon Came into the bed room. he Came in the room one time and he did Not pull me off of amanda.

(22) In the Jury instructions the Court failed to add a lesser Charge of Assault 3rd degree and went Straight to adding a 4th degree Assault Charge Agnst Amanda. adding the 3rd degree assault would have been helpful to the Jury in Case they thought that Assault 2nd was too high But Assault 4 was two low.

(23) During the Closing arguments the Judge pointed out that he made some errors and did not add some stuff into the Jury instructions. By law these things should have been put in the Jury instructions.

"There are a Couple of aspects of the Closing argument, though, that I want to make slight Corrections on. I suspect most people did not notice. But the definition given to you by the plaintiff on the screen here was slightly different than the definition of assault I gave to you in the instructions. The definition on the screen had the phrase "" without lawful authority." that is optional Language in the approved definition of an assault that I did not include in my instructions to you because I concluded that it did not apply to this Case. it was, I suspect, an inadvertent inclusion on the prosecutor's slide because its part of the official definition but optional Language in any event, it makes no difference to this Case, and you should use the Courts definition in that regard."

"The second Correction is the argument that the aggravating factor for the Charge of felony harassment on Kerrie Dolinski, ms Nevada argued that you could find that her Children were present. I Did not instruct you on that aspect of harassment. the only aspect of the the aggravating Circumstance that I instructed you on was whether the Defendants Child

was present. Again that's simply a difference that I wanted to bring to your attention in case any of you Noticed it and felt there was some significance to that."

(24) Now this last part Im not sure if I should put this in my Appeal But I want to get it on the record and that is I do have a Complaint agnst the tenino police department and the thurston County Sheriff department for police misconduct for exsessive force, and Police Battality. Because they already had me in Cuffs and detained and they Continued to pepper Spray and taze, and Kick me. I was Never fighting them. I may have been yelling because I thaught my arm was broken from officer Brooks hitting me in my forarm and I could Not see because they Already pepper Sprayed me and I wanted water. But at No point did I ever become Combative or agressive towards the police. they had No right to do that all to me. and its agnst the law.

Now in this last Paragraph I ask that you Take all of what I have presented to you in this Appeal and Reverse Some of the Charges and or grant me a New trial Based on all of the ineffectiveness and errors during my trial. I hope that it has Come to your Attention that this was an unfair and one Sided trial. where my Counsel left me with No Defense my Counsel was ineffective. I am requesting that you grant me a new trial. A trial that I Can get up and testify and tell myside of what really happened. So the Jury Can hear from all Sides and make a proper Judgement in this Case. A trial that I will actually have a defense

Thank you for your time and Consideration
Fred Carpenter Doc 791979 2-26-2013
Fred Carpenter