

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY AK
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STATE OF WASHINGTON)
)
Respondent,)
)
)
v.)
Brian McEvoy)
(your name))
)
Appellant.)

No. 46795-0-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Brian McEvoy, 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

I was denied the ability to call my own expert medical witness. I made numerous requests to my attorney (Tom Weaver) to call/contact my surgeon (Dr Bear) St Anthony's Hospital Olg Harbor, WA. I believe, not having an expert witness to testify to, my severely diminished physical capacity significantly impacted my defense in the assault case. See attached for complete statement.

Additional Ground 2

Unfair prejudicial treatment by county throughout entire process, the bail amount, number of charges, trial, and sentencing was handled with extreme bias. I made numerous requests through my attorney to ask for a change of venue. My numerous requests for a venue change were completely ignored. I believe this significantly impacted my defense in a negative way. See attached for complete statement.

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

Date: 3-24-15

Signature: Brian McEvoy

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Additional Ground 1 - Ineffective Assistance of Counsel. On ~~April 10th~~ ^{April 10th}

I was arrested for Domestic Assault 4th Degree. After bailing out of jail I retained Sam Ramirez as my attorney. Mr Ramirez has an office in Bainbridge Island, Wa and routinely takes cases in Kitsap County. After my initial court appearance Mr Ramirez and I agreed it would be a good idea for me to leave the area and stay with relatives in Vermont. The idea being it would defuse the situation and allow the time for Mr Ramirez to negotiate a plea agreement with the prosecutors office. After arriving in Vermont I consulted with Mr Ramirez by phone several times. Mr Ramirez told me he had reached a plea agreement with the Prosecutors office. The terms of this agreement were no felony charges and no jail time. Mr Ramirez further advised me not to appear for my arraignment on May 14th. Ramirez went on to say the Prosecutor (Cami Lewis) had been informed that I was in Vermont and they were in the process of reaching a formalized agreement. This ~~advice~~ ^{advice} was extremely confusing to me. Having 10 years of experience as a Deputy Sheriff I knew an FTA warrant would be issued and the bail bondsman would attempt to locate and arrest me. When I brought these facts to the attention of Mr Ramirez he simply stated to stay in Vermont. Mr Ramirez then informed me he was going to check with his boss to see if he could continue to represent me. Mr Ramirez stated the county had added several serious charges against me and he wanted to renegotiate the agreed upon Fee for his services.

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At this time I began to question whether ~~is~~ Mr Ramirez had my best interests in mind as he advised me. When I attempted to get Mr Ramirez to clarify the issues involving the FTA warrant and the bail bondsman he became agitated and stated stay in Vermont. This conversation took place in early May. I placed several calls to Mr Ramirez in the following days leaving messages with his office requesting a call to clarify these important issues. Mr Ramirez did not contact me until the day of my arraignment. Mr Ramirez stated he would no longer represent me because I made him look bad to the Prosecutors office. Mr Ramirez then stated the Prosecutors office would no longer honor the plea arrangement they had made. At this time I was extremely upset, confused, and questioning the ethics of the Prosecutors office. Following the advice of my attorney ~~is~~ created or added to my legal trouble. I believe the actions and advice of Mr Ramirez exemplify the term Ineffective Assistance of Counsel.

I was arrested on May 19, 2014 and retained the services of Tom Weaver as my second attorney in the case.

During my initial consultations with Mr Weaver I requested he contact my surgeon (Dr. Bear - St Anthony's Gig Harbor) and have him appear as an expert witness. My estranged wife testified that I was able to chase her around and jump on the hood of her vehicle on the night of our domestic dispute on April 9th, 2014. On April 9th I was physically incapable of running or jumping. As a matter of fact I was only 2-3 weeks removed from a wheelchair. I could barely walk and had almost a complete loss of balance on April 9th.

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A brief chronology of my injury and recovery leading up to April 9, 2014.

- December 31, 2013 suffered two torn achilles tendons during a motorcycle accident.
- Jan 14, 2014 surgery to repair torn achilles tendons.
- Dr Bear advised both tendons torn apart completely and I could expect a 1 year recovery period.
- Had numerous follow-up consultations with Dr Bear and started physical therapy up to and through March 31, 2014.
- Given clearance to operate a vehicle on March 31st.
- Advised to only walk in casts on March 31st to avoid rupturing tendons during an accident (tripping, slipping etc)

Mr Weaver could have contacted Dr Bear, his physician assistant, or the physical therapists who worked on my recovery to refute my estranged wife's testimony. Mr Weaver assured me on several occasions in the months leading up to the trial that he would have an expert witness to testify about my severely diminished physical capacity at trial. A few days prior to the start of the trial Mr. Weaver finally admitted he never even attempted to contact any medical expert. Having a medical expert testify on my behalf would have accomplished two goals. First, the testimony would have been in direct conflict to what Kara McEvoy's testimony was. Second, it would have called into question the credibility of Kara's testimony. Kara's testimony was considered beyond reproach by judge Dalton and given expert status because of her occupation

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as a RN (registered nurse). Kara does have approximately 7 years of experience in nursing. However, she has no training or expertise in Orthopedic surgery or recovery from achilles tendon surgery. Kara has worked in the following fields: Oncology, a woman's health clinic, mother, baby unit, and an office setting as a case manager. None of this provides Kara with any specific knowledge of Orthopedic surgery or recovery time frames. Not having my own expert witness severely impacted my defense in a negative manner.

After retaining Mr Weaver as my attorney one of the first requests I made to him was for a change of venue. I explained to Mr Weaver the numerous concerns I had about the county's ability to treat my case in a fair and objective manner. As stated already I worked as a Deputy in Kitsap County for just shy of 10 years. I was very familiar with all the subjects who arrested ~~me~~ and conducted the entire investigation. These are the same individuals who were responsible for ~~my~~ the decision to terminate my employment at the Sheriff's Department. It is worth mentioning that I was fired by the Sheriff's Department because I was stopped and arrested on suspicion of a DUI. All criminal charges against me were dismissed yet I was ~~to~~ fired. In the years following my dismissal from the Sheriff's Department two Deputies were arrested and charged criminally with DUI. Both Deputies (Argyle and Brossel) retained their positions with the Sheriff's Department. A third Deputy was found to be using marijuana on a regular basis and yet again this criminal behavior was

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over looked and Deputy Hill retained his position with the Sheriff's Department. Asking for a change of venue seems to be a legitimate request when considering the various people involved in the process had already ~~to~~ demonstrated bias and prejudice when dealing with me in the past.

Summary of Additional Ground 1- The advice from Mr Ramirez to leave the state and skip my arraignment effected my defense in a negative manner. The prosecutor (Cami Lewis) was advised by Ramirez about my location and intention to skip the arraignment but never once acknowledged that fact during the entire two week trial. Mr Weaver's failure to request a change of venue and subpoena an expert witness on my behalf clearly demonstrates Ineffective Assistance of Counsel. My reasoning for retaining Mr Weaver as counsel for my appeal are as follows: Mr Weaver has extensive knowledge of the case. Due to the fact Mr Weaver was the trial attorney, I believe it provided him an advantage over other attorneys when constructing his appeal. I also wanted to provide Mr Weaver a chance to redeem himself. Finally I had financial constraints when making my decision.

Additional Ground 2- Bias and Prejudicial treatment by prosecutors office. Bail in my case was placed at 1.5 million dollars. After my arrest an 8-12 year girl was kidnapped, raped, and murdered in Kitsap county. The 17 year old suspect who was arrested provided a full confession to the above-mentioned crime.

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The suspect was also a registered sex offender. Oddly enough this individual's bail was set at one third the amount mine was set at. This fact alone seems to indicate bias and prejudice on the part of the prosecutor's office. At the time of my trial and arrest the elected Prosecutor (Russ Hauge) was in the process of attempting to become re-elected. My arrest, trial, and sentencing all made headlines in several local papers. I believe Mr Hauge's political ambitions fueled the harsh treatment I received during the entire process. I advised Mr Weaver to seek a plea agreement with the prosecutor in the weeks leading up to the trial. A few days before the start of the trial I observed an e-mail correspondence between Tom Weaver and Cami Lewis. Mr. Weaver sent an e-mail ~~with~~ containing a plea offer to Ms. Lewis. The response Ms. Lewis sent back was "Russ said no". It seems Ms. Lewis had her discretionary authority taken from her by Mr Hauge. My main goal leading up to the trial was a reasonable settlement to avoid trial. I did not want to force my wife and 15 year old son to be forced into testifying in court by the prosecutor's office. When taking all facts and circumstances into consideration a fair and unbiased individual can clearly determine the entire process was tainted from start to finish.

One last point to make. At my sentencing in October 2014 the prosecutor (Cami Lewis) submitted a small sample of my phone conversations with family members as evidence. These recordings were used to justify sentencing ~~to~~ enhancements.

Ms. Lewis selected conversations in which I denied ^{taking} responsibility for my actions and blamed my brother and mother for my legal troubles. My statements in these select conversations obviously depicted me in a negative manner. Mr Weaver failed to submit the dozens of conversations when I accept responsibility for my actions, admit to causing my legal troubles, show remorse, and negatively affecting my entire family. The judge made a judgement when provided evidence from one side. There is little doubt Cami Lewis went above and beyond the call of duty to have me prosecuted to the fullest extent allowable by law. Ms Lewis did her job and fulfilled her obligations to the people of Kitsap County. The same can not be said about Mr Weaver. Even the simple task of listening to phone conversations and submitting them on my behalf was not met. This appears to be another clear example of ineffective Assistance of Counsel.

Respectfully,
Brian McEvoy
3/24/15