COURT OF APPEALS
DIVISION II
2016 MAR 16 PM 1:04
STATE OF WASHINGTON
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2/26/16 page (1) of (16)

In the Court of Appeals, State of Washington, Division II

State of Washington respondant vrs Joseph M. Donnelle-Sherman appellant	No: 47602-9II Statement of Additional Grounds Motion to Reverse and Vacate Verdict and Sentence due to Statutory Ambiguity

Comes Now Joseph M. Donnelle-Sherman PRO SE to ask that the Court of Appeals Reverse and Vacate the Sentence, Judgement, Verdict, and charges in this case due to Statutory Ambiguity.

1. the Charge: Count 1 - Assault in the Second Degree while Armed with a Deadly Weapon; 9A.36.021(1)(c); 9.94A.825; 9.94A.533(4); 9A.36.021(1)(c) - class B Felony: In that the Defendant, Joseph M. Donnelle-Sherman, in the State of Washington, on or about Aug. 4, 2013 did Intentionally Assault Bruce A Bayles with a Deadly Weapon, to wit: a machete

Dated this 7th Day of August, 2013
J. Andrew Toynbee, WSBA# 22582
Deputy Prosecuting Attorney

Subscribed and sworn to before me this
11 : 3 : 2016
day of March, 2016

3.12.16

Venetta E. Jackson
Notary Public in and for the State of Washington Residing in Walla Walla, Washington. My commission expires April 1, 2017

Notary Public
State of Washington
VENETTA E JACKSON
MY COMMISSION EXPIRES
APRIL 1, 2017

Statutory Ambiguity 2.9.16 9am

Count 1 of the charging document is ambiguous and does not accurately depict the law in Washington state. Washington state Law does not explicitly define the term "machete" as a deadly weapon. It is a yard tool until proved otherwise.

In re Scott 173 Wn.2d 811, 271 P.3d 218 (2012)
"Charging documents can be consulted to determine whether a judgement and sentence is invalid on its face." [State v. Floyd 178 Wn. App. 327, 314 P.3d 1091 (2013)]
"The charging documents alone establishes the constitutional infirmity of defendant's murder conviction, because a court may not use facially invalid convictions for any sentencing purpose."

"An accused has a constitutionally protected right to be informed of the criminal charge against him, so he will be able to prepare and mount a defense at trial."
[State v. Rucoenco, 163 Wn.2d 428 P.3d 1276 (2008)]
"Reversal for trial error is made from the determination that a defendant has been convicted through a judicial process which is defective in some fundamental respect."
[State v. Vangerpen, 125 Wn.2d 782, 794, 888 P.2d 1177 (1995)]
see 176 Wn.2d 58, 592, P.3d 715 (2012)]
"Supreme Court reviews instructional errors de novo."
[State v. Sublett]

An instrument that is primarily used as a tool must be defined as such, until it is used in another way. (If we speculate as to the intent of the Washington State Legislature's NOT specifically defining an instrument as a deadly weapon, we surmise that its use as a tool most vigerously determines its nature.
[see RCW 9.94A.825; RCW 9.41.270; RCW 9A.04.110 (6)]

"Statutory Ambiguity" 2-24-16 8am

[S.v. Castillo-Murcia 2015]

"to resolve a statutory ambiguity, a court may apply principles of statutory construction, refer to the legislative history of the statute, or consider case law precedents."

[Reeves 184 Wn.App. at 158]

"A statute is ambiguous if its plain language is "susceptible to more than one reasonable interpretation."

"If legislative intent still cannot be determined we must interpret the ambiguous statute in favor of the defendant pursuant to the rule of lenity." (Id at 158-159.)

[S.v. Johnsen 2014]

[S. v Vangerpen 125 Wn.2d 782, 787, 888 P.2d 1177 (1995)]

"The information is constitutionally sufficient only if all essential elements of a crime, statutory and nonstatutory, are included in the document."

[S.v. Zillyette 178 Wn.2d 153, 158, 307 P.3d 712 (2013)]

"A essential element is one whose specification is necessary to establish the very illegality of the behavior charged."

"This essential elements Rule exists "to apprise the accused of the charges against him and to allow the defendant to prepare a defense" [Vangerpen]

[S v Nonog 169 Wn.2d 220 n.3, 237 P.3d 250 (2010)]

"if the state fails to allege every essential element, then the information is insufficient and the charge must be dismissed without prejudice."

Ballintines Deadly Weapon Dictionary

"1. An instrument which is likely to or which will cause or produce death or great bodily harm when used in a manner contemplated by its design and construction. Barbourville ex rel. (2. Whether an unloaded firearm is to be considered a deadly weapon depends ordinarily upon whether the manner in which it was used or attempted to be used, whether as a firearm or a bludgeon."

Jury Instructions (JI) 2.28.16 2pm

JI no. 6 does not use the word "intentional" which is the gravamen of RCW 9A.36.021 assault in the second degree. By framing the definition of assault in this way takes the meaning out of context of the Law, thus creating an ambiguity wherein the jury could be mislead into thinking the instruction is in a legal sense when it is not fully. By following with JI no. 7 it may be concluded that assault and intent are separate under the law. Further, JI no. 10 leaves out the phrase "with unlawful force" which serves to separate self defense under the law.

JI no. 8 defines "deadly weapon" per RCW 9.41.270 [9.95.040 (6)] which was not cited in the charges or the verdict. And JI no 15, though showing the correctly worded definition from RCW 9.94A.825 paragraph two, is couched in verbage refering to the other definition thus misstating the law regarding sentencing enhancement. The prosecution appears to be attempting to define the term "machete" as a knife with a blade longer than three inches. "Machete" is not explicitly defined in this way under the Laws of Washington State.

Specifically, the phrase "AND, from the manner in which it is used" is confused with "circumstances in which it is used." In this case, the yard tool was not used as a deadly weapon since there was no significant injury even though there could have been. That the jury might have been confused by the instructions thus emerges from "the read as a whole" point of view.

The Wa. Supreme Court disapproved of the Gamboa verdict (2007) "... a weapon's potential for harm is alone insufficient for a deadly weapon finding," and the court reversed.

JI no. 10 reads like they are describing a sense of ill manner. Is this really what Felony Assault is about? Is blowing smoke (second hand smoke) an Assault 2 with a deadly weapon?

3rd/6 8am

by omitting specific intent, an element of the crime of assault, from its jury instructions on assault, a trial court commits an error of constitutional Magnitude [Eastmond 1996]

"The cumulative error doctrine applies only when several trial errors occured which, standing alone, may not be sufficient to justify a reversal, but when combined together, may deny a defendant fair trial." [Hodges 2003]

JI no.6 omits the term "intentional". Although case law has indicated that "Intent is an element of the defense which is inherant in the term assault," [Sue 2007 ?] this may not be clear to the Jury. By defining the crime of assault without its context in RCW 9A.36.021 where "intent" appears as part of the legal definition, the instruction confuses the definition. Also, JI7 does not address the necessity for premeditation "more than a moment of time".

Then in JI 7 the "intent" appears to be not related to "Assault" (why is separate pages helpful?) And in JI no11(1) "intentionally" is again not included as it was in charging ~~document~~ document count 1.

JI no. 13 is supposed to be about self defense, but doesn't mention "self defense" thereby again confusing the issue for the non-legaleeze person. no.13 also does not include the ~~phrase~~ term "subjectively", thereby making self defence under the law of Washington State less "manifestly apparent" to the average juror.
[Walden 1997] [Kyllo 2009]

JI no 1 (¶1) reads: "It is your duty to accept the law from my instructions, regardless of what you personally believe the law ~~should~~ is or what you personally think it should be."
(¶9) "the law is contained in my instructions to you."
* Any instructional ambiguity of misstatement therefore invalidates all of the instructions in this trial verdict.

Vacate conviction
count 1, Machete not yet found to be DW by Trial

Deadly Weapon (DW) 3/2/16 9am

RCW 9A.04.110(6) requires more than mere possession display where the weapon in question is neither a firearm nor an explosive. In accordance with the plain meaning of this statute, unless a dangerous weapon falls within the narrow catagory for deadly weapons perse, its status rests on the manner in which it is used, or threatened to be used. no statement like this-law

[In re Pers. Restraint of Martinez, 171 Wn. 2d 354, 256 P. 3d 277, 2011 Wash. LEXIS 322 (Wash. 2011)]

* compare P's statement at time of alleged assault with VRP re: what was said about warning verbal

[St. v. Gamboa 137 Wn. App. 650; 154 P. 3d 312; 2007 Wash. App. LEXIS 556 No. 24610-8-III (2007)] "A machete was a deadly weapon because it was readily capable of causing great harm since there was ample evidence that the machete was accessible and available."

Supreme Court 04

* "Disapproved" by In re: Reversed by Supreme Court [Restraint of Martinez 171 Wn.2d 354; 256 P.3d 277; 2011 Wash LEXIS 322 No. 83219-6 (2011)

"Wash. Rev. Code 9A.04.116(6) creates two categories of deadly weapons: deadly weapons perse, namely any explosive or loaded or unloaded firearm AND deadly weapons in fact."

"A court, in construing a statute, must attempt to discern and give effect to the Legislatures intent. When the language of the statute is unambiguous, the court discerns legislative intent from the language of the Statute alone and will give effect to the plain meaning of that language"

[Sorenson 1972, VRP Sentencing Hearing, page 16, Line 13

[State v. Bashaw 2009, 2010] [+] [7] "Before State introduces evidence that will result in a mandatory penalty enhancement, the State must show that the evidence it relies on is accurate."

Defendant informed the court that the machete used at trial by hearsay was NOT his yard tool prior to sentencing and as soon as possible given his jailing and being held incommunicado

Definitions 3-2-16 8am

Deadly Weapon Special verdict – Definition 9.1.09

RCW 9.94A.825 SRA 1991 recodified .602 to 825 (2009)

In a criminal case wherein there has been a special allegation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, or if a jury trial ~~has~~ is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime.

For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death AND from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Blackjack, sling shot, billy ~~club~~ sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any firearm, any knife having a blade longer than 3 inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas. (NO Knife < 3"✓)

RCW 9.94A.827 – 839 special allegations – of a particular kind (gangs, sex, minors, prostitution, drugs, cops) last edited (2015)

RCW 9.95.015 Finding of Fact or Special Verdict Establishing defendant armed with a deadly weapon.

* 9A.04.110 (6) "Deadly Weapon" means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a vehicle as defined in this section, which, under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily harm.

more recent

different from Assault 2 these def. are revised relatively recently and still do not include machete

Agy Jury to determine if deadly weapon under law? where's the authority?

Does not name "Machete"

Some legal context

Not in charging Document

False Evidence (FE) 2.28.14 9am

the actual machete used at trial) was admitted as hearsay by Deputy Brooks' statements. [Verbatum Report of Proceedings (VRP) page 62, line 3.] Note that the trial machete does not match the yard tool depicted in Photo exhibit no. 9 (10 or 8?) [VRP 88/6] wherein Defendant says he was struggling for balance [sentencing hearing VRP The trial machete appears more weapon like than the thin, dull, light weight yard tool, thus prejudicing the jury. 7

In re [State v. Mills (1995)] "court of Appeals was required to determine whether, as a matter of law, facts were sufficient to prove that "defendant" was armed for purposes of sentence enhancement statute.

In re [State v. Fowler (1990)] "Penalty can not be enhanced if evidence establishes that defendant was armed with a gun-like (machete-like) but non deadly weapon."

In re [State v. Sorenson (1972)] "the character of an implement as a deadly weapon is determined by its capacity to inflict death or injury AND its use as a deadly weapon by the surrounding circumstances, such as intent and present ability of the user, the degree of force, the part of the body to which it was applied, and the physical injuries inflicted."

Trial court abused its discretion by admitting evidence (machete) not based on tenable grounds, and was hearsay, and was inflamatory and prejudical because it was more "weapon-like" than Defendants yard tool, and did not accurately portray the lack of injurious potential.
? [State v. Stenson (1997)] ?

not deadly per se (firearms) deadly by ~~per~~ fact if proved BRD

Machete in case law takes a variety of definitions 2.24.16 8pm

Supreme [S v Myrick 1984] machete paraphernalia in Weed operation

[S v. Estes 1968] campers with tools

Appeals [Cramer Prop Servs. v Song 1996] for use in a job description

[Sv. Rodriguez 1992] "a knife that looks like a machete."

[S v. Brooks 1978] used to dismember dead body

[S v Mills 2005] "mixed question of law and fact"

RCW 9.95.040(2); 9A.04.110(6)

indeterminate sentences → terms fixed by board – minimums for certain cases ~~not used~~

[State v Gamboa 137 Wn App. 650, 154 P3d 312 (2007)

"Standard for Deadly Weapons" – Read the circumstances provision out of the statute and treated the machete as if it were a deadly weapon per se." [WaSupremeCourt(2011) Restraint of Martinez]

[State v. Schilling 77 Wn App 166, 169, 889 P.2d 948 (1995)

broken bottle "not a deadly weapon per se." "Circumstances of use include the intent and present ability of the user, the degree of force, the part of the body to which it was applied and the physical injuries inflicted."

RCW Definitions

RCW 9A.04.110(6) "DW means any explosive or loaded or unloaded firearm, and shall include any other weapon, device, instrument, article, or substance, including a 'vehicle' as defined in this section, which, under the circumstances in which it is used, attempted to be used, is readily capable of causing death or substantial bodily harm." Plaintiff's phone? lunging

RCW 9A.04.100 BRD (1) competent evidence or can't convict.

(2) where there exists a RD as to which of two or more degrees he is guilty he shall be convicted only of the ~~lesser~~ lowest degree.

Complete Self Defense

RCW 9A.16.020 Use of force - When lawful

(3) Whenever used by a party about to be injured ... in preventing or attempting to prevent an offense against his person ... in case the force is not more than necessary.

RCW 9.41.270 Weapons apparently capable of producing bodily harm

(1) Unlawful to carry, exhibit, display, or draw any firearm, dagger, sword, knife, or other cutting or stabbing instrument club, or any other weapon capable of producing bodily harm, in a manner, under circumstances, and at a time or place that either manifests an intent to intimidate another or that warrents alarm for the safety of others.

(3)(c) subsection (1) shall not apply ... any person acting for the purpose of protecting himself against the use of force presently threatened unlawful force by another or for the purpose of protecting another against the use of such force unlawful force by a third person.

Self Defense (SD) in Jury Instructions 2.25.16 10 am

"The use of force upon or toward the person of another is lawful when..." [Jury Instruction no. 13] (3 #2

This sentence is confusing because it attempts to simplify the Washington State Law with regard to self defense and becomes almost ~~non-sensicle~~ nonsensical thereby. None the less I will attempt to do so in my own terms: to wit: In the State of Washington a person is entitled to use limited force to protect himself. Even if it is only his subjective perceptions that raise the need for self defense. (Unless his actions caused whatever the need was.) His subjective perceptions do NOT have to be proved, nor even real. The prosecution has the burden of disproving, beyond a reasonable doubt, that the actor was using lawful force. -Joseph M. Donnelle-Sherman

plaintiff's lunging

"Because non-deadly force was at issue, jury should have been informed that a person is entitled to act in self defense ... only a subjective reasonable belief of imminent harm" was necessary.

[State v. Kyllo 2009]

Jury Instruction no. 13 in this case leaves out the word "subjectively" believes and thereby misstates the law. Particularly when combined with the prosecuter's statement during his closing argument; [VRP page 185, line 20 - line 2] The prosecutor then goes on describing a hypothetical sequence of events that purportedly show a lack of ~~any~~ could be reason for self defense by the Defendant, which ~~is~~ true. There was not yet any need for Self defense and none occurred. There was not a situation of confrontation or combat until the Plaintiff lunged at Defendant as can be seen in photos 9 and 10. (note photos have not been made part of the VRP at this point.)

Prior to the Trial, the photographs from the Discovery had been reviewed by Defendant and DAC Attorney Larry Jefferson in his office. A video purported to be from Plaintiff's security camera

was also reviewed. The Defendant asked Mr Jefferson to to provide an expert analyst to review the veracity of the video, and to confirm ~~of~~ deny Defendant's analysis of the photographs as illustrating Plaintiff's lunging motion. This request was not honored.

If LJ's defense is SD, he should cover all the bases who is aggressor, speed of events, the law on person / property, the SD law in WA, better photo analysis why convict assault? VRP 179/14 Assault by who? LJ confuses the Jury? = ineffective counsel

Jury can not infer intent from mere display of a dangerous weapon [State v. Macilee ?]

Apprehension verses intent [State v. Bush (1942), James (1960)]

Accidental or intentional? [State v. Callahan (1991)]

Plaintiffs statement that he was holding his phone up to block an overhead blow occurred when in the sequence of photos? How did he get it high up from waist height?

Why didn't LJ cross examine about the mechanics of the moment of alleged striking, not to mention the mental state of aggressor at that moment, How stable is the Plaintiff and does his demonstrated mental instability (VRP pg 84, line 14 - the crying episode) call his version of reality into question? Why wasn't Plaintiff evaluated for mental competance?

Lexis Headnotes: Wash

Aggress. Instr.

Wash. Super Crim R 3.3(b) trial date within 90 days
Did LJ file notice of objection within 10 days of notice of Trial Date: Generally precludes Review Wash. RAP P 2.5a

[Cf. V. Kyllo 141 Wn. App. 1037, 2007 Wash. App. Lexis 3126 (2007) 32729-5-II
"An aggressor instruction is appropriate even if there is conflicting evidence as to whether the DEF's conduct provoked the attack and thereby necessitated the use of force in SD. With conflicting evidence regarding the identity of the aggressor, an aggressor instruction is PARTICULARLY appropriate"

Standards of Review

"Under the Appearance of Fairness Doctrine...

"The cumulative error Doctrine applies when several Trial errors occurred but none alone warrants reversal, but the combined errors effectively denied the ~~Appellant~~ Defendant a fair Trial"
[St. v. Hodges, 118 Wn. App. 668, 673, 77 P. 3d 375 (2003)]
~~[State Basin v City of Steamwood~~

[St. v Miller

"In 1994 the Washington State Supreme Court Committee on Jury Instruction changed the instruction to State the law on apprehension of danger. Has there been time enough to trickle down?

What does WPIC aggressor say?

Self Defense

2.19.16 8am

9A.16.020 Use of Force – When Lawful

(3) whenever used by a party about to be injured ..., in case the force is not more than necessary.

[Ct. App 2007 5-1 [138 Wn. App. 191 156 P.3d 2007 Wash. Lexis 815]

[S v Woods 2007] The legal standard applied to jury instr. is: Jury instr. are sufficient if they are supported by substantial evidence, allow parties to argue their theories of the case and when read as a whole properly inform the jury of the applicable law. However, self defense instr. are subject to heightened appellate scrutiny. "[I]t must more than adequately convey the law of self defense ... legal standard manifestly apparent to the average juror. Further a [I] misstating the law of SD amounts to an error of constitutional magnitude and is presumed prejudicial."

* Look up VRP closing re: reasonably prudent person

"Evidence of SD must be assessed from the standpoint of the reasonably prudent person, knowing all the DEF knows and seeing all the DEF sees. Courts must inform the Jury that the self defense STANDARD incorporates both objective and subjective: the subjective portion requires the jury to stand in the DEF's shoes and consider all the facts and circumstances known to the DEF, while the objective portion requires the Jury to determine what a reasonably prudent person would do.

* VRP 1037

"A jury may find on the basis of the DEF's subjective, reasonable belief of imminent harm from the victim..."

"A DEF Entitled to use force to defend himself if he reasonably believes... injury

manner used = non deadly so no DW

Prosecutor's closing is replete with false or incorrect leading assumptions, the citation of which is onerous, to the extent to which it might be necessary to list any truth at all. Such imagination

LS - character witness ↔ ineffective (counsel)

DWSE Englestad 2014 experts Tonga 17

CASE LAW CITATIONS

290 Floyd 2013 Pro Se status 178 Wn. App. 316 P.3d 1091 Wash App. (2013)

non-3 sub) ** Rucuero 2008

* Vangerpen 2012 125 Wn 2d; 888 P.2d 1177 (1995)

enhance ~~Scott 2012 125 149 Wn. App. 213; 202 P.3d 985; 2009 Wash App LEXIS 556 no. 34686-9-II~~

part of body Sorenson 1972 6 Wn App. 269; 492 P.2d 233, 1972 Wash. App. LEXIS 1165 no. 160-412294

~~Instr. Schilling 1995 4 Wn. 2d 105; 253 P.2d 952, 1953 Wash. LEXIS 419 no. 32172~~

aggressor conduct before ~~Kyllo 2014~~ 2007 Wash. App. LEXIS 3101 no. 32729-5

Miller law change

SI * Chavez 2008 unpublished juvenile

35.50 ** Eastmond 1996 mere display 129 ~~Wn App~~ Wn 2d 497; 919 P.2d 577 ~~LEXIS 413~~ OK no. 63252-9

~~Gonzales - 2014 Wash. App. Lexis 1974 no 444-33-0-II~~

intro display Villanova 2014 *

SI 35.50 Sorenson 1972? 121 Wn.2d ~~Wash 2d~~ 497, 919 P.2d 577; 1996 Wash ~~App~~ Lexis 413 54 without state def no. 63252-9-

? * Nong 2010

read a whole all elements * Reeves 2014 184 Wn App. 154; 336 P.3d 105; Lexis 2553 no. 44811-4-II

** Johnson 2014 180 Wn. 2d 295; 325 P.3d; 2014 Wash LEXIS 341 NO 88683-1

Zillyette 2013 178 Wn. 2d 153, 158, 307 P.3d 712 (2013) essential element Court

~~Hutchinson 1998 135 Wn 2d 863, 959 P.2d 1061 L564 658~~

Objective ? Walden 1997 131 Wn. 2d 469. 932 P.2d 1237 Lexis 96 no 63992-2

* Kyllo 2009 166 Wn. 2d 856; 215 P.3d 177 Lexis 743 no. 81164-4

Maciolet

dagger request * ** Woods 2007 legal Jury Instr. 138 ~~Wn Rptr~~ App. 191; 156 P.3d 309; Lexis 816 no. 24910-7-III stand in DET shoes

specificity ? Walden 1997 → 100 Wn. App. 318; 997 P.2d 929 Lexis 69 no. 43944-0-I

leatherman 2000, Eckenrode 2007 nexus

Zumwalt 1995 ~~Pirtle 1995~~ death penalty 118 Wn. App. 668; 77 P.3d 375; Lexis 2778 no. 24901-2-I

small knife Hodges 2003 corn error → 66 Wn. 2d 273; 401 P.2d 971 Lexis 857 no 37690

Badges 1965 actual Danger vrs. subjective perception

leave property Bland 2005

confrontation Walker 1985 40 AD Wn. App. 658; 700 P.2d 1168 Lexis 2426 no 7093-6-II

death P. ~~Steuson 1997~~

SD subj ~~Woods 2007 138 Wn. App. 191; 156 P.3d 309; 2007 Wash App. L816~~ no. 24910-7-III

CTE & SD ~~Grigler 1979 time shooting thru door~~ disavowed Supremes disavowed *

can be a DW blood on it Gamboa 2007 137 Wn. App. 650; 154 P.3d 312 Lexis 556 no. 24610-8-II

remanded DW Lawsen 2014

B4D errors ? * McCullum 1983 98 Wn. 2d 484; 656 P.2d 1064 Lexis 1339 no. 47766-3

DW enhance error * Mclague 2011 some ~~Mclague~~ Mclague 172 Wn. 2d 802; 262 P.3d 1225 L813, no 85657-5

SD reason McCreven 2012 170 Wn. App 444, 284 P.3d 793, L2068 no. 39538-3-II

DW per se (1987) Allen 101 Wn. 2d 355, 678 P.2d 798 1987 Lexis 1053 OVER

fact ** Martinez 2011 171 Wn. 2d ~~at 360~~ 354; 256 P.3d 277 Lexis 322 no. 83219-6

D. cap & intent Davis 1992
gravamen intent Laport 1961
Appre Brower 1986
Wigley 1971
Deadly Fowler 1990
Pam 1980
Assault & intent Shaffer
Display Macilec
Wasson 1989
Disprove DW Acosta 1984 101 Wn.2d 612; 683 P.2d 1069 [1671 no. 49621-8
evidence presented Beadle 2011
Suggers 2014 cops
Gunter 1984
SE enhance ~~Fowler 1990~~
of accurate & Bashaw 2009-10 can't enhance with false evidence.
statute sanctions Alvarez 1995
Hughs 1986
Davis 1992
Fowler 1990 114 Wn.2d; 785 P.2d 808; 1990 Wash. LEXIS No 56175-3
accident or Callahan 1991
so apprehensive Walker 1985
aggression Thereff 1980
Apprehension intent Bush 1942
James 1960
Eastmond 1996 129 Wn.2d 497; 919 P.2d 577; 1996 Wash. LEXIS 413 No. 63252-9
Stenson 1997
Pirtle 1995
Lane 1995
Powell 1995
Sue 2007 Wash. App. LEXIS 2350 No. 33015-6-II
[Chavez 2006 134 Wn.App. 65]; 142 P.3d 1110 Wash. App. LEXIS 1849 No. 33240-0-II]
(Supreme Court of Wa 163 Wn.2d 262; 180 P.3d 1250 2008 Wash LEXIS 262 No. 79260-8)
WCPCLJ chapter 18.02 B
RCW 9A.04.060 - Common Law to supplement statute

one sided

NO. 47602-9-II pg(1) of (14)

Court of Appeals, Division II
March 8, 2016

State of Washington
respondant

vs.

Joseph M. Donnelle-Sherman
appellant

Appeal from the Superior Court
For Thurston County
The Honorable Erik D. Price, Judge
Cause No. 13-1-01173-9

Motion to Compel Discovery and Award Fees
Approximate Date of First Requests 6/10/2015 (9 months)
± 270 days x 100 $/day = $27,000.00 900

Thomas E Doyle WSBA 10634
Attorney for Appellant
PO Box 510
Hansville, WA 98340
(360) 626 0148

Signed!

3.10.2016

Joseph M Donnelle-Sherman # 383022
Washington State Penitentiary WA 114 U
1313 N. 13th Ave
Walla Walla, WA 99362

PS: I am in receipt of the court's decision to NOT order see attached
the requested documents and have included this motion
to illustrate the delays I have been experiencing only

In the Court of Appeals, State of Washington Division II

State of Washington respondent VRS Joseph M Donnette-Sherman appellant	No. 47602-9-II Motion for Reconsideration pursuant to RAP. 17.2(a)(3) noted for: 2-17-16 Clerk Action Required

Comes now the Appelant Joseph M Donnette-Sherman pro se Hereby Respectfully requests the court of Appeals to order Thurston County Jurisdiction to provide the Trial exhibits 2-10 (Photos), Police Reports, Forensic Evaluation, Photos originally provided by Defendants Discovery, and all copies of all Videos and Pre-sentencing Briefs.

1. See attached motion to Supplement the Record at State Expense dated 2.19-16 (sic)

2. The prior Motion to Supplement the record dated 2.19.16 (sic) Response IS NOT complete. Missing are the photographic exhibits 2-10 (as well as photos apparently not used at trial, to Illustrate Prosecutorial Misconduct and/or Ineffective Defense Counsel.); Police Reports from the night of Arrest (Aug. 4 2013); Forensic Evaluation Reports used at Sentencing; And Plaintiffs security camera videotapes originally reviewed at the office of Assigned Counsel Attorney Larry Jefferson's office about two weeks before Trial.

3. The descriptions in the Verbal Report of Proceedings (VRP) (Transcripts) are not sufficient because they seem to refer to photos NOT presented at Discovery.

4. The Arrest reports will be compared to testimony in the VRP. Please note that the Prosecutor may have re-written the Reports prior to the Probable cause Hearing and all

(4. cont.) and all copies are needed for Appellants (SAG)

5. The video referred to in the VRP page 11, line 30 shows evidence inconsistant with the photographs, taken by Plaintiff, of the incident (alleged assault) and the video has been doctored and falsified, thus impuning Plaintiff.

6. Appellant is indigent and disabled/impaired per the Appeal Petition and needs assistance from the Appeals Court clerk (or other agency) to serve all interested parties of any motion or document, pursuant to Rules of Appellant Procedure (RAP.) Rule 15 special Provisions Relating to the Right of for Indigent Party. Documents need to be copied and transmitted to supplement the Record at State Expense per RAP 10.4(c).

7. Appellant is having difficulties with the Department of Corrections (D.O.C.) Washington State Penitentiary (WSP) for access to legal materials (WPIC) (case documentations) and legal copies and mailings. This is an emergency situation in that the Court of Appeals Schedule needs to be complied with. Appellant asks for a Court Order compelling D.O.C WSP to assist with reasonable accommodation for legal paperwork and etcetera.

Conclusion

These additional Records and Accesses may reveal errors of Due Process in this case that should be made part of the Record for case number: 47602-9-II and Appellants Statement of Additional Grounds (SAG)

Respectfully Submitted the 17th day of February, 2016

Signed: [signature]

Joseph M Donnelly-Sherman DOC NO 383027
WSP WA 114 U; 1313 N 13th Ave; Walla Walla Wa 99362

In the Superior Court of Thurston County WA State of Washington Respondent v. Joseph M. Donnette-Sherman Defendant	Cause No. 13-1-01173-9 Motion to Supplement the Record at State Expense pursuant to RAP 10.1(c) Noted for 2.19.16

Comes now the Defendant Joseph Donnette-Sherman Hereby Respectfully Requests The Superior Court to Order Thurston County Court Records to provide the Trial Transcripts (include Arrest police Reports), Jury Instructions, and voir dire.

1. Introduction

(a) Background

1.) Mr Donnette-Sherman was convicted in Thurston County Superior Court of Assault in the Second Degree while armed with a deadly weapon. RCW 9A.36.027(1)(c), 9.94A.825, 9.94A.533(4), 9A.36.021(1)(c).

2. On 1-19-16 the Defendant's Direct Appeal was filed in Washington Court of Appeals Division II No. 47602-9-II.

II. Statement of Facts 13-1-01173-9

1.) Mr. Donnette-Sherman wishes to enter a Statement of Additional Grounds for Review Brief Pursuant to R.A.P. 10.+(c)

2.) Mr. Donnette-Sherman has repeatedly requested Trial Transcripts from hrs Attorney; Thomas E. Doyle P.O. Box 510 Hansville, WA 98430 Phone Number (360) 626-0148

3.) Mr. Donnette-Sherman's 1 year Collateral Period ENDS 5-19-2016. Therefor he is requesting the court to provide him with Transcripts for hrs trial to include all evidence exhibits.

III. Conclusion

1.) please for the above noted reasons [Grant this Motion] The Defendant Respectfully requests the court to Grant This Motion.

Respectfully submitted this 22 Day of January 2016

signed: [signature]

Superior Court of the State of Washington
For Thurston County

2000 Lakeridge Drive SW • Building No. Two • Olympia WA 98502
Telephone (360) 786-5560 • Fax (360) 754-4060

July 15, 2015

Joseph Donnette Sherman
Washington Corrections Center
PO Box 900
Shelton, WA 98584

Re: Public Records Request dated 6/29/15
Paper Copy received from other agency 7/15/15
Cause number 13-1-01173-9

Dear Mr. Sherman,

You filed a public records request, dated June 29, 2015. A copy of the request was delivered to me today. You ask primarily for records that are in the court file or evidence used at trial. This office does not maintain the court file or evidence; that is done by the Thurston County Clerk's Office. You also ask, however, for "trial transcripts." Through this letter, I am answering your request for trial transcripts.

This court is not subject to the Public Records Act, but it wants to be helpful to citizens who are interested in court proceedings and operations. Here, the information that you want is a transcript from a trial. Transcripts are creating by court reporters in their role as independent contractors, not employees, of the court. State law provides that court reporters have a right to be paid for transcription services beyond the salary that the court pays them. (RCW 2.32.240.)

It appears that you are asking about a trial in Thurston County Superior Court Cause Number 13-1-01173-9. The trial began April 21, 2015 and it was reported by Sonya Wilcox. You can reach Ms. Wilcox to order the transcript at (360) 786-5569, or by writing her at the court's address. This letter resolves your request, which is now considered closed.

Sincerely,

Rebekah Zinn
Public Record Officer

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THURSTON COUNTY
WASHINGTON
SINCE 1852

LINDA MYHRE ENLOW
COUNTY CLERK
And Ex-Officio Clerk
of Superior Court

Tawni I. Sharp
Chief Deputy Clerk

June 18, 2015

Mr. Joseph M. Donnette-Sherman #383022
Washington Correction Center R3 01 L
PO Box 900
Shelton, WA 98584

West's RCWA 42.17.010

Dear Mr. Sherman:

We are in receipt of your request for information relating to Case #13-1-01173-9 received by this office on June 10, 2015.

Public Disclosure Request. The application of the public records statute to judicial records was resolved by Nast v. Michaels, 107 Wn.2d 300 (1986). The Court held that the statute did not apply to judicial records (case files) held by the County Clerk. Disclosure of judicial records is governed by a limited common law right of access as determined by the court on a case-by-case basis.

We need you to specifically identify - in detail - the documents that you want out of your case file. The Thurston County Clerk's Office is not in possession of police reports, photos, videos, etc., as these types of documents need to be requested from the arresting law enforcement agency – not the Clerk's Office.

So, the process that needs to be followed is: ID the documents you want from your case file and send us the list. We will send you the cost of the requested case file documents. Then, send your payment and a self-addressed stamped envelope so that we can mail the documents back to you. We will need payment and a self-addressed envelope in order to process your request.

Hope this helps.

Sincerely,

LINDA MYHRE ENLOW
Thurston County Clerk

Sandra Parker
Ex. Asst. to Clerk

2000 Lakeridge Drive SW, Olympia, Washington 98502-6045 360-786-5430 www.co.thurston.wa.us/clerk

THURSTON COUNTY SHERIFF'S OFFICE

WASHINGTON
SINCE 1852

JOHN D. SNAZA
Sheriff

2000 Lakeridge Drive SW • Olympia, Washington 98502-6045 • (360) 786-5500

July 14, 2015

Joseph Donnette Sherman
Washington Corrections Center
PO Box 900
Shelton, WA 98584

Dear Mr. Donnette Sherman:

I received your request for records regarding your arrest (late August 2013), and your directive in your request to have the copies paid by CGK Consulting LLC. I contacted Kai Keller at CGK Consulting LLC and he indicated that he would not be paying for these records, so I have closed this request. Please feel free to request these records again when you make alternative payment arrangements.

Please feel free to contact me if you have questions, or I can be of further assistance.

Sincerely,

JOHN D. SNAZA, SHERIFF

Judith Leeson

Judith Leeson, Legal Assistant

c: PDR 1373

Director of the office of Assigned Counsel / Daryl A Rodrigues
Thurston County WA
926 24th Way SW
OLYMPIA WA 98502

I have not yet recieved requested documents from my court assigned attorney, Larry Jefferson, regarding my case number 13-1-01173-9. Mr Jefferson indicated he would provide me with copies of Arrest Reports and Photos from the night of my arrest (± Aug 4, 2013). Also, he was to provide me with the security camera video tape that we reviewed at his office a week or two before trial (April 21, 2015). Also, I requested the Jury instructions from my trial and the Competency Report used to determine my competency to stand trial.

Further Mr. Jefferson agreed he would compare the Machette used as evidence at my trial with the Photos of the one taken as evidence on the night of my arrest. His statement in this regard is needed.

These Documents are needed for a Pending Civil case (15-2-00844-4) and the delay may be causing me Harm.

Respectfully,

Joseph M. Donnette-Sherman #353022
WILLIAMS UNIT WA 130-L
Washington State Penitentiary
PO Box 520
1313 N 13th
Walla Walla, WA 99362

13-1-01173-9 6/29/15

6.) Indigent Report as filed by D.A.C. Attorney LARRY JEFFERSON (April 2015±)

7.) Court Response to Collateral Attack ~~submitted~~ by plaintiff (± MAY 2015)

COPY FEES WILL BE PAID BY PLAINTIFFS REPRESENTATIVE CEK consulting, LLC
2647 Westwood Drive NW suite 2
OLYMPIA WA 98502
(415) 747 2615
Attn: KAL KEELER

Please take note that this is my 2nd request as my first request was filed on the wrong FORM and legal authority.

Ten-day legal notice given this 29th day of June, 2015.

Joseph M. Donnelle-Sherman #383022
Washington Corrections Center
PO Box 900
Shelton, WA 98584

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REQUEST FOR ~~PUBLIC DISCLOSURE~~ RECORDS

To: Thurston County Superior Court
2000 Lakeridge Drive SW
Olympia WA 98502

ATTN: _____ PUBLIC DISCLOSURE OFFICER _____

REQUESTER: Joseph M Donnelle Sherman
Washington Corrections Center
PO Box 900
Shelton WA 98584

RE: 13-1-01173-9

Ten day legal notice given on this ~~June 8~~ 9th day of ~~9th~~ June 2015

DESCRIPTION OF RECORDS REQUESTED AND AUTHORITY

I, Joseph M. Donnelle Sherman am requesting disclosure pursuant to RCW 42.56 et.seq. on the following listed documents.

✓ 1. Trial Transcript (including Evidence items/photos)
✓ 2 Sentencing Hearing Transcript
✓ 3. Jury Instructions
4. Appeal Documents
5. Arrest Reports (late August 2013)
6. Photos from night of arrest
7. Video as supena'd (in September or October? 2013) (and viewed at DAC Attorney Larry Jefferson's office in April 2015)
8. Court Response from Collateral Attack (1 may 28th 2015)
9. Pre Sentencing Briefs.

All copying (for fees) is to be done only upon written request and from an itemized list prepared AFTER REVIEW OF RECORDS AND DOCUMENTS. No payments / duty will be owed for any copies produced not so authorized by me after review of requested records is completed.

Fees for photocopying is set under RCW 42.56, maximum rate of 20 cents per copy with no other fees or charges permitted or allowed by law.

Failure to respond or properly comply with disclosure is set out in RCW 42.56 and may result in penalties between five dollars and one hundred per day. Legal costs and attorney fees are also authorized pursuant to RCW 42.56 by State Legislature.

6/29/15

Thurston Superior Court
2000 lakeridge Drive SW
OLYMPIA WA 98502

13-1-01173-9

RE: DOCUMENTS REQUESTED FROM CASE FILE
13-1-01173-9

REQUESTER: Joseph Donnette Sherman (Plaintiff)
Washington Correctional Center
PO Box 900
Shelton WA 98584

DESCRIPTION OF RECORDS REQUESTED:

I Joseph Donnette Sherman am requesting disclosure pursuant to the limited common Law Right of Access as determined by the court on a case by case basis.

1.) Trial Transcripts including photograph evidence used at trial and statements by attorneys and Parties
2.) Sentencing Hearing Transcript including statements by parties and lawyers, and lawyers briefs.
3.) Jury Instructions including revisions by Attorneys accepted by the Court.
4.) Appeal Documents filed by Larry Jefferson O.A.C. Attorney of record.
5.) Video Tape as subpoena'd by plaintiff (in September or October 2013±) and as reviewed in O.A.C. Attorney Larry Jefferson's office (April 2015±)

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Superior Court of Washington for Thurston County
2000 Lakeridge Drive SW Building Two
Olympia WA 98502

RE: NO. 15-2-00844-4 CIVIL MOTIONS
Hearing for Summary Judgement / Dismissal
Judge: Mary Sue Wilson

I will NOT be able to attend the Hearing set for July 10, 2015 because I am in prison at WCC / Shelton PO Box 900 SHELTON, WA. 98584.

I have a coasultant: CGK Consulting, inc
2647 Westwood dr NW, suite 2
OLYMPIA WA 98502
ATTN: KAL KELLER.
who may be able to communicate for me. I am unable to shop for an attorney from Prison.
My Initial response to the complaint by B A Boyles was filed with clerk Linda Myh... Law on May 20, 2015.

The criminal case NO: 13-1-01173-9 is being under Appealed.

I ask that the hearing be postponed until such time as I can respond in person.

Joseph M. Donnelly-Sherman
363022 R3 D1 L
WCC / Shelton POB 900 98584

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CONTACTS CASE NO. 47602-9-II ; TCSC13-1-01173-9

Washington State Court of Appeals, Division Two
950 Broadway, Suite 300
Tacoma Wa 98402-4454 (253) 593 2970
David C. Ponzoha, court Clerk

Linda Myhre Enlow
Thurston County Clerk
2000 Lakeridge Drive SW
OLYMPIA WA 98502 (360) 7865430

Thurston County Sheriff's office
2000 Lakeridge Drive SW
OLYMPIA WA 98502 (360) 786-5600
Judith Leeson, Legal Assistant

Thurston County office of Assigned Counsel
926 24th Way SW
olympia Wa 98502 (360)
Daryl A Rodregues, Director
Larry Jefferson, Attorney; case no. 13-1-01173-9

Superior Court of the State of Washington, for Thurston County
2000 Lakeridge Drive SW; BLDG 2
OLYMPIA WA 98502 (360) 786-5560
Rebekah Zinn, Public Record officer

Thomas E. Doyle, Attorney at Law NO. 47602-9-II
PO Box 510
Hansville WA 98340-0510 (360) 626-0148

Joseph M Donnelle-Sherman DOC no. 383022
Washington State Penitentiary WA 114 U
1313 N 13th Ave
Walla Walla Wa 99362

presided

Court of Appeals, W.D., DIV II 47602-9-II | COVER

Statement of Additional Grounds 2.27.16 30 pgs

This treatise of a case gone awry
By way of subtle and not-so-subtle manipulations
at-trial gaming
set out to prejudice legal thinking
In a Marginal case under the law
There are serious issues of statute clarity in Wa Laws Land
that should have been directly addressed
and carefully explained to the Jury, were they? I say No

RCW 9.94A.36.021 Assault in the Second Degree
(1)(c) "Assaults another with a deadly weapon."
Office of Prosecuting Counsel Attorney Larry Jefferson (OPCAT)(LJ)
Joseph M. Connelly-Sherman Defendant (DEF)

OPCAT's statement: "What this case boils down to
is whether you-that a person
has a right to self Defense
while standing on victim's front walkway"

The complex issues in this case involve the meanings of;
intent act What is an "assault" "subjective State of Mind"
What do we mean by "Intent, apprehension, and "Diminished capacity" MH eval
What constituting a "deadly weapon," "bodily harm" RCW 9.94A.825
when is Self Defense a Lawful Act?
who was the instigator or participant, aggression
where did the event take place (circumstances)
why are we trying this case, burden of proof, or disprove
prosecutorial misconduct, Jury Instructions, and BRD,

The facts as recorded by the Defendant (DEF) Affidavit

NOTES ON CASE 2.13.16 9pm

There were two photos given to me at Discovery. These photos illustrate my version of events. They show myself holding up my yard tool. one photo I am out of machete range. The next the distance of the camera has been closed and the image blurred by the motion of the camera, thus illustrating BKB's (Angina motion. From what I can tell, these photos were not presented to the jury with this explanation as I discussed with the Defense Attorney Larry Jefferson. I can only surmize that they were not used by the prosecution because they were not favorable to Plaintiff. This is only one example of a series of conditions that prejudiced the jury in this trial.

I have learned a great deal about the laws and the criminal justice system. What I see is that the laws, while fair, is confusing with regard to Assault, Deadly Weapons, Self Defense, and Sentencing. And the management of a trial and Jury deliberation is critical. I find myself having difficulty understanding issues of Ineffective Defense Counsel, Prosecutorial Misconduct and the subtle yet significant manipulation of this jury trial. The definitions of legal terms have been conflagrated. The Jury was manipulated psychologically.

I have also seen that criminal charges can be sewn with inaccurate and malicious intent. The Trial is more of a game of conviction-potential rather than a pursuit of the truth. To coin a phrase, "there is "something rotten in Denmark." And I thank the state for the use of the D.O.C. Legal Library.

The photos noted above also were not selected for the Defense by Larry Jefferson, his comments to me most likely illustrate why. One of his first statements to me was "They are going to convict you." Is he simply presagent or does he know something about the impending legal process that subtley sets the stage for the prosecution's

2:14:16 7am

Method of operation? Why else might a court appointed Defense Counsel talk to the Defendant in this way? Mr Jefferson began our interviews with an "offer" by the State for a "plea bargain" to which I was supposed to confess to, They would "drop" the deadly weapon enhancement. As will be seen below, this will be used to land me in Prison. Little did I know at the time. There was not even an attempt to understand my assessment of the facts surrounding the accusations. which I was anxious to reveal and which should have exonerated me. If only I could get the powers that be to listen to me.

"This photo alone is enough to convict you" he said. Holding up like a mark of smite the photo of me having photo- been captured while trying to regain my balance after falling. And holding my yard tool in some semblance of a weapon-like threat. Defensively. This disabled and arthritic old man who has lived peacefully among these neighbors for 23 years, In the quiet neighborhood of Westwood. Where no one had ever seen a "machete attack." And still hasn't I might add after researching what such an attack might look like. It wouldn't involve approaching a would-be victim with belly exposed and hands raised into the air. From 23 feet away we are supposed to be intimidated? A machete is not an implement that can be thrown like a bullet. And this particular yard tool is thin, light weight, and not sharp like a knife. It is more of a toy version of the species. There by coincidence only after being used to trim the blackberry undergrowth. But the plaintiff is supposedly apprehensive and in fear? But what does he do? Lunges towards it in an effort to get a closeup of my belly button. Thus putting himself in "harms way" And after not being struck admonishes: 'go ahead do it.' As though he had not been presented with evidentiary culpability. Sufficiently And while restraining me with both his hands clamored on my left hand which was trying to hand his phone back.

2.14.16 9 am

transcripts pages 96 and 97

Thus setting the stage for the next charge of Assault in the second degree. There go I, holding the yard tool back and away somewhat like holding a dog toy away before throwing it. Or a dog run. I didn't throw it. His eager eyes and aggressive tone looking somehow disappointed.

But the pictures were on his phone. Along with some other ones I have not seen. Not delivered to me at Discovery. Something about moving toward him with the dog's leash still in hand. After freeing it from it's caught under the corner of the concrete walkway, but before the phone was picked up off the ground. Why were these photos not presented to Defendant at Discovery? And why was Plaintiff's camera not taken into evidence by Deputy Brooks? So Plaintiff would not be inconvenienced,? he said. After all, they had the photos to substitute.

And what of Plaintiff's security camera videotape. The one that, according to Plaintiff's statement he didn't know how to use so he would deliver it later. And Deputy Brooks agreed this would be acceptable. The same videotape that was not presented to Defendant at Discovery. The same video that was seperate'd by the Defense and finally delivered to the Defense Attorney 2 weeks before trial. With the explaination that it doesn't play from the compact disk. Even if the Defense Attorney had agreed to get an expert analyst as Defendant requested, there would have been another trial delay. After all, the previous 18 months of delays prior to trial were more than enough if only the Defense had had the video available. The same video tape that was falsified according to Defendant, because it didn't show Defendants fall. (It had been edited out) Nor did it show the shadows around the motions of the characters in the scene.

Meanwhile Deputy Brooks assists Plaintiff with making and filing his statement. And arrests Defendant (who had already claimed self defense) and handed him to the

2/4/16 9 am

Thurston County Jailers, where the Accused was held incommunicado, thus preventing him from defending himself and filing complaints of his own. Is this a common modus operendus in this county? Is this in spite of the accused requests for necessary prescription medications, medical assistance, and help with the dysfunctional phone system (Beyond this Disabled person's ability to make function). Beyond this county tax payer's comprehension. Where were my services when I needed them?

But let us get back to legal and common definitions of terms, what are the definitions of Assault? Well, there is what we all commonly mean by it, which is "a violent attack." And then there are various legal definitions we are supposed to accommodate. In common law (the basis of our legal system) we find assault to be about attacking someone physically. fair enough and simple to understand. And then we see Definitions in the law of Washington State with its various interpretations in case law, and as approximated in the Jury Instructions in this case. To wit: [RCW 9A.36.011 Assault in the First Degree] having to do with "Intent" and "great bodily Harm" which was NOT selected for the charges in this case, as such. [RCW 9A.36.021 Assault in the Second degree] where the definition appears in terms of itself after excluding Assault in the First Degree. And we find clause(c) "Assaults another with a deadly weapon." Does this mean that the term "Assaults" herein does not mean having to do with intent and bodily injury? or does it mean by virtue of its appearance last in the list - is something less serious than. Except that the "deadly weapon" appears apparently making it seem more serious. I don't know. But now we read other definitions in a different context wherein Assault means just the intention to harm, and eventually somebody can say their subjective feeling is violated. Such as listed in this case's Jury Instruction No. 10, which

(Webster's)

(25 years for Mathias)

2.4.16 10am

sets out three variations to choose from. All of which seem to have been edited to exclude "unlawful force" term which presumably related to a constitutional right to self defense in Washington State Law; which is the defense posture in this case. And which seems to appear in Jury Instruction no. 13 even though it does not mention self-Defense explicitly. In no. 10 we are introduced to "intentional touching" which is offensive; intent to inflict (even though not inflicted); and in the third paragraph "intent to create apprehension."

Was the Jury somehow confused by all this when they apparently found defendant guilty of; (to paraphrase) Intentionally offending without actually intending to? And all because I "could have" and my neighbor "might have" been apprehensive? So Defendant is branded a felon for life by a trial in which the honorable Judge says "the law is contained in my instructions", the prosecutor contends (per Appeal Attorney Thomas Doyle) that there is no evidence outside statements made even though none is required for a self Defense position? Meanwhile the Defense Attorney gesticulates in the background and probably never intended to object when the chicken was struggling to cross the road.* What I'd like to understand is; Who set that road in front of that chicken? And why is the sentence so excessive? Who in our society is this corner of law supposed to be protecting?

Why was this incident even brought to trial? Let's look and what the law says the prosecutors are supposed to consider in doing so, and the prevalent criticisms of their methods.

* July Voir Dire pg 49 line 21

2.15.16 8am

There are books in the Department of Correction's Law Library about WA criminal Practice and prosecutorial misconduct. (WA Criminal Practice in Courts of Limited Jurisdiction "No Defendant may be convicted of a crime unless the statute allegedly violated gives clear... notice that the Defendant's conduct is prohibited," who knew? That the law rests on whether or not Self Defense might offend the other party. Or does it? Is the law dependant on the interpretations given it? Isn't it the appropriate discretion of enforcement authorities that is at issue here? Does this case hinge on confounded interpretations of the law?

In the book Prosecutorial Misconduct (ISBN: 978-1-4224-2213-7 chapter One says the following:

"There are limitations on the Prosecutor's charging decision, and some examples of these constraints are: The use of the criminal process for essentially civil purposes; Vindictive or Retaliatory prosecution; and discriminatory or selective prosecution."

When considering this case in this light, several issues come to mind. Is there significant harm when one party is arrested and charged, and the other isn't? Thus pitting a self-defense Defendant up against an aggressive Plaintiff, which of the parties should assume which posture and which burden? Once self defense is claimed, the likely trial position can be anticipated by the prosecutor who should know that he will bear the "Beyond a Reasonable Doubt" (BRD) burden of dis-proving self-defense which is very difficult barring some kind of confession. Barring a prejudiced jury. And barring a competent Defendant.

And we see here that the Prosecutor found it necessary to rewrite the arrest report and ensnare Defendant in vain to prevent him defending himself in a legal manner. In a similar vein to refer to the Plaintiff as "the victom" thus pre-identifying the opposing parties with prejudice. Subtle but effective. Then repeatedly summoning Defendant

2.15.16 9am

over an eighteen month perrod of marginal delays. Is this to exhaust the Defendant and create an impression of inevitability by one way or another? We see here also that the charges had been inflated beyond the misdemeanor level; and then offer a plea deal surrendering the deadly weapon enhancement and felony impeachement. Hmmm, when would you become weary and seek to settle by confessing to something you didn't do? Just to get past. All the while knowing your opponant is suing for damages where you might look more culpable.

Surely there was a less onerous charge of lesser degree that would have sufficed. And allow that level to be put before a jury. In the interest of fairness. Fairness by including a jury instruction for lesser degree (like maybe the level of the reducing pleas). Something the Office of Assigned Counsel (OAC) Defense Attorney failed to do in this case.

What was the extent of harm in this case that merited all this prosecution? Has not the Defendant suffered more harm than the Plaintiff? Assuming this conviction as a felon will be carried his whole life unless this Appeal overturns it. And what of the costs to the State, to bear this barnyard squabble?

Lets think about that for a moment. Did the Prosecution understand that Defendant's defense fund would exhaust? And was it coincidental that his house is to be put up to foreclosure around the same time he goes to trial and prison? Thus compounding his adversity? Why was this case brought to trial? Burning a life in exchange for a nicked finger, alleged apprehension, and sobbing during testimony (18 months later). The fear of a deadly weapon is only relevant at the moment of conflict, by the way. [*]

Does the crime really fit the punishment as the WA Sentencing Reform Act is wont to do?

2.15.16 10am

With regard to sentencing and enhancement we should address the relatively new mandatory sentencing regimen put in place in 1986 and subsequently modified by the State Legislature as part of a greater legal reform sentiment nationally. Here we find the revised (from common Law) definitions of some key legal terms that ultimately have me writing this from prison. (By hand since the D.O.C. won't allow me the use of a word processor [my pet peeve]) (I'm getting blisters on my fingers."

What is a Deadly Weapon Enhancement and more to the point, when is it an appropriate tool of the Law. Is it likely to make me more reticent to carry yard tools around? Probably so at this point. But I don't think the community will be more safe in my case since I didn't use it in the manner to which it "could" be put to use. But what finding my yard tool in this light has resulted in, has me being in prison for 19 months; another 19 months of Community custody, and 10 years to worry about a no-contact order. Plus all the economic hardships for this disabled American who can't work, nor walk effectively for more than a few blocks. Why? Because of the legal definitions of "violent offense," "assault 2," "deadly weapon", and "first time offender waiver" which conflegrate in this case.

1.23.16 (1)

2. Due Process Issues

1. Arrest process puts Def Mc at disadvantage
2. evidence, enhancement based on hearsay → First time
3. Ambiguous Law definitions (V. state) (subjective)
4. Self Defense burden of Proof and review of entire record
5. Evaluation ↓ speedy trial
6. Ineffective Counsel
7. Prosecutorial Misconduct.

3. Mixed issues

1. photo interpretations, evidence withheld
2. Arrest reports
3. Sufficiency of evidence, corroboration of subjective
4. subjective state of mind of jury with BIGMACHETE

4. Actual events.

To begin with JDS was recovering from head trauma prior to and during the events of August 4, 2013. His physical symbols included disturbed equilibrium and frequent incidents of spasmatic falling and retching resulting from too vigorous too head motion this is pertinent because of Defendant's (Def.) fall during the alleged assault whereby he momentarily struggled with his balance. Defendant's condition was observed by witnesses who were not called by Thurston County's office of assigned counsel (ex-c) Larry Jefferson.

→ The actual sequence of events of the event in question are as follows; and are illustrated in part by the Plaintiff's photographic evidence. The situation began with (Def.) working

Brief Affidavit - to supplement the statement

12316

in his yard immediately adjacent to Plaintiff's. Defendant was cutting blackberry vines with a yard tool. Because the vine originated under another bush the chosen yard tool was a light-weight "toy" machete long enough to reach under and next to the undergrowth.

At some point the Plaintiff's dog cried out as though injured (yelped). Upon inspection it appeared that the dog's long wire cable (leash) had become snagged under the corner of Plaintiff's front walkway. Suspecting this might be dangerous, as the dog might choke upon the concrete stairway, Defendant moved to free up the wire, his yard tool still in his right hand by coincidence, the wire was tangled in a knot which Defendant picked up with his left hand. The wire snag came free and the dog (who was about six feet away) began moving toward Plaintiff's front porch. The wire-tangle briefly clinched on Defendants left hand and pulled him over on to his backside. Defendant was not aware of Plaintiff's presence while struggling to free himself, but heard a vocalization. He raised his arms by way of a balancing gesture while turning and stepping up a step. Defendant commonly raises his arms to unweight

1.23.16 (3)

himself to accommodate his physical limitations from old injuries. Since his arms were already raised up, they became more raised at the moment that Plaintiff began his photography; apparently. Subsequently Plaintiff lunged at Defendant (while taking another photo, blurred by the motion of the camera, and aimed from three feet away at Defendants midsection). Note: this second photo was made available to the Defense but may not appear in the trial record even though discussed to be part of Defendant's Defense with O.A.C attorney Larry Jefferson. Defendant moved his hands to protect his midsection reflexively. Some sort of accidental contact ensued which resulted in Plaintiff's phone/camera falling at Defendant's feet. As Defendant reached to pick it up for Plaintiff, Plaintiff grabbed Defendants left hand with both hands and phone, and wouldn't let go even as Defendant tried to withdraw. Defendants right hand was holding his yard tool out of the way somewhat like when a dog vies for a toy to be thrown at a dog park. Plaintiff then said "Go ahead & hit it," which Defendant took to be an odd request. Defendant then yanked his hand away and left the scene to call 911 because of Plaintiff's aggressive behavior. All of this occurred within the space of some number of seconds which left no time for intent. Retrospectfully, Plaintiff had

* → need trial documents

* disturbed & mentally prior to the alleged assault.

completly exposed himself but no machete action ensued. Nor did Defendant have any intent to do so.

We will look at the legal definitions of "Assault" and "Deadly Weapon" below but for now please understand that Defendant was suffering mental problems that limited his memory of his arrest, jailing, and lack of treatment for his trauma. Defendant's witness has reminded him of his arrest whereby the Prosecution's Deputies arrested Defendant but not the Plaintiff, despite Defendant's claim of Self Defense.

The above noted situation was communicated to O.A.C. Attorney Larry Jefferson but may not have been presented to the jury. Defendant is claiming ineffective counsel and needs copies of Larry Jefferson's work notes including written statements submitted by Defendant, medical transcripts, all copies of all photos and security camera videotapes, pretrial court visits, evaluations, and all reports & meetings with Prosecutorial and other State representatives concerning this case no. 13-01173-9 at Thurston County Superior Court.

Conditions ensuing Defendants arrest effectively prevented him from acting in his own Defense with regard to any legal actions, He was effectively and essentially held incommunicado by the Prosecutorial Agents of the Thurston County Jurisdiction. When eventually asked why Plaintiff's charges were moved forward while Defendant's were not, it was purportedly since Plaintiff filed a complaint. When was Defendant supposed to file a complaint?

Why indeed was Defendant arrested in the first place? Defendant had indicated his self-defense and cooperated with County Deputies, Defendant was not read his Miranda Rights, He experienced an unwarranted search and siezure of his abode and property even though not made aware of his imminent arrest. Defendants

yard tool was later used for sentence enhancement for a Deadly Weapon without acquiescence or any kind of proof that it was used as a deadly weapon. Its use by Thurston County Prosecution is therefore per evidentiary and hearsay rules only allowed as an example of Defendants' yard tool and not as evidence to be used for sentence enhancement.

A statement was made by one Attorney Larry Jefferson to the effect that Plaintiff's photograph of Defendant raising up his arms and yard tool was "alone enough to convict." How so? Defendant is shown 20 feet away and NOT contacting Plaintiff. That this amounts to some kind of intimidation can only be surmized, and is NOT a fact in the case. In Plaintiff's next photo the Defendant is still with arms up despite Plaintiff's closing of the distance. If this gesture is one of intimidation, why did Plaintiff approach? In any case Defendant's yard tool is NOT being used as a "Deadly Weapon" per se, And LJ should have made this point.

The legal definition of Deadly Weapon appears via several statutes and case law determinations. First we have Revised Code of Washington (RCW) 9.94A.825 Deadly Weapon Special Verdict (second paragraph): "For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death AND from the manner in which it is used, is likely to produce death." Standing with arms raised is unlikely to result in death.

Plaintiff's photos could be interpreted as brandishing (if that, given the context) but that is NOT a Felony under the laws of Washington State. The photos do not amount to evidence of deadly weapon use, and cannot be used for sentence enhancement per RCW 9.94A.825 as charged. To do so would necessitate the position that any object held up constitutes a deadly weapon. Was this the Legislature's intent?

[State v. Sorenson, 1972] "penalty cannot be enhanced by evidence established that Def was armed with a gun (rifle) but non-deadly weapon"
v. Fowler 1990
People v. Fisher 1948

RCW 9.94A.270 Dangerous Weapons (3a) "Capacity to inflict death" part of body and which weapon was applied and what were injuries inflicted.
State v. Thompson, 1977

6

1.25.16

The charges in this case include a reference to RCW 9A.36.021(1)(c). "Assaults another with a deadly weapon." This is an interesting and probably vague subsection of the statute. If we are to understand it, we must look at the legal and perhaps the general definitions of "Assault." RCW 9A.36.021 states: "under circumstances NOT AMOUNTING to Assault in the First Degree."...

[RCW 9A.36.011 Assault in the First Degree", (a) Assaults another with a deadly weapon with Intent..." and "(c) Assaults another and thereby inflicts great bodily harm."]

Since these were NOT charged we must find that the charges, in this case, do NOT AMOUNT to Assault in the First Degree. Going back to RCW 9A.36.021 we read: "(a) Intentionally assaults another and thereby recklessly inflicts substantial bodily harm;" also NOT charged. So we find that the charges do not amount to "Assault" under these subsections.

Looking at other definitions of Assault we find Legal definitions and common definitions to include the following idea: "The threat or use of force on another that causes that person to have a reasonable apprehension of imminant harmful or offensive contact." -- Ballentines

Here two points; Wa Case Law [State V Brakes, 1970] tells us that Washington state Law, before the Sentencing Reform Act of 1986, did NOT consider apprehension to be part of the Assault charge. Second point: if Plaintiff felt so threatened, why did he lung at Defendant, and why was Defendant's claim of a need for self defense not amounting to the same sort of apprehension.

was added by wa legislature?

[State v. Brakes, 1970] "Apprehension" is NOT an element of Assault
? but "intent" is

Thomas Doyle, Attorney at Law 12/6/15 2pm pg 1 of 3
PO Box 510, Hansville WA 98340-0510 NO. 47602-9-11
(360) 626 0148

Thomas Doyle, I have been re-reading the Prosecution's Response to the pre-sentencing Report drafted by LARRY JEFFERSON O.A.C. attorney and realized that there is some dis-information therein. I do not have LJ's Report as it was drafted during my jail visit post trial, which effectively prevented my ability to communicate and defend myself. However the Prosecution's Response cites two "mitigating factors," both of which are misconstrued misstatements in the context of Sentencing; and probably significantly affected the Sentence. The real mitigating factors should have been that Plaintiff was a significant instigator, and that Defendant's prior brain concussion injuries may have compromised his ability to function① momentarily after falling on Plaintiff's front walkway. [9.94A.535 Departures from Sentencing Guidlines]

(1) "Defendant was ... compulsed"? I don't know where this idea came from; except for the reference to "Dog Abuse" which was never my point. I think that might have been suggested by someone standing next to me when being interviewed by the Deputy, but was not a motive for me. I was responding to the Dog's yelping as though in pain and trying to help the dog as any good neighbor would.

(2) Defendant's capacity to appreciate the wrongfulness of his conduct was impaired." Again, I think that is not the issue. The event happened very quickly and there was no time for any thinking. There was no conscious thought to react in self defense to Plaintiff's lunging. It was pure reflex to bring my hands in defense of my midsection. Defendant's body reflexively defended itself. to lunging at any part. If anything, D's loss of equilibrium after falling backward contributed to D's difficulty standing, but this is not having to do with my capacity for thinking about least. it was clear to me that Plaintiff was behaving aggressively.

Further, the Forensic Mental Health Report cited by made no mention of Defendant's disability (note: Defendant has never seen that report.) Defendant's Hereditary HemoChromatosis (iron overload) affects the brain in several ways having to do with endocrine and neurotransmitter functions. It occasionally causes Defendant to fall uncontrollably and hit my head causing brain trauma (concussions).

Defendant did inform Larry Jefferson that the Western State Personell were not, by their own admissions, qualified to report on the condition. (note that Defendant was not allowed to review the report!) Further, L. Jefferson declined to challenge the report despite Defendant's expert request.

Thus Mr Tunicion's comment that said Report "establishes NO mental disease or defect" is either a misunderstanding or a creative interpolation of the facts. Defendant was and continues to be Disabled by his Iron Overload in both mental and Physical ways. His pain makes physical activity difficult. And his mental dysfunction [illegible]

At sentencing, Judge Price focused on the "wrongfulness issue rather than the incapacitation of the Defendant with regard to Defendant's inability to Assault Someone. How does an arthritic disabled old man raise fear in a neighbor?

Mr. Doyle, can you please send me copies of the Mental Health Report, the Jury instructions and the "statements" from the night of the arrest? I would appreciate being able to further review these issues in the context of the legal library ~~West's law~~ here at WSP.

Respectfully

Joseph Donnelle-Sherman DOC No. 383022
WASHINGTON STATE PENITENTIARY WA 226
1313 N 13th AVE
Walla Walla WA 99362

Thomas Doyle, Attorney at Law   pg 1   12/4/15 8am
PO Box 510, Hansville WA 98340-0510 (360) 626 0148

Thomas Doyle, please let me know about the status of my Appeal No. 47602-9-II. I have been reading up on the laws and cases that seem pertinent and find that my case has problems, some of which have to do with transcripts, Jury Instructions, and ~~Arrest~~ Reports which I don't have. My memory of the trial is weak and I wonder why my Attorney Larry Jefferson of Thurston Office of Assigned Counsel (LJ) did not present to the Jury any of the information I had sent to him both in writing and in person. (LJ) is NOT responding to my inquiries and perhaps you could contact him. If you need my permission to access his case notes, I hereby authorize it.

The issues of law I see are having to do with Intent, the level of infraction [RCW 9A.04.100(1)(2) and Rule 3.8], and the alleged "deadly weapon". How did the prosecution prove the dull 'weapon' (AKA, my yard tool) was deadly. How did they admit it past the hearsay rule without proving it was accurate? [State v Bashaw [4] [5] (2009, 2010)] Since they knew it was the basis for the sentencing enhancement it had to accurately portray it as the one used at the Alleged incident. How did they prove beyond Reasonable doubt that it was used in such a manner? Why was

will I need a 2255 motion?

[State v Beadle (2011)] The machete used at trial was prejudicial

there NO forensic Evidence submitted? Why were my requested experts on Weapon use, brain injury (CTE), and video tape Analysis not presented by (LJ)?

The Plaintiff lunged at Defendant with a black object in his outstretched hands thus closing the distance Range of the Defendant, who had his hands up in one photo, and still in the next photo which was blurred by the motion of Plaintiff.

Why was Plaintiff's supposed injury not shown to be non-deadly even if it was a result of the incident, which was NOT apparent at the time of the alleged Assault? Why didn't (LJ) raise the issue of the absence of malice? Why wasn't Defendants reputation for peaceful law abidance presented to the Jury?

Prior to trial the Prosecution had offered several "plea" deals that dropped the deadly weapon and changed the charges to something less than Assault 2. Why would they do that if those could be proven? Brandishing a weapon (if that is what it was rather than a balance gesture) is only a misdemeanor.

How was Intent proved? the Defendant is disabled and was suffering/recovering from prior head trama. How could Defendant be found guilty of contradicting verdicts? one verdict contends that

State v Eckenrode (Wash 2007) / Petition of Gunder (1984)
State v Leatherman (2000) / State v. Fowler

Fed Rule 353.4 Injury in fact
was NOT Deadly use injury testified
Fed 5215 Prejudice when stimulating excessive emotion

Defendant was "Intentionally cutting another person, and tending but failing to accomplish it. Next Defendant "created a reasonable apprehension of imminent fear of bodily injury" even though NOT intended, And why did Plaintiff even approach Defendant if he was in fear? In [State v Mckague (2011 #11, a ruling that an injury "necessarily requires a showing greater than injury merely having some existence."] Deadly Sentence Enhancement penalty can NOT be enhanced if evidence establishes that defendant was armed with a 'weapon-like' but NON deadly weapon." Further, because Alleged weapon is in the category of "other weapon" (other than Firearm), it must be shown to be readily capable of bodily harm (ie. Victim must be in range and Assailant strong enough) also sharp enough

How did the Prosecution prove beyond a reasonable doubt that it wasn't Defendant's right to self defense? [State v Pam (1983)] [State v Lyon Alexander TAKACS]. [RCW 9A.16.020 (3) (2) burden of proof is on Prosecution] See Plaintiff's Front entry walkway is not his abode [RCW 9.41.270].

Per RCW 10.31.100 since the Deputy had probable cause for Plaintiff's action as a significant initiater why wasn't plaintiff arrested on the night of the incident?

See Superior Court of WA Thurston Co. Judgement and sentence dated 5/19/2015 Page 2 of 12

[Per RCW 9.94A.411(2)(a)] "if sufficient evidence exists (Plaintiff's lunging photo and report by Defendant) which when considered with the most plausible (self Defense), reasonably foreseeable defense that could be raised under the evidence would justify a conviction by a reasonable and objective fact finder."

Surely if Defendant was arrestable based on Plaintiff's statement, then Plaintiff's statements should be equal to Defendant's and Plaintiff should be arrestable too.

Do I need a 2255 motion for an Evidentiary Hearing to review Ineffective Assistance of Counsel? What would be my best case with regard to (LJ's) refusals to present the issues I raised prior to trial? When should I file a statement of Additional Grounds (SAG) and what is RAP10.10?

Sincerely,

Joseph Donnelle-Sherman DOC. No. 383022
WASHINGTON STATE PENITENTIARY WILLIAMS UNIT A 226
1313 N 13th Ave
Walla Walla WA 99362

PS: What exactly is "the evidence" in this case, and how was it corroborated?

PSS: See also Attachement to no. 13-1-01173-9 (TCSC) already in your possession dated July 12, 2015 OVER

MOTION FOR RELIEF OF JUDGEMENT or order, CrR Rule 7.8

Thurston County Superior Court #13-1-01173-9 8/6/15
Motion for Collateral Attack - originally submitted in MAY 2015
(and NOT responded to)

Wherein during Trial, false evidence was presented to the Jury by the Prosecutor.

A comparison of the photos from the night of the arrest (± Aug 4th, 2013), as photographed by the Arresting Deputy, DO NOT MATCH the weapon used as evidence by the Prosecutor of the Jury Trial.

The photos from the night of the arrest were provided to Defendent as requested for Defense's DISCOVERY on or about September, 2013. The same photos were delivered to O.A.C Defense Attorney LARRY JEFFERSON and reviewed at his office with Defendent. (A) Neither DNA or fingerprints from the alleged weapon used at trial could not possibly be tied to Defendent. The Jury was improperly influenced by false evidence. The Machette presented at Trial looks more weapon-like than Defendent's light weight yard tool which is not sharp, this is critical.

(A) Unless Plaintiff or [illegible] lost possession gave opportunity to plant.

In Addition:

(1.) A videotape purported to be from Bruce A. Bolyes' (plaintiff) security camera (though not used at trial) was doctored and falsified. This is demonstrated by comparing the false video to photos taken by Plaintiff on the night of the alleged incident. [see: Defendent's foot positions, shadow inconsistances, and orientation of camera.] The video's falsification illustrates a deliberate intent to falsify evidence to be used in the case. The falsified video had been sepena'd by the Defense and reviewed at Defense Attorney's office only several weeks before Trial. The false video was not taken into evidence the night of the alleged incident and only came to light months later.

(2.) The "arms held upward" photograph suggested to be a menacing gesture was actually Defendent's attempt to maintain ballance while tripping over the concrete step. Defendent's foot positions are NOT the same as depicted in the false video.

(3.) The close up of Defendent's midsection is blurred due to the erratic motion of the camera as Plaintiff lunged at Defendent. The location of the camera is inconsistant with that portreyed in the fake video. At the moment of the photograph, there is NO CONTACT from Defendent. Defendent felt threatened by plaintiff aggression and tone of voice.

(4.) The orientation of the phone/camera in the false video is inconsistent with the photograph. Plaintiff held the camera with the lens pointed at Defendent, Not with phone/camera buttons facing forward.

(5.) Plaintiff's eager photography illustrates that he was NOT intimidated or afraid of the yard tool being used as a weapon. The Prosecutions contention that Defendent's yard tool is a "deadly weapon" is NOT tenable given its NON-use to inflict bodily harm. The arresting Deputy testified only to the apparently intact evidence wrapping, NOT that the weapon used as evidence was used during the alleged incident. Evidence based on hearsay is in-admissable under Rules of Evidence #2 A Deadly Weapon enhancement to a sentence must be a fact in the incident NOT hearsay. Prosecution must prove that it is capable of producing bodily harm (See: State V. Pam 98 Wash.2d 748, 753, 659 P.2d 454 (1983) and: State V. Todd J Carlson (April 2 1992) [5] and: State V. Workman 90 Wash.2d 443, 454, 584 P.2d 382 (1978)

July 12, 2015

ATTACHMENT to MOTION AND ORDER FOR APPEAL BOND

Thurston County Superior Court (TCSC) NO: 13-1-01173-9

Joseph M. Donnelly-Sherman (JDS) was convicted by a Thurston County Superior Court Jury Trial of Assault 2 with a "deadly weapon" on 1 April 23, 2015. At sentencing JDS was denied an Appeal Bail Bond. JDS had been out on his own recognizance for about 18 months while waiting for Trial. JDS demonstrated responsibility and no risk for flight or violence. He made all required Court Dates, coordinated effectively with Bail Bondsmen regarding weekly check-ins and travel restrictions. JDS had NO contact with Plaintiff per the Restraining Order. There have been NO violations.

JDS is a respectable, peaceful, and Disabled citizen who has rescued people and equipment on multiple occasions. His work as an architect Sole Practitioner has made him responsible for Public Safety, which he has never failed to provide. JDS does NOT own, or know how to use, weapons of any kind. (RCWA 9A.36.02) [a].

JDS (Defendent)'s conviction is based entirely on the false statements of Plaintiff (one person's word against another's), and Jurisdictional "failures" which are under Appeal. The Plaintiff's statements are unsubstantiated and Defendent's were ignored. JDS contends that the Plaintiff's actions precipitated the accidental collision that is the basis for the charges in this case. (RCWA 9.94A.535 (1)(a)(c)(e))

This can be demonstrated by a fair examination of the evidence. (see Plaintiff's and Defendant's statements and photos from the night of the arrest. Note: statements and photos could not be obtained from Court Documents at this time.)

JDS asks for a minimum, or zero Bail Bond based on previous Bail behavior and his indigency. The only money available to him is his monthly Disability payments for living expenses and his Home's value, which is subject to foreclosure in July 2015. JDS's credit cards are maxed out. All he might do is borrow more money from family.

JDS is Disabled per the ruling of a Federal Judge and has not been able to work for several years. He has both physical and mental limitations to his abilities. His health is affected by disruptions of his nervous, muscular and endocrine systems -- the effects of Hereditary Hemochromatosis (Iron Overload) on the human metabolic systems. Essentially JDS loses his ability to concentrate effectively and follow the meanings of discourse. Physical activity aggrevates his condition. His Court Appointed Defense Attorney did not understand this and did not present it effectively to the Jury at Trial. The Court sponsored Evaluations of his competency did NOT adequately address his Disabilities. These inefficacies Harmed JDS's rights for equal protection, both at Trial and at Sentencing.

the ineffectiveness of Defendent's Defense Attorney (LARRY JEFFERSON) will be presented at the Appeal Hearing or Discretionary Review. Issues of ineffective Counsel includes: (1) Important events at the time of the alleged assault, and as presented in Defendent's ~~statements~~, were NOT presented to the Jury at Trial.
(2) Thurston County Deputies arrived late on the scene and relied on Plaintiff's statements only as the basis for the Arrest of the Defendent. There were no witnesses to the alleged event aside from Plaintiff's security camera and photos which were Not presented at Trial.
(3) Defendent's history of being an excellent citizen with No crime record was Not presented to Jury. The Court Appointed Defense Attorney declined to sepena or depose Defendent's requested character witnesses.
(4) Defendent's request for Experts to testify regarding the appearances of weapons uses, Cronic Trematic Encephalitis (CTE), and video tape falsification were not honored.
(5) At the time of the alleged assault, the Defendent had No ill will toward the Plaintiff (his next door neighbor), and was surprized and shocked by Plaintiff's aggression.

Apparently, we live in a County where your neighbor can say he is "Afraid" of you because of a dull yard tool. And the local constabulatory will send you to prison without Bail terms.

The yard tool in question, (AKA alleged "deadly weapon") was NOT sharp, and was present at the alleged event only because it was being used to clear blackberry vines in Defendent's yard. It was there by coincidence, NOT an intent to intimidate Plaintiff. Indeed, Defendent didn't even know Plaintiff was present at the time. Defendent was responding to the dog's yelping as though injured. An inspection JDS determined that the dog's wire tether had become snagged under the corner of the concrete walkway, thus preventing it from returning to the Plaintiff's front porch. Defendent's good samaritan act of breaking the wire free ultimately resulted in Defendent falling on Plaintiff's front entry steps, when the tug of the dog pulled him over. Defendent aggrevated his prior head trama (CTE.) and subsequently struggled to stand; He threw his arms up and out to balance himself after tripping. At this point Plaintiff apparently photographed Defended and the photo became evidence of "brandishing" the yard tool.

Subsequently, Plaintiff lunged at Defendent as illustrated by a second photo, blurred by the erradic motion of the camera, 3 feet off the ground and 3 feet away, and pointed at Defendent's navel. Defendent can be made out to be standing with arms up and NOT toaching Plaintiff. In other words it was Plaintiff that intriated by approaching Defendent in an aggessive

manner. There was no apparent wounding of the Plaintiff at the time of the incident and none demonstrated in Court. Plaintiff's bruised knuckle could have happened later and, according to Defendant's experts, was self inflicted.

The Defendant is old and Disabled. The pain in his muscles and joints practically prevents him from walking, let alone assaulting anyone.

The machette presented at trial does not belong to the Defendant. It looks much more "weapon-like" than Defendant's smaller yard tool. The arresting Deputy testified only that the "evidence seal" appeared undisturbed, NOT that it was used as a weapon by Defendent.

The video tape from Plaintiff's security camera would have shown Defendent's fall and unstable standing, as well as Plaintiff's actions. The tape was NOT taken as evidence and was supposedly delivered months later. It was purportedly non-functional. Only after it was sopena'd by the Defendent's consultant did a falsified video arrive at the Defense Attorney's office 2 weeks before Trial. Though it was NOT used at trial, if it had been shown to be falsified it could have been put to "NOT insignificant use" (WILDE V. STATE 706 P2d 251 (Wyo 1985)) by the Defense. A false video would have shown that someone was trying to submit false evidence.

July 12, 2015

In conclusion, JDS deserves to be released on Bail. There are extenuating circumstances surrounding his conviction that must be investigated and documented. JDS needs the freedom to follow up on these issues personally as he is no longer able to afford expert representation and coordinate effectively from Prison.

Joseph Donnette-Sherman #383022
WASHINGTON STATE PENETENTIARY

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Walla Walla, WA 99362

M

SAG outline today a page

DW under RCW is defined in several not totally consistent ways. See 9.94A.825; 9A.04.110(6); 9.95.040(2) of the Revised Code of Washington (RCW); 9.41.270; 9.94A.533(4) Then there is the dictionary versions. Then there is case law. ☹ My favorite is where machete is defined as "drug paraphenalia" in a drug bust where defendant was harvesting weed. nuf-said.

SAG

P's statements

Pros. did not verify with corroborating evidence.

LJ didn't either, did not challenge on cross

false machete wasn't sufficiently tested for evidence

false arrest after SD indicated, P not arrested based on lunging and restraining DEF puts DEF in legal jeopardy.

LJ did not seek true analysis of photos

(also false video)

P's statements were false and internally inconsistent with his sequence: #8 photo when statement

(DB) Dep Brooks memory 18 months VRP 65/45 8/14/13 - 4/Aug 8/14/13

DEF statement of facts per undisputed false testimony that was not corroborated. and not challenged by LJ

to whom? 6/18 cell phone not seized, DB already sleeping from DEF claim for photos & video two day. Motion to compel discovery and award fees

Arrest reports

2/14/13 3/10/13 6/12/13 6/18/13 P "I don't remember" "94/22 answered wrong question reveals coaching

"cable of the dog in hand" 96/24 & 98/ dog ran"

M

V

The evidence is only P's statements (conflicting)

false machete and video, photos

conditions of

False Arrest based on P's statements alone despite SD claim

Held incommunicado. no evidence taken re phone/video

M 10. cumulative error doctrine

Q 1. Ambiguities in charging doc Vacate, Compel Discovery

2. false arrest & held incom

3. JI lack of lunging, photo analysis; not abuse, injury.

4 corrob ER. cell phone seizure & restraint.

5 18 months & lesser memory

6. Ap Brief 21/last cut his leash" NOT meant "free" his leash from snag