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COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON
BY DEPUTY

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
Melina Harris)
(your name))
)
Appellant.)

No. 69648-3-1

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Melina Harris, 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

Attached

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Additional Ground 2

Attached

3

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

Date: Sept 14th 2013

Signature: Melina Harris

No. 69648-3-I

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

STATE OF WASHINGTON,
Respondent,
v.
MELINA HARRIS,
Appellant

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY
The Honorable Leroy McCullough

I would like to request that my appeal be considered. I was convicted on a scintilla. This should not be possible in our justice system.

The state's evidence for it's charges, depend solely on the unsubstantiated, un corroborated, ludicrous story of a fresh, two month on his own, rookie officer who, if he did not come up with a lie for knocking out a citizen, with enough force to put a ¾ inch on the outside and 3/8ths inch on the inside, hole in her face, after a completed call, on her way to her front door, would most likely have been fired.

The States witness J. Thompson testified that the rookie officer was "confused" more than once, in describing the scene he came upon after the call had been completed, after he had told the young officer "we are done here," after he had headed to his car. Officer Thompson states he was out of view during the assault and retraced his steps when he heard a yell. He stated that there was no professional reason for the officer to have gone after and accosted me at that point.

At officer Thompsons first view the citizen is laying on the ground, with a rookie cop rolling into position to straddle her. He arrives behind the officer who then positions himself, kneeling beside the body. He states that the citizen is not fighting, but not responding and there by not cooperating. He states later that she was not responding to verbal and pain compliance techniques. The states that after he notices that Eric is confused, he reaches around to the arm pinned under me and brings it around to my back and then he asks him "Are you going to cuff her?"

The photo of Thompson holding me off the ground, handcuffed by one arm, shining the flashlight down and looking at me, could be used in a training video of what "not to do" regarding safety. Trust me, I do (did) safety training. It's a great shot. I have great sympathy for both of us in that photo.

The only corroborated statement is from a witness, who states she saw something on Eric's hand and when she asked to see it closer he closed his hand and walked away. This is when she is desperately questioning why her heroine and hostess is bleeding profusely and being arrested. She also stated it could have been an impression from holding the flashlight firmly, (the one that is suspected of putting a hole in my face), or even a smear of my blood. She also points out in interview that when she asked what happened Eric said I threw my shoes at him, she looks over to where my shoes are close to where I fell down questioningly, and Eric then changes his story and say's I tried to hit him with my shoes.

The state chose the witness who had questioned Eric and had him show her his hand. The state is not aware of her panic and concern at the lies that moment. Several years ago, she was at a very bad point in her life and drunkenly attacked me at a conference. She remembers clearly that my reaction to being screamed at, swung at, shoved and pushed was to tell security I would deal with her and get her to shove me into the elevator where I took her up to my room and put her to bed with a hug and reassurance it would be ok. Her panic when I was placed alone in the car with the officer who had obviously assaulted me and then not being able to find me at the jail or the hospital for a couple of hours was intense. Her nervousness on the stand was also intense.

Eric never states that I bit him, only that I attempted to bite him. Thompson nor Gagner remembers him showing them his hand, he has a camera in the car and does not photograph it, nor does he report it on his statement as an injury.

I understand there are over a thousand pages of trial transcripts, but the whole incident is going over about 8 minutes of time, that I was not fully conscious for about half of.

The jury was given confusing instructions, leading them to think that if they thought that either or any part of the story was true that they should convict.

They asked to see the video again, and it seems that they see what may be the young officer showing his hand to officer Thompson. This in some way confirms for them the idea that there may have been some truth to his story that I tried to bite him.

So I was convicted of something I may or may not have tried to do, while in a barely conscious state, coming to, fighting for air, as I am not breathing.

As far as I know, there is no criminal law that prevents a human who is being restrained and is not breathing, coming to consciousness, from fighting and struggling in self defense.

To call that act a felony assault of the officer who knocked them out and is at that point currently strangling the citizen, is a perversion of the law.

As stated in my testimony, I have no idea if I tried to bite at the arm or hand that was restricting my breathing to the point of mortal panic or not.

The physical evidence of the blunt force trauma impact to my face, swelling to my neck from the strangulation that could be seen by my physician 8 days after the incident, in photographic evidence, the video evidence showing me as not fully conscious, as well as the statements from the three witness's who saw the officer strike me and me falling unconscious, as well as the young officers own statement, should have separated the States claim of assault into two distinct incidents. One I was present for the alleged assault, and one I was absent from.

Eric states I was shaking my head side to side, and flailing my arms a legs a bit, yelling without speaking, then I stop moving and am silent, then again, yell, shake head, flail, then stop moving and am silent, and then again with the flailing. For those with out current complete first aid training. That would indicate that the blunt trauma force to my face, and the back of my head, (I landed on the slate paving stones) cause traumatic brain injury, aka, unconsciousness and or concussion, and I am trying to come to.

I believe I was convicted of an act that is not a crime, considering the jury's instructions, as well as their requests and comments after the trial, as the other claim of assault was too preposterous and unsubstantiated to believe without obvious doubt.

They were told that my actions of refusing to engage with the officer, not giving him my name, being disrespectful by trying to jokingly point out the inappropriateness of his aggressive behavior, the alleged attack before and after I was falling to the ground, my struggling while coming to consciousness, my resistance to walking to the car when I made the request to adjust the improperly applied handcuffs, my resistance to get in the car on my second request to adjust the improperly applied handcuffs, etc...etc... constituted the crimes they were to convict me of, felony assault of an officer and obstruction.

Thompson alludes to the fact, in interview, that Eric was overly rambunctious when he is at the threshold at the start of the call, hanging half way in the open door, shining his flashlight around in the brightly lit by the large chandelier entry, calling out loudly and repeatedly. I am firm he was wired with adrenaline and or other substances.

I clearly refused to interact with him and ignored him. I then made a verbal effort to pointedly state, he was being ridiculously aggressive. I then verbally made it absolutely clear I "was" talking to Thompson, I Refused to engage him. This was all in the space of well under 4 min. As I did not react to Eric until I was on level with him on the front porch.

The jury is not clearly instructed that this is not against the law, in fact they are led to believe by the final statements of the prosecution, that it contributes or constitutes

obstruction of the law, along with his long laundry list of items that “together” constitute the crime of assault and obstruction.

They explicitly thank him for explaining that all to them clearly in the after trial interview. One juror puts for the thanks, and several others nod smiling in agreement, thankful that the prosecutor has made it so clear for them.

Officer Thompson testifies that the rookie officer Eric followed me closely during the short time we were discussing why they were there. They were under the assumption that they were there for a noise complaint due to the music that could be heard out the open front upper windows. After a short conversation where I continue to try to move away from the aggressive officer who is continuously haranguing me, glued to me, with his face close to my hear making communication very difficult, I deduce that the noise level from the music is not loud enough to be heard in the only home in the cul de sac that a complaint may have come from, and ask them to listen to the noise that is causing the complaint, the people BBQing shish Kabobs and smoking outside around a small deck fire pit. My neighbor Sharon sleeps with her window open and we drive each other nuts often as she talks on the phone loudly on her deck and it is focused in my bedroom and my deck is on the side of the house where her bedroom is. As we pause to listen, it is noted that you cannot hear the people talking on the back deck and at the BBQ, from the front drive. The guests during this time have turned down the music and closed most of the windows. Officer Thomson states then and in testimony that he then said to me, that turning down the music and closing some of the windows should suffice and that they were done, to the younger officer. I nodded and turned around to get back to my guests.

Eric’s version during the first interview in court, before the jury is included is fairly short. He notes the obvious, that I avoided speaking to him for the most part, and states that I did not appear overly intoxicated.

His testimony in front of the jury, after being coached by the prosecutor, and after he hears my tapped statement taken at the jail where I am having trouble speaking at various points and words and it sounds like I say subservant, instead of civil servant, is ridiculous in it’s embellishments. Saying I kept calling him a subservant and (as I mouthed to him prior, when he was on the stand, (it’s not a word)), then said he thought I was drunk because I kept saying that, and it’s not a word. His tail of the “attack” is done with a smile and sometimes even a grin, as he piles it on. His tail of the “tried to bite him” being the Most Intense moment of his life, is theatrical in it’s exaggeration. It is a distinct contrast to his pretrial testimony.

Eric is rather vague in his testimony about how he got in front of me and very careful to keep repeating he was not blocking my path, (though trust me, had he not been, I would have continued on to my front door) he does state he shined the large high powered flashlight in my face. He then goes on and on about how he lowered it, he learned in training how bright it was, they shined it in our eyes, he shined it on my chest, just the reflection of light, you know it’s really bright,.... Ad nauseam.....and on... and on....

After this long drawn out, "I didn't do nothing wrong" statement, he finished up with, "and then she attacked me with her shoes"...

However he does testify he accosted me with the flashlight and was somehow facing me on my way into the house.

Eric testifies that when he "pushed" at me my "Head snapped back" That is a repeated quote by him and the witnesses. He states that he is sure that it is at this moment I received the injury of a hole in my face. He states I was, after being "pushed back" leaning backwards.

He awkwardly goes on to say that as I reached out for balance, he then "knew" he was "Under attack." And he pulled back.

I remember me falling away from him. He states I was falling away from him. The witness state I was falling away from him.

He insists he reached out and "not by the books", but....he "took me down to the ground".

Eric spends much time, and with emotion, testifying that the citizen has NO choice in the matter. HE was the lead officer, I Had to interact with him and do what he said. HAD to, the citizen has no choice, He was the LEAD OFFICER. The call was Not over, I Would respond to him.

These are not statements asked by the prosecutor or my attorney, they are voluntary explanation statements, given by Eric on the stand, showing his obsession, emotion and mind set at the time of the assault as well as long after the incident.

It is this increasingly embellished, obviously fabricated, and undeniably telling of his psychological issues, testimony that is the scant scintilla of evidence that the State has used for a conviction of a citizen of a serious Felony charge.

I state clearly that my only words were "Please Stop" and I said them in a clear, loud and exasperated tone. Seconds later, I am knocked out.

He had no other reason to come back to accost me, other than to force dominance. He had been on the force for several months in training with another officer, and in academy training prior. No one should be able to say he was ignorant of the resources he had at hand. Like pulling up the home owners name from the address. We are all very clear I stated I was the homeowner twice, and that I stated it could be pulled up and usually was, when I was answering Thompsons question and trying to convey my discomfort and unease. Thompson testified to this fact.

I being a 47 year old educated political activist, experienced troubled/at risk youth councilor, with 20 years in the male dominated industry of construction, with plenty of prior interaction with police officers, while having a Wonderful celebration of work well

done, and my decision to give 2 more years to the non profits efforts, in a house full of family, children, professional associates, and project volunteers, had no motive or reason to assault an armed rookie cop, who by all accounts I had hitherto pointedly avoided, by beating him with my prized, infamous shoes. No one has been able to come up with any reason or explanation why I would suddenly drop my IQ by half or more, and become severely insanely violent without provocation. Then moments later while bleeding on the ground, can be heard to be calm and helpful in controlling the situation.

I thought this was summed up well by the Judge at sentencing when he with a big smile and humor clearly explained to the prosecutor that he did not think Mrs. Harris needed anger management.

The video evidence, and photographs, combined with the officers statements, clearly show that there was no actual legal obstruction was committed, to substantiate the charge.

The States claim and statements that the above constitute obstruction relied on confusing the jury and outright lying about the law.

The prosecutor leaned heavily on the audio after I am hauled to my feet after being hand cuffed. Because I was on trial and not the officers, the prosecution relied on emotion elicited from my statements after the sentence of Strappado had been administered by the officers, after I had been handcuffed. The Strappado and it's effects were severely minimized by the prosecution. Using this to claim that it is additional "evidence" of my "disrespect and lack of cooperation" with the officers. Considering the situation, I do believe I should receive a medal for my restraint and professionalism, but that is beside the point.

I would like to address that moment as I believe the States slant on it to be a vile perversion of the justice system for corrupt reasons.

It is noted in the testimony of both officers that I was not physically responding. They state I was not responding to verbal commands nor increased use of "pain compliance commands" as do the witness's who state I was not focusing nor responding to their voices, yet they on film, video and in front of witness's, picked up my body weight by my restrained arms backward, grasping my elbow and upper forearm, pulling up on my arms repeatedly until I fully came to with the prodding of intense pain, scream, and try again to get footing.

Just so we are All on the Same Page that maneuver is not called pain compliance.

It's called **Strappado**. **Strappado** is a form of **torture** in which the victim's hands are first tied behind his or her back and then the victim is lifted/raised until his body weight is hung from his shoulders, usually dislocating both arms. Other names for strappado include "reverse hanging" (This form of torture, involves binding the prisoner's hands behind his or her back. After fatigue sets in, the prisoner will inevitably fall forward--**putting full body weight on the shoulders, and impairing breathing**. If the prisoner is not released,

death by crucifixion (constricting of the lungs, causing asphyxiation)) results. It is best known for its use in the torture chambers of the medieval Inquisition, as it was quick, cheap, very effective and left no scars or blood. The UN Convention Against Torture has defined torture as: "...any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person

Strappado is NOT an approved daily police procedure. Period. Shoulder joints and hand cuffs have been around for thousands of years, this is not new, it is not rare and this is Not proper and safe police procedure.

As I was born double or loose jointed and had my shoulder sockets surgically recreated, and in doing so, my backward range of motion purposely limited, it ripped the labrum on both shoulders, as well as other tendons, as soon as the angle of my arms reached maxim rotation range and enough of my body weight was suspended from them, to tear past maxim rotation range. It damaged mine to the point where they will only heal with surgical repair. About 25 grand each for surgery. Making it a safety matter of serious consequence.

This pain compliance technique was used again, as shown in the video, and testified to in trial, to "propel" me immediately upon getting a foot under myself to help hold my body weight. The arms are restrained behind the body and the hands are lifted upward to induce pain to compel the victim to move, or fall forward if you are not very careful.

If a person stumbles while this procedure is being used, the most likely scenario is that the officer(s) would try to catch the person, by their arm(s) as that is what they can quickly and readily reach, pulling up as a natural reaction. This "shock load" on the shoulders is what made the more active forms of Strappado permanently crippling.

The added concern of "shock load" is statistically probable using it to pull a humans body weight to a standing position. If the victim gets a foot under themselves, the officers will raise up on the arms as the person stands up, if the foot slips or knee gives in the effort of standing, the shock load on the shoulders occurs.

Pain compliance techniques that have a high risk of bodily injury are to be used only in extreme circumstances when other measures have failed or if the officers believe they are in real and immediate danger.

Variations of "The Strappado torture" "Pain Compliance technique", are extremely high risk pain compliance techniques. It's why they were and still are used as Torture.

You can see from the video that I am not moving enough at any point to require any force, I am one step away from a rag doll. The only thing you can see that I am capable of at that point is speaking, and that is very limited...

And why you have over a thousand pages of trial and a conviction with no evidence.

Though I am obviously coming to consciousness during part of the rolling over and handcuffing, and can be heard asking the crowd to take pictures and to back off, the photos clearly show that again, during a time when my actions or lack thereof are being used as evidence of my "illegal behavior" I am again rendered unconscious by officer Thompson.

The still frame photo from the video stamped 44;45;02 could be used as a training example of restraint asphyxia. Kneeling on a smaller framed human so that their ribcage no longer expands for breathing while they are facedown and handcuffed, causes them to no longer be able to breath and go unconscious. This is exactly what happened. The photo shows the knee putting pressure in the middle of my upper back and my eyes closed. The audio indicates I was having problems speaking, as I asked them to take photos, and then, I am silent. Not breathing tends to do that. The photo stamped 01;09;08 shows my head dropped, my eyes closed, my face slack. The photo stamped 01;09;19 I actually look so animated I could be dead.

Restraint Asphyxia resulting in sudden death is rare, but does occur and all officers using force and restraint are to be trained and thoroughly understand this danger. The danger is most often to those overweight, but there are many factors, such as asthma, age, activity before restraint, or in this case, that I had not fully regained consciousness before restraint positioning and putting pressure on my ribcage occurred.

It is also why the Strappado method of standing me to my feet got repeatedly shock loaded, you can see that I try to put a foot under my weight and fail as I am not fully conscious, and the officers haul up on my arms attempting to lift the weight of my body repeatedly.

Though I was in pain and my rights, evening, and body had been molested, mangled, maimed, and you can clearly see I am not fully conscious while on the ground, you can clearly hear on the video, my only statements are to have the molestation filmed, for my protection and for my nephew and others to back down, for their safety, and for the officers to address the pain they are putting me in, again for my safety.

I understand that the tactics of the state, are not a legal question, just underhanded dirty pool, especially through coaching younger officer, and days of repetition, (and I do mean serious, insane repetition) introducing photos to evidence in front of the jury without prior approval to do so, to discredit a witness. Repeating daily and often, that I was drunk and disorderly, though I had requested a breathalyzer test to show I was sober enough to be legal on the highway by several points. To insist it was too dark for the witness's to have actually seen what they stated they saw, though the streetlight is located in my front yard and is 49 feet from where I landed on the ground, and there were holiday lights, and light shining out from over 20 window panes, many of them rather large, as well as the open door with the hall light and 3 tier chandelier shining out. Purposely and painfully dragging out the trial by days, to go into my attorneys stated inescapable vacation and out of state work days so the trial was split with a 10 day recess in-between and the jury was hostile.

I am not sure of the legalities of the prior discussion in deciding to not, in front of the jury, get into the reasons for Mrs. Benjamin dismissal after 13 years on the Bothell police force, as the unemployment board had found no reason to believe she had lied or been dishonorable as the judge stated. Then later the State insisting if the jury were told she was an officer as she was flown up from AZ as an expert witness, being a guest, who had rushed to the house when I was released, and as an officer freaked out over the strangulation and other marks and had taken photos and taken me to the hospital, that the bs over her dismissal after coming out of the closet as a lesbian, be a 3 ring circus of discussion, to discredit her. I decided to not allow this and the jury did not know she was an officer with extensive experience or hear why she was testifying.

I am not sure of the legalities of allowing Sergeant Gagner testify on the stand that the witness's did "make noise" that I had been assaulted and then perjuring himself by later testifying that they did not, just before lunch break, and not being allowed to bring him back on the stand to note to the jury that he had perjured himself.

I feel this is of some importance to his credibility as the sergeant called in at the incident, and one who did his best to make me look bad, for his own protection.

Thompson calls for a sergeant to oversee the incident. The Sergeant does not ask me what happened. He does not tell me he is the Sergeant reporting to oversee the incident and his actions during the evening were also criminal.

Sergeant Gagner states in his report, A. Gohman says she witnessed the event. R. Pell, states she was witness to the whole event, and asks for a witness to her statement. His notes are clear leading up to the moment of the assault, his lack questioning, and notes after that point are a gross negligence of duty in the situation. I was not asked what happened. Though at this point there was reasonable cause to suspect that there may have been reason to at least question the rookie's story. I was confused at this time and had no clue why I was still in the police car. Police get out of hand, it happens, you generally don't arrest the victim for it. I had no idea at this time Eric was claiming I assaulted him. I also at that time did not know I was bleeding. Witness told Gagner I was assaulted. Gagner did know these facts, and should have at that point, asked questions, quite a few questions. I was put into a patrol car alone with an officer with a highly suspect story, and statements and indications of foul play, to be driven injured, restrained and helpless into the dark residential neighborhood, with a fresh rookie officer the Sergeant did not know well enough to have made that call, regardless of the busyness of the evening. I was left hand cuffed for over 3 hours, after I had repeatedly said there was damage to my shoulders and I was in intense pain. I was at no time fighting or resisting, and while conscious and able to do so, I was physically cooperating and mentally and verbally as professional and calm as I could muster. I was left cuffed behind my back at the hospital, the sergeant refusing the request of the nurse to cuff me to the bed so I could use an ice pack, and my request to do so, to relieve the intense pain and strain. I was only uncuffed the exact amount of time it took to put in the stitches and only because the doctor refused to stitch me sitting up. After I was stitched up, it had been about 3 hours past the time of the incident, I had a female

nurse, the lavatory was less than 35 feet out the door to the room I was in, and visible from the door of my room. I was refused the request to go relive myself.

As I stated, I am not quite clear on what is a point of law, and what is just allowable smoke and mirrors. I understand it is custom to coach the officers to lie on the stand, though I do not believe it is legal and you can see the coaching and lying clearly by reading the statement given to my attorney before trial, the pre trial testimony and then the trial testimony of the officers. As I have formally and repeatedly asked for a criminal investigation into the officers in questions, they were vested in the aggressiveness and slant of their testimony.

I firmly believe that the jury convicted me on items that were not against the law, in the confusion of including them with actions that were alleged as violations of the law by the State.

I was not comfortable with the ruling that the words sexual assault could not be used but I have no idea on the legalities of that ruling, only that I disagreed with it firmly. What grown man, in his right mind, grabs a woman's bare crotch for ANY REASON?? Much less a rookie cop in training, in front of a veteran officer and in front of witness. Loud with panic witness's, including a tiny 9 year old.

The only thing the State alleges that could be defined as a violation of the law is the ludicrous story that I attacked the officer with no reason or provocation, out of the blue, with my prized shoes.

They were bought special to receive an internationally recognized award in Times Square, as a News Maker of the Year, for using innovation to address the issues of women in the construction trades (or lack thereof) and the Skilled Trades Disaster Response Project, training and keeping track of certifications of construction volunteers for use in natural and unnatural disaster response, and I had just put them on for photographs at the event and was taking photos of the guests for the contest when the officers showed up.

They sit in evidence in hopes that you grant my request for a retrial.