

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS

06 APR -5 PM 12:04

STATE OF WASHINGTON

BY JW

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
 Ernest Sylvia)
 (your name))
)
 Appellant.)

No. 33326-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Ernest Sylvia, 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

Insufficient Evidence to convict of attempted murder 1 - Can we interpret the defendant's actions as substantial steps toward murder in the first degree, beyond a reasonable doubt when there is reason to suggest through actions and testimony of witnesses that the defendant's purpose and intent was not for murder?

Additional Ground 2

Evidentiary Error - Should the court have allowed this testimony?

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

Date: 4-3-06

Signature: Ernest A Sylvia

Additional Ground 3

Ineffective Assistance of Council

Was council for defendant unprepared
and ineffective?

4-3-06

Ernest A Lybica

Document #5 shows on April 6 we were continued to April 11 of 2005 when trial began.

Again, in document #2 Mr. Guillian says normally it takes a number of months to prepare for a case as serious as mine. By March 29 of 2005 we had done virtually nothing. Before court Mr. Guillian said we needed a continuance and we would get it. He said if we didn't get it we would have appeal issues. When the continuance was denied Mr. Guillian made the ridiculous statement that he could prepare in one day. We had done no investigation yet. He did a crashcourse preparation for trial. I never had a chance to put my case together. My council was unprepared and ineffective.

Due to ineffective assistance of council I ask the court to vacate the conviction and remand for a new trial.

All of these statements are in fact true to the best of my knowledge.

4-3-2006

Ernest Sylvia
Ernest A Sylvia

Additional Ground 1 - Insufficient Evidence

As I the defendant make my statements of additional grounds to support my case that there is insufficient evidence to convict for the charge of attempted premeditated murder, you will see that every witness, the defendant, and even the victim himself are all on the record giving testimony that support my case.

The testimony in this trial is not all the same. Some statements outside of court are not the same as testimony at trial. The state attacked the credibility and integrity of some witnesses on this point. I intend to show that even the officer's testimony will differ and will contradict each other. My point is to show that no two stories are exactly the same.

Crawford vs Washington says the accused should enjoy the right to confront his accusers. I would suggest that statements made in trial are just as important, if not more important than any testimonial statements made outside of court. I will show that the defendant disarmed himself and made no attempt at murder.

Three officers responded to a call of domestic violence. All three were present at the breach of the front door yet they have two different stories.

Yamada testified that Foster hit the door three or four times with his shoulder. RP 42
Confident of what he saw, he demonstrates to the court just how he saw it happen. RP 43

Foster also testified that he had forced the door open with his shoulder. RP 270

When officer Shook testified, he made repeated statements that Foster kicked the door open. RP 350, 351, 358

Yamada and Foster had very similar stories while Shook tells of something different. Next Foster and Yamada have differing testimony of an event that happened moments after the breach of the door.

As the officers made their way up the stairs and in the bedroom they took the defendant into custody. Yamada testified that they had to wrestle with him but because there were three officers against one man they were able to subdue him. RP 34

However when Foster testified, he said that he ordered the defendant to comply at gun point and the defendant did comply. RP 275 He also testified that there was no need to wrestle with him. RP 280

I think we are fortunate that this testimony is not relevant to the essential elements of the crime. It is hard to tell what happened by these statements.

I said all that to say this. It is not clear as to exactly what happened on or about January 7th of 2004. The only thing that I can see that is consistent is that you will hear witnesses, the victim and the defendant all give some testimony that suggests the defendant did not attempt to kill James Strom and that he dropped, threw or released his weapon at both the front door and the bedroom. There is no question that some type of an assault did occur. Fear, emotional outbursts, intimidation, threats and scary situations are all evident. The defendant testified and has never wavered in his claim that he wanted to be in control. He wanted to scare James Strom. He wanted to get his way but he simply never tried to kill James Strom. RP 440

Can we interpret his steps and actions to be substantial steps toward attempted murder in the first degree beyond a reasonable doubt when there is reason to suggest through actions and testimony that these steps and his purpose was for an intent other than murder, such as to cause fear, to manipulate a persons actions to gain control of them?

scaring a man, intimidating a man like James Strom can't be done with kind words and flowers. No, it got ugly. The defendant went as far as to pick up a knife and shout threats. He puffed out his chest and put on a display of hostility. But there is a difference between what he purposely did and making a real attempt to kill a man. By typical standards this may appear to be an attempted murder. However, this is a very unusual case and I do not believe that it should be put in a category with typical cases.

Jamie and Jennifer both testified that there was a point when all these events were occurring that the defendant told them he wasn't going to hurt James. RP 300 RP 220, 221. Jamie testified that there was absolutely no doubt in her mind that this conversation occurred. RP 246

There is no doubt and no disputing that at the incident at the front door after scaring Jim with the knife, the defendant threw the knife away. There was also an incident later at the bedroom door where the defendant had the meat cleaver as he charged up the stairs. He had no intention formed in his mind to kill James. He said he never had the intent to shed blood. RP 440. Again he threw the knife away by his own hand. This time it is a little different.

Two things are not different. James was not hurt and the defendant threw the knife.

Jennifer testified that the defendant threw the knife. RP 320, 321, 325 She also saw the defendant throw the knife away at the incident at the front door. RP 325

Jamie testified that she observed the defendant throwing the knife to the ground at the incident at the front door. She also testified that at some point at the incident at the bedroom door that she saw the defendant throw the knife. RP 252

Jackie testified about the incident at the bedroom where she was present. She said no one made the defendant drop the knife. RP 194 She said that when the door came flying open he came tumbling in and the knife was not in his hand. RP 194 The knife was on the floor RP 194 When she was asked if she had any concern that the defendant would kill James that night she answered, "Absolutely not." RP 194

Here we have three witnesses that testified that the defendant had thrown, tossed or ~~dropped~~ released his weapon and no one testified that there was some effort to strike Jim Strom with the weapon. When asked if the defendant tried to regain control of the weapon, Jackie, officer Foster and the defendant all give the same answer. No. RP 194, 279, 438

The defendant testified that he threw the knife and described in detail what happened and what he was thinking. RP436, 437 When he was asked if he ever had the intent of hurting Jim in any way throughout the night he answered, "I never had the intent to shed his blood or to stick a weapon into him. I never had that intent." RP440 When asked if he had any intent to kill Jim he answered, "Absolutely not." RP440

When Jim testified he also indicated that the defendant released the knife and may have thrown it. RP144 In statements outside of court Jim said that the knife was about six inches away from him when the police came in, that it was within arms reach. RP118 When he was shown a picture of the knife in court Jim indicated that his earlier statement may have been incorrect because the knife was much farther away as it appears in the picture. RP118 Officer Yamada took a picture of the knife and indicated that it had not been moved. RP34

I suggest that a photograph is the most accurate witness. When James Strom was viewing this evidence it indicated something different than how he remembered. I suggest perhaps that is not the only thing he may have been mistaken about in his early recollection and statements while he was under duress and the influence of his anger toward the defendant.

I would like to point out that the court denied the defense motion in lamine to the state of mind of James Strom, to his feelings of if his life was in danger, of his experience in Vietnam. RP 51, 52, 53 The court must have felt that his feelings on these things had some value and were important. I said that to say this.

Jim Strom's feelings seem to be very clear that the state went too far with the charges and that the defendant had not made any attempt to kill him. There is no doubt an assault occurred but it was not an attempt to kill him. Jim said on the record at sentencing that he talked to Kevin McEann on several occasions because he felt the charges were "way too high" RP 603 He went on to say, "I if Jesse had intended to inflict bodily harm or to take my life he would have done it." and he said the defendant chose to get rid of the weapons. RP 603 James Strom feels the assault on him was more about intimidation. He said it wasn't about doing physical bodily harm. RP 603

This may appear to be an attempted murder but it is not. It is an unusual case. We have a man with absolutely no injury who feels the defendant in no way tried to kill him. The victim, the defendant, and all three witnesses testify to support something other than an attempted murder happened that night.

The state did not overcome the burden of unreasonable doubt. I ask the court to vacate the conviction.

The next page is a typed and notarized signed statement made by James Strom. He knew of my appeal and wanted to make a statement. I invited him to send it to me so I could pass it along to the court with my statements. The statement is truly his and was in no way coerced. Again, this is an unusual case and I plead with the court to consider it.

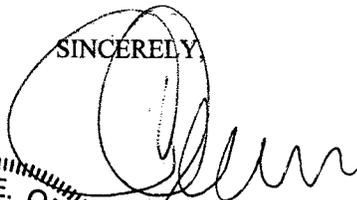
PLEASE ACCEPT THE FOLLOWING STATEMENT AS TRUTH IN THE APPEAL OF
CASE #04-00097-3, ERNEST SYLVIA.

I BELIEVE A GRAVE INJUSTICE HAS BEEN SERVED IN THIS CASE. BEING THE
VICTIM, MY WISHES AND TRUE FEELINGS CONCERNING THE EVENTS THAT TOOK PLACE
THE NIGHT OF THE CRIME, WERE IGNORED. ERNEST, AKA, JESSE, WAS GUILTY OF THE
CRIME OF ASSAULT AGAINST MY PERSON. THE PROSECUTING ATTORNEY, KEVIN
MCCAN, CHOOSE TO SEEK ATTEMPTED MURDER CHARGES, EVEN THOUGH I TALKED TO
HIM ON THE PHONE AT LEAST FOUR TIMES TO REDUCE THE CHARGES. DURING THE
TRIAL, KEVIN DIRECTED THE TESTIMONY TO FAVOR HIS CONVICTION AND THE DEFENSE
ATTORNEY DID LITTLE TO CLARIFY THE FACTS.

HOW COULD ANYONE, LET ALONE MY SON, BE FOUND QUILTY OF ATTEMPTED
MURDER WHEN THEY DISCARD THE WEAPONS THEY USED TO ANIMIDATE SOMEONE. HE
GAVE THESE WEAPONS UP ON TWO DIFERENT OCCASIONS, OF HIS OWN FREE WILL. NOT
ONLY DID HE GIVE THESE WEAPONS UP, I SUFFERED NO CUTS, SCRATCHES OR EVEN A
BRUISE. WAS JESSE ANGRY BECAUSE I ASKED HIM TO LEAVE AFTER THE FIGHT WITH HIS
BROTHER? YES! COULD I HAVE HANDLED THE SITUATION BETTER? YES! DID HE TRY TO
KILL ME? NO! THIS WAS A SIMPLE CASE OF POWER AND CONTROL, WHO HAD IT AND WHO
DIDN'T. I WAS ANGRY TOO. JESSE CROSSED THE LINE IN HOW FAR HE WENT TO SCARE
ME. THE PROSECUTOR TOOK ADVANTAGE OF MY ANGER AND FRUSTRATION WITH MY
SON TO EXAGERATE THE CIRCUMSTANCES TO SUPPORT ATTEMPTED MURDER.

I DID TELL THE PROSECUTOR I WANTED JESSE TO PAY FOR HIS ACTIONS. HE
NEEDED TO BE HELD ACCOUNTABLE FOR HIS BEHAVIOR, BUT NOT THE CHARGES THE
PROSECUTOR SOUGHT AT THE TIME. IT WASN'T RIGHT AND IT WASN'T FAIR, NOT ONLY
FOR JESSE, BUT THE REST OF THE FAMILY AS WELL. JESSE HAD NO INTENT TO MURDER
ME. JESSE DESERVES A TRIAL WITH A PROPER DEFENSE ATTORNEY, SO THE JURY CAN
SEE THAT THE PROSECUTOR WAS MORE CONCERNED ABOUT HIS CAREER AND A
VICTORY THAN HE WAS WITH TRUTH. THIS IS A YOUNG MANS LIFE AND
TWENTY YEARS IS AN ETERNITY. I PLEAD WITH YOU TO HELP JUSTICE BE SERVED IN
THIS CASE.

SINCERELY,



JAMES STROMI
3-31-06



Christine E. Opstad
expires: June 16, 2009
Defed March 31, 2006

Additional Ground 2- Evidentiary Ruling

I believe there was an error in an evidentiary ruling in the defendant's trial. He was not allowed to explain to the jury why he had fear and took a defensive position by grabbing the meat cleaver from the cutlery block when he answered the knock at the front door. RP425-432 He had reasonable apprehension of fear because of a situation which the jury did not get to hear. The court sighted that in answering it happened probably nine months before, that was not a specific enough time period. RP430

I can tell you now with certainty that the incident happened on or about March 18th late at night. I can tell you this because I, the defendant, remember watching America invade Iraq the next day on CNN. That event happened on March 19th of 2003. I watched this with William Miles at his home. William Miles knew all about the events the night before.

I argue the defendant should not be penalized because he did not have an exact date for this event. It does not make that event any less traumatic or any less terrifying. The defendant's answer was probably 9 months before. Please remember this trial was about 15 months after that so in reality we are asking a date for something that happened two years before. The only reason I even remember the day I was shot in the face is because the next day

was April 1st, which is April fools day.

If we calculate March 18th to January 6th that is over 9 and a half months. 9 months is a pretty good on the spot estimate for someone who simply did not write the event down on his calendar. If being hit in the head with a baseball bat is not a traumatic or terrifying event I don't know what one is.

There are some striking similarities between the event of March 18th when the defendant was struck in the head with a baseball bat and the night of January 6th. On both nights, Joe, the defendant's brother started a fight with the defendant in the family room which ended up in the front yard. After the fight on the night of March 18th the defendant's brother knocked on the door. When the defendant answered the door he was hit on the head with a baseball bat.

Now on the night of January 6th the defendant had reason to fear the knock on the front door. He knew what happened last time there was a fight with his brother. He knew what his brother was capable of. He was afraid of what may be on the other side of that door. The jury wasn't allowed to hear that. The state made it seem ridiculous that the defendant had some fear of being attacked. "That's not credible. That's not believable." "... just preposterous." RP 530

I believe that without knowledge of this testimony the jury's minds may have been swayed enough to find the defendant guilty and that they may have disregarded all of the defendant's testimony as not credible. I believe the requirements to admit this evidence were met and the defendant should be allowed to tell his story. I ask the court to vacate the conviction and remand for a new trial.

Additional Ground 3- Ineffective Assistance of Council

I believe I have been denied effective assistance of council. I have included some documents to support my statements. Throughout the trial proceedings I took notes and wrote things down to give me a fresh and clear account of events that happened.

Mr Quillian was the second attorney to work on my case. He was assigned to my case to file a motion to withdraw a guilty plea. The motion was granted on October 8 of 2004. That was the day I asked Mr. Quillian to represent me for trial. Document #1 shows we were in court and a trial date was set.

On November 4 of 2004 I sent Mr. Quillian a document telling him my side of the story. Mr. Quillian sent me a letter I have here as document #2. In document #2 Mr. Quillian explains he would need to ask for a continuance. He states in the letter that charges as serious as mine normally require a number of months in preparation and he would need additional time.

Document #3 shows that the continuance was granted until March 29 of 2005. The next two months went by with almost no communication between Mr. Quillian and myself.

On March 29 of 2005 Mr. Quillian and I went before judge Orlando. During this time Pierce County judges were dealing with what they referred to as "Blitz cases."

The idea was to move old cases along as quickly as possible. Before our appearance Mr. Guillian told me we needed another continuance and he was confident we would get it. He said if we didn't get it we would have appeal issues. Judge Orlando denied the continuance and we were ordered to proceed. I was stunned. This was a nightmare. We were not prepared.

Mr. Guillian tried to appear calm after court and told me he could prepare in one day. I knew he was doing the only thing he could do, fake it 'till you make it. Directly after court I wrote a statement down and it is labeled here as document #4

The state had actually agreed to a short continuance to April 4 of 2005. I believe Kevin McCann said he agreed to it to keep some order in the courtroom.

At this point Mr. Guillian had done virtually nothing and was being forced into some kind of crashcourse preparation for trial. He never went through the discovery with me. I never saw an investigator. The weekend before April 4 he interviewed all the witnesses and the victim and went to the crime scene in one day. I never had a chance to effectively put a case together. It was a joke.

We sat and waited for a courtroom April 4, 5, and 6. Mr. Guillian was out of his hometown and away from his office where he could work.

1
10P2

4 SA 1

IN THE SUPERIOR COURT FOR PIERCE COUNTY WASHINGTON

State of Washington,

Plaintiff

NO. 04-1-00097-3

vs.

Ernest A Sylvia
Defendant

SCHEDULING ORDER

IT IS HEREBY ORDERED that:

1. The following court dates are set for the defendant:

Approval No	Hearing Type	Date	Time	Courtroom
	<input type="checkbox"/> Pretrial Conference	,20	AM/PM	
	<input type="checkbox"/> Omnibus Hearing	,20	8:30 AM	
	<input checked="" type="checkbox"/> Status Conference	12/6, 2004	8:30 AM	CDPJ
	<input type="checkbox"/> Motion:	,20	AM/PM	CDPJ
<input type="checkbox"/> Pros. agrees 3.6 hrg. necessary <input type="checkbox"/> Testimony expected <input type="checkbox"/> Time estimated:				
	<input checked="" type="checkbox"/> TRIAL	1/24, 2005	8:30 AM	CDPJ
	<input type="checkbox"/>	,20	AM/PM	
	<input type="checkbox"/>	,20	AM/PM	

2. The defendant shall be present at these hearings and report to the courtroom indicated at 930 Tacoma Avenue South, County-City Building, Tacoma, Washington, 98402

FAILURE TO APPEAR WILL RESULT IN A WARRANT BEING ISSUED FOR YOUR ARREST.

3. DAC; Defendant will be represented by Department of Assigned Counsel.

Retained Attorney; Defendant will hire their own attorney or, if indigent, be Screened (interviewed) for Department of Assigned Counsel Appointment.

Dated October 8, 2004.

Copy Received:
Ernest A Sylvia

Defendant
AM Quill

Attorney for Defendant/Bar # 6838

Stephanie A. [Signature]
JUDGE

Prosecuting Attorney/Bar # 2582

Defendant waives right to speedy trial for trial date of 1-24-05

1 10P2

#1
20F2

43A1

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

State of Washington,)
 Plaintiff)
 v.) No. 04-1-97-3
)
Ernest Sylvia) Waiver of Right to Speedy Trial
 Defendant) Pursuant to Time for Trial Rules
 WVRST

I am aware that I have the right to a trial within 60 days of the commencement date if I am in jail on this case, or within 90 days of the commencement date if I am not in jail on this case. I wish to give up this right and I agree that the new commencement date for this case is 12-31-04.

As a result of this waiver, the last allowable date for trial pursuant to CrR 3.3 (the expiration date) will be 3-1-05.

Dated 10-8, 2004

Ernest A Sylvia
 Defendant

Stephanie Allen
 Judge

RM Quill
 Defendant's attorney/WSBA # 6836

#1 20F2

#2

Robert M. Quillian

Attorney at Law
2633-A Parkmont Lane S.W.
Olympia, WA 98502

COPY

(360) 352-0166
Fax: (360) 786-9704
e-mail: qlaw@turbotek.net

December 28, 2004

Mr. Ernest Sylvia
c/o Pierce County Jail
910 Tacoma Avenue South
Tacoma, WA 98402

Dear Ernest:

I just wanted to give you an update on your case, primarily with regard to the upcoming trial date of January 24, 2005.

I have been heavily involved, in the last few weeks, with a series of cases in another county, all involving the same Defendant, and one of which is a third strike case, carrying wit it the possibility of life without parole. There have been and will be very time-consuming pre-trial hearings in all these cases, and the plan is to simply try them back to back until they are completed.

My reason for telling you this is that the best estimates are that these cases will extend well into January, if not February. While I have been working on your case, based upon the document you gave me, I will not be ready to try your case on January 24. Your charges are, as you know, extremely serious, and our defense must be fully prepared and done right. Thus, I will be requesting a continuance of your trial on January 24, and assume you understand the need for such a continuance. Charges as serious as yours normally require a number of months in trial preparation before being fully ready for trial. Simply put, I want to defend you to the best of my ability, and I will need additional time in order to do that.

I will see you on the 24th, if not before.

Sincerely yours,



ROBERT M. QUILLIAN

RMQ:s

#2

2

3

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,)
 Plaintiff)
 vs.)
Ernest Sylvia,)
 Defendant)

Cause No. 04-1-00097-3

ORDER CONTINUING TRIAL

This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.

Reasons: Defense counsel is in pre-trial hearings, to be followed by trial, in another county, and needs additional time to investigate and prepare for trial in this matter

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED the Defendant shall be present and report to:

	DATE	TIME	COURT ROOM	ID NUMBER
<input checked="" type="checkbox"/> OMNIBUS HEARING				
<input type="checkbox"/> STATUS CONFERENCE HEARING SET FOR:	<u>3/2/05</u>	<u>8:30</u>	<u>CD1</u>	<u>1323177</u>
THE CURRENT TRIAL DATE OF: <u>1/24/05</u>	IS CONTINUED TO: <u>3/29/05 @ 8:30 am Room 211-A</u>			

Expiration date is: 4/29/05 (Defendant's presence not required) TFT days remaining: 30

DONE IN OPEN COURT this 24th day of January, 2005

Ernest A Sylvia
 Defendant
KM Quillian
 Attorney for Defendant/Bar # 6836

[Signature]
 Judge
[Signature]
 Prosecuting Attorney/Bar # 25182

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

 Interpreter/Certified/Qualified
 Pierce County, Washington

#61

March 2nd - IN FRONT OF JUDGE Orlando

Robert Quillion (Attorney) told me before we asked for continuance, that we would get the continuance and if we didn't we would have appeal issues. We were not prepared.

He then told me after we were ordered to proceed that he only needed 1 day to prepare.

#4

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,) Cause No. 04-1-00097-3
 Plaintiff)
 vs.)
Ernest Sylvia,)
 Defendant)

ORDER CONTINUING TRIAL

This motion for continuance is brought by state defendant court.
 upon agreement of the parties pursuant to CrR 3.3(f)(1) or
 is required in the administration of justice pursuant to CrR 3.3(f)(2) and the defendant will not be prejudiced in his or her defense or
 for administrative necessity.
 Reasons: no courtrooms available

RCW 10.46.085 (child victim/sex offense) applies. The Court finds there are substantial and compelling reasons for a continuance and the benefit of postponement outweighs the detriment to the victim.

IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO:

	DATE	TIME	COURT ROOM	ID NUMBER
<input type="checkbox"/> OMNIBUS HEARING <input type="checkbox"/> STATUS CONFERENCE HEARING <input type="checkbox"/> TRIAL READINESS STATUS CONFERENCE				
THE CURRENT TRIAL DATE OF: <u>4/6/05</u>	IS CONTINUED TO: <u>4/11/05 @ 8:30 am Room CDPJ</u>			

Expiration date is: 5/4/05 (Defendant's presence not required) TFT days remaining: 23

DONE IN OPEN COURT this 6th day of April, 2005.

Ernest Sylvia
 Defendant
RM Quillian
 Attorney for Defendant/Bar # 6836

Myra Schubert
 Judge
[Signature]
 Prosecuting Attorney/Bar # 25182

I am fluent in the _____ language, and I have translated this entire document for the defendant from English into that language. I certify under penalty of perjury that the foregoing is true and correct.

Pierce County, Washington
 Interpreter/Certified/Qualified