

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

08 JAN 14 AM 8:55
STATE OF WASHINGTON
BY [Signature]
DEPUTY

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
ANTHONY E. FAIN,)
)
Appellant.)

No. 36390-9-II

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

I, Anthony E Fain, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

I would like to file for insufficient assigned counsel. My assigned counsel didn't motion to impeach his witness when I asked him to do so. I feel like he wasn't tryin to help me but that he just wanted to finish the case. He never let me look at my discovery when I asked to see it. My lawyer filed for none of the motions I asked him for.

Additional Ground 2

Also I would like to file for inconsistent testimony by everyone who took the stand in my trial to tell their story. All the testimony stories were different about who seen what. They witness who did lie on the stand my lawyer did not try to impeach none of them who lied. When I asked for him to do so I was told that it didn't matter.

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

Date: 1-11-08 Signature: Anthony E Fain

CERTIFICATE OF SERVICE
I certify that I mailed

Form 23

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to K. Proctor
& J. Cunningham
Date 1/11/08 Signed [Signature]

Additional Ground 3

I believe that I was not given an proper instruction on a lesser included offense on Christopher Jiles of assault 2. I was charge with attempted first degree murder and assault 1 which is not a lesser included offense. In the case of Nicholas J. Cencich he appeals the trial court's denial of his motion for a new trial based on the retroactive application of *State vs. Berlin*, 133 Wn. 2d 541, 947 P.2d 700 (1994), which entitles him to a jury instruction on a lesser included offense to his charge. I was given a lesser included offense on Valeria Jiles of assault 2 but not on Christopher Jiles. Also in the case of Song Suk Han the trial court improperly refused to instruct the jury on the inferior degree offense of second degree assault. RCW 9A.08.010(1)(a) is neither party disputes that Han used a weapon and inflicted body harm. The issue is whether the evidence supports a reasonable inference of criminal negligence and whether the evidence would allow a rational jury to acquit on the greater offense. My jury instructions for a lesser included offense of assault was directed toward Valeria Jiles and not Christopher Jiles. They instructions were not given separate for each persons.

Additional Ground 4

My jury instructions on self-defense I believe was confusing and incomplete. The instructions improperly relieved the state of its burden of proof because the jury was not told that the state had to disprove my self-defense claim. They proved I shot him but I didn't dispute that. They didn't prove that I didn't act out of self-defense. I believe that the jury instructions were confusing to the jurors. In the case of *Rehugo Abel Rodriguez* it states that the jury instructions must more than adequately inform the jury of the law on self-defense in order to pass appellate scrutiny. *State vs Walden*, 131 Wn.2d 469, 473, 932 P.2d 1237 (1997). Here, the jury could have believed the in order for Rodriguez to act in self-defense he had to fear he was in actual danger of death or serious permanent disfigurement or loss of a body part or function. That reduced the burden of the state to disprove my self-defense I don't believe that my jury instructions were on self-defense was fair.

Additional Ground 5

The intent to commit death or great body harm was not proven beyond a reasonable doubt. My intent to commit a crime was not prevented. The self-defense I claimed was not disproven. It was never established that my actions were not in self-defense. In the case of *Thomas McGrath* it states the factual pattern here present doesn't permit the imputation to McGrath of an intent to injure as a matter of law nor does his testimony establish the intent as a matter of fact as to which a reasonable mind can't differ.

The fact that I shot was the only thing that was established and that was something I wasn't doing. There for the crime of assault 1 on Christopher Jiles was never established. Neither was my self-defense proven to not exist. I don't think nothing was proven but the fact I shot which is something that didn't need to be established. Total.

Additional Ground 6

I think that my offender score may be wrong cause I committed a crime as a juv. and got 4 points for it instead of 2. It was a robbery and an assault that happened a hour apart from each other. They both have the same criminal conduct and shall be counted as one offense under RCW 9.94A. 589(1)(a). So if that is true I should have 7 points not 9. The robbery and assault were both committed within 1 hour of each other.

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