

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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STATE OF WASHINGTON)
)
Respondent,)
)
v.)
Russell Gene Barnes)
(your name))
)
Appellant.)

No. 36666-5-11

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

I, Russell G. Barnes, 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 believe that the court interfered with the jury in finding a fair and impartial verdict. See attached ground 4 statement.

Additional Ground 2

any and all testimony of officer Lear regarding conversation with me at the apartment. See attached ground 2 statement.

If there are additional grounds, a brief summary is attached to this statement. Ground 3 attached
Additional briefing of ineffective assistance of trial counsel.
Attached

Date: 3-28-08

Signature: Russell G. Barnes

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additional Ground 1

On pg. 165 lines 18-23 jury instructions are that, "Reasonable doubt must be overcome by evidence." Further lines 22-23 state that all the evidence must be, "fully, fairly, and carefully considered." I think that the Court interfered with this consideration when it denied the jury review of the testimony of Ms. Beard and Officer Lear.

The fact that the jury requested such a review is clear evidence of a reasonable doubt. I believe that there was good reason for that doubt within their testimonies,

Ms. Beard reversed a major part of her testimony. Starting on pg. 95 ending on pg. 97 of the transcript. At first she saw me get in the truck then admits that she did not actually see me do it.

Officer Lear testifies on pg. 152 of the transcript that he did not talk to Ms. Simmons through the window. On pg. 153 he reverses his testimony. These are good reasons for doubt that the jury was not allowed to review.

To make matters worse trial counsel does nothing to bring these matters to
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the attention of the jury.
I feel this is a major cause of this
wrongful conviction,

Additional Ground 2

First of all Officer Lears' testimony in regards to our conversation at the apartment is quite exaggerated and for the most part false. There was no in depth conversation with him regarding the statement that someone took the truck to work on it, & simply told him that, "that was what Ms. Simmons said," & did not try to convince him that the statement was true or not, & just told him that was what she said in passing. There were no other witnesses to any conversation with him. There was no warning that anything I said may be used against me in court. I don't believe that any of that testimony should have been allowed for those reasons.

This is another example of trial counsel's failure to perform his duty. Without this testimony it is far less likely that I would have been convicted of either charge. It is very doubtfull that I would be convicted of giving false information to a police officer.

additional Ground 3

I believe that there are serious problems with the sentencing. I was sentenced based on 3 points for my burglary convictions. all of these counts were brought under one cause number and one plea agreement, They all happened within a short period of time. "a crime spree". I think that should count as one point instead of 3.

Also, I was given the maximum sentence, I believe that I was given that in part because I exercised my right to a trial. I also believe the record reflects the courts consideration of statements made by officer Lear. These things have nothing to do with the crime alledged and should not be considered.

There is also apperantly a somewhat secretive seperate judgement and sentence for the charge of false information to a police officer. I have never seen it despite my requests in writting. I think that is wrong and may result in action under 42 USC. § 1983.

additional Briefing:

Ineffective assistance of counsel

The record is replete with instances where trial counsel could have and should have objected to numerous things. all of the references to me as the driver, References to the vehicle as mine. These had a constant and cumulative affect on the jury. None of them should have been allowed.

The failure to bring to the attention of jury the major reversals in witnesses testimony was an additional and unforgiveable catastrophe. any reasonable attorney would not have done these things. It is difficult for me to believe that this level of deficiency could be unintentional. He even goes so far as to pretty much admitt my guilt to the charge of false information to a police officer, & have never even heard of a more pejudicial practice by any attorney.

If not for these things I do not believe I would have ever been convicted of these charges, & believe this is reversable error and I am entitled to a fair trial.

This is to certify that I am responding
well within 30 days of receiving the
transcripts,

3-28-08

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