

ORIGINAL

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON,
Respondent,

v. John Michael Bale
Appellant.

No. 44172-1-II
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

FILED
COURT OF APPEALS
DIVISION II
2013 SEP 25 AM 11:52
STATE OF WASHINGTON
DEPT. OF JUSTICE

I, John Michael Bale, 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

please review page's 1-9 I
have provided please and thank you!

Additional Ground 2

please see pages 1-9

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

Date: 9/20/13 Signature: [Signature]

Dear Judges

1. you are about to read my statement of additional grounds. I would also like to have you be reminded when you read my statement of additional grounds that I had no intent of harming any one and that no weapon was pointed at any officer at any time. 531 months = 45 years in prison for No Assault in the first degree
2. I also would like you to know that I did not know this weapon was stolen more over this weapon was not reported stolen for weeks of the charge, so how did the court convict me of possession of a stolen firearm
3. I would also like you to know that I did not sign or waiver my rights to a speedy trial. They threaten me if I did not sign a court Document that waived my speedy trial rights that I would go to Sag. I also said on records that they were in violation of my speedy trial rights.

Please consider these errors I have included and reverse my case.

Section 1 In respect to the judges I have come up with an easy way to read and understand my statement of additional grounds as follows:

A. I will state in my own words a brief story on what was unjust during my trial.

B. I will state the errors, citing case law or the constitution of the united states in defense of my unjust trial statements in A.

Section 2 This will have my main issue of additional grounds set fourth in section 2.

My attorney Michelle Taylor willfully disclosed information to the prosecutor regarding evidence (the gun) that was protected by attorney client confidentiality clause. This information was critical to my defense and should not have been disclosed to any one. More over when in the courtroom she said to me I'll "regret it!" She also lied to me repeatedly about statements that were made and none were made.

ERROR: Michelle Taylor broke attorney client confidentiality and by doing so, damaged my whole case. She broke rule 1.6 of Rules of Professional Conduct (RPC) title 1 section A, which states that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent. This breaking (RPC) rule State V. Webbe (2004) 122 WA. App. 683, 94P.3d 994

The prosecutor has damaging information now that has affected my defense. I informed the court on record that I now have prejudicial conflict with the prosecutor due to Michelle Taylor willfully disclosing damaging information to the prosecutor. So the judge took a ten-minute break, and then came back to the courtroom. He then removed Michelle Taylor and the prosecutor from my case then said to the both of them that they are both under investigation. Then in one week or less the same prosecutor was back on my case.

ERROR: My trial was unjust and my rights to a fair due process trial was violated. It states in the constitution amendment 14 that any person should not be deprived of any of life, liberty or property with out due process nor deny equal protection of the laws. Bolling V. Sharpe 347 U.S. 497, 499 (1954)

On one occasion I informed the judge that I would like new counsel and I would like to remove my attorney, Craig Kibbe from my case because there was a complete breakdown of communication. I also gave 12 reasons from the Rules of Professional Conduct (RPC) that he was in violation of. My right to new counsel was not granted, the judge said I gave "personal reasons" why, these were not personal reasons but factual.

ERROR: A. The judge did not grant me my right to new counsel. This is a violation of my sixth amendment and under State V. Hegge 53 Wn. App. 345, 766 P.2d 1127 (1989), states that there must be a complete break down of communication by this action my counsel violated communication rule 1.4, thus causing grounds for new counsel.

B. My attorney also violated my sixth amendment, which states that I should have "compulsory process for obtaining witnesses in his favor." Craig Kibbe (my attorney) failed to do this, causing a breakdown in my legal defense. Harris V. Reed 894 F.2d 871 (7th Cir 1990) more over harming my case by his ineffectiveness of counsel. Strickland V. Washington 466 U.S. 668, 685-86, 104S.Ct. 2052, 80 L. Ed. 2d 674 (1984) States the right to effective assistance of counsel. The result of my attorney, (Craig Kibbes's) actions and errors the proceeding would have been different.

Kitsap county does an illegal process called "Bind over". It is the process of holding you in district court for sixty day's on felony charges, then moving you to superior court. After this they start your sixty-day speedy trial rights. I have done every type of research on this illegal process and have not found any state or county that does this. I asked my attorney Mr. Kibbe to dismiss my charges due to this illegal process, he did not. So on record I told the judge that they are in violation of my speedy trial rights. I would also like to inform the judges that I did not waive my rights to a speedy trial on record.

ERROR: In the constitution the sixth amendment states that the accused shall enjoy the rights to a speedy trial. My right to a speedy trial in Kitsap county was violated due to the fact of this illegal process called the "Bind over". More over the 14th amendment is more stringent enforcing the foundation of the sixth amendment.

I was denied my constitutional right to due process on the grounds of use of the county law library. My attorney Craig Kibbe put in a court order to have my rights to use the law library, The judge (Steven) granted me my rights to use Kitsap county jail's law library.

ERROR: Kitsap county jail refused to allow me my constitutional right under Article 1, Section 3 (states that no person shall be deprived of life, liberty or property with out due process) State V. Enlow 178 P.3d 366, 143 Wn. App 463 (Wash. App Div3 2008) This defendant was also denied his legal request and access to a lawful access to his county jail law library. This was not a harmless error; His case was reversed and re – manded due to these facts.

1. Disproving the element of: Fingerprint/ D.N.A.

I have also found their was insufficient evidence to support a guilty conviction on the grounds on failing to provide finger prints on the weapon. The prosecutor put the weapon in the lab and tested it for fingerprints and my D.N.A. It came back negative on both. This did not prove all of the elements of the crime. State V. Lucca 56 Wash. App 597, 599, 784 P.2d 572 (1990) this case was reversed and re-manded.

2. Disproving the element of 1st degree assault.

The evidence was insufficient to establish that the victim suffered substantial bodily harm as required in order to convict defendant of first or second degree assault State V. Finch 137 Wash.2d 792, 831, 975 P.2d 967 (1999). This case was reversed and re-manded. The states evidence was insufficient to support all of the elements of first and second-degree assault. It must be proved beyond a reasonable doubt. More over both police officers got on the stand & said "I attempted to point a gun at them." This does not meet a first or second-degree assault. Because on the grounds no one was harmed and if it was a crime it would be brandishing a weapon if anything.

I have found a case in which the court of appeals Grosse J. Held that (1) statutory definition of "great bodily harm" did not create alternative means of committing crime of first degree assault and (2) the defendant was entitled to jury instruction on a lesser included offense of fourth degree assault. State V. Laico 987 P.2d 638, 97 Wn. App 759 Wash. App. Div. 1 (1999) This case was reversed & re-manded and was not a harmless error.

531 months = 45 years is harsh for a crime that did not occur or even meet a first degree assault please see no one was harmed and no gun was even pointed at any-one. please reverse and remand my case

I must remind you no gun went off, both officers said gun was not even pointed at them nor did gun go off. please reverse my case.

**My Main:
Statement Of Additional Grounds
Part 2.**

The trial court violated Bales right to a public trial by conducting peremptory challenges privately.

The court directed counsel to exercise peremptory challenges by passing a piece of paper back and forth. The court then excused juror's and seated other venire members in the excused juror's seats. This private procedure violated Bales right to a public trial.

The sixth Amendment to the united states constitution and article 1, section 22 of the Washington constitution guarantee the accused a public trial by an impartial jury Presley V. Georgia, 558 U.S. 209, 130S. Ct. 721, 724, 175L. Ed. 2d 675 (2010) State V. Bone-club 128 Wn.2d 254, 261-62, 906 P.2d 629 (1995). Additionally, Article 1, Section 10 of the Washington Constitution provides that justice in all cases shall be administered openly and without unnecessary delay. This latter provision gives the public and press a right to open and accessible court proceeding, Seattle Times CO. V. V. Ishikawa 97 Wn.2d 30, 36, 640 P.2d 716 (1982). While the right to a public trial is not absolute, a trial court may restrict the right only under the most unusual circumstances Bone-club 128 Wn-2d at 259. Before a trial judge can close any part of a trial, it must first apply on the record the five factors set forth in Bone-club, Orange, 152 Wn.2d at 806-07, 809. A violation is presumed prejudicial and is not subject to harmless error analysis. State V. Wise 176 Wn.2d 1, 16-19, 288 P.3d 1113 (2012); State V. Strode 167 Wn. 2d222, 231, 217P. 3d, 310 (2009); State V. Easter ling, 157 Wn. 2d 167, 181, 137 P.3d 825 (2006); In re-personal restraint of Orange, 152 Wn. 2d 795, 814, 100 p. 3d 291 (2004).

The public trial right applies to the process of juror selection; which is itself a matter of importance, not simply to the adversaries but to the criminal justice system Orange, 152 Wn. 2d at 804 (quoting press-enter. Co. V. Superior court, 464 U.S. 501, 505, 104 S. Ct. 819, 78 L. Ed 629 (1984)).

The right to a public trial includes circumstances in which the public mere presence passively contributes to the fairness of the proceedings such as deterring reminding the officers of the court of the importance of their functions and subjecting judges to the check of public scrutiny State V. Sleat, 169 Wn. App. 766, 772, 282, x P.3d 101 (2012) quoting State V. Bennet, 168 Wn. App. 197, 204, 275 P.3d 1224 (2012).

The peremptory challenge process, an integral part of jury selection is one such proceeding; while peremptory challenges may be exercised based on subjective feelings and opinions, there are important constitutional limits on both parties' exercise of such challenges Georgia V. McCollum, 505 U.S. 42, 49, 112 S. Ct 2348, 120 L. Ed. 2d 33 (1992) Batson V. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 69 (1986). Based on these crucial constitutional limitations, public scrutiny of the exercise of peremptory challenges is more than a procedural nicety; it is required by the constitution, see slert 169 Wn App at 772. (Explaining need for public scrutiny of proceedings).

The procedure in this case violated the right to a public trial to the same extent as any in-chambers conference or other courtroom closure would have. Even though the procedure occurred in an otherwise open courtroom, any assertion that the procedure was in fact public should be rejected. The procedure was similar to a sidebar, which occurs outside of the public's scrutiny, and thus violates the appellants right to a fair and public trial slert, 169 Wn.App. at 774n.11 (rejecting argument that no violation occurred if jurors were actually dismissed not in chambers but at a sidebar and stating "if a side-bar conference was used to dismiss jurors, the discussion would have involved dismissal of jurors for case-specific reasons and, thus was a portion of jury selection held wrongfully out side slert's and the public's purview); See also Harris, 10 Call.App. 4th at 684, (exercise of peremptory challenges in chambers violates defendant's right to a public trial); cf. People V. Williams, 26 Cal.App. 4th Supp 1, 7-8, 31 Cal. Rptr.2d 769 (1994)

(Peremptory challenges could be held at sidebar to permit party opponent to make motion based on state version of Batson 476 U.S. 79, if challenges and party making them were then announced in open court). The trial court violated appellant's constitutional right to a public trial by taking peremptory challenges during a private proceeding and while there is no Washington case containing identical facts, the private proceeding was no less a violation of the right to a public trial than the closed Voir dire sessions that Washington courts have repeatedly held to violate the public trial right. Because the error is structural, prejudice is presumed, and thus reversal is required. Wise 176 Wn.2d at 16-19.