Howard Bruce Goodwin IV (733205)
Washington State Penitentiary
Williams Unit - B129
1313 N 13th Ave
Walla Walla, WA 99362

8/24/2018

Derek M. Byrne
Court Clerk/Administrator
Court of Appeals - Division Two
950 Broadway, Ste. 300, MS TB-06
Tacoma, WA 98402-4454

P/M: 8/27/18

Re: Contents Enclosed
State of Washington v. Howard Goodwin
Court of Appeals No. 50707-2-II

Dear Court Clerk: Derek M. Byrne,

Please find enclosed a Supplemental SAG.

If you have any questions or concerns, feel free to contact me directly or through my counsel. Thank you.

Sincerely,

Howard B. Goodwin IV
The Appellant, Pro Se

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

STATE OF WASHINGTON, Respondent,	) NO. 50707-2-II
v.	) SUPPLEMENTAL STATEMENT OF ADDITIONAL GROUNS FOR REVIEW (SUPP. SAG)
HOWARD GOODWIN, Appellant.	)

COMES NOW, HOWARD BRUCE GOODWIN IV, the above-named Appellant, Pro Se, and, being permitted, by ruling made by Commissioner BEARSE, to add to my original SAG, hereby provides the following Supplemental SAG, to wit, below:

SUPPLEMENTAL SAG

ADDITIONAL GROUND TWO (2)

The Jury mistook the law in the present case, in violation of the law of the case and the right to a fair trial.

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(a) Finding the Facts of this case

THE FACTS OF THE PRESENT CASE, in relation to this assignment of error and ground number two, show that

(1) The Jury was instructed, that: (i) "It is your [the jury] duty to decide the facts in this case based upon evidence presented to you during this trial," see RP 645, LN 1-3; and (ii) "It is also your [the jury] duty to accept the law from my [the court] instructions, regardless of what you personally believe the law is or what you personally think it should be," see RP 645, LN 3-6 (emphasis added); and (iii) "The evidence you [the jury] are to consider during your deliberations consists of the testimony that you've heard from witnesses, stipulations, and exhibits that I [the court] have admitted during the trial," see RP 645, LN 12-16 (emphasis added), and this Court should so find.

Above, in grounds number one, I related to this Court the instructions that the jury in the present case received regarding Count 2 - Indecent Liberties with forcible compulsion, Count 5 - Assault in the Second Degree, and Special Verdict Form C to which applies to Count 5, in regard to conviction, so I will not reiterate that all herein this ground. I will simply refer this Court to view pages 20, 21, 2 and 3 of the original SAG, please and thank you, and upon viewing such, I ask that this Court find that to convict I, the defendant, on and of Count 2 and 5 and to return an affirmative finding on Special Verdict Form C, the jury had to find the elements which they were instructed to find, which elements I have provided this Court in my original SAG.

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(b) Law and Argument

AS WAS SHARED in my original SAG, the law of the case is the jury instructions, see Millies v. LandAmerica Transnation, 185 Wn. 2d 302, 313, 372 P.3d 111 (2016) ("Unless there is a proper objection, jury instructions become the law of the case"), and this Court should so conclude.

In the present case, the jury instructions, as given, were not objected to, and this Court should so find.

The jury in the present case was instructed that:

(1) "To convict the defendant of the crime of assault in the second degree, **each** of the following **elements** of the crime **must** be proved beyond a reasonable doubt:

1. That on or about November 16, 2016, the defendant assaulted Patricia Meyer;

2. That the assault was committed **with the intent** to commit rape in the second degree and/or rape in the third degree;

3. That this act occurred in the state of Washington," see RP 658, LN 19 - RP 659, LN 3 (emphasis added), and this Court should so find.

(2) "To convict the defendant of the crime of attempted rape in the second degree, **each** of the following **elements** of the crime must be proved beyond a reasonable doubt:

1. That on or about November 16, 2016, the defendant did an act that was a substantial step towards the commission of rape in the second degree;

2. That the act was done with the intent to commit rape in the second degree, and;

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3. That the act occurred in the state of Washington," see RP 652, LN 13-22 (emphasis added), and this Court should so find.

The jury returned a verdict of not-guilty to Count 1 - the charge of attempted rape in the second degree, see RP 716, LN 25 - RP 717, LN 2, and this Court should so find.

NOW, the appellant, I, Howard Bruce Goodwin IV, am not arguing that an assault did not occur, as I already admitted in trial to assaulting Patricia Meyer. What I am arguing is that the jury, by mistaking the law, incorrectly found me guilty of assault in the second degree, because the assault was not committed with the intent to commit rape in the second degree and/or rape in the third degree. Being that I was not charged with or accused of the crime of rape in the third degree, I see not how the jury was allowed to have a finding that the assault was committed with the intent to commit ~~the~~ rape in the second degree and/or rape in the third degree included in the to-convict instructions, which is an error I am assigning to the Jury Instructions, but will not be addressing, extensively, in this argument or in ground two (2), being the ground which this argument is being made in.

It is true that the jury was instructed to "decide each count separately," see RP 650, LN 20, and that, "your [the jury] verdict on one count should not control your verdict on any other count," See RP 650, LN 20-22, and this Court should so find. But, being that the to-convict instructions on Count 5 - the crime of assault in the second degree -

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instructed the jury that they had to find that the assault was committed with the intent to commit rape in the second degree and/or rape in the third degree; and being that the jury found I not guilty of the crime of attempted rape in the second degree - which pretty much has the same elements as the crime of rape in the third degree and is an attempt to commit rape in the second degree, thus covering both rape in the second and rape in the third - how can this Court ~~not~~ conclude that the jury did not mistake the law in the present case? The jury made a specific finding, in Count I, when they found me not guilty of attempted rape in the second degree, that I did **not** do an act that was a substantial step towards the commission of rape in the second degree nor was the act done with the intent to commit rape in the second degree, and this Court should so find.

Now, being that I was never charged with or accused of the crime of rape in the third degree, there was no real true legal way or factual way in which the jury could say that I committed the crime of rape in the third degree, and this Court should so find. Nevertheless, to find that I did not commit the crime of attempted rape in the second degree should be enough to move this Court to conclude that by finding I guilty of assault in the second degree with sexual motivation, the jury mistook the law of this case, because, an element of the crime could not have been proven beyond a reasonable doubt if the jury already found in another count that an element which is an element of assault in the second degree as charged in the present case was

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not proved beyond a reasonable doubt. To conclude otherwise would be similar to concluding that someone charged with three separate counts: (1) stealing peanut butter (2) stealing jelly (3) eating a peanut butter and jelly sandwich, all of which the defendant stole, is guilty of count 3 after being found not guilty of count 1. How can this be a finding which is in line with the law of that case? It can not be, since we can conclude that, yes, the defendant may have stole the jelly, but he did not steal the peanut butter, and, therefore, cannot be guilty of eating a peanut butter and jelly sandwich which he stole, since all that sandwich would consist of is jelly.

Further, the jury in the present case obviously found that the evidence did not support a conviction of attempted rape in the second degree, and this Court should so find. And since they only had that evidence to go by, what evidence did they have to support a conviction of assault in the second degree as charged in the present case?

WITH THAT BEING SAID, and with what I already presented in ground one (1) of my original SAG, it is clear that the jury mistook the law of this case, and this Court should so find.

(c) Suggested Remedy(ies)

TO REMEDY the error of the jury mistaking the law in the present case, I proffer the following suggested remedy(ies): (1) have the jury in the present case reconsider the verdict pursuant to RCW 10.61.060; or

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(2) set aside the jury's verdict on the ground of insufficient evidence, pursuant to Kelly v. Madden, 2017 U.S. Dist. LEXIS 156815(2017).

THE SUGGESTED REMEDY(IES) can be limited solely to Count 5 and Special Verdict Form C, if this Court concludes that the argument made in this ground does not stretch beyond a remedy to Count 5 and Special Verdict Form C.

NOTE: I INITIALLY PLANNED ON RAISING THREE(3) MORE GROUNDS, but due to time limits I am only able to raise this extra additional ground number two(2), raised above. Therefore, please, reserve me the right to raise the three(3) additional grounds, that I mentioned in my original SAG but did not raise herein, at a later time and/or through other means, e.g., PRP, Habeas Corpus. Thank you. Also, please accept this Supp. SAG as timely filed, pursuant to GR 3.1 and RAP 18.5 (e).

DATED: August 24, 2018

Respectfully Submitted By:

HOWARD BRUCE GOODWIN IV
The Appellant

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