

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

2018 DEC 24 AM 8:18

STATE OF WASHINGTON

Respondent.

V.

BRENT LUYSTER,

Appellant.

No. 51288-2

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON

BY  DEPUTY

I, Brent Luyster, 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

Denial of constitutional right to speedy trial: I was appointed a legal defense team that was prepared to take my case to trial within a reasonable time frame.

Upon arraignment, the Court ruled that, due to public expense, I could no longer retain both attorneys. Neither attorney believed he could effectively defend me without the aid of co-counsel, so they were both forced to withdraw from the case. I informed the Court that I demand speedy trial and I requested that the commencement date be set.

Two days later, the Court appointed Charles Buckley as counsel. I asked the court to reconsider allowing me to keep my original defense team. In June 2017, the court appointed Steve Rucker as co-counsel to work with Buckley, thereby reversing its previous ruling that I could not have two attorneys.

The Court created a situation that allowed it to circumvent my speedy trial rights. This allowed the prosecution the desperately needed extra time to prepare their case.

I objected to every continuance and I asserted my right to-

speedy trial-my speedy trial rights were violated.

Additional Ground 2

Ineffective assistance of counsel:

1. The states case was based largely on the testimony of it's key witnesses, Brieanne Leigh, and Andrea Sibley.

Upon Leigh's initial contact with law enforcement, she said she did not know who shot her.

Leigh was transported to the hospital, where she was contacted by deputy, Brice Smith. Smith said that Leigh was unable to speak, but communicated with him by writing on papers and on a facial tissue box as he asked her questions. In his police report, deputy Smith said he asked Leigh who shot her, and if it was Lamar. Leigh wrote that Lamar had left, and that she was "pretty sure Brent Luyster He's in big trouble Fed." These statements are also reflected in the OFFICER'S DECLARATION OF PROBABLE CAUSE that was written by former lead detective, Kevin Harper.(see attached exhibit A)

At trial the state published Leigh's papers and tissue box from the hospital as an exhibit. These exhibits were presented to the jury via a projector, but when doing so the prosecutor covered key portions of the writing with a piece of paper so that the jury could not see it. This was done so that he could manipulate Leigh's statement, as well as deputy Brice Smith's testimony, to reflect something that is glaringly inconsistent with the police reports: Smith testified that Leigh had identified me as the shooter and she wrote "that he left, that shes pretty sure that he left" when questioned about the writing on the exhibit. As Smith was testifying I pointed out the inconsistencies to my attorneys and asked them to impeach Smith with his police report, but they failed to do it. They also refused to do their own presentation of the exhibits so that the jury could see the full text.

2. As Leigh was recovering in the hospital she was interviewed on numerous occasions by former detective, Kevin Harper. Most of the interviews that Harper conducted with Leigh were unrecorded, despite the serious nature of the investigation. The interviews that were documented show that Harper was feeding Leigh leading questions that were suggestive that I was the shooter. It was during this point that Leigh went from "pretty sure" to positive in her identification of me.

During the course of the investigation, Harper was forced to

resign from his position in law enforcement due to sexual misconduct with a female witness from a different case. Harper was on the defense witness list, and his testimony was critical in showing that Leigh was lead to believe that I was the shooter. My Attorneys refused to interview Harper and/or call him to testify.

3. During direct from the state, Andrea Sibley gave affirmative testimony that I had told her that people had been shot, and that she provided me with transportation knowing that I was being sought by law enforcement for murder.

On November 9, 2016, Sibley was interviewed by detectives, Joe Swenson, and Brie Bieber.(see attached exhibit B)

During the interview Sibley told the detectives that, in fact, I had not told her that people had been shot, and that she was not aware that I was being sought for murder. She told the detectives that the statement was perpaired by her attorney, James Sowder, so that she could take the states plea offer. I had retained James Sowder as counsel on my 2013 felony case and he was still under retention as my counsel when he began defending my co-defendant, Andrea Sibley. I informed my attorneys that there was a conflict of interest with sowder, but they refused to act on it. My attorneys failed to use the interview transcripts to impeach sibleys trial testimoney. Also, my attorneys never informed me of sibleys above decribed interview or the existance of the transcripts- they were given to me post-trial in discovery for a federal firearms charge.

4. There were a total of six .45 ACP spent cartridges recovered from the crime scene, all believed to have been fired by the murder weapon. The cartridges were swabbed for the presence of DNA, and they tested positive for a complete DNA profile from a female and a partial mixed profile. The DNA does not belong to any known persons and there is no match for it in CODIS.

In an effort to explain away the unaccounted for DNA, the state elected speculative testimony from their DNA expert, Mr. Chowen. Chowen speculated that the DNA was the result of contamination. My attorneys failed to raise objections of speculation.

I did not get effective assistance of counsel.

Additional Ground 3

The trial court erred in allowing the state to display a pistol:

The states firearm expert, Johan Schoeman, displayed a pistol

to the jury. Defense counsel objected, arguing that the pistol is not relevant, and even if the Court could find some relevance, under 403 that relevance is greatly outweighed by the prejudice and the confusion that it may cause the jury.

The state failed to establish any relevance, but instead elected to display the pistol for "illustrative purposes." By the states own admission there are at least 40-50 different makes of firearm that could have fired the bullets recovered from the crime scene. As Schoeman displayed the pistol he described to the jury all of its individual features in great detail, such as the grip safety, thumb safety, and barrel length. Because a murder weapon was never recovered, it is impossible to know what make it was or what features it had, therefore, they could not be "illustrated".

There was no legitimate purpose for displaying the pistol, and it caused undue prejudice and confusion among the jury.

Additional Ground 4

The trial Court should have excluded my pending charges:

When I was arrested for the homicide, I had pending charges of assault in the second degree and numerous charges for unlawful possession of firearm, and I was out on bail. The state sought to admit the pending charges and bail status to prove motive. Defense counsel argued that it was highly prejudicial and far outweighed any probative value. During trial the jury learned of the pending charges and bail, but the state failed to use it to establish motive: During closing arguments the prosecutor admitted that he didn't know what the motive was.

My pending charges and bail status should have been excluded from the trial. They were not relevant and caused severe prejudice.

Additional Ground 5

The trial Court erred in not granting change of venue:

My arrest and subsequent court proceedings were highly publicized. The media repeatedly published photos depicting my tattooed torso, and referred to me as a violent White Supremacist. They gave detailed accounts of my criminal history and pending charges.

Two of the seated jurors had seen media coverage of my pending charges, prior to them being seated. I was not provided jury voir dier with my trial transcripts, but I know one of them is William Turner, and the other is a female.

I did not have an impartial jury.

Additional Ground 6

The states witnesses were not properly sequestered from trial testimony prior to their testifying:

During trial there was a court news reporter that was accessing her Twitter account on her smart phone. She was Tweeting out a play-by-play of the court proceedings, including trial testimony.

State witnessess who were awaiting their turn to testify were sitting in the court lobby and watching the Twitter feed. Specifically, the defense investigator observed Andrea Sibley using her smart phone to access Twitter. When asked what she was doing, Sibley showed the investigator her phone and explained that she was following the trial. Defense counsel informed the court of Sibley's actions and asked the court to call her back and ask if it had affected her trial testimony . The court declined to question Sibley or investigate the matter.

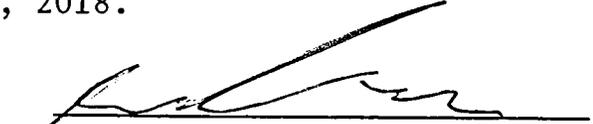
The Twitter feed may have affected trial testimony

Attachments

Attached as **Exhibit A** is a true and correct copy of page 1 of the OFFICER,S DECLARATION OF PROBABLE CAUSE, by Kevin Harper.

Attached as **Exhibit B** are true and correct copies of pages 58-59 of an interview of Andrea Sibley by detectives, Joe Swenson, and Brie Bieber, dated November 9, 2016.

Dated this 17th day of December, 2018.



Brent Luyster, Appellant

EXHIBIT A

16 JUL 16 P1 53

OFFICER'S DECLARATION OF PROBABLE CAUSE

The undersigned law enforcement officer states that he has probable cause for the arrest of Brent Ward Luyster for the crimes of Murder in the First Degree RCW 9A.32.030(1)(a) and Attempted Murder in the First Degree RCW 9A.32.030(1)(a), committed in Clark County, Washington, based on the following circumstances.

Initial Response

On July 15, 2016, at 2256 hrs I received a call from Clark County Sheriff's Office Major Crimes Unit Detective Joe Swenson. Detective Swenson informed me that a female gunshot victim had been located at the AM /PM in Woodland, Washington, and this gunshot victim was being transported to PeaceHealth Southwest Medical Center. The information provided was that the location of the assault was in Clark County.

I received another call from Detective Swenson, a few minutes later; Detective Swenson informed me that SWAT was responding to 4006 NW 417th Street, Woodland, Clark County, Washington, with a report of gunshot victims at this location.

I responded to PeaceHealth Southwest Medical Center, and arrived there at 2349 hrs. When I arrived, I met Deputy Bryce Smith and Reserve Deputy Kyle Bisson. Deputy Smith told me that he was dispatched to PeaceHealth Southwest Medical Center tonight at 2237 hrs, with a report of a gunshot victim being transported there. Deputy Smith and Reserve Deputy Bisson arrived at the hospital before the gunshot victim arrived; when she arrived by ambulance, Deputy Smith communicated with her.

Breanne L. A. Leigh Statement / Injuries

Deputy Smith said the woman was identified by a Washington Driver License in her possession as Breanne L. A. Leigh. Breanne had a gunshot wound to her face; the projectile appeared to have entered her face on the left side; it was unknown if the projectile exited her head.

Deputy Smith said that the woman was not able to speak, but communicated with him by writing on papers and on a facial tissue box as he asked her questions. Deputy Smith said that the woman appeared to understand his questions. Deputy Smith was aware that other gunshot victims were reported to be at 4006 NW 417th Street, Woodland, and was aware that a subject named Joseph Lamar resided there. Deputy Smith said he asked the woman who shot her, and if it was Lamar. Breanne wrote that Lamar had left, and that she was "pretty sure Brent Lyster Luyster He's in big trouble Fed".

Deputy Smith asked Breanne if the other woman who had been with her was ok; Breanne wrote that she thought this woman had been shot in the face right before Breanne was shot in the face.

Deputy Smith asked Breanne if anyone else was there; the woman wrote that Joe and Zach were there, and that they might have been shot. Deputy Smith asked where; she wrote "outside."

EXHIBIT B

2561
2562 SWENSON: And then you said that when the – when you heard the shots and your window
2563 broke, was your door open or closed?
2564
2565 SIBLEY: It would have been closed. I – yeah, my – yeah, where the driver’s side door
2566 is, yeah. When my window broke, it would have been closed ‘cause I was
2567 sitting right...
2568
2569 SWENSON: It was...
2570
2571 SIBLEY: ...here.
2572
2573 SWENSON: Okay so the door was closed. Obviously, the window was up.
2574
2575 SIBLEY: Yeah.
2576
2577 SWENSON: Okay. Um, did – did (Brent) ever say anything to you about being in fear for
2578 his other children’s safety or their mother’s safety or anything like that? Did
2579 you ever hear anything...
2580
2581 SIBLEY: That night? Is that what you’re saying?
2582
2583 SWENSON: I – I guess that night or in any of the time after that.
2584
2585 SIBLEY: Um...
2586
2587 SWENSON: Where he’s...
2588
2589 SIBLEY: No. He – like I said, I mean, he didn’t sou- he didn’t give me anything, uh,
2590 nothing of significance, nothing like an explanation or this happened or, no. I
2591 mean, the only things that he said was just mumbly bullsh- crap, I mean,
2592 nothing of – like I said, nothing of signi- nothing that would give me any type
2593 of direction or, yeah, I mean, he – no, he didn’t say anything like that.
2594
2595 SWENSON: Reasoning or...
2596
2597 SIBLEY: No.
2598
2599 BIEBER: Did...
2600
2601 SWENSON: Okay.
2602
2603 BIEBER: Did he tell you at one point – and I’m asking this ‘cause I’m looking at the
2604 statement that you gave in court. Um...
2605

2606 (SOWDER): Change of Plea form.
2607
2608 BIEBER: Change of Plea form. Did he say at one point that people had been shot?
2609
2610 SIBLEY: No. He didn't tell me when we were...
2611
2612 BIEBER: So was that Junior? When you say at some point (Brent Lyster) said one or
2613 more persons had been shot, are you talking about junior or senior?
2614
2615 SIBLEY: Well, I didn't technically say that.
2616
2617 BIEBER: Okay. I obviously wasn't in court. So, um...
2618
2619 SIBLEY: Um, I mean, the way that it had happened is that plea bargain came to me that
2620 day. And I was expecting to go to trial. And they said, "You can take this
2621 plea bargain and be out of jail today and be done with it."
2622
2623 BIEBER: Okay so that's not accurate the part...
2624
2625 SIBLEY: I...
2626
2627 BIEBER: ...that he said that people had...
2628
2629 SIBLEY: No.
2630
2631 BIEBER: ...been shot?
2632
2633 SIBLEY: No.
2634
2635 BIEBER: Okay.
2636
2637 SIBLEY: That was a statement that had to be given in order for...
2638
2639 SWENSON: Okay.
2640
2641 SIBLEY: ...me to take the plea.
2642
2643 SWENSON: Okay.
2644
2645 BIEBER: Okay.
2646
2647 SWENSON: So with that too, then, I mean, obviously, you've – you've kinda been leading
2648 onto the fact that you suspect somebody was shot.
2649