

FILED
COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON
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STATE OF WASHINGTON)
STATE OF WASHINGTON)

Respondent,)

BY MS
DEPUTY)

No. 51344-7-II

Richard Bagley
(your name)

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

Appellant.)

I, Richard Bagley, 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

The Lewis county trial court erred in allowing the Lewis county prosecuting attorney to use the jury selection process to exclude both a) ex felons, and b) anyone who had ever abused drugs or alcohol, or had known anyone who had ever abused drugs or alcohol; thus, excluding those persons who would have been part of the defendant's peer group.

Additional Ground 2

The defense attorney although highly paid was incompetent in defense of his client, Defendant Richard Bagley. Defense attorney did not spend time interviewing the defendant about the case defense attorney did not go to ABHS, to investigate the situation's circumstances then happening at ABHS. Defense attorney ignored a list of information about key staff at ABHS, who know the situation

Date: 8-7-18

Signature: [Signature]

and circumstances on a daily basis, but he ignored their expertise and knowledge, defense attorney pursued a single line of defense. Relying upon DNA evidence. Defense attorney had such tunnel vision, as to ignore the one and only opportunity at trial, to give the jury even a glimpse of the circumstances and situations at ABHs.

1 Additional Ground 1:

2 The Lewis County Trial Court erred in allowing the Lewis County Prosecuting Attorney
3 to use the jury selection process to exclude both a) ex-felons, and b) anyone who had ever
4 abused drugs or alcohol, had friends or family members who abused drugs or alcohol, or
5 had known anyone who had ever abused drugs or alcohol; thus, excluding from jury
6 service those persons who would have been peers of Defendant Richard Bagley.

7
8 Additional Ground 2:

9 The Defense Attorney, although highly paid, was incompetent in defense of his client,
10 Defendant Richard Bagley.
11 Defense Attorney did not spend time interviewing the Defendant about the case.
12 Defense Attorney did not go to American Behavioral Health Systems (ABHS) to
13 investigate the situations or the circumstances which were then happening at ABHS,
14 which the trial record will show was the location of the criminal charge in this case.
15 Defense Attorney ignored a list of information about key staff at ABHS who each knew
16 specifics of the situations and circumstances on a day-to-day basis, but the Defense
17 Attorney ignored the expertise and knowledge of those ABHS persons as he then pursued
18 a single line of defense: Relying upon DNA evidence.
19 Defense Attorney had such tunnel vision as to ignore the one and only opportunity at trial
20 to give the jury even a glimpse of the circumstances and situations at ABHS, when
21 Defense Attorney failed to question the only ABHS witness called to testify in this trial.
22 The Witness could and would have confirmed Defendant Richard Bagley's testimony
23 about the many unsecured lockers in which the ABHS clients should have been able to
24 secure personal belongings (during classes, shower/hygiene, or sleeping, etc.); however
25 those lockers did not all have functioning locks and many ABHS clients did not know or
26 had forgotten the combination to the locker they had been assigned, as was a key point
27 for Defendant Richard Bagley whose leather wallet was accessible to all other ABHS
28 clients and staff. Said wallet was the location of the 1"x1" ziplock with white powder
29 residue (tested positive as methamphetamine) which the one and only ABHS witness at
30 trial had given his initial statement that he found in Defendant Richard Bagley's wallet
31 "crammed deep in the corner of the wallet".

1 Defense Attorney failed to cross examine the ABHS witness as to the security of ABHS
2 client personal belongings, nor the living arrangements with eight (8) men housed in a
3 large room with no door where any ABHS clients or staff had open access, which opened
4 up the strong possibility that the physical evidence in the case could easily have been
5 planted by someone at ABHS.

6 Defense Attorney presented DNA evidence that there were three (3) female DNAs on the
7 1"x1" ziplock and no male DNA present, however the evidence was introduced by an
8 out-of-state DNA expert easily overcome by the local Washington State DNA expert,
9 presented in front of the local Lewis County Washington jury.

10 Defense Attorney further failed to document Defendant Richard Bagley's medical
11 condition, Traumatic Brain Injury (TBI) resulting from two left frontal lobotomies in
12 November 2010 to remove a brain tumor, which has left Defendant Richard Bagley very
13 challenged in matters requiring critical thinking or decision making or impulse control.

14 Defense Attorney failed to present medical documents he had been provided with, nor did
15 he subpoena any medical expert testimony that Defendant Richard Bagley reasonably
16 requires some extra time and patience when reviewing documents or when responding to
17 verbal comments or questions. At the end of the trial in Lewis County Court, at
18 sentencing, the Judge provided the Judgement and Sentence (J&S) and asked in open
19 court if Defendant Richard Bagley understood what the Defense Attorney had reviewed
20 with him and if he understood that to be the same as what the Judge had just stated
21 verbally. Defendant Richard Bagley had watched the Defense Attorney flip through the
22 11-12 page document as the Judge was speaking from the bench, but had not understood
23 the contents and so told the Judge that he would like to read the document for himself
24 before answering. In the end, he signed the J&S under duress from the Defense Attorney
25 based on the Defense Attorney that Defendant Richard Bagley would receive a copy of
26 the J&S, which the Defense Attorney dropped off at the Lewis County Jail after the
27 Sentencing was completed. That copy of the J&S was received by Defendant Richard
28 Bagley in the evening prior to his transport to the Washington State Prison at Shelton,
29 Washington, however the Department of Corrections (DOC) transports inmates dressed
30 only in an orange jumpsuit and DOC does not allow inmate property to be transported,

1 thus the J&S was not actually read by Defendant Richard Bagley until he was ultimately
2 released from custody approximately six (6) months later.

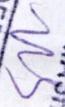
3 The Defense Attorney at no time spent more than a few minutes alone with his client,
4 Defendant Richard Bagley, to get to know either the facts or circumstances of the case,
5 nor to get to know or communicate directly with his client. Defense Attorney departed
6 the courtroom immediately after the verdict was rendered, declining the Jury request that
7 both the Lewis County Prosecuting Attorney and the Defense Attorney respond to
8 questions and comments that they Jury had for them, with Defense Attorney immediately
9 departing the Lewis County Courthouse to return to his Law Office in Tacoma,
10 Washington. Similarly, when the J&S copy was made available for Defendant Richard
11 Bagley, the Defense Attorney dropped that J&S copy in the lobby of the Lewis County
12 Jail and did not make any attempt to review that with his client, Defendant Richard
13 Bagley.

14
15 In conclusion, this trial was before a jury that was not of the Defendant's peers, by
16 defense counsel careless and incompetent to defend this particular Defendant.
17 Whereupon, the Defendant prays that the Court of Appeals, Division Two of the State of
18 Washington, accept this Statement of Additional Grounds for Review of Cause No.
19 51344-7-11, and consider the merits presented in the opening brief prepared by my
20 attorney along with the Addition Grounds presented herein.

21
22 Respectfully submitted on August 10, 2018, in Pierce County Washington,

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30 P. S. Please feel free to contact me if the Court of Appeals has any questions or if you
31 need additional information.