COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
JEFFREY GIBLIN)
(your name))
)
Appellant.)

No. 51434-6-II

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

FILED
COURT OF APPEALS
DIVISION II
2018 NOV -8 PM 1:10
STATE OF WASHINGTON
BY DEPUTY

I, JEFFREY GIBLIN, 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

[CONCEALMENT & SUPRESSION OF EVIDENCE BY PROSECUTOR]:
- A. LOREDO WAS ACTIVELY ON PROBATION FOR AT LEAST ONE(1) DUI CHARGE WITHIN WA STATE PER HIS RECORDED STATEMENT 9/13/2016 & POSSIBLY ANOTHER IN VA.
- B. LOREDO HAD VIOLATED PAROLE OF A FELONY CHARGE IN TX; WAS ON ACTIVE PROBATION FOR ANOTHER UNRELATED CHARGE (POSSIBLY VIOLENT IN NATURE) IN WA STATE; AND WAS OPERATING A MOTOR VEHICLE W/O VALID INSURANCE AS REQUIRED BY LAW IN WA STATE @ THE TIME OF THIS EVENT.

* ALL ARE CONSIDERED "ACTS OF DISHONESTY" THUS QUESTIONING THE INTEGRITY OF THEIR SWORN TESTIMONY DURING TRIAL & PRIOR IN RELATED WITNESS STATEMENTS.

Additional Ground 2

[INEFFECTIVE ASSISTANCE OF ASSIGNED COUNSEL]:
- NOT FUNCTIONING AS COUNSEL AS GUARANTEED BY THE 6TH AMENDMENT SO AS TO PROVIDE "REASONABLY EFFECTIVE ASSISTANCE" WITH SERIOUS ERRORS AS TO DEPRIVE ME OF A FAIR TRIAL THAT BECAUSE OF A REASONABLE PROBABILITY THAT, BUT FOR COUNSELS UNPROFESSIONAL ERRORS (i.e., FAILURE TO OBJECT & ARGUE WHEN FAVORABLE TO DEFENDANT; FAILURE TO RESEARCH & PRODUCE EVIDENCE CONTRARY TO THAT OF THE PROSECUTION, ETC.) THE OUTCOME WOULD HAVE BEEN DIFFERENT. TRIAL WAS FUNDAMENTALLY UNFAIR DUE TO CUMMULATIVE EFFECT OF COUNSELS DEFENSE.

If there are additional grounds, a brief summary is attached to this statement. (SEE ATTACHED).

Date: 10/31/2018

Signature: Jeffrey P. Giblin

Form 23

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ADDITIONAL GROUND 2 (cont.)

- COUNSEL FAILED TO SEEK & PRESENT ADDITIONAL EVIDENCE THAT WOULD BENEFIT DEFENDANT BY COUNTERING NUMEROUS ARGUMENTS PRESENTED BY THE DEFENSE INCLUDING (BUT NOT LIMITED TO): EYEWITNESS TESTIMONY; TRAFFIC CAMERA FOOTAGE; ADJACENT BUSINESS CAMERA FOOTAGE OVERLOOKING I-5; COUNTERANCE OF A. LOREDO'S CLAIM HE COULD "SEE HIS/MY EYES IN THE REARVIEW MIRROR WHEN I WAS ON THE GROUND." WHEN HE IN FACT STATED DURING HIS RECORDED INTERVIEW/STATEMENT ON 9/13/2016 THAT I WAS "WEARING SUNGLASSES."
- FAILURE TO COMPETENTLY, ADEQUATELY & AGRESSIVELY CROSS-EXAMINE PROSECUTORS WITNESSES FOR THE BENEFIT OF THE DEFENDANT IN AN ATTEMPT TO REMOVE PREJUDICE & BIAS CREATED BY PROSECUTOR IN FRONT OF THE JURY.
- FAILURE TO ADEQUATELY & SATISFACTORILY PREPARE FOR TRIAL: AT MY PRE-TRIAL "STRATEGY" MEETING THE MONDAY BEFORE THURSDAY'S JURY SELECTION I WAS PREPARED TO DISCUSS COUNSEL'S STRATEGY & INQUIRED ABOUT A ~~SELF~~ DEFENSE OF SELF, FAMILY, AND PROPERTY WHEN COUNSEL INFORMED ME SHE HAD "YET TO DECIDE ON A STRATEGY AND WAS LEANING TOWARD PRESECUTION BEING REQUIRED TO DEMONSTRATE & PROVE 'INTENT'!".
  NEEDLESS TO SAY THIS DID NOT INSTILL THE HIGHEST DEGREE OF CONFIDENCE ON MY PART.
- FAILURE TO DISCUSS, PRESENT AND REVIEW THE CHARGES, OTHER POTENTIAL OPTIONS INCLUDING, BUT NOT LIMITED A PLEA BARGAIN DEAL THAT COULD CONSIST OF LESSER, MORE APPROPRIATE CHARGES

CONT. →

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ADDITIONAL GROUNDS **2 (cont.)**:

SUCH AS ASSAULT 2 = RCW 9A.36.021(2)(a); VEHICULAR ASSAULT (NON-DRUG/ALCOHOL) IN A RECKLESS MANNER = RCW 46.61.522 (a-b); HIT & RUN RESULTING IN INJURY = RCW.46.52.020(4)(b).

— FAILING TO DISCLOSE & NOTIFY DEFENDANT HE HAS THE RIGHT TO TERMINATE COUNSEL IF HE IS NOT CONFIDENT HE WILL BE ADEQUATELY REPRESENTED AS REQUIRED BY LAW UNDER HIS 6th AMENDMENT RIGHTS AT ANYTIME PRIOR TO AND/OR DURING THE COURSE OF TRIAL.

ADDITIONAL GROUNDS **3**:

— WITNESS COERSION & TAMPERING BY THE PROSECUTION:
VIA COACHING WITNESS J. BOWERS WITH HER TESTIMONY AND PROVIDING HER WITH EXCERPTS FROM MY RECORDED STATEMENT TO DEFENSE COUNSEL PRIOR TO TRIAL,

a. J. BOWER'S WRITTEN & RECORDED STATEMENTS PROVIDED ON 9/10/2016 & 9/14/2016 RESPECTIVELY WERE BASIC & LACKED THE TYPE OF SPECIFIC DETAIL PROVIDED DURING HER TESTIMONY AT TRIAL INCLUDING, BUT NOT LIMITED TO, ETHNICITY AND/OR PHYSICAL STATURE ie., BOTH MEN "SEEMED TO BE ABOUT THE SAME SIZE & BUILD" VS HER EXAGERATED TESTIMONY AT TRIAL IN WHICH SHE DESCRIBED THE LOREDO'S RACE AS THAT OF "INDIGINOUS PEOPLE OR PACIFIC ISLAND DECENT". WHEN ASKED WHY SHE THOUGHT THE LATTER SHE SAID, "BECAUSE I LIVED IN HAWAII ONCE & THAT'S WHAT THEY REMINDED ME OF." * WHICH MATCHES VERBATIM THE STATEMENT I PROVIDED TO MY PUBLIC DEFENDER UPON MY INITIAL INTERVIEW. →

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ADDITIONAL GROUNDS 3 (cont.):

B. WHEN ASKED AT TRIAL IF J. BOWERS COULD DESCRIBE THEIR DEMEANOR & BODY LANGUAGE SHE RESPONDED — "THE TESLA DRIVER EMERGED FROM HIS VEHICLE W/ ARMS BENT @ 90° OUT TO HIS SIDE WITH PALMS RAISED IN A DEFENSIVE/ SURRENDER POSITION WHILE THE BMW DRIVER BEGAN THROWING PUNCHES IMMEDIATELY." * AGAIN THE FIRST PART OF THIS STATEMENT (DESCRIBING THE TESLA DRIVER) WAS TAKEN FROM MY INITIAL INTERVIEW W/ DEFENSE COUNSEL IN NOVEMBER 2016 IN WHICH I WAS DESCRIBING MY OWN BODY LANGUAGE & DEMEANOR VERBATIM. COINCIDENCE? I THINK NOT AND REEKS OF JUDICIAL EMBELESHMENT, COERSION & IMPROPRIETY.

C. VANTAGE POINT & LINE OF SIGHT WAS CONJURED & FABRICATED BY ~~DEFENS~~ PROSECUTION IN ORDER TO STRENGTHEN CASE DURING TESTIMONY OF J. BOWERS THAT DIRECTLY CONTRA-DICTED HER STATEMENTS MADE IN WRITING & DURING RECORDED INTERVIEW IN TERMS OF WHAT SHE SAW VS. THE SPEED OF WHICH THEY TRAVELED, TRAJECTORY OF CURVE, DISTANCE AND LINE OF SITE.

ADDITIONAL GROUNDS 4:

- JUDICIAL BIAS & FAILURE TO ENSURE A FAIR TRIAL & IMPARTIALITY OF HER COURTROOM & THE JURORS: HONORABLE SHELLY SPIER ALLOWED NUMEROUS OBJECTIONS RAISED BY THE PROSECUTOR & DISALLOWED VALUABLE 404B EVIDENCE THAT WOULD INCRIMINATE A. & B. WORDS SPECIFICALLY PERTAINING TO EYEWITNESS TESTIMONY GIVEN BY JONAH GIBLIN,

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ADDITIONAL GROUNDS 5:

EVIDENCE - PARTICIPATION IN OR WITNESSING EVENT BY DECLARANT: IN AN ACTION BY AN INDIVIDUAL FOR PERSONAL INJURIES SUSTAINED WHERE ONE (1) OF THE ISSUES WAS WHETHER A DEFENDANT'S "INTENT" IS AT QUESTION, THE TESTIMONY OF AN INDIVIDUAL WHO ARRIVED UPON THE SCENE AFTER THE ACCIDENT, OR WHO WAS PRESENT DURING THE ACCIDENT CLAIMING THE DEFENDANT "INTENDED TO INFLICT BODILY HARM", WOULD BE INADMISSABLE UNDER THE "RESGESTAE" RULE, SINCE THE 'SIXTH ESSENTIAL' IS LACKING — THERE BEING NO SHOWING OR INDICATION THAT THE "WITNESSES" OR OTHERS ARRIVING UPON THE SCENE AFTER THE FACT SAW OR HEARD INDICATIONS OF "INTENT" AND IT BEING PURELY SPECULATIVE WHETHER THERE WAS "INTENT" OR WERE MERELY REPEATING WHAT THEY HAD BEEN TOLD, OR WERE RECONSTRUCTING THE ACCIDENT FROM WHAT THEY FINALLY SAW). (BLAKE, C.J.; JEFFERS, AND MAIN, JJ., DISSENTING). ER 803(a)(2).

ADDITIONAL GROUNDS 6:

"INTENT" AS ARGUED BY THE STATE: BECK V DYE CONTEMPLATES THAT, THE OTHER REQUIREMENTS BEING MET, A "HEARSAY" STATEMENT WOULD FAIL TO QUALIFY AS ONE OF FACT, AND HENCE BE INADMISSABLE IF IT WAS SO CLEARLY AN EXPRESSION OR OPINION AS TO HAVE NO PROBATIVE VALUE IN EXPLAINING OR CHARACTERISING THE EVENT DESCRIBED.

CONT. →

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ADDITIONAL GROUNDS 6 (cont.): INTENT

THIS INTERPRETATION OF "INTENT" IS SUPPORTED BY THE COURTS CHOICE OF WORDS IN THE RULE, "... AND NOT THE MERE EXPRESSION OF AN OPINION."

"INTENT" INTERPRETATION AS IN "INTENT TO INFLICT BODILY HARM" SUCH AN EVALUATION IS METAPHORICALLY, AS BECK V. BYE AT 10-11 SUGGESTS, "AN EVENT SPEAKING THROUGH THE PERSON."

EVIDENCE > HEARSAY > EXCEPTIONS > SPONTANEOUS STATEMENTS: THE RULE AS ADOPTED, DECLARED, AND FOLLOWED BY THE COURTS REQUIRES THAT THE STATEMENT OR DECLARATION CONCERNING WHICH TESTIMONY IS OFFERED MUST, IN ORDER TO MAKE SUCH EVIDENCE ADMISSABLE, POSSESS AT LEAST THE FOLLOWING ESSENTIAL ELEMENTS:

(1) THE STATEMENT OR DECLARATION MADE MUST RELATE TO THE MAIN EVENT & MUST EXPLAIN, ELUCIDATE, OR IN SOME WAY CHARACTERIZE THAT EVENT;

(2) MUST BE A NATURAL DECLARATION OR STATEMENT GROWING OUT OF THE EVENT, AND MUST NOT BE A MERE NARRATIVE OF A PAST AND COMPLETED AFFAIR;

(3) MUST BE A STATEMENT OF FACT AND NOT THE MERE EXPRESSION OF AN OPINION;

(4) MUST BE A SPONTANEOUS OR INSTINCTIVE UTTERANCE OF THOUGHT, DOMINATED OR EVOKED BY THE TRANSACTION OR OCCURRANCE ITSELF, AND NOT BE THE PRODUCT OF PREMEDITATION, REFLECTION OR DESIGN.

(CONT. →)

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ADDITIONAL GROUNDS 6 (CONT.): INTENT

(5) WHILE THE DECLARATION OR STATEMENT NEED NOT BE COINCIDENT OR CONTEMPORANEOUS WITH THE OCCURRANCE OF THE EVENT, IT MUST BE MADE AT SUCH A TIME AND UNDER SUCH CIRCUMSTANCES AS WILL EXCLUDE THE PRESUMPTION THAT IT IS THE RESULT OF DELIBERATION, AND;

(6) IT MUST APPEAR THAT THE DECLARATION OR SUCH STATEMENT WAS MADE BY ONE WHO EITHER PARTICIPATED IN THE TRANSACTION/EVENT OR WITNESSED THE ACT OR FACT CONCERNING WHICH DECLARATION OR STATEMENT WAS MADE.

ADDITIONAL GROUNDS 7:

STATEMENT OF HEARSAY AND/OR INTERJECTING OPINION BY ELISA ESQUEDA (GF OF A. LOREDO) WHILE DETECTIVE JOI HAYER WAS CONDUCTING HER SECOND (2ND) INTERVIEW OF A. LOREDO ON 9/13/2016. → SHOULD NOT HAVE BEEN ALLOWED.

a. THOUGHTS & OPINIONS REGARDING THE EVENT AS WELL AS PROVIDING RESPONSES TO QUESTIONS DIRECTED AT A. LOREDO ADDING HEARSAY/INUENDO & OTHER DETAILS FROM HIS BROTHER (B. LOREDO) STATEMENTS THAT HE WOULD NOT HAVE BEEN PRIVY TO THAT ULTIMATELY SERVED AS THE BASIS OF TESTIMONY DURING TRIAL.

B. SHE SHOULD HAVE BEEN INTERVIEWED AS A SEPARATE WITNESS SUBSEQUENT TO INFORMATION & STATEMENTS SHARED ON FACEBOOK THAT WOULD HAVE DISCLOSED A CONSPIRACY TO FORMULATE A DEFENSE FOR THEIR ACTIONS ON 9/10/2016.

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ADDITIONAL GROUNDS 8:

PROBABLE CAUSE AND CHARGES: THE STATE PATROL NEVER SOUGHT TO INTERVIEW ME OR MY SON ONCE THEY WERE AWARE OF MY IDENTITY AS EARLY AS 9/13/2016 BY TELEPHONE OR OTHERWISE IN PREPARATION OF THE PROBABLE CAUSE STATEMENT ISSUED & PREPARED FOR THE PROSECUTION IN FILING THE FORMAL CHARGE OF ASSAULT IN THE FIRST DEGREE. HAD THEY DONE SO, I BELIEVE THEY WOULD HAVE ACCURATELY CHARGED ME WITH ONE OF THE FOLLOWING:

- ASSAULT 2 = RCW 9A.36.021(2)(a); AND/OR
- VEHICULAR ASSAULT (NON-DRUG/ALCOHOL) IN A RECKLESS MANNER = RCW 46.61.522(1)(a-b); AND/OR
- HIT & RUN RESULTING IN INJURY = RCW 46.52.020(4)(b) CLASS C - LEVEL IV → NON-VIOLENT

- THESE WOULD HAVE LESS SEVERITY OF PUNISHMENT FOR A FIST TIME OFFENDER SUCH AS MYSELF AND OPENED THE DOOR FOR A POTENTIAL PLEA BARGAIN IF SO DESIRED BY THE STATE.
- THESE SHOULD HAVE BEEN PRESENTED & DISCUSSED AS OPTIONS BY MY DEFENSE COUNSEL WITH PROSECUTION DUE TO THE LACK OF "INTENT" ON MY PART DURING THE COMMISSION OF THE CRIME FOR WHICH I WAS ULTIMATELY ACCUSED.
- BY FAILING TO DO SO I WAS PAINTED IN AN UNFAIR & UNFAVORABLE LIGHT ALMOST CERTAINLY SEALING MY FATE AND ENSURING A GUILTY VERDICT THUS PREVENTING A FAIR TRIAL.

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ADDITIONAL GROUNDS 9:

SENTENCING: I AM A FIRST-TIME OFFENDER WITH ZE[illegible] [0] POINTS ON THE OFFENDER SCALE YET THE STATE USED A SCORE OF ONE [1] WHEN CALCULATING MY SENTENCING RANGE. ACCORDING TO CASE LAW STATE VS. HADDOCK-2[illegible] THIS IS NOT PERMISSABLE.

DATE: 10/31/2018

Signature: Jeffrey P. Giblin