

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II
2019 MAR 20 AM 11:57
STATE OF WASHINGTON

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
 Barry R. Draggoo)
 (your name))
)
 Appellant.)

No. 52379-5 ~~EM~~
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Barry R. Draggoo, 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

See attached

Additional Ground 2

See attached

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

Date: 3/19/2019

Signature: Barry R. Draggoo

A. Additional Ground 1.

In "Findings of Fact, Conclusions of Law From CrR 7.8(b) Hearing," Aug. 8, 2018 (Lewis Co. Superior Court Cause No. 08-1-00452-4), 2-7, Judge Lawler incorrectly concluded that there was no Brady violation regarding Draggoo's "Motion and Memorandum For New Trial" (Oct. 23, 2017).

Lawler's conclusion ignores that the Prosecutor willfully failed to provide in a timely manner all discovery related to Ms. Toni Nelson's perjury, even after Draggoo requested it in Feb. 2016. As pointed out in my "Motion For New Trial," the Prosecutor is obligated "to produce Brady material, even if not requested by counsel" (p. 6). Yet Lawler's "Finding of Fact" 1.14 states: "Discovery was provided when requested by Draggoo in the current post-conviction action." Lawler is wrong, as the following timeline demonstrates.

Feb. 3, 2016 - Prosecutor mails to Draggoo notification of Ms. Nelson's perjured testimony.

Feb. 18, 2016 - Draggoo mails to Prosecutor a letter requesting all discovery related to Ms. Nelson's perjury. (Attached)

Mar. 4, 2016 - Prosecutor acknowledged receipt of Draggoo's request, and "anticipates" a response to Draggoo by Mar. 18, 2016. (Attached)

No further correspondence, notifications, discovery, or anything else was sent by the Prosecutor to Draggoo.

<Cont.>

Aug. 2016 - Draggoo retained Brett A. Portzer, Attorney At Law, to represent him.

Dec. 14, 2016 - Mr. Portzer filed "Motion and Affidavit For Discovery" and a "Request For Discovery," in which he requested "any and all discovery as it relates to the investigation of Toni Nelson."

Dec. 29, 2016 - "Order on Defendant's Motion For Discovery" was signed by Judge Lawler.

Discovery should have been immediately available by this time since it had been originally requested nearly 10 months earlier, and because the Prosecutor anticipated having them prepared on or around Mar. 18 (9 months earlier). The Prosecutor did not, however, send anything for another 2 months.

Feb. 22, 2017 - Mr. Portzer recieved 2 CD-ROMs of discovery. After reviewing all provided materials, Mr. Portzer realized that the Prosecutor had omitted all material relating to the Sheriff's investigation of Ms. Nelson. The Prosecutor had referenced this investigation in an earlier letter to John A. Hays, dated Feb. 17, 2016. (Attached)

Jun. 9, 2017 - Mr. Portzer requested discovery on the Sheriff's investigation from the Prosecutor. (Attached)

~~Jun. 30, 2017~~
~~Jul. 2017~~ - Mr. Portzer recieved one missing document (Sheriff's report). This was about 17 months after Draggoo's initial request for discovery. Whether other documents exist is still unknown to Draggoo.

<Cont.>

Oct. 23, 2017 - Draggoo filed "Motion and Memorandum For New Trial."

Draggoo and his attorney have consistently acted in a timely manner.

The Prosecutor, by contrast, has consistently ignored requests, withheld documents, and delayed sending discovery materials. Yet they are required by law to provide all discovery, and in a timely manner. See: State v. Mullen, 171 Wn.2d 881 (2011), as cited on page 6 of my "Motion For New Trial." Discovery should have been provided even without any specific request; yet the Prosecutor refused to comply by providing discovery, even after Draggoo's request, and did not comply until 6 months after the court ordered them to do so. This was a total of 17 months from Draggoo's request until Mr. Portzer received the last missing document.

Such refusal to produce discovery in a timely manner (even if it had been unwilling failure) violates Draggoo's due process rights. Therefore, Lawler's ruling that there was no Brady violation should be overturned.

<Cont.>

B. Additional Ground 3.

In "Findings of Fact" 2-3, Judge Lawler ruled that "Draggoo failed to show the newly [-discovered] evidence would probably change the result of the trial." I concur with my attorney, Mr. Pirtzer, in "Brief of Appellant" that Ms. Nelson's testimony was material. I further contend that her testimony did, in fact, change the outcome of my trial.

Ms. Nelson's testimony was presented to the jury first, before any other testimony, and was used to undergird all later testimony. So it was not only material but also greatly impacted how the jury interpreted all later testimony. The Prosecutor further heightened this latency effect and reinforced Ms. Nelson's testimony by repeatedly referencing it (with or without citing her by name) throughout the entire trial, and especially while questioning other witnesses.

Any reasonable person would conclude that the Prosecutor used Ms. Nelson's testimony as a specific tactic they believed would indeed affect "the result of the trial." It is therefore ludicrous to now suggest that it "probably" did not do so.

Judge Lawler's ruling overlooks the importance placed upon Ms. Nelson's "expert" testimony by the Prosecutor, who clearly intended for it to sway the jury and, thus, the outcome of my trial — which in fact it did. This ruling is not reasonable and should be overturned.

<Cont.>

C. Conclusion

Judge Lawler's rulings on my "Motion For New Trial" were simply wrong in several regards. Besides the points argued by my attorney, Mr. Puntzer, in "Brief of Appellant," I add that Lawler ignored the Brady violation of the Prosecutor, who failed to provide discovery in a timely manner; and I also add that Lawler was wrong in ruling that the outcome of my trial was not "probably" affected by Ms. Nelson's testimony, when it most certainly was greatly affected.

For these reasons plus those expressed in "Brief of Appellant," I respectfully ask this Court to grant me a new trial.

Barry R. Draggoo #318681
Coyote Ridge Corrections Center
PO Box 769
Connell, WA 99326

Jonathan Meyer, Prosecuting Attorney
345 Main Street, 2nd Floor
Chehalis, WA 98532
February 18, 2016

Mr. Meyer,

Thank you for your letter of Feb. 3 regarding testimony of expert witness, Ms. Toni Nelson.

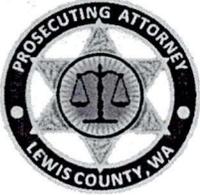
I do not have an attorney and am pro se, so please forward to me all Brady/Bagley materials regarding this witness false testimony.

Please also send to me the specifics on how Ms. Nelson perjured herself, including her actual history of education, training, qualifications and employment.

Thank you for this notification, and please keep me updated on any future developments.

Sincerely,

Barry R. Draggoo



Lewis County Prosecuting
Attorney's Office

345 W. Main Street, 2nd Floor
Chehalis, WA 98532
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TDD: (360) 740-1480

March 4, 2016

Barry R. Draggoo
DOC#318681
Coyote Ridge Correction Center
PO Box 769
Connell WA 99326

Re: ~~Public Disclosure request received by this office on February 25, 2016~~

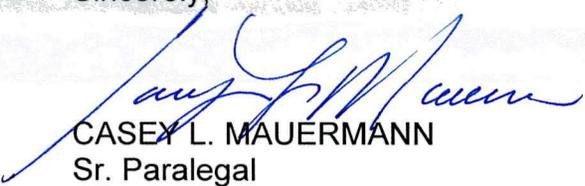
Dear Mr. Draggoo:

Thank you for your public disclosure request directed to our office regarding *Brady* materials involving Toni Nelson. The Public Disclosure Act authorizes Lewis County to provide you with a reasonable estimate of time to process your request. *RCW 42.56.520*. This office anticipates having a response to your request by March 18, 2016.

Further, please be aware that Lewis County charges \$.15 per page for copies and if applicable \$6.30 per CD. *RCW 42.56.070, RCW 42.56.120*. Documents will be redacted pursuant to and in compliance with *RCW 42.56.230, 42.56.240* when it is produced.

If you have questions, feel free to contact our office.

Sincerely,


CASEY L. MAUERMANN
Sr. Paralegal

It is the Mission of the Lewis County Prosecutor's Office to zealously seek justice in all criminal matters, consistently promote public confidence in the legal system, and diligently represent county government while adhering to the highest ethical and moral standards



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February 17, 2016

John A Hays
Attorney at Law
1402 Broadway
Longview, WA 98632

Re: False Testimony by State's Witness Toni Nelson

Mr. Hays:

Thank you for your recent letter. We have determined Ms. Nelson testified in three (3) cases resulting in conviction. I have enclosed a copy of the letter we sent to the courts outlining the three (3) matters. In addition, we are continuing to determine what other cases Ms. Nelson was involved with. We believe this impacts approximately 60 cases. The last time we believe Ms. Nelson testified was 2010.

Ms. Nelson testified she graduated a four (4) year university. She did not. She indicated she was a Registered Nurse. She is not. She indicated was a certified teacher in Washington. She was not. She indicated she was working towards her Master's Degree. She only has a two (2) year degree. She indicated she was a certified counselor. It does not appear this is true either. Ms. Nelson admitted to these facts.

My conversation with her was not audio or video recorded. I have turned over my information to the Lewis County Sheriff's Office. Ms. Nelson has an attorney so I am doubtful she will be sitting for a recorded interview any time soon.

If you have any questions, or would like to discuss this matter further, please do not hesitate to contact my office.

Sincerely yours,

JONATHAN L. MEYER
Prosecuting Attorney

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Reply to: Brett A. Purtzer
brett@hesterlawgroup.com

June 9, 2017

CLIENT'S COPY

Sara I. Beigh
Senior Deputy Prosecuting
345 West Main Street, 2nd Floor
Chehalis, WA 98532

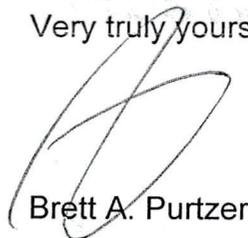
RE: State v. Barry R. Draggoo Cause # 08-1-00452-4

Dear Ms. Beigh:

I have reviewed the discovery provided re: Toni Nelson. Enclosed you will find a copy of a letter from Jonathan Meyer dated February 17, 2016 stating that information has been turned over to the Sheriff's Office, yet there is no information provided regarding the investigation. Please provide all information obtained after the letter dated February 17, 2016 as this information is to be included pursuant to the court's December 29, 2016 order.

Thank you for your attention to the aforementioned.

Very truly yours,



Brett A. Purtzer

BAP:lam
Enc.