

2. Right to choose and control my defense
3. Right to fundamental fairness and police misconduct
4. Ineffective assistance of counsel
 - a. Failure to argue evidence favorable to me
 - b. Failing to properly cross examine witnesses
 - c. Attorney's actions predated the defendant. Since no legal citations were provided in the motion I wish to provide the courts with this legal authority in the interest of justice.

Issues Presented

1. There was newly discovered evidence, which by due diligence could not have been discovered in time to move for a new trial.

I received my transcripts after I filed the motion in Kitsap County Superior Court. I would like to direct your attention to the transcripts for August 20 2018 page 73. The courts ask if I could prove that I received exhibits 5 and 6 prior to trial and he answers "there is no way to prove that." On page 74 the court clarifies by asking "and do you recall specifically receiving documents, exhibits 5 and 6 in discovery?" Defense counsel responds, "I can't say specifically but I can't say for sure that I saw this particular document. NO". He then goes on to say "except at trial".

This clearly violates the Brady Law. *Brady v. Maryland*. 373 U.S.83 (1963). The Supreme Court held the prosecution must turn over any evidence favorable to the defendant. When the prosecutor withholds favorable evidence from the defense, Brady material is implicated, and a defendant's right to due process under the U.S. Constitution are violated. *United States V. Bagley* (U.S. 1985) refined Brady by holding that a prosecutors duty to disclose material favorable evidence exists regardless of whether the defendant makes a specific request. Superior Courts Criminal Rule (cr 4.7(a)(2)(3)(4) all cover the prosecutors obligations, which failed to be followed violating my constitutional Rights to a fair trial.

State V. Boyd, 160 WASH.2d 424, 158 p.3d 54(2007) makes clear that "where the nature of the case is such that copies of materials are necessary in order that defense counsel can fulfill the critical role necessary to ensure that the trial is fair, criminal discovery rule, governing prosecutors obligations, require the prosecutor to disclose to the defendant evidence he/she intends to use at the hearing or trial, obliges the prosecutor to provide copies of the evidence as a necessary consequence of the right to effective representation and a fair trial.

The United States Constitution's Fifth Amendment requires that prosecutors make available evidence favorable to an accused where the evidence is material either to guilt or to punishment.

The United States Constitution's 14th Amendment and the Washington State Constitution Article 1 Sec 3 both in reference to due process are backed by case law.

United States V. Dreamer, CA. 8(S.D.)1996, 88F3d 655. The government have a duty under the due process clause to disclose to the defendant any and all evidence which is favorable to him and material to the issue if his/her guilt.

2. Referring to transcripts from August 20, 2018 page 70, defense counsel states "entrapment was not winning at all." He did not investigate whether my case was entrapment. He researched whether all other net nanny cases were entrapment. All cases are different. State V. Lynch, 178 Wn.2d 487, 309 P.3d 482 (2013) states a defendant has a constitutional right to control my defense. In the sixth amendment. State V. Jones, 99 Wash.2d 735, 740, 664 P.2d 1216 (1983) tells us that it is a fundamental right for a defendant to control at least broadly his own defense.

State V. Wiebe, 195 Wash. App. 252, 377 P.3d 290 (2016) a defendant has a sixth amendment right to choose his defense. It is implicit in the sixth amendment that a criminal defendant has the right to control his defense. State V. Coristine, 177 Wash.2d 370, 300 P.3d 400 (2013) states that the defendant has a right to choose his defense, as it is his life and liberty at stake.

3. Law enforcement violated my constitutional rights to fundamental fairness. Outrageous conduct has been described as "those cases where the government conduct is so illegally involved in the offense that the government agents direct the crime from the beginning to the end, or where the crime is fabricated by the police to obtain a defendant's conviction rather than protect the public from criminal behavior".
The police did not respond to criminal activity by posting an innocuous ad on a legal dating site. See State V. Black, 733 F.3d at 303. The police had no basis to suspect me of engaging in ongoing criminal activity. I was not targeted because law enforcement learned of my involvement in criminal activity. State V. Lively, 130 Wn.2d at 24. There was no evidence I was involved in illegal activity of any kind prior to law enforcement's fake ad.

United States V. Harris 997 F.2d 812,816(10th cir 1993) states, "Generally, the government may not manufacture a crime from whole cloth and then prosecute a defendant for becoming ensnared in the governments scheme."

United States V. West 511F.2d 1083(3rd cir 1975) "The governments conduct did not facilitate discovery or suppression of ongoing illicit activity, it serves no justifying social objective. Rather, it puts law enforcement authorities in the position of creating new crime for the sake of bringing charges against a person they had persuaded to participate in wrong doing."

United States V. Bogart, 8783 F.2d 1428,1436(9th cir 1986) says "where police control and manufacture a victimless crime, it is difficult to see how anyone is actually harmed and thus punishment ceases to be a response, but become an end in itself."

State V. Solomon (9th cir May 2018) "By creating and illegal targeting an individual with no known criminal disposition and persistently pursuing a target, despite his resistance. The police engaged in conduct repugnant to a sense of justice and no criminal prosecution should have resulted!

Investigation Rights

The right to compulsory process is "in plain terms the right to present a defense...this right is a fundamental element of due process law." Washington V. Texas, 388 U.S. 14,19,87 s.Ct. 1920, 18 L.ed. 2d 1019(1967)

"The defendant's interest in fully investigating every possible defense to charges leveled against him is not to be lightly denied "State V. Gonzalez, 110 WASH. 2d 738,748,757 P.2d 925(1988)

A violation of the defendant's constitutional right to effective counsel and the right to compulsory process is presumed to be prejudicial. State V. Burri, 87 WASH. 2d 175, 181, 550 P.2d 507 (1976)

4. The United States Supreme Court has determined that the right to effective council is "Fundamental and essential to a fair trial." If counsel would have received exhibits 5 & 6 prior to trial he would have suppressed text messages as they violated Washington State Privacy Act. Also note that exhibit 4 does not match 5 & 6. My attorney was incompetent for arguing this point. With this suppression of evidence the witnesses would have been questioned differently and lastly this prejudiced me. State V. Grier, 171 WN.2d at 34 states prejudice exists if there is a reasonable probability that except for council's errors the result of the proceedings would have been different. Kinnelman V. Morrison

(1986). Because council failed to conduct any meaningful pretrial discovery, could have successfully suppresses law enforcements statements or impeach them. Failure to do this deprived the defendant of effective council.

I have a constitutional right to investigate possible defenses and the requested materials that are within the scope of discovery. It is material prejudice to my right to a fair trial.

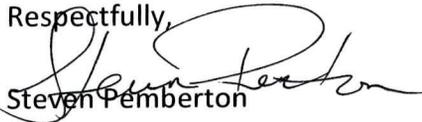
"The tight to effective counsel includes a reasonable investigation by defense counsel." Strickland V. Washington 466 U/S. 668, 684, 691, 104 S.CT. 2052, 80 L.Ed 2d 674 (1984). "It also guarantees expert assistance if necessary to an adequate defense." State V. Punsalan, 156 Wash.2d 875, 878, 133, p.3dd 934 (2006)

Conclusion

Due to the multiple constitutional violations, (federal and state), criminal rule violations, right to fundamental fairness, right to a fair trial, right to effective counsel, and blatant neglect of my case. I am asking this court to reverse and remand my case for a new trial or to be dismissed with prejudice.

30 July 2019

Respectfully,


Steven Pemberton