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STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

STATE OF WASHINGTON)
)
Respondent,)
)
v.)
)
Kier K. Gardner)
(your name))
)
Appellant.)

No. 69726-9

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, Kier K. Gardner, 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 attachment please

Additional Ground 2

see attachment please

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

Date: 8-10-13 Signature: KKG

I, Mr. Kier Ke'Ande Gardner, ask for your patience in that I am not an Attorney of any sort. Nor do I, Mr. Kier Ke'Ande Gardner, understand in totality all of the procedures of the law. With that being said, I will present my statement of Additional Grounds to the best of my ability, and as precisely as possible. Please bear with me. Thank you!!!

I, Kier Ke'Ande Gardner, am appealing to you for relief in that I have

#1) Been convicted by a jury, not of my peers
#2) Been convicted due to questionable evidence
#3) Been convicted due to major violations of my Constitutional and Washington Constitutional rights
#4) Been convicted and prosecuted with prejudice
#5) Been convicted without given a fair trial.

In regards to #1, none of my jurors were minorities. Nor were any of them young adults. This isn't a major issue, yet, it is still detrimental in regards to the fairness of my trial, which is part of my Constitutional Rights. I believe the 4th Amendment, as well as the 6th Amendment deals with having a jury of <u>your</u> peers.

In regards to #2, Claudia Murphy, the state's key witness was allowed to testify <u>under oath</u>, even though she has previously lied <u>under oath</u> before. She was allowed to do so <u>without</u> the state having to disclose this key evidence to me, Mr. Kier K. Gardner, and my defense counsel. A trial court abuses its discretion if its evidentiary ruling is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. (Williams, 137 Wn. App. at 743, quoting State v. Downing, 151 Wn. 2d, 265, 272, 87, P. 3d 1169 (2004) it also states in (Williams, 137 Wn. App. at 743 that the party challenging an evidentiary ruling bears the burden of proving the trial court abused its discretion. In my, Mr. Kier K. Gardner, case, I, Kier K. Gardner, was not, nor was I ever given the chance to challenge this piece of evidence because, 1) I, Kier K. Gardner, was never given the evidence and 2) was never ever notified or aware of the existence of this exculpatory evidence, due to the court abusing its discretion by ruling this evidence immaterial. This was obviously done for untenable reasons because

the reasoning behind this can not be held, maintained or defended. what justifies these actions? The convictions should be reversed.

Also, in Pretrial Motions, the court found the evidence regarding officer Murphy immaterial and sealed it. However, the court did goon to say, "that the court of Appeals will have an opportunity to review and affirm or not my determination that it does not need to be disclosed to the defense. But the issue will be there for appeal." (RAP 4, 187.)

The court made similar remarks like this throughout the trial. Indicating they were either already deeming Mr. Gardner being me, guilty, or they were trying to put it into the jurors minds that they should find me guilty. Either way, thats still a violation of my right to a just and fair trial. The convictions should be reversed.

(RAP 40-41) Speaks of an incident where a witness or witnesses were talking out in the hallway nearby jurors. The court asked the jury if they heard anything. The jurors denied that they had, but how can one rationally say they heard nothing of a conversation only 5 feet away that my attorney overheard 20 feet away. Does this constitue jury misconduct?

(RAP 48) Speaks of officer Ellsworth talking about helping officer Smit "remember the night". This is because officer Smits original testimony was that he saw me, Mr. Gardner, lying down on the gurney when I "kicked" officer Murphy. Yet this conflicted with Ellsworth's testimony of me sitting up on the gurney, so they had to make their testimonies compatable. Thus, Mr. Smit had to change his original testimony to match Deputy Ellsworths. But if what Mr. smit said in his original testimony was the truth, why have to go back over it and change it? And why did his testimony still differ from officer Murphys even after the change? This constitutes a reversal.

I was found guilty of assault 4° DV on Ms. Wells after she got on the stand and said I did not assault her (RAP 115-119) Ms. Wells stated in (RAP 115) that she told the officers, "she did not want to press charges."

In (RAP 119) she said, "Mr. Gardner nudged her out of the way". She said, "it was a soft nudge." Meaning, non-offensive.

I was trying to leave the room and Ms. Wells was trying to keep me in the room, so she said, I nudged her out of the way. I believe I have

a right to escape my captives. Isn't what Ms. Wells was doing called Unlawful Imprisonment? So how could I receive an assault charge for nudging her out of my way when I felt I was being held against my will and I was'nt trying to hurt her. I was just trying to leave. All of the witnesses testify to this fact. Yet, I was still convicted of this and the assault 3° charge. This conviction should be reversed.

2 of the jurors on my jury panel worked at Sacred Heart hospital. The same hospital all of these events took place at. I believe they even worked in the head trauma division. So why couldn't my defense be presented given that I'm sure these jurors have the common knowledge of a head trauma. 1 of them even admitted in voir dire that it's common for a person with a major head trauma, which is what I, Mr. Gardner was suffering from at that time, to act and be hostile. Also, these jurors denied knowing of this case which I just don't see how that could be possible.

The court deemed that the testimony of officer Vodopich, (who the court did not even allow to finish his testimony) as well as the officer and the nurse from the jail's testimonies would not be admissable without the testimony of Mr. Gardner 1st. (RAP 179). This is a direct violation of Mr. Gardners 5th Amendment as well as his 6th Amendment to the United States Constitution, Article I, section 22 of the Washington Constitution, and my, Mr. Gardners, State and Federal due process rights.

The court made speculations as to why I, or people, may act bizarrely, stating, "it could've been due to Mr. Gardner not having medical insurance or thinking the heals would heal on their own. I ask, how is it appropriate for the court to speculate, yet not allow the jurors to speculate or even hear out my defense. If they believed they had a good case and that I was guilty of the crimes committed, why would it matter what defense I presented?

After the court required that 1) Either I, Mr. Gardner, testify or 2) An expert witness be brought in, counsel asked for a continuance which was then denied (RAP 187-188.) Counsel also requested a continuance previously to this in Pretrial Motions (RAP 11), counsel said," If we must bring in an expert to testify on something I believe is within the common knowledge I MUST request a

Continuance so I can secure this expert. This was denied.

Ralph D. Miller was charged and acquitted of 3° assault on an EMT, due to his head trauma he received from drinking and driving and crashing into a tree. He was convicted of DUI, but acquitted of 3° assault on the EMT. Mr. Miller assaulted EMT Hart when Hart came to Mr. Miller's home to assist Mr. Miller with his injuries. Mr. Miller obviously had enough control of his faculties to go home, yet the court still found of innocent of his assault on EMT Hart because, the court felt, due to Mr. Miller's head trauma, he had no proper understanding of his actions. Mr. Miller pushed Hart and was assaultive towards him. (Ralph D. Miller No. 24893-0-II)

My case is shockingly similar to Mr. Miller's. The only differences being 1) I was jumped and the victim of a crime committed, not the one out committing crimes when I received my major head trauma
2) I was not intoxicated
3) I obviously could not perform specific intentions as Mr. Miller did like walk home, etc., yet Mr. Miller was acquitted whil I wasn't. Why is this? Is this just and/or fair?

In regards to the courts requiring Mr. Gardner to testify before his defense could be presented and/or taken into consideration. In State v. Eaton 30 Wn. App. 288 (1981) the court required the defendent to testify before the psychiatrist could testify as to intoxification defense, as opinion was based upon defendants re-counting of incident; held: reversed, as violates intent of ER 703 In my case, the trial court wouldn't even allow me to secure an expert witness, after the court deemed it necessary for me to have one. And if the Court finds this was a technicality on defense counsels part, than that qualifies for ineffective assistance of counsel, given defense counsel had 5 months to prepare for my trial.

In regards to the exclusion of evidence. A trial court may NOT exclude evidence RELEVANT to a valid defense to a criminal charge ABSENT a compelling need to exclude the evidence [15] Wash Appelate Reports #157 Pg. 741 State v. Hawkins, 157 Wn. App. 739 238 P.3d 1226

For the trial court to allow Mrs. Murphy's past discrepancies to be excluded and sealed from defense counsel without a compelling need, other than it helps Prosecutor Richey's case, is a direct violation of this as well as my Constitutional Right to cross examine my accusser. This alone constitues a reversal and/or a remand for a new trial.

The State put Officer Shannon's testimony into its jury instructions. Under (ER 702), for expert testimony to be admitted in a trial the witness MUST BE 1) An expert and 2) the testimony MUST be helpful to the trier of fact. Mr. Shannon was not an expert. He said so himself. When asked, "There could be internal injury and still--" he answered, "I think I can't really answer that because I'M NOT A DOCTOR." (RAP 229) Defense Counsel probably should've objected to this and by not doing so that constitues ineffective assistance of counsel; yet, the trial court abused its discretion by even allowing this to be put into the jury instructions after Mr. Shannon admitted to not being an expert in the field that he was testifying on.

Parties are entitled to instructions that, when taken as a whole, properly instruct the jury on the applicable law, are not misleading, and ALLOW each party the opportunity to argue their theory of the case (state v. Redmond 150 Wn. 2d 489 493, 78, P. 3d 1001 (2003) and again, failing to instruct on the defense theory is REVERSIBLE ERROR where there is evidence to support the theory (state v. Harvill 169 Wn. 2d 254, 259, 234, P. 3d 11606 (2010) Their was obviously evidence in my case. So much so to where the State did not even want my defense to be allowed to be presented. If the State believed my defense was "only for sympathy purppses" (RAP 9, 170,) Also Mr. Richey stated (even after I agreed to take the stand and we were all under the agreement that if I took the stand my defense could be presented)," I have a problem even if he does testify with additional witnesses talking about his head injury. Obviously Mr. Richey knew what I was saying was true and he had no case, otherwise what's the problem with other witnesses who witnessed what happened talking about what they know and observed, concerning my head injury? Even after all the evidence the trial court would not allow to be presented in my case, there was still more than enough for my jury instructions

to be presented. Instructional errors are presumed prejudicial. (State v. Weaville 162 Wn. App. 801, 815, 256, P. 3d 426, 173 Wn. 2d 1004 (2011)
To find an instructional error HARMLESS this Court MUST conclude Beyond a Reasonable Doubt that the verdict would have been the same WITHOUT the error. (State v. Ponce 100 Wn. App. 409, 420, 269 P. 3d 408 (2012)

Mr. Richey and the trial court violated my 14th Amendment by not allowing me exculpatory evidence concerning Claudia Murphy's past false testimonies under oath. The 14th Amendment of the U.S. Constitution and article 1 & 3 of the Washington State Constitution REQUIRES that Criminal prosecutors conform with prevailing notions of fundamental fairness and that the Criminal defendents be given a meaningful opportunity to present a COMPLETE defense. To compact with due process, the prosecution has a DUTY to disclose material exculpatory evidence to the defense and a related duty to preserve such evidence for use by the defense (state v. Witten burger, 124 Wn 2d 467, 474-475, 880 and P. 2d 517 (1994) citing California v. Trombetta 467 U.S. 479, 104 S Ct. 2528, 81 L. Ed, 2d 413 (1984) and Brady v. Maryland 373 U.S. 83, 83 S Ct. 1194 10 L. Ed. 2d 215 (1963) If the courts felt this evidence was irrelevant, why did they seal it for later use by the Court of Appeals?

The Court reneged on its initial agreement to allow me to use my defense; if I testified, when the court agreed with Mr. Richey that part of the evidence I was going to be presenting for my defense was irrelevant (RAP 189-191)
Even after I took the stand, the court denied me key testimony from some of my key witnesses (e.g. nurse Connie Magana, Officer Vodopich, etc.)

In regards to the State bringing up my past convictions for Theft 1° in 2010 and making a false statement in 2003, 1) the state isn't allowed to bring up convictions that's over 7 years old and 2) ER 404 (b) states: Evidence of other crimes, wrongs, or acts is NOT admissible to PROVE the character of a person in order to show action in conformity therewith. It may, however be admissible For other purposes, such as proof of motive, opportunity, intent, preparation

plan, knowledge, identity, absence, or mistake of accident. The purpose of ER 404(b) is to PREVENT consideration of prior bad acts evidence as proof of a General propensity for criminal conduct (State v. Halstein 122 Wn. 2d 109, 126, 857, P. 2d 270 (1993) Moreover, to be admissible under ER 404(b) the prior misconduct MUST LINK the defendent to the crime charged. (State v. Sanford 128 Wn. App. 280, 286, 115 P. 3d 368 (2005 So in regards to my conviction of Theft 1° in 2010, this had NO relevance to my case. I wasn't charged with an act of dishonesty. Since I wasn't allowed to exercise my 5th Amendment Right, due to the courts prenious ruling of me HAVING to testify in order for my defense to be relevant, I was forced to answer these questions. Since my defense counsel did not object to these questions, this is also ineffective assistance of counsel. Mr. Hendrix refused to object at my request several times. I believe he only objected once during the course of my trial. I hate to have to attack Mr. Hendrix's defense strategy, or lack there of, but given the circumstances, I find it necessary to bring to light his miss moves. Mr. Hendrix admitted he was not prepared for my trial when he said, "I was prepared for this other trial." (RAP 6) He also stated, "I was expecting to go forward on another trial Monday morning and that is where my focus had been. (RAP 173-174) This is reason for reversal of conviction on both counts.

The court denied the motion for dismissal in regards to Count II of assault 4° DV on Chantie Wells, even after evidence showed their was no assault. Nudging one out of your way does not constitute an assault, especially when the person you nudge is holding you against your own will. You have the right to escape your captor. Evidence/testimony shows that I was being held captive in a hospital and tried to leave on numerous occassions. When Ms. Wells placed herself between me and my exit, she became the aggressor by refusing me room to leave. I had every right to move her out of the way. She had no authority to keep me there.

In closing, I would like to thank the Court for reviewing my SAG and my Opening Brief and for taking into consideration these grave matters at hand. I apologize for jumping around in my SAG so much This is my first time ever writing one of these and I had no legal or professional help/guidance. Please understand this and dont penalize me or my counsel for my lack of understanding of the Law. Thank you. I pray for Relief

Respectfully, Mr. Kier Ke'Ande Gardner