

Statement of Additional Grounds Page 1

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During an Evidentiary Hearing on Feb. 9, 2013, issues were brought before the court. The State requested to enter into evidence the hearsay statement from Mohammed Young to alleged victim A.B. The court ruled to let the state say that I was arrested to show the mind state of A.B. for her 3 week delay reporting. It was not to be used for any other purpose.

That was in the jury instructions RP(7-25-13). I was acquitted of that arrest at trial in July 2010. There was not any case law to support the court's decision RP(2-4-13)31. Evidence Rule 404B was used to show bad acts or common scheme and plan. Being falsely accused of a heinous crime is not a bad act or common scheme. In a trial without any physical evidence, because A.B. did not go to the hospital, statements and credibility were the evidence at hand. By allowing to let the jury hear that I was arrested and not full the whole story prejudiced the defense. In the legal world an arrest has little bearing, but in the world of everyday people, jurors included it usually is a negative act. This Court order was violated at trial when the state's lead detective Mrs. Stines said "I was under investigation for another case" RP(7-23-14)149. Defense Counsel asked for a side bar. Jury was taken out of court and a curative was the solution. The jury was asked to ignore that response RP(7-23-14)154-155. Defense Counsel

was ineffective, by not asking for a mistrial, Detective Sines was present for the entire trial RP(7-22-14)14 She knew about the court order and prejudiced me to look like a habitual offender. There are rape shields protecting alleged victims. What about my protection being the victim of a false rape? The state used my acquittal against me.

The second issue was the Myspace pictures of A.B. and Ms. Greco. These photos were very sexual in nature. There was alcohol in the pictures RP(2-11-13)17.

The morning after the night in question, I showed Mohammed Young these pictures and told him what happened. Therefore, without those pictures Mr. Young would have never contacted A.B.

Mr. Young spoke of these pictures in trial.

These pictures clearly show these women drinking. Yet at the first trial Ms. Greco was asked by counsel "if she had ever seen A.B. drink?" Her reply was "Not Really". At the second trial she claimed to have seen A.B. drink a few times.

The pictures prove her lies. RP(7-23-13)87. The court ruled in favor of the state on the "affest issue" claiming the state of mind by alleged victim.

What about my mind state? In regards to the pictures. The only thing I know about these women is what is in those pictures. Combine that with them coming to my house at 3AM to drink, gives me reasonable belief both these women are into me. A.B. lived 10 minutes away.

but choose to come to my place to drink. It is unfair when I cannot show people who these women really are but the state can tell the jury I was arrested and under investigation for an unrelated case.

At Trial, the state offered a plea bargain. RP(7-23-14)14. The plea was Indecent Liberties with out force. I have read this law and it is the same wording as the Charge of Rape in the 2nd, that they used against me. The state abused their discretion by over charging me. The Indecent Liberties plea was offered to me after I was awarded remand for the first trial, Therefore, I could have went home over 2 years ago. The state is using the Rape 2nd as leverage because it comes with a life sentence. I was told sign the deal and I would go home.

Obviously the state does not think I am a threat to society if they will allow me to go home. But, if I don't play ball with them I get life. There is no injuries in my case but my serious level is high violent along with manslaughter.

I should have been charged with Indecent Liberties and fighting this appeal from home. It is apparent to me that the state will do whatever it can for a Conviction including violating my constitutional rights and coercion. The next issue at

trial was the defense expert witness Dr. Moore. Dr. Moore formed his opinion from the transcripts of the first trial. Dr. Moore believed A.B. to be confabulating in parts of her testimony. The only way to give evidence of confabulation is through A.B.'s own words. The State argued that confabulation is lying or unknowingly lying. It is assuming something when one does not have full recollection of events. Due to alcohol, drugs, or memory loss A.B. was assuming that she was such a good friend, that there is no way possible she would consent to sex with me. Since she had 6-8 drinks that night, that were double and triple shots, plus 2 glasses of wine and beer at my house, it would be hard to believe that she would not deviate from that behavior to another under all that alcohol. Evidence rule 702 would allow Dr. Moore to his opinion. The jury should be entitled to know if a witness is confabulating because those are facts proved through A.B.'s testimony. Nevertheless, the trial court ruled to not admit Dr. Moore's opinion. This ruling prejudiced the defense. In jury instruction number 4, it states that an expert may form an opinion, RP(7-25-14)387. The hearing of Dr. Moore's opinion was held outside the presence of the jury. Therefore, a jury member would hear about confabulation but not think A.B. confabulated because Dr. Moore did not give his opinion of that. Unknowingly to the jury he was ordered

not to give his opinion. The State clearly deceived the jury.

In the Opening Brief, the defense stated the Constitutional violation of my Sixth and Fourteenth Amendment. By denying my counsel the right to confront and cross examine Mohammed Young. One of the main reasons why this was not a harmless error is because during jury deliberations, the jury sent a note to the Court. BP(7-25-14)p449-50. In this note the jury asked for several items because there was an obvious doubt. The jury asked to see exhibits 2, 10, 8, 5, 3, the Myspace dialog between A.B. and myself the day after alleged incident. Also most importantly the Mohammed Young / Detective Stines interview. This was after the Court failed to allow my counsel to cross examine. The jury disregarded the Court's instruction and asked for the conversation anyway. The jury wanted to be sure of the facts and were denied. This is abuse of discretion by the court and by conduct favoring certain testimony. Unlike in State v. Higgins 276 P 3rd 700 The Court did not explain their actions.

At Trial, we were also denied the right to choose our defense. The defense argued not only in this trial but also the first trial that

the sex was consent: by A.B. actions, the State put the "Reasonable Belief" defense GA. 44.030. The defense never argued this, but the state would argue how we did not meet the burden. We did not meet it because we never argued it. In St. V. Coristin and State v. Lynch 2013 they were denied the same right. We did not control our defense. A.B. testified at both trials that she remembers my hand on her face and stomach. She also testified to remembering me shoving my tongue down her throat. She did not tell me to stop. If I am putting my tongue in someone's mouth and they know it's happening and don't stop me, that would make any reasonable person think the person is consenting. Not to mention that if she remembers that, then how is she sleeping? She was not sleeping. A.B. also claimed what woke her up that night was Candice saying "what the fuck". So the States argument is I took off all her clothes and assaulted her in her sleep or in a coma like state, but when she hears those words she is up, putting on her clothes by herself and running down two flights of stairs on her own strength. The next day I told my close friends exactly what happened that night, which is the same story I told at both my trials. I showed Mr. Young her Myspace and that

is when he contacted her, I contacted A.B. via Myspace the next day as well, to let her know she left her debit card at my house. In that Myspace conversation A.B. thanked God that she heard from me. Then she gave me her phone number asking me to drop off the debit card at her house. Then 3 weeks later when she heard I was arrested she said "I switched gears pretty quick." Therefore, she felt I was a good enough person to give out her phone number, but now by the false accusation by Brittany Smith A.B. now feels I am a monster. Brittany Smith was never charged with a crime nor was I compensated for my time and bail money in that case. This is not fair. The state wants to honor this conviction but they do not honor my acquittal. In fact they use it against me in trial. The state wins these cases on emotion. This is a he said/she said case and I lost twice. The reason for that is the stigma of the charge and the fake tears at trial by A.B. In both her phone calls to Mr. Young and interviews with law enforcement, she did not cry but in trial years later she is crying. That is sick to fool the jury like that. At the second trial A.B.

testified that she knew I was assaulting her and she knew I raped her. She never disclosed that information before in any interview or the first trial.

The evidence in my case or rather lack there of does not fit the conviction of a high violent life in prison crime, especially when the plea bargain offered was 2 years. I seek Justice and an exoneration. Thank you for your time and God Bless.

Respectfully

Marcos Roberto Lozano

