

COURT OF APPEALS
DIVISION THREE
OF THE STATE OF WASHINGTON

FILED

OCT 22 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
 Donald L. Dyson JR)
 (your name))
)
 Appellant.)

No. 322483

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Donald Dyson JR, 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 Court Rule 2.5

Alleged victims Talking + Becoming Friends

Additional Ground 2 Court Rule 2.5

uncalled witness and evidence Toxicologist
Weapons expert. BAC Report

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

Date: 10-15-14

Signature: Don Dyson

I would like to bring to fact about the two alleged victims and them conversating before the meeting with Detective Gillmore. Mr Swartzenberg did not know my name before this meeting. I am sending the transcript with highlighted lines of testimony from the Detective and Mr Swartzenberg and Mr Ward became friends on Face Book. I believe that these events could have influenced Mr Swartzenberg's memory of the evening of September 8th.

I also believe that there is a court rule stating no talking about the case till after trial.

I would also like to bring up some other important facts of witness not being called on my behalf like the toxicologist that did Mr Swartzenberg's B.A.C level and the fact my lawyer did not call or put it in to evidence. There is also the fact ~~the~~ Mr Dressler did not call a witness to discuss the knife wounds. These ~~two~~ two facts are a violation of my rights to a fair trial. For this evidence could have given the jury more to go on along with my social security paper work showing I have P.T.S.D.

1 testify, so there is impeachment here; it would be strictly
2 hearsay unless there is some other exception.

3 MR. DRESSLER: I'll withdraw the question, Judge.

4 Q. (By Mr. Dressler) At some point you also interviewed
5 Mr. Schwartzberger and Mr. Ward?

6 A. Yes.

7 Q. And I think you indicated at one point they were both
8 at the Gardner Building to see you at the same time?

9 A. Yes.

10 Q. Do you know, were they engaged in any conversation
11 wherever they were together?

12 A. Yes.

13 Q. Were they talking about the case, to the best of your
14 knowledge?

15 A. I think one of them learned the name of the suspect
16 from the other one.

17 Q. Did you have a chance to hear much of their
18 conversation?

19 A. I didn't hear anything.

20 Q. Okay. So we don't know what they may have been
21 talking about?

22 A. Right. Just that one statement I think I indicated
23 came from one of them to me; I think it was from Mr. Ward.

24 Q. Okay. So they could have been out talking about cars,
25 the weather or the case, we don't know?

1 A. I wasn't there.

2 Q. We just know they were in the same anteroom, so to
3 speak?

4 A. Yes.

5 Q. You interviewed Mr. Ward after you interviewed
6 Mr. Schwartzberger.

7 And at this point I'm on Page 5 of six, if you need to
8 refer to your notes.

9 A. Yes.

10 Q. And you indicated he was cooperative with regards to
11 the interview?

12 A. Yes.

13 Q. And I believe Mr. Martin may have asked, but I may be
14 wrong, whether or not Mr. Ward had indicated he had seen
15 Mr. Dyson do any slashing of Mr. Schwartzberger?

16 A. Yes. He asked me that. And I answered that, yes.

17 Q. And do you recall the answer? I may have missed it.

18 A. He didn't see Mr. Schwartzberger get cut because
19 when he -- he heard the scuffle, I think was the word -- he
20 heard the scuffle, turned to look, saw Mr. Schwartzberger
21 falling back. At that time he saw Mr. Ward (sic) slashing
22 at Mr. Schwartzberger with a knife, though wasn't close
23 enough to be cutting him at that point.

24 And then he saw blood squirting out of
25 Mr. Schwartzberger's neck.

1 A. Yes. I didn't know him.

2 Q. Do you know him now?

3 A. Yeah. We became friends on Face Book after. I don't
4 know him that well; we never hung out or in person.

5 Q. But you get along well enough to be Face Book friends?

6 A. Well, yeah. I mean, this was a big thing that
7 happened.

8 Q. Will you describe again for the jury, and this time
9 describe the hands that you are using to the best of your
10 ability what you saw Mr. Dyson do.

11 A. What I had seen was after the scruffle, you know,
12 there was a little bit of argument -- I didn't hear what
13 the argument was over, and then there was a scruffle. And
14 I turned to my side, and what I had seen was, Dyson, he his
15 left hand on Schwartzenger's left face, and he had his
16 knife in his right hand, and he slid up.

17 Now at this point Schwartzenger was standing up,
18 and he was falling backwards. His neck was open up. It
19 was very apparent that his neck was wide open; lots of
20 blood. Extremely scary.

21 That is one of the reasons why I jumped in was because
22 it was so intense.

23 As he was falling backwards Dyson was continuing to go
24 after him. And to me it seemed like it wasn't finished.

25 So I had jumped in and basically tried to tackling him

1 warning that he had a weapon or he was armed?

2 A. No.

3 Q. Now, when you said you heard the argument behind you,
4 did it involve I guess normal conversational tones or were
5 peoples' voices raised?

6 A. Well, it was an argument, so the voices were raised a
7 little bit.

8 Q. Could you tell how many people were participating in
9 that?

10 A. It looked like two.

11 Q. Man, woman?

12 A. Two men.

13 Q. How far away were those men from you when you turned
14 around after you heard the sound of those feet shuffling?

15 A. Approximately seven feet, eight feet.

16 Q. What did you see when you turned around?

17 A. I turned around, and immediately once I turned around,
18 I just saw the stabbings occur. Donald Dyson, he had his
19 left hand on Spencer's face and cut up towards -- oops --
20 up and out on his neck (indicating).

21 Q. You used the first name Spencer. Did you mean
22 Mr. Schwartzberger?

23 A. Yeah, Schwartzberger.

24 Q. Did you testify earlier that you didn't know him at
25 the time?

Our Supreme Court has set forth a high threshold for clarity of jury instruction: The standard for clarity in a jury instruction is higher than for a statute; while we have been able to resolve the ambiguous wording of [a statute] via statutory construction a jury lacks such a manifestly clear instructions.

State v. L.A. Faber, 128 Wash.2d 896, 902, 913 P.2d 369 (1996)

And where, as here, a self-defense jury instructions are at issue, the court has stated that the "instructions, read as a whole, must make the relevant legal standard 'manifestly apparent to the average juror' " Id. 900, 913 P.2d 369 (citations and internal quotation marks omitted).

Indeed a "jury instruction misstating the law of self-defense amounts to an error of constitutional magnitude and is prejudicial.

Walden 131 Wash.2d AT 473, 932 P.2d 1237 (quoting L.A. Faber, 128 Wash.2d AT 900, 913 P.2d 369)

State vs Andrew G. Tancos

State vs Wanrow 88 Wash. 2d 221, 234-36.
59 P.2d 578 1977

The appellants need not have been in actual danger of great bodily harm, but they were entitled to act on appearances; and if they ~~believed~~ believed in good faith and on reasonable grounds that they were in actual danger of great bodily harm, although it afterwards might develop that they were mistaken as to the extent of the danger, if they acted as reasonably and ordinarily cautious and prudent men would have done under the circumstances as they appeared to them, they were justified in defending themselves.

State v Adams

(Formerly 203K276)

In order to properly raise issue of self defense defendant need only produce "any ~~any~~ evidence" to prove that the homicide was done in self-defense; however, he need not produce the amount necessary to create a reasonable doubt in the juror's minds as to existence of self-defense.

State v. Wanrow, 88 Wash 2d. 221, 241, 559 ~~2~~
548 (1977)

The Court also stated in tyree that the amount of force which (appellant) had a right to use in resisting an attack upon him was not the amount of force which the jury might say was reasonably necessary, but what under the circumstances appeared reasonably necessary to appellant.

(Emphasis added) Id 143 Wash at 316, 255 P. 382 once self-defense evidence is produced, the defendant has a due process right to have his theory of the case presented under proper instructions even if [31 Wn. App. 327] The Judge might deem the evidence inadequate to support such a view of the case were he the trier of fact (and even if) the law is, in general way, covered by the instructions given.

State v. Rigler

In defense, a defendant's actions is measured by the subjective determination of how reasonable the situation appeared to him at the time he acted in view of all the facts and circumstances.

Washington
Court Rules

Rule 2.5

Case# 322483

MAR 18 2015

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By _____

The only thing I can do
An analogy to this called ~~(slow~~
Deflation of the Justice system) ~~)~~
Throwing Tacks under tires it dose NOT
go flat quickly but over time with
leaks it breaks down AND flattens out
and loses its balance or structure
and wont work properly. This falls
back to the (US Supreme courts)
U.S. vs. Berger (Prosecutor's should NOT
place thier hands on the scale's of Justice
no matter how slight it is)

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On Pg 189 line 19 404B motion

The argument Ends in denial on Pg 201 line 1
I Bring This motion up cause it was
denied But my Acquittal is Brought up during
sentencing on Pg 810 to 811 From lines 29 on Pg 810
To and through lines 1-7 I AM only Arguing
About my Acquittal Being Brought in I was Found
Not guilty on This charge By A Jury For IT To Be
Brought up in my sentencing I Believe had a impact
on the Time I Received From The court and I Believe
it was used for This purpose Because Not only was
The Acquittal mentioned But The charge was also
mentioned and used in sentencing I AM under The
Belife That Being Acquitted is I am Free of This
charge under The law And ~~the~~ constitution so This
would Be a second time This charge was used Against
me This time it worked To get memore Time in
a seperate case