FILED
COURT OF APPEALS
DIVISION II

2015 FEB 23 AM 8:50

STATE OF WASHINGTON

BY ____ DEPUTY

COURT OF APPEALS
DIVISION
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON)
Respondent,)
v.)
Randy G Richter (your name))
Appellant.)

No. 46297-4-II

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, Randy Richter, have recieved 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...

Statement of Additional Grounds

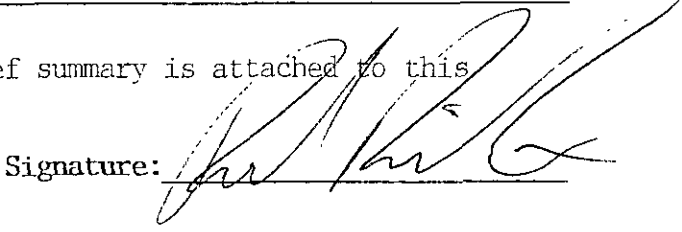
Additional Ground 2

Additional Ground 3

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

Date: 2-19-15

Signature:



DECLARATION OF SERVICE BY MAIL
GR 3.1(c)

I, Randy G Richter, declare that, on this 14 day of Febuary, 2015 I deposited the forgoing documents:

Statement of additional grounds

or a copy thereof, in the internal legal mail system of Clallam Bay Correctional Center

And made arrangements for postage, addressed to: (name & address of court or other party.)

Division II Court of Appeals
950 Broadway # 300 M/S TB-06
Tacoma WA 98402

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BY [signature] DEPUTY

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated at Clallam Bay, WA on 2-19-15
(City & State) (Date)

[signature]
Signature

Randy Richter
Type/Print Name

#1 Late disclosure of discovery and Confidential informant packet.

The late disclosure prevented my attorney and myself from being able to investigate where the alleged deals where done. So we had no knowledge if the meetings where even conducted in a school zone. This drastically effected my attempt to investigate and my ability to produce a defense in my case.

It also prevented me from getting video Surveillance from the local businesses close to where the alleged deals took place. It prevented me from knowing where I could request eye witnesses or employees who could have seen what took place.

Failure to disclose the video's prevented us from authenticating them and the audio also. It prevented us from investigating who the confidential informant was and prevented my attorney from doing proper interviews with Natalie Curley. The late disclosure also prevented me from tracking down the other person in the video who could have also confirmed I was not doing what I was accused of. It also prevented my attorney from investigating all the charges and benifits that Natalie Curley recieved

This also prevented my attorney from investigating all the evidence that was logged in and who logged it in. This prevented my counsel from interviewing the officers and from properly preparing a defense based from those interviews.

It also made it so my attorney couldn't get samples of the drugs and to file motions to suppress evidence like the text messages, videos and audio recordings.

And scense I requested my discovery nemerous times all threw my pre-trials on RP 10 LN 22-23, RP 15 LN 6,7, RP 26 LN 11-18, RP 28 LN 7-11, on Febuary 20, 2014 and I filed a motion for discovery again on March 18 2014. The court agreed I had discovery issues on RP 16 LN 21-23 and was blatantly denied my discovery and told to shut up and stop asking about it on RP LN 3-16.

When it was confirmed on RP 20 LN 22-24 my attorney recieved it then returned it to the prosicuter it was confirmed I could recieve it at any time yet I was still denied.

Then again the court confirms my attorney was to recieve my discovery on RP 30 LN 12-20 on Febuary-11-2014 yet even after motions and requests it was not disclosed to me until April-17-2014 a week before trial. This all was done for no other reason then to prevent me from doing any kind of investigation. Which I beleave is a Brady Violation and a violation of the Jenks Act

Brady v Maryland 373 U.S. 83, 83 S.ct 1194, 10 L.Ed 2d 215 (1963)

Jenks act 18 U.S.C.A. § 3500

#2 Prosicutor Misconduct

As Mentioned above the late disclosure of my discovery and the failure to disclose many other things I know to be true.

As a witness testified to that Natalie had Warrants at the time of the alleged controlled buys. RP 59 LN 23-25. And I know she had warrents dropped for no reason on 4-21-2015. And the defense was not notified of this.

Scense Natalie was the only person to have a direct testamony as to what happened the prosicutor admits to not having a case with out her testamony on RP 33 LN 18-21. It is obvious that he would allow her to testify falsly and would provide the key witness what ever to get the testamony he needed to recieve a conviction.

As he later confirms on RP 32 LN 13-14 Natalie Curley had court yet we had no knowledge of this until trial. Now I ask what else could he be withholding.

Well my witness confirmed she had another Possetion charge on January 2014, which from all I can confirm due to the fact I am being denied my discovery still but that charge was also dismissed on a deal with her testamony.

And Scense it was not disclosed to me but it is all true the prosicutor allowed Natalie to lie on the stand and as in case Mooney

V. Holohan 294 U.S. 103, 55 S.Ct 340 79 L.Ed 791
The third circuit in the Baldi Case construed that Statement in Pyle V. Kansas 317 U.S. 213, 215, 216 63 S.Ct 177, 178 87 L.Ed ~~214~~ 214, to mean the suppression of evidence favorable to the accused was itself sufficient to amount to a denial of due Process 195 F.2d at 820. The test extended when the courts said in Mooney V. Holohan "The same results obtained when the State although not soliciting false evidence, allows it to go uncorrected when it appears" See Alcorta V. Texas 355 U.S. 28, 78 S.Ct 103 2 L.Ed 9; Wilde V. Wyoming 362 U.S. 607 80. S.Ct 900 4 L.Ed 985.

Now when you know that the prosecuter asked the Jury specificaly how they felt about a witness with charges they told him they would have a hard time beleaving a witness with Nemourous charges and benifits that you can see on RP 96-100.

This I beleave would proove that the prosicuter deliberetly withheld this info to preserve Natalie's credability and allowed Natalie to break her contract and was not prosicuted on none of the violation's which I beleave if this info would have been brought up along with the fact she redically admits to using and liing to the officers. The verdict would have been different. It shows Natalie had many reasons to lie and cover her lies with a simple option of providing a small amount of Drugs to the officers.

#3 Ineffective Assitance of Counsel

While the state has the duty to turn over impeachment information to the defense, the defense counsel need not just sit back and wait for the prosicutor to fullfill his duties. Rather the defense counsel has an obligation under the 6th Amendment and wash constitution Artical 1 §22 to investigate the backgrounds of the witnesses testifing against him or her.

A criminal defendant has the right under U.S. Constitution and Amendment 6 & 14 and wash const Art 1 §22 to effective assitance of counsel. Strickland v. Washington 466 U.S. 668, 685 104 S.Ct 2052 80 L.Ed 2d 674 1984. While counsel is not expected to perform flawlessly, counsel is required to meet objectively reasonable minimum standard of performance. Id. Evidence of ineffective assitance includes the failure to conduct appropriate investigations. Strickland 466 U.S at 691 ("counsel has a duty to make a reasonable investigation or to make reasonable decisions that makes particular investigation unnesecery. IN an ineffectiveness case a particular ~~investigation~~ decision not to investigate must be directly assessed for reasonableness under all circumstances") See also Duncan v. Ornoski 528 F.3d 1222, 1234-35 (9th cir 2008)

The duties exist regardless of counsels personal feelings as to guilt or innocense of his or her client. A lawyer who believes his or her client

will certainly be convicted still must investigate before trial. See National legal aid and defender ass. Performance Guidlines for defense representation Guidline 4-1(A) (counsel has a duty to conduct an independent investigation regardless of the accused admissions or statements to the lawyer or facts constituting guilt.) American Bar Association the defense function Standard 4.4-1 (defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of a conviction. The investigation should include efforts to secure information in the possesion of the prosicution and law enforcement authorities. The duties to investigate exsits regardless of the accused addmissions of statements to the defense counsel or facts constituting guilt or the accused desire to plea Guilty.)

while considerable discretion is given to lawyers to make strategic decisions about what to investigate when defense counsel merely believes certain testimony might not be helpfull no reasonable basis exsits for deciding not to investigate (Duncan v. Ornoski 528 F.3d at 1234-35) (emphisis in original) Accordingly, no defience is required to tactical decisions made by counsel where counsel fails to conduct appropriate investigation prior to making the tactical decision Rios v. Rocha 299 F.3d 796 805-11 (9th cir 2002)

As in State v. Jury 576 P.2d 1302 19 Wash. App 1978 counsel never investigated witnesses, didn't talk to previous attorney's, and made little to no effort to investigate. See also State v. Byrd 638 P.2d 601 W.N. App 794 800 1981 Counsel failed to acquaint himself with case and failed to suppeana witnesses Cowan v. Stovall 645 F.3d 818 (C.a. (Mich) 2011) failed to interview witnesses and familarize himself with case.

IN State v. Richter Councel never investigated my witnesses. David child's was a witness in the vehical who has first hand knowledge of what happened on the 3rd meeting with natalie curley and was confirmed by officer Hartley on RP 184 LN 22-25 and officer Sawyer on RP 18 LN 19-21. to be in the vehical yet was not called to testify or interview by my attorney other then a brief Phone conversation 2 month's Prior to trial.

He was at my court ready to testify to the facts I only recieved 40$ from Natalie Curley and I handed her nothing. That she called me to meet her at biglots so she could repay the money she borrowed a couple days before.

Counsel also failed to investigate Sean Griener who was in a relationship with natalie curley during the times I was going to trial and was with natalie curley when she got arrested on January 2014 for new drugs charges and could testify to the fact that she was given benefits I was never informed about prior to

trial. I gave counsel all contact info and counsel failed to contact him or call him to investigate what I informed him was allegations the prosicuter was withholding info from U.S.

I spacifical asked counsel to file motions to recuse Judge even's due to a conflict of intrest.

As mention above he was given my discovery yet withheld it from me until the week of trial.

He failed to investigate the deals and Police reports on the controlled buys. When all testomony from the officers indicate It was a hand to hand threw the window on the 3rd meeting on 6-21-2013. Hartley RP 185 LN 25 186 LN 1-2 Sawyer RP 19 LN 12-14. Yet when the Video is Played RP 188 LN 7-11 I have my door open waiting for C.I but they can not record a hand to hand. So upon the fact that it contridicts what the officer's are testifying to it is Not Properly Authenticated and Needed to be suppressed, which my counsel Never tried to do on any of the Video's or Audio or text Messages. see State v. Reichbach 152 Wn. 2d 126 101 P.3d 80 (2014) Which Im sure is one of the first things an attorney does. (failure to investigate)

As mentioned above Natalie Curley was working off a possetion charge. But after I informed my attorney that Sean Griener informed me she had new charges and warrants his JOB would be

to investigate. Keeping in mind are trial tactic was to discredit the informant and prove the officers are lying about all that they said happened. Now info like that should have been brought to are attention by the Prosicutor, or at least ~~to~~ it should have been looked into by my counsel.

Although we only had 4 business days to investigate from when I recieved the discovery counsel should have asked for a continuence.

Additionaly councel failed to mention or present statements made by Natalie that confirms she called me on the 2nd and 3rd meeting, not texting me. Showing she was commiting perjury on the stand to strengthen the prosicutors case. Her statements also confirm that I had an open door on this meeting which confirms the video evidence in the 3rd meeting. Yet no video evidence confirms a hand to hand exchange ever on #2 or 3. So the video is not confirming what is testified to so it is not properly authenticated per ER 901.

All of this info is in the C.I Packet which I was given for 2 hours and then was not given to me again. Even to this date I have filed motions for this info to prove my allegations but I'm being denied. Along with the videos and Audio recordings.

This all should have been brought up in court and I told my attorney this then and

It was disregarded by Counsel Which if it was brought to the Jury's attention the Verdict would have been diffrent. A reasonable doubt would exsist if all the info I have shown was Presented lia it should have been.

Councel also failed to request an informant instruction See U.S. V. Griffen 382 F.2d 825 ((C-A (Mich) 1967) the Confidential Informant admits to being addicted and using drugs, So failure to Put informant instruction is ineffective See also U.S. V. Luck 611 F.3d 187 (C.a. (VA) 2010).

If you where to consider maybe one or two of these allegations to be ineffective it could be considered a harmless error But with all of these cumulative errors would it constitute a diffrent Verdict. I have to say yes. So I ask for a Verdict of ineffective assitance of Councel and remand back to trial.

#4 Sever the charges

I beleave the best defense would have been to sever the charges. If you are to break down all 3 meetings you can come to the same conclution that thier is not enough evidence to convict me on one charge let alone all 3.

The first meeting they have a witness who I meet in a parking lot to recieve 40 dollers she borrowed a couple day's prior to her phone call to me. I was not arrested with any drugs after this meeting. No marked money. No phone that has the text messages that she alleged come from me. My phone number is 360-749-4855 which is in the incedent report the cops made. And all the officers let an un licensed driver drive in a vehical that is un-insured and not hers to meet me. Do not do a thurough search of a female and beleave all she is telling them. And drugs are brought to them that no one can confirm they come from anyone for sure. Even the video does not show me hand her anything. If the video is unconclusive then so would all observers of the meeting.

The second meeting on June 5th. Same as above. No money. No drugs on me. Video evidence is unconclusive. Yet they can have an officer testify to a hand to hand. Yet on Natalie's written statement taken right after she met me she

mentions calling me on the phone but no officer Seen that happen. She also wrights That I met her threw the open door of my truck. But no cop testifies to that at all. And video on That meeting it was alleged I met her and She reached threw the window. Which is a completely diffrent vertion of what happened compaired to a Statement written Right after the meeting. Not to mention a cop can testify to exactly what happen but can not get video of the hand to hand. I will inform the courts that his testomony does not confirm anything that happened except what the prosicutor needed to get a conviction. But thier is still no physical evidence of a drug deal.

The Third meeting is as said on one and 2. No Drugs on me, No marked money on me and no video of a hand to hand exchange. If you read RP 133 LN 2-3 ~~she~~ Natalie asks who Im talking to and I am on the phone with a friend and the recording makes no scence unless you know that. And when she talks to me all the conversation herd was to a 3rd party that I was talking to on the phone. My passenger could testify I never handed her drugs and I recieved money she owed me. Which all officers testify to happening threw a window. ~~yet~~ RP 185 LN 25 186 LN 1-2 and RP 19 LN 12-14 yet the video being discribed on RP 188 LN 7-11 States I had

My door open. But No video proof of a hand to hand but it relates to the statement from Natalie she wrote for the 2nd Meeting. But No matter the written statement the Evidence on record does Not Prove I did any drug deals.

Then If you look at all the Evidence Seperetly You have No absolute proof and Direct evidence relating me to drug ~~deals~~ deals.

As mentioned in my other brief from my counsel they Never Prooved possesion in the vehical and it shows that it would be a different verdict if you look at one day at a time.

Which shows the charges should have been severed, to have all the verdicts different. It is possible to beleave that Their is a reasonable doubt that I was guilty of these charges.

#5 Confidential Informant's credability

Thier is a 3 prong test to prove the Informant is credable. And when you review all the info the cops provided to the courts in thier Incedent reports does not prove her credible.

The video does not show any incriminating evedence. The probable cause statement is all based on the fact she asked me to meet her on a phone call/text. That alone does not prove a reliable witness. And the cops never proved I had any marked money on me and so it was lies to recieve any kind of warrants.

They used a witness who had no previous controlled buys, no verification of any info she told the officers to be true. And the officers ~~youseed~~ used info they did not know to be true to recieve probable cause.

This I beleave would make the arrest a violation of my constitutional rights and against the law. So all charges would not be prosicuted. See also State v. Fisher also State v. Woodall. And State v. Morehouse No 13461-2-I (Wash app 1984)

#6 Search and Seizure of my Vehical

As mentioned above they never proved thier burden of possetion in the vehical. Before that you have to looke at how they applied for a search warrent as in State v. Bean 572 P.2d 1102 89 Wn.2d 467 1978, he entered my vehical and drove it from a legaly parked spot in front of my house with out a trafic stop to legaly search my vehical or enter my vehical. The officer drove it from my house to the police impound, and then applied for a worrent that was based on the investigation of the controlled buys and information that was never proved to be from a reliable informant and as in State v. Quezadas-Gomez 267 P.3d 1036 165 Wn App 593 2011, That states because the controlled buys happened previously thier is no reason to believe that I was currently committing or recently committing any illegal act's where evidence would be found on my person or in my car.

Which means the officer would have needed to be conducting a new investigation or a Terry stop to pull me over or a ~~warrent~~ warrent which I beleave was not issued yet at the time I was pulled over.

This officer admitts to needing permition to enter my vehical on the record RP 157 LN 23-24. So he new the vehical needed

to be towed to the police Im Pound- yet he Rnowingly broke the chain of custody and entered my Vehical, he did Not have permition to enter drove it accross town by himself and then applied for a warrent to enter my Vehical using allegations from the investigation of the controlled buys to recieve permition to enter my vehical.

I dont believe the officer had a warrent to arrest me and as in State v. Saggers 352 P.3d 1038 Wash app div 1 2014 a police officer may rely on his or her experience to identify seamingly innocent facts as suspicious but confirming a subjects discription, Location, or other innocous facts generaly does not satisfy to coarobaration requirements. The goal of corroboration is to reduce the chance of acting on a malicious prank initiated at the defendants expense.

If Im being arrested when officer Epperson stopped me with No identification of who he was and at gunpoint for 3 minutes until backup arrived then he would have needed a warrent, which he didn't have at the time. He informed me that I was wanted for Questioning. IN State v. Ladsey 138 Wash. 2d 343353 979 P.2d 833 1999 a pretextual stop occurs when an officer stops a vehical in order to

Conduct a Speculative criminal investigation unrelated to the driving. What officer Epperson was doing is this, So If a stop is determined to be pretextual and he enters my vehical without permition then all evidence found from that point should be suppressed. See State v. Nichols 161 wash.2d 1, 8, 162 p.3d 1122 2007.

#7 Judge Recuseing Himself

ABA code of Judicial conduct provides in conon 3C Headed disqualification that a Judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned including but not limited to instences where, he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary fact concerning the proceding (or where) he knows that he individualy or as a fiduciary or his spouse or a member of his family residing in his house hold, has a finacial interest in the subject matter or controversey or in a party to the proceeding or any other interest that could be substantialy affected by the out come of the proceeding.

As mentioned on RP 171 LN 9-19 Judge Evans has had previous run ins with me that where less then plesent. Judge Evans had to be given info regarding my case prior to Trial when he released Natalie Curley from Jail in May 2013 to become a key witness in my investigation. Proof of that is in my wife London Richter's child custody hearing when Judge Evans made a life altering decision to relenquish us from custody of or child for no reason. In family court he stated that the enviornment was good for the

Child in one court hearing then on the Next court hearing after the Very Release of Natalie he Reversed this decision for no reason.

I then Shouted at Judge Evans and Made him upset with me. So in regards to this Prior conflict of interest as a Judge he Should have excused himself from being My Judge to avoid the fact that He could Not be bias in my trial Just as he was Not bias in my trial with my wife in family court.

He not only proved that he had a Short fuse with how he reacted towards me on sentencing but how he threatened me for very little Provocation and denied me all he could to try to inflict as much punishment on top of the ~~exceptional~~ exceptional Sentence.

Looking back at the Sentencing you can see when he compares me to the war on drugs and refuses to look into any of the facts I Bring up in RP 167-171 to Show my attorney didn't do anything I asked and Evidence existed I was Not lieing that he was Not being bias and Proves he had an emotional conection beyond a Standard feeling.

Conclution

The defendant Brings to the courts attention that many Parts of these Charges Could and are wrong. If you look at it from a non bias Point of view my attorney was ineffective for many reasons proving that Evidence was thier that he could have investigated if the prosicuter would have Produced the discovery and given my counsel time to investigate and it Proves that I was Prevented from producing a defense.

Many Parts of the States case fall's on a Key witness who lies and is using drugs with warrents and getting New charges. No Part of her credicability was Proven so all the info the cops relied on and testified to was based on a Key witness given many things on top of Charges being dismissed to testify how the State wanted her to.

And if you can look at all the technical aspects, warrents, were not valid their was a conflict with the Judge and Cops and video's all dont colaberate each other's Story

So I Rightfully ask the Court to see I was given an unfair trial, Evidence dont Show a true conviction and ask for the charges to be dismissed or remanded back to court and a fair trial provided for Justice.