

IN THE COURT OF APPEALS OF THE  
STATE OF WASHINGTON  
DIVISION ONE

State of Washington,  
Respondent,  
v.  
Jose Jaime Rosales - Contreras,  
Appellant,

No. 72911-0-1  
Statement of  
Additional Grounds  
Pursuant RAP 10.10

2015 SEP -8 PM 2:31  
STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION ONE

I. STATEMENT OF CASE

A. Mr. Jose Jaime Rosales - Contreras (herein J.J.R.C.) was convicted in King County Superior Court No. 09-1-02888-5 KNT of First Degree Assault RCW 9A.36.011. Appeal attorney Maureen M. Cyr has submitted his opening appeal brief. Now comes Mr. (J.J.R.C.) hereby submits his statement of additional grounds pursuant to RAP 10.10

II. DISCUSSION

A. Trial attorney Hang Tran unfortunately, due to her ineffective assistance of counsel, committed 'inexcusable

trial errors that prejudiced him. Throughout the trial she failed to perform at or above an objectionable standard of reasonableness. Her initial presentation to the court was an admission she locked herself out of her office. Not being ready got worse when (JJRC's) attorney attempted an 8.3 dismissal under an inchoate presumption; the prosecution would perform essential evidence gathering if the defense responsibility to see got done.

1. The trial court reminded Tran it was her due diligence duty to her client, to obtain the evidence necessary to defend him not the prosecutions. This deficient performance ultimately resulted in prejudice to Mr. JJRC. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). By failing to obtain the phone and face book evidence, Mrs. Dimas testimony; she was too afraid to come forward when the assault initially occurred, instead it wasn't until she called Mexico and got Mr. (JJRC's) new girl friend Ruby on the phone, did she decide to pay back her exhusband for finding a new love by reporting the assault, went on without an effective challenge for determining what degree of credibility to give her testimony

2. Ms. Tran unexplainably sent the subpoena duces tecum notice to Mrs. Dimas instead of Face book and phone company. The State pointed out the pertinent phone number sought by the defense was in the medical file plainly obtainable

yet defense counsel still failed to garner the relevant evidence to help her client. Next she fails to fully inform a recalcitrant witness of the repercussions of not adequately fulfilling her obligations concerning the subpoena duces tecum and allows that witness to skip away unscathed while revealing nothing of her phone contacts with (Mr. JJRC's) new girlfriend Ruby.

3. Ms. Tran unexcusably leaves out the right to object in the subpoena duces tecum VBR 9-10-14, pg 77 & 78, lines 11. This deficient performance allows Mrs. Dimas to avoid direct, re direct, and cross examination questions about Face book and E-mails which was "highly prejudicial" to (Mr JJRC) because it came down to Tran unable to support her own trial strategy, basically leaving (Mr. JJRC) without a defense. See Strickland, 466 U.S. at 687, 104 S.Ct. 2052.

4. Ms. Tran's failure at due diligence on her clients behalf permitted State to argue it's 404(b) evidence clears the harrasment case bar for allowing the alleged 12-6-06 assault incident in under it's state of mind exception. Knowledge of the other woman Ruby could've challenged Mrs Dimas credibility that her fear of (Mr. J.J.R.C.) is why she reasonably believed she'd be hit which went to why she could reasonably believe Emilio would be hit, instead of her fear possibly be envy of another woman and the onus of vindict-ness. See VBR 9-8-14 pg 24.

5. Ms. Tran's lack of due diligence resulted in (Mr. JJRC) not being able to claim involuntary intoxication diminished capacity. He attempted to convince her the entire time, he'd been under the influence of heavy sedatives from a dental office he insists occurred on the unfortunate day of the crime. See Adams In re, 178 Wn.2d at 417: "while diminished capacity doesn't give rise to a complete defense . . . it plays a significant role in determining an appropriate sentence". A simple check of insurance records . . .

6. Diminished Capacity would've required a lesser included instruction See State v. Shcherenkov, 146 Wn. App. 619 (2008). RCW 10.61.006. Contemporaneously Dr. Seloves testimony VBR 9-16-14, pg 10 lines 24, permitted a reasonable probability (Mr. JJRC's) contact with Mrs. Dimas eye could've been accidental. The prosecution attempted to corner him into ruling out the possibility of accident, but he held on to his belief it was impossible to determine the contact was purely intentional. Conversely, why did'nt Ms. Tran request a lesser included offense instruction?

7. In State v. Prado, 144 Wn. App. 378, 31 P.3d 1207 (2001) Instruction for lesser degrees of assault satisfied Defendant's right to due process. The court owed (Mr. JJRC) a lesser included instruction due to Dr. Seloves testimony. See State v. Stacy, 181 Wn. App. at 553, and Ms. Tran was

ineffective for not insisting upon a lesser included instruction due to Dr. Seloves' testimony.

8. The probability that a diminished capacity aspect would've kept a jury from voting guilty unanimously on First Degree Assault in this case is reasonable. Given a charge less than first degree would've allowed the jury to be able to choose between not guilty at all or first degree assault. All or nothing is what they had. This satisfies the: to establish prejudice a reasonable probability that the outcome of the trial would've differed absent Ms. Trans deficient performance. State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987). An ~~an~~ acquittal after conviction is not necessary to satisfy: "A reasonable probability sufficient to undermine confidence in the outcome hurdle. See Strickland, 466 U.S. at 644, 104 S.Ct. 2052; Kyllo, 106 Wn.2d at 647.

9. Allowing for Ms. Trans plethora of blunders she committed in (Mr. JJRC's) defense, it is difficult to see how a reviewing court to consider her performance rates their presumption of reasonableness. ~~See~~ State v. McFarland 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995). She actually believed the States assistance in obtaining the Book and Phone records unrealized, justified wasting the court time with the opening 803 dismissal salvo. She flubbed the subpoena duces tecum by sending it to the prosecution w

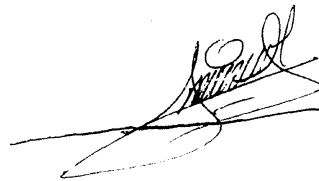
-ness instead of Face Book and the Phone Company. She failed to hold Mrs. Dimas to the subpoena duces tecum legal protocol thereby cheating (Mr. JJRC) out of an effective interview of this important witness. Ms. Tran fails to preserve her right to object paragraph in the subpoena duces tecum and deprives her client of the benefit of the adversarial advalorem with which to defend himself against the charges. It was Ms. Tran's trial strategy to keep out 404 b evidence, denigrate Mrs. Dimas credibility but she failed to competently effectively secure evidence to support it. She basically invalidated her trial strategy by failing to obtain the crucial evidence by which to pursue it. Which cannot prevent (Mr. J.J.R.C.) from establishing his defense counsel had not a conceivable legitimate trial strategy. State v. Grier, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011) quoting State v. Reichenbach, 153 Wn.2d 126, 130, 101 P.3d 80 (2004).

10. The trial court committed jury nullification when, even after juror # 45 VBR 9-9-14 pg 82, lines # 1-9 admitted his/her? inability to remain impartial several times, the trial court continued to: "Mr. Rosales Contreras is not guilty. . . until brow beating juror # 45 into his/her agreement to; to this point and will remain-not guilty unless and until the State proves beyond a reasonable doubt that he is guilty." Ms. Tran sat by saying nothing, not preserving her clients right to appeal this questionable tactic.

# CONCLUSION

Ms. Tran failed at too my critical places in the trial to consider her defense of (Mr. J.J.R.C.) effective assistance of counsel. Her miscues helped the prosecution paint (Mr. J.J.R.C.) in a very negative light. But nowhere more egregiously than in the closing statement VBR 9-18-14 pg. 19, lines 19 & 20 where the prosecution derided (Mr. J.J.R.C.'s) failure to present evidence of the diminished capacity required involuntary intoxication mitigation he deserved by being sedated from a visit to the dentist mere minutes before the assault took place, totally bereft of any conceivable legitimate trial strategy.

Respectfully Submitted this 31<sup>st</sup> day of August 2015.



# THE COURT OF APPEALS STATE OF WASHINGTON

State of Washington  
Respondent  
v  
Jose Jaime Rosales-Contrera

No. 72911-0-1  
Statement on Additional  
Grounds Pursuant RAP 10.10  
Certificate of Mailing

I, Jose Jaime Rosales-Contrera, under penalty of perjury do declare and certify pursuant to 28 U.S.C. § 1746 have served the following documents: Statement on Additional Grounds.

Upon: The Court of Appeals of the State of Washington  
Division I One Union Square  
600 University ~~Square~~ Street  
Seattle, WA, 98101-4170

PROCESSED BY  
STATE OF WASHINGTON  
2015 SEP -8 PM 2: 31



On This 31<sup>st</sup> day of August 2015 Place In WSP US Mail