

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 OCT 16 PM 2:05

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

State of Washington

Respondent,

v.

Howard Lee Ross

Appellant.

Court of Appeals Cause No. 72251-4-1

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I Howard Lee Ross 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 I

(Continued on paper)

I was charged with being in possession of the firearm that shot Kenneth Jones but I was convicted of having a firearm in my car. A firearm that I was not charged with being in possession of.

Additional Ground II (Continued on Paper also)

The judge admitted to having doubt about me being in possession of the gun that shot Kenneth Jones but still convicted me. There for she violated my constional rights. (Continued on Paper)

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

Date: 10/13/15 # Oct. 13

Signature: _____

KLR

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I would just like to note for the record that I am in segregation so I have no access to the law library. I say that because I am only able to rely on my memory so I was not able to quote any case law or U.S. Constitution. So I ask if I am off with any of my additional grounds violations that you would excuse it. Example. Vengeful prosecution, use of discretion, also insufficient charging documents. I do not 100% remember if these are the correct terms. Thank you ~~KIP~~

Additional Ground I

Violation of due process

I was convicted of having a gun that I was not charged with having. (Assigned)

Page 74 par 18

During her explanation of why she was not going to grant the motion for a severance of trials for the assault and the Firearm she said "With regards to the clarity of ~~my~~ defense as to each count, there's no evidence of any inconsistent defense which would result in embarrassment or 'confounding defenses'"

Page 75 par 2

The judge states "in this case, all of the evidence that would be admissible in the assault

charge would be admissible and necessary for proof of the firearm charge"

During the states direct with Ken Jones the prosecutor asked him if i had anything in the car with me. Jones answers, "Page 603 par "TA was a chrome gun"

The prosecutor on Page 604 par 7 "So you see he has a gun in the car."

Page 607 par 11 Jones says, "he takes his gun Page 607 par 20 the prosecutor says, "So when he left you in the car he took the gun with him"

When the Judge gave the Jury instruction on Page 835 par 13 she says "The state must prove beyond a reasonable doubt that there was a connection between the firearm and the defendant. The state must also prove beyond a reasonable doubt that there was a connection between the firearm and the crime."

At closing arguments to the Jury the state says on Page 846 par 15 "Plenty of time to get rid of the gun"

Page 848 par 25 Prosecutor says, "You did have a gun because the defendant got rid of it"

Page 854 par 21 State says, "That gun he had in the car"

Page 860 par 7 State says, "Some person with Ken Jones told you had a gun in the car, silver

9 millimeter, that he was playing back is forth with between the console and side pocket of his car."

Page 860 par 22 State says, "that the defendant was armed with a firearm. You know that he was. He shot Ken Jones with it. That there was the connection between the firearm and the defendant."

Page 861 par 2 state says, "This was actually a gun he was handling."

Once the closing arguments to the jury is over and there dismissed the judge says, Page 895 par 13 "So regards to count II" then goes on to say Page 895 par 15 "Was there any additional the parties wanted to add by way of argument to the bench?"

Page 895 par 21 The state says, "The witness testified that he was in possession of the gun. It was his. He was bragging about it. He was moving around the car and ultimately shot and injured Ken Jones with it"

I have stated these quotes from the record to lay the foundation and show that the gun being discussed during this trial, the in par Count II, was the gun that allegedly shot Ken Jones and was the gun I allegedly had in my possession.

Once the judge found me guilty on

Count to my attorney Tim Heary, on Page 915 par 25 asks the Court, "Is the Court concluding that... am I correct in assuming that the Court is finding that he was in possession in large part based on the testimony of seeing the gun while driving around the city?"

"Correct" the judge answers.

Tim Heary continues, "And is the Court making a finding that that is same gun used to shoot..."

Court responds, "I am not making that finding. No that's not before the court."

Tim Heary says, "And I just wanted to clarify."

Tim from that point goes on to ask her operability and whether or not it was a legitimate firearm since it was not recovered.

And I quote Page 916 par 11 "Since it was not recovered and the Court is not finding that it was the one that was used in the shooting

Page 916 par 21 Court says, "I'm making an inference based upon the evidence that it was a operable weapon."

My attorney asked again, Page 916 par 23 "And the court is not necessarily making a finding that it is the same gun that was used in the shooting?"

The court then answers, "Correct."

From the record alone it is very clear that the judge did not find me guilty of having the gun that shot Jones. The gun from Count II. The gun that i was allegedly moving around my car. As the stat said on Page 895 par 21. "The witness testified that he was in possession of that gun" "He was moving around the car and ultimately she Ken Jones with it."

In my motion to arrest Judgement my lawyer Tim Heary says, Page 920 par. 9 "The state elected to argue that the gun for Count II was the gun that was used to fire

Not one time did the state disagree that the gun for Count II was the gun used to fire. The state only referred to the point how they don't have to prove operability.

~~There was~~ At no point in time did the state ever deny Count II as being the gun that shot him. In fact she even said on Page 925 par 4 "the gun being moved back is north" Again describing the gun from Count I

~~was the gun that was used to fire~~

So by the judge convicting me of the "gun that was in the vehicle" Page 920 par 19 and not the gun that shot him clearly

violates my due process. I was never arraigned on possession of any gun other than the one that shot Jones. The prosecutor, the judge, my lawyer and myself all went through trial as count II being the gun that shot him. By not being convicted of the shooting or special verdict or for the gun that shot him ~~the~~ ^{and} ~~by~~ ^{by} the court convicting me of having a different gun than I never knew I was charged with violated my rights.

Additional Ground II

The standard for a reasonable doubt was not met.

On Page 920 par 12 the judge states, "I did not make a finding that it was the gun that shot him."

Page 920 par 15 Judge says, "I did not make a finding that it was not the gun that shot him."

My lawyer Tim Heary then says, "Right. But that wasn't the gun you used to convict for count II?"

The court answers, "It might have been. Those statements are a clear sign of reasonable doubt. She admits to not knowing

whether it was the gun that shot him or not. Clear Reasonable Doubt.

On Page 921 para 9 My lawyer Tim heavy says to the judge, "So i think it's logical to say it's not... We don't know beyond a reasonable doubt that was the gun that we used. Is that accurate?"

The judge answers, "That would be my statement. Yes."

It is clear that my six amendment of the U.S. Constitution was not only violated but totally disregarded. A instruction she made for the jury herself. Page 835 par. 7

~~Additional Ground~~ ~~III~~

Additional Ground III

Insufficient charging document

I only had two counts, One for assault and one for the firearm. By me being convicted of a gun other than the one that shot Jones means my charging documents were insufficient and i was not made aware of a second gun. If i wasn't made aware then i could not properly defend myself against

it. The Hard Time for Armed Crime initiative amended the statute to specify that each firearm unlawfully possessed constitutes a separate offense for my charging documents to be complete i should have had three counts, I Assault II firearm III fir

1 Possession

arm possession. When the judge said on Page 916 par 21 "I'm making a inference based upon the evidence that it was a operable weapon" That statement clarified that she was convicting me of a second firearm. If it was the gun used to shoot Jones she would not have to make any inferences about the gun being operable or not. She would know for a fact because Jones has a bullet in him. Also if my lawyer would have been aware that i was charged or alleged to have any other gun then the one that shot Jones he could have been able to defend against it. With one simple question to Jones, "How many guns did you see him possesse?" Or he could have asked, "Did he have two guns?" With no way of knowing this there was no way for my lawyer to defend me. Page 74 par 18 The judge says "theres no evidence of any inconsistent defense which would result in embarrassment or confounding defenses" Two is defiantly inconsistent of one.

Additional Ground ~~IV~~

Vengful prosecution (malicious prosecution)

During the trial from beginning until the jury came back with the verdict the state was making it clear that it was a chrome gun

that i allegedly possessed and shot Jones with
That was clear. Then when i got acquitted it
all changed. The prosecutor and the judge both
let their personal beliefs of the alleged assault
over take their duties as court officers.

When the court read it's absurd list of
why "the elements of the crime of unlawful poss-
ession of a firearm have been found beyond a
reasonable doubt" (Page 914 par 1) My lawyer
went on to ask questions clarifying her decision.
My lawyer begin to ask about her findings and
on Page 916 par 14 the judge answers one of
the questions like this. "Ms. Vorhees do you wish
to comment?" Ms. Vorhees is the state. The
state answers and concludes it with, on Page
916 par 18, "the defendant bragged that it was a "nine"
and the fact that he was carrying it around
and using it"

Using it? I had just been found not guilty
of assault and a special verdict but she still believe
and states on record im using it. Clearly displayin
her true feelings that she believes i did the assault.
Rather than the state being accountable for what
they knowingly charged me with they instead continue
to prosecute a innocent man.

The judge herself even displayed her true
feelings of the assault on record on Page 920
par 21 " "Did that gun ultimately result in shooting

the defendant" I think -- there's certainly on a preponderance of evidence basis I would say, yes Evidence? The only evidence based on any basis of this point point is I didn't shoot Jones. I had been acquitted of assault which is a over ruling evidence of anyones exhibits, thoughts or theories. The judge, as just as the prosecutor did expressed her feelings on record of how she believed I shot Jones. Not only did she express her feelings she went on to convict me. By making up her own theories, theories that the prosecution or any witness (Jones) came up with. It's on record and it's totally obvious she found me guilty out of spite for being acquitted. In the courts jury instructions on Page 829 par. 13 she says, "As jurors you're officers of the court. You must not let your emotions overcome your rational thought process. You must reach your decision based on the facts proved to you and on the law given to you not on sympathy, prejudice or personal preference." If it wasn't spite she found me guilty for it was sympathy for Jones. If not sympathy it was personal preference. I can't state what her specific reason but it is more than clear that she came up with this guilty verdict because she thought I shot Ken Jones. Without a doubt she believed that because she said it. "I would say yes" Page 920 par. 21 After she comes up with all these

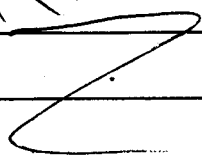
irrational reasons why she found me guilty. Not guilty of the gun that shot him but guilty of a gun. She then in the arrest of Judgment says ~~on~~ on Page 927 par 5 "Mr. Jones saying he has a chrome gun" Jones said i shot him with the chrome gun. The state also says this. And so does the Judge, after ive been acquitted of shooting him with as the prosecutor said on page 895 par 2 "of that gun"

Additional Ground VI

Abuse of Discretion

The judge clearly abused her discretion. Page 920 par 19 When discussing whether she was convicting me of the gun that shot Jones she said, "It might have been." 75 months for it might have been is outlandish. This including all the other issues in my additional Grounds should prove abuse of discretion cut and dry.

I ask that i please be immediately released with Count II dismissed and reversed. I ask this respectively. ~~KIP~~



Howard
Lee
Ross

10-13-15

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