

COURT OF APPEALS
 DIVISION TWO
 OF THE STATE OF WASHINGTON

FILED
 COURT OF APPEALS
 DIVISION II

2015 DEC - 7 PM 2:38

STATE OF WASHINGTON

BY: Chabe Devyver
 DEPUTY

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
Devyver, Chabe)
 (your name))
)
 Appellant.)

No. 47547-2-II

STATEMENT OF ADDITIONAL
 GROUNDS FOR REVIEW

I, Devyver, Chabe, 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

Jury instructions, opening statements from the state, and opening statements from defense counsel have not been transcribed in the trial transcripts. Without these sections I have no way to check for prosecutorial misconduct, ineffective assistance of counsel from defense, or procedural misconduct from the court.

Additional Ground 2

Voluntary intoxication jury instruction was improperly worded. The state listed intent, knowledge, willfulness and recklessness as available choices of culpability as a determinant of grade. The state deliberately removed with defense counsel's approval, criminal negligence as a possible choice of culpability. The stipulations of the following case laws were denied by the court: State vs Mriglar-1977 - Specific intent can not be established during a period of legal or voluntary intoxication. State vs Colwash-1976: Trial court must instruct... continued on attached paper

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

Date: 29 Nov 2015

Signature: Chabe Devyver

Additional Ground #2 Continued

jury on Manslaughter in the 2nd degree during a period of legal and voluntary intoxication. State vs Collins-1981- Manslaughter in the 2nd degree is the lesser included given to Murder in the 2nd degree while intoxicated. State vs Stephens-1972- Voluntary intoxication is a legal defense against the intent to steal. State vs Gamble-2005- To secure a conviction of felony murder, the state is required to prove the defendant committed intentional assault. State vs Coates-1987- Because of intoxication, the defendant may not have acted with intent; nonetheless, if a reasonable person would have avoided the wrongful act, and failure to do so was a gross deviation from the course of reasonable conduct, the defendant acted with criminal negligence. State vs Norby-1978- To knowingly inflict ~~great~~ grievous bodily harm requires a particular mental state that can be vacated by intoxication. All of the laws cited indicate that criminal negligence is an applicable level of ^{culpability} ~~culpability~~ while intoxicated. RCW 9A.08.010 General Requirements of Culpability Paragraph C states: When the grade or degree of an offense depends on culpability, its grade or degree shall be the lowest for which the determined culpability is established with respect to any material element of the offense. RCW 9A.16.090-Intoxication- Affects necessary mental state required for intent.

Additional Ground #3

Count 1- Murder in the 2nd degree: Applicable case laws cited above- State vs Collins, State vs Mriglot, State vs Colwash, State vs Coates, State vs Gamble. RCW 10.52.020 Presumption of innocence + RCW 9A.04.100 Proof beyond a reasonable doubt both state if reasonable doubt exists as to which degree the defendant is guilty, the defendant shall be convicted of the lowest

When those laws are applied to the cited case laws and RCW 9A.02.010 paragraph C. to determine degree + culpability, the trial court erred in denial of Manslaughter in the 2nd degree as a lesser included.

Additional Ground #4

Count 2 Assault in the 2nd degree - Reneer's DNA was not found on any weapon recovered + presented in trial. The state had no forensic evidence to support the claim of assault.

Disregarding the lack of forensic evidence, the nature of injuries and ~~fact~~ determinate of culpability would indicate Assault in the 3rd degree with Criminal negligence. RCWs + case laws to support Criminal negligence are: RCW 9A.36.031 Assault in the 3rd degree, 9A.16.090, 10.58.020, 9A.02.010 Paragraph C, 9A.04.100, State vs. Morigot, State vs. Cortes, State vs. Norby. The difference between the state's definitions of Great Bodily Harm (Assault in the 1st degree) and Substantial Bodily Harm (Assault in the 2nd degree) is if the substantial disfigurement / loss of function of body part is permanent or temporary. Bodily harm (Assault in the 3rd degree) covers all minor injuries. Reneer's doctor (the state's witness) testified Reneer's wounds were superficial. The state's only ^{argument} ~~argument~~ for a higher degree was "if the knife would've gone deeper". If that was a legally valid argument, it would negate the need for various degrees of a charge.

Additional Ground #5

Count 3 Robbery in the first degree: Reneer testified that she did not see me take her wallet or keys. The State then asked if she saw me looking through her purse.

She replied with "~~Oh, yeah,~~ Oh, right, yes. He did." The court sustained defense counsel's objection for leading, but made no attempt to stop the state from continuing to use the objected answer. The court also allowed the state to use the struck response and ignored the original testimony of not seeing me take any property. Defense counsel also made no attempt to ask Reneer why she changed her answer. Since her testimony of seeing me with her purse was struck as leading the court should have used her original testimony of not seeing me with her wallet or keys. Since her not seeing me take property from her is the only testimony that was not struck, the rulings of State vs Chamrooem Nam- 2007- should be applied: The state must prove the victim had physical possession of the property when it was stolen. Reneer was unable to prove possession without a leading question and was also unable to prove she did not leave her wallet in the car prior to the incident. The state was unable to provide DNA or fingerprints to prove I ever touched the wallet in question. Those reasons, plus the rulings of State vs Miglot, Stephens, and Coates are why the trial court was in error to refuse theft in the 3rd as a lesser included.

Additional Ground # 6

Firearm enhancement for Robbery in the 1st- State vs Miles- 1979- Defendant is not subject to weapon enhancement penalty when convicted of Robbery in the 1st degree. This is because the use of a "weapon" is the only difference between 1st + 2nd degree Robbery in Washington. Once again, the state was

unable to provide DNA/fingerprints to prove I ever touched the pistol admitted into evidence. Reneer's doctor (state's witness) contradicted her claim of receiving an open head wound. She stated she was struck in the head by the pistol, but her medical records state there was no trauma found on her head. The closest she was able to come to identifying the pistol in trial was when she said "It looks like a ~~pistol~~ pistol." She couldn't even state if my pistol and the pistol presented were the same color. The lack of forensic evidence and positive identification, and head injury proven to be false should be sufficient to dismiss the enhancement.

Additional Ground #7

Along with allowing the state to remove criminal negligence from the jury instruction, defense counsel made no attempt to establish what my level of culpability may have been. He did not even argue against the state saying I acted with conscious, deliberate thought by stating the most simple and obvious fact: someone acting with conscious, deliberate thought does not tell a wounded eye witness "I have to kill you or you'll call the cops", and then walk out of the house leaving the eye witness, someone mortally wounded, blood all over the floor, and his own car at the house, and drive away in the witness's car.