

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/30/2018 3:33 PM  
BY SUSAN L. CARLSON  
CLERK

IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

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STATE OF WASHINGTON,  
Respondent,

vs

RICHARD G. NEIGHBARGER,  
Petitioner

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APPEAL FROM DIVISION II  
OF THE COURT OF APPEALS  
#50033-7-II

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I, Richard G. Neighbarger, am petitioning the Washington State Supreme Court to review the Opinion provided by the Court of Appeals due to multiple errors made by the Court of Appeals in my case.

For several errors that were argued in the appeal on additional grounds, the Court of Appeals stated that “On direct appeal, the reviewing court will not consider matters outside the trial record” (p 21). The Court of Appeals erred when it denied reviewing the errors brought up in the additional grounds because the errors are in the official hearing transcripts and thus are inside the trial record and should have been reviewed.

### **Court of Appeals Error 1**

The first error the Court of Appeals denied reviewing was additional grounds stating that the jury had hardships.

The Court of Appeals stated that “record does not contain voir dire transcripts documenting the exercise of for cause challenges for jurors with hardships, so there is no record of whether the trial court “ignored” juror’s hardship claims” (p 21). Looking at the statement of additional grounds, the Court of Appeals should have reviewed page 24 lines 1-3 of the official court transcripts to see that this was inside trial record. The transcripts say: “a number of hardship claims given the holiday coming up.”

### **Court of Appeals Error 2**

The second error the Court of Appeals denied reviewing was additional grounds that the investigators destroyed evidence.

The Court of Appeals stated that “the record does not contain information regarding investigators’ handling of defendant’s work laptop” (p 21). However, the Court of Appeals was greatly mistaken when making this decision and the handling of the work laptop can be found starting on page 291 line 12 of the transcripts though page 292 line 19.

### **Court of Appeals Error 3**

The third error the Court of Appeals denied reviewing was additional grounds that the court should have allowed the polygraph results.

Here, the Court of Appeal claims that transcripts and pretrial hearings did not include this, but again the Court of Appeals erred. While I do not have access to the pretrial records and cannot provide a page or line number, this was indeed in the official court transcripts:

- Page 188 line 24
- Page 189 line 9
- Page 740 line 22
- Page 741 lines 1-7
- Page 748 lines 7-22

#### **Court of Appeals Error 4**

The fourth error the Court of Appeals denied was the argument that the court refused the defendant's attorney an opportunity to interview JN and ZN. While this was not in the official court transcripts of the trial, this can be found in transcripts when Wayne Fricke became my lawyer. He requested access to the accusers and was denied.

#### **Court of Appeals Error 5**

The fifth error made by the Court of Appeals has to do with their review of the argument that the court failed to define the word "pornography." The claim by the Court of Appeals is that due to the jury not being given "instructions" to define the word, they never needed to define it; however, due to the abundance of testimony and arguments in the court around whether I had pornography in the house, the jury had to have a definition in mind. In addition, it was even included in the prosecutor's closing arguments (page 676 line 22).

#### **Court of Appeals Error 6**

The sixth error made by the Court of Appeals is when they rejected the argument of prosecutorial misconduct by lying during closing argument. Their reasoning was that "the state drew a reasonable inference from this testimony and asserted an argument based on the evidence when it asserted that ZN disclosed

when he did, in part, to avoid traveling with Neighbarger” (p 25). This, however, is inaccurate.

The prosecution injected the work “just” into the testimony which completely changed the testimony and inserted a false assumption. While ZN and I were going to be going to Leavenworth, it was not going to be “just” the two of us. Sarah Neighbarger, Mikel Pardue, and JoAnne Pardue were joining us as well. Proof can be found in the registration records for the race we were going to run that weekend (ZN, Mikel, and I).

Looking through the transcripts, never once did I say “just” us two. Please refer to the official court transcripts:

- Page 589 line 7-9
  - Page 617 line 20- 25
  - Page 618 Line 6-7
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Please take the above in consideration when reviewing my case.

*Richard G. Neighbarger*

Richard G. Neighbarger

(signed by Sarah E. Neighbarger by way of Power of Attorney and with permission from Richard G. Neighbarger)

**HESTER LAW GROUP, INC., P.S.**

**August 30, 2018 - 3:33 PM**

**Filing Petition for Review**

**Transmittal Information**

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**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** State of Washington, Respondent v. Richard G. Neighbarger, Appellant (500337)

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