

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

08 OCT 20 AM 9:09

STATE OF WASHINGTON
BY [Signature]
DEPUTY

STATE OF WASHINGTON)

Respondent,)

v.)

Ezell Jackson)

(your name))

Appellant.)

No. 37105-7-II

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Ezell Jackson, 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

Insufficient Evidence Of Two Prerequisite Violations Of No Contact Orders:

Though the State admitted a certified copy of the original "No Contact Order" into evidence, to show that the Order was issued under certain prescribed statutes. It's my belief &/or contentions, that the issue was not the "validity" of the un-clarifying No Contact Order as the State so argued... But was in fact, the insufficient evidence of two prerequisite violations of no-contact (See Attached Pg. #2)

Additional Ground 2

Violation Of A Procedural Due Process While Awaiting Trial:

Since I had always been present at the previous hearings &/or proceedings that involved "motions" to continue my trial, &/or based on the "mandatory language" within the "ORDER CONTINUING TRIAL", which states the following: "IT IS HEREBY ORDERED THE DEFENDANT SHALL BE PRESENT AND REPORT TO..." It was my expected belief &/or right, to be present (See Attached Pg. #3)

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

Date: October 16, 2008

Signature: Ezell Jackson

Additional Ground 1 - Continued

orders. Because, at trial, the State also offered certified copies of "Judgement and Sentences" (over objections) to prove that I had two prior convictions. Both of the convictions at issue were for violation of no-contact orders, but both failed to state the type of no-contact order violated.

And since the judgement & sentences admitted as exhibits did not mention on its face, a violation of any of the prerequisite statutes... it does not establish that I violated a prerequisite no-contact order, and the jury should not have been permitted to consider them.

The first conviction at issue is a violation under Tacoma Municipal Court Cause Number D 34747... Exhibit #5 at my trial was the "Court Order" showing a disposition of guilty to violating a no-contact order, but it did not state the type of no-contact order violated. The "Order" does not mention a violation of any statutes. Thus, this "exhibit" does not establish that I violated a predicate no-contact order.

Next, let's consider the criminal complaint in the above case... Exhibit #4, at my trial, was the certified copy of the "Criminal Complaint" with a cause number of D 34747... It alleged that I violated Pierce County Superior Court no-contact order 04-1-04427-0, which was ordered pursuant to RCW 26.50.110. This exhibit has the same cause number as exhibit #5. But it does not prove the violation of a no-contact order under chapter 10.99 RCW.

The second conviction at issue is a violation under Pierce County Cause Number, 06-1-00026-1... Exhibit #2, at my trial, was the certified copy of the "Amended Information" regarding this cause, alleging I violated the order in 04-1-04427-0... Exhibit #3, was the certified copy of the judgement & sentence, showing the conviction of violation of a protection order which pertains to the matter in exhibit #2. But as with exhibit #5 above, it does not state the type of protection order violated, or any statutes... (Note: My argument relates to the admissibility of the State's proof of the prior convictions, rather than to an essential element of the felony crime...)

Additional Ground 2 - Continued

& in court on April 26, 2007, April 30, 2007, May 1, 2007 and again, on May 2, 2007... when the presiding judge (NAME UNKNOWN) granted the "continuances" for my trial date, in order to exercise my right to the objection of these continuances.

But my rights to be present at the proceedings were infringed upon, because, I was not present and in court on the above dates as specified in the "ORDER", nor was I given any kind of justifiable explanation of why I wasn't allowed to be present, since I was already being held in custody, & my whereabouts were surely known.

Had I not been in custody, and not showed up in court on the above dates I'm fairly positive that a warrant for my arrest would have been requested by the State, & the judge would have granted it... solely on the basis of the "mandatory language" ordering my presence in court.

Additional Ground 3

Prosecutorial Misconduct Which Denied Me A Fair Trial:

Though I was being tried for a "non-violent" violation of a no-contact order. The prosecutor disregarded this fact, when questioning the defense witness, by asking questions & making statements pertaining to & involving "violence", that was directly related to the "discovery" of a pending case that I had not been tried for... & where the defense witness was the alleged assault victim.... The prosecutor's statements, questions & behavior in the presence of the jury regarding the discovery of an untried case, constituted prosecutorial misconduct so flagrant & ill intended, that no "curative instruction" could have obviated the prejudice they engendered.

Furthermore, after the prosecutors behavior (above), had been objected to & ruled on by the trial judge. The prosecutor's tactics of misconduct still continued to evolve, when he continuously used the word "cases" (plurally) in front of the jury while continuing to question the defense witness, for no other reason but to solely suggest that there was other criminal proceedings against

Additional Ground 3 - Continued

me... which led to the trial judge (out of the presence of the jury) having to make it clear to counsel (prosecutor), that he (judge) really want to refrain from any references to cases, plural, because there are no cases plural. There is only one case going on.

But the jury had already heard the references to "cases" plural... & therefore, the damage had already been done. Especially, since the impropriety of the prosecutor's conduct was meant to solely confuse the jury of the facts, & to also persuade said jury into wrongfully convicting me, by introducing inadmissible statements, that he made in order of preventing me from getting a fair trial.

Additional Ground 4

The Trial Judge Abused His Discretion and/or Authority which Denied Me A Fair Trial:

- A. The trial judge abused his discretion when he denied my "Memorandum To Dismiss No Contact Order Violation Half-Time Motion", simply because the court refused to read the plain language of the statute as the defense proposed... & for at least take a recess & review the basis of the motion presented, since the court's interpretation & reasoning did not relate to what the motion was about.
- B. Knowing that I was being tried for only one case. The trial judge failed to stop the prosecutor from using the word "cases", plural, in front of the jury... Thereby, abusing his discretion in not stopping &/or correcting the wrong immediately, as it took place.

Instead, the trial judge opted to instruct counsel, to refrain from any reference to cases, plural, (while, ~~out~~ out of the presence of the jury), right before the defense rested its case.

Therefore, since the trial judge was apparently aware that the

Additional Ground 4 - Continued

mentioning of cases, plural, could potentially suggest other criminal proceedings against me to the jury as he so stated in court. Then why did he not stop the prosecutor when it was first mentioned, & for gave another "curative instruction" to the jury when they returned to the courtroom, & before the defense rested?

- C. After having put the State on "notice" regarding any forms of misconduct when the trial court was reviewing section "F" of defendant's "Motion In Limine"... The trial judge abused his discretion by refusing to grant a mistrial, after the prosecutor (while questioning the defense witness), flagrantly made statements, & asked questions in the presence of the jury about matters not pertaining to the case at hand, but matters pertaining to the "discovery" of an entirely different untried case, which had to be prejudicial to my trial, simply because the jury had been tainted by the facts.

The trial judge instead, opted to give a "curative instruction" to the jury (which was to disregard the statements they had just heard the prosecutor make), which in my opinion, was impossible to do, & nor could it obviate the prejudice, since it made the jury aware of the fact, there was a pending case, besides the one they was trying... in which the defense witness was now the alleged assault victim.

Being aware that some form of misconduct had taken place, that pertained to section "F" of the defense's "Motion In Limine", and based on the definition of what the "Motion In Limine" really is, according to Black's Law Dictionary... The trial judge had to know that the prosecutor's actions and for behavior, could not be remedied by an instruction to disregard.

Additional Ground 5

The To Convict Instruction That Was Given To The Jury Was Inadequate &/or Insufficient, Because It Did Not List All The Elements Of The Crime To Be Proven:

Instruction # 8, which was the instruction telling the jury that to convict me of Domestic Violence Court Order Violation, Four things or elements must be proven:

1. That on or about the specified date, I willfully had contact with the protected person
2. That such contact was prohibited by a no contact order
3. That I knew of the existence of that order, and
4. That these acts occurred in the State of Wash.

However, Former RCW 26.50.110(1)(2000), provides all of the elements necessary to prove a criminal violation of a Domestic Violence No Contact Order, issued under chapter 10.99 RCW, which is:

1. The existence of a no contact order
2. Knowledge of the order by the restrained party
3. A violation of the order by the restrained party, and
The violation warrants an arrest of the restrained party, under RCW 10.31.100(2)(A).

With a proper "instruction" being given to the jury that listed all of the elements of the crime (immediately above). I do not believe that the jury could have found me guilty of the crime charged... simply because my actions did not satisfy the "fourth element" above that pertains to RCW 26.50.110(1)(2000), where it references RCW 10.31.100(2)(A).