

Petitioner, Mr. Michael Jesse Gonzales hereby offers his 'Supplemental Reply Brief Of Petitioner, To Respondent's Supplemental Response Brief', (per Order Calling For Supplemental Response), within the thirty (30) days allowed, and noted in the Court's October 10, 2006, "Order Calling For Supplemental Response". Petitioner received Respondents Supplemental Response on November 6, 2006.

Petitioner hereby asserts that the Declaration of perjury by the State's primary witness, Mr. Dustin Jeffery is sufficient prima facie evidence that Petitioner's guilty plea could not have been made except under duress. Petitioner hereby asserts that he absolutely did not, voluntarily, intelligently, and knowingly plea guilty due to the extensive perjury of the State's witness, Mr. Jeffery, throughout the investigation and trial, and who through extensive perjury, created an overwhelming situation where there was absolutely no option for Mr. Gonzales to take a plea of guilty, under duress, amounting to actual and substantial prejudice to Mr. Gonzales.

Petitioner believes that he has sufficiently

articulated and argued the facts and actual prejudice throughout his PRP and supplemental pleadings, in addition to Mr. Jeffery's own admission of perjury in his Declaration, and numerous documented perjured statements within the transcripts, which collectively amount to fundamental defects, which if known to the Judge and jury would have absolutely changed the outcome of the proceedings and trial, and eliminated the plea of guilty under duress of Mr. Gonzales. Petitioner supports his Grounds, Issues, and Claims through State and Federal laws and case laws, i.e., *Kyles v. Whitley*, 514 U.S. 419, 433 (1995)(quoting *U.S. v. Bagley*, 473 U.S. 667, 682 (1985)); and 18 U.S.C. § 1621, specifically for this Fifth Ground, at Pages 35 through 41.

Petitioner provided the Declaration of Mr. Jeffery to the Court as soon as it became available from Mr. Jeffery, and in no way could have provided said information any sooner, and asserts that the admission of perjury by Mr. Jeffery requires reversal of Petitioner, Mr. Gonzales' conviction in the interest of justice.

Petitioner asserts that if the roles were reversed

in any combination, the Prosecutor would be arguing the same, and Petitioner asserts that the Prosecution cannot justifiably have it both ways. Obtaining a conviction of Petitioner with perjured testimony, and then attempting to maintain said conviction when the State's primary witness admits to widespread perjury cannot stand or be allowed in the interests of justice. Also a large amount of perjured testimony is substantiated in the transcripts of the proceedings.

The overwhelming perjury by Mr. Jeffery, diminished the opportunity for the truth to be conveyed to the Court and the jury, thereby compelling and leaving no other option for Petitioner than to make the best plea he could in view of the entire circumstances at that time, knowing the testimony of Mr. Jeffery was false, but unable to prove it to the Court.

The Respondent's assumption that Petitioner could have provided evidence of perjury of Mr. Jeffery before trial is preposterous for numerous reasons. One, Petitioner could not have known what Mr. Jeffery was going to testify truthfully to. Two, Mr. Jeffery had a plea

deal/agreement to testify for the prosecution, regardless that the testimony would be perjured. Three, there is no doubt that Mr. Jeffery made the best deal he could at the time, and it is only common sense that the prosecution's strategy was to gain the conviction of Petitioner. Four, Petitioner could not have, and did not have contact with any of the State's witnesses, specifically Mr. Jeffery prior to trial, which would have amounted to the equivalent of witness tampering, therefore, convincing Mr. Jeffery 'not' to falsify his testimony for the prosecution, and would have been the only way 'anyone' could have ensured a truthful and fair proceeding. Only when Mr. Jeffery made a personal decision to tell the truth and set the record straight, did he offer his Declaration to Petitioner.

Mr. Jeffery's statements formed a basis of the direction of the events for the prosecutors, enabling them to lead the witnesses to the certain depicted events which were testified to. In addition, the perjured testimony could not have been credibly discovered and presented prior to trial because of the threatening manner and nature of numerous charges placed on Mr. Jeffery, which

would have caused anyone to say or do almost anything, to escape the threatened and more severe charges and punishment.

I absolutely would not have pled guilty, had Mr. Jeffery been truthful, affecting the outcome of the trial, and forcing me into a guilty plea. The truth about the factual events would have enabled me to proceed through an entire trial, maintaining my innocence, and providing enormous reasonable doubt.

REPLY TO SUPP. RESPONSE, Pg.5. Petitioner's plea was absolutely not made voluntarily. Attorney, Mr. Pimentel stated to Petitioner that, "...if you withdraw your plea, the prosecutor has said "he will bury you...", which Petitioner perceived as a threat for extreme and unjust punishment, amounting to duress.

Also, contrary to the State's analogy of In re Crabtree, 141 Wn.2d 577, Crabtree did "not complain that he was tricked, coerced or threatened to plead guilty", Petitioner has constantly maintained throughout his personal restraint petition, that through ineffective

assistance of counsel (hereafter IAC) and pressure by the prosecutor, through Mr. Pimentel, Petitioner was in deed coerced into a plea of guilty.

The circumstances in Crabtree are not analogous to the case at hand, and Petitioner would have never taken a guilty plea if the truth of the case was told.

REPLY TO SUPP. RESPONSE, Pg.6. Par.1. Contrary to Respondent's assumption, Petitioner never stipulated to Mr. Pimentel or the Prosecutor to allow the Court to use any police statements, and or the statement of probable cause as a factual basis for the plea. See, RP 1447. In addition, many if not most of the allegations in the probable cause were never proven at trial, and are contrary to the actual testimony from trial.

It is obvious from Mr. Jeffery's testimony, RP 613, lines 1-20; and RP 671, lines 1-12, that Mr. Jeffery was bound to his agreement and testimony with the prosecutor, concerning his plea agreement, to maintain his story and version of events as the prosecutor wished to portray them, contrary to the facts and the truth.

In support, Attorney Mr. Pimentel deposed Mr. Jeffery, addressing the fact that Mr. Jeffery and most if not all defendants were "terrified and fearful for their lives, "... with incentive to lie". See, RP 141, lines 13 - 14, dated 5-15-2003.

Report of Proceedings, RP 140, lines 19 - 25; and RP 141, lines 1 - 19:

"MR. PIMENTEL: When I deposed Mr. Jeffery, Mr. Quillian was present. And I asked Mr. Jeffery if -- if -- about his knowledge of the Abundiz family with regard to them dealing drugs. And the Prosecutor objected to that question and Mr. Jeffery didn't answer it. We need to resolve that issue because one thing that has come up in this -- in my investigation, my investigator found over and over again, is that every one of these co-Defendants is terrified of the Abundiz family and has been told in one form or another, that the Abundiz family is going to put out hits, or has put out hits, on them."

"And one of the things that I've seen as I look through the -- as I look through all of the witness statements, I am seeing that as a huge incentive for a

defendant to try to distance himself from this thing and to try to blame someone else for it. So not only is there the incentive of they're looking at a long time in jail for their activity, there is also -- just one moment -- another incentive that I saw was revenge. That's another incentive. But another incentive to lie is the fact that each one of these people, every time you mention the Abundiz family, literally shrivels up and becomes terrified. And it's clear that they are trying to distance themselves from them. And I think the evidence will show that. And I need to be able to raise that issue and put it into evidence."

Report of Proceedings, RP 140, lines 19 - 25, and RP 141, lines 1 - 19:

Regarding Respondent's Appendix Supp-A; 'Probable Cause', the following is conflicting testimony of Mr. Moreno and Mr. Barbee:

Pg.1, Par.3; "... and shot "Mikey" Gonzales in the leg." Contrary to this statement, (of Mr. Barbee) Petitioner, Mr. Gonzales was not, nor has ever been shot in the leg, or any other part of his body - ever.

Pg.1, last par; "... In his statement, Moreno said that Gonzales was involved in the planning, and the discussion of the planning, leading up to the robbery". Contrary to this statement, See RP 834, #17, dated 5-20-2003, Mr. Moreno states: "... never heard Gonzales was part of planning".

Pg.2., line 4, "... Moreno observed Gonzales with a gun". Contrary to this statement, of Mr. Moreno, See, RP 840, dated 5-20-2003, Mr. Moreno states: "... Gonzales in position to shoot at guy who shot at him, but didn't have gun".

Importantly, regarding the Probable Cause, Mr. Jeffery was never mentioned in the Probable Cause, nor was Petitioner, Mr. Gonzales ever mentioned or alleged to be involved by Mr. Jeffery until eleven (11) months after the incident, and Mr. Jeffery's statements to the police over the initial eleven (11) month period, never included or involved Petitioner, Mr. Gonzales.

Conclusion: Petitioner, Mr. Gonzales asserts that all of his collective pleadings adequately address the

merits of the personal restraint petition and request for relief. Petitioner requests that this Court fully review the collective grounds, issues, arguments and supporting case-law and grant the requested relief, as noted within the PRP, Supplemental Fifth Ground Brief, and Reply Briefs.

All RP Pages referred to within this Supp. Reply Brief are included in following Exhibit section.

Respectfully submitted,

Michael Gonzales

EXHIBITS

The following Exhibits are those referred to within
Petitioner's Supplemental Reply Brief.

RP Pages: 140; 141; 613; 671; 834; 840; 1447.

1 THE COURT: Okay, granted. And we can revisit
2 that if it becomes appropriate. Anything other?
3 MR. PIMENTEL: No, your Honor.
4 THE COURT: Anything, Mr. Quillian?
5 MR. QUILLIAN: No, your Honor. Thank you.
6 THE COURT: Anything from the State?
7 MR. BURLESON: No.
8 THE COURT: If not, let's go ahead and bring our
9 jury in.
10 MR. PIMENTEL: Well no, your Honor. I had another
11 issue. I'm sorry.
12 THE COURT: That's what I was asking about.
13 MR. PIMENTEL: Oh, I had another issue. There is
14 another issue that I need to raise. As I was preparing my
15 opening statement -- well, let me back up. When I deposed
16 Mr. Calfrobe -- Jeffery, that was the last one we did, right,
17 Jeffery?
18 MR. BURLESON: Uh huh.
19 MR. PIMENTEL: When I deposed Mr. Jeffery,
20 Mr. Quillian was present. And I asked Mr. Jeffery if --
21 if -- about his knowledge of the Abundiz family with regard
22 to them dealing drugs. And the Prosecutor objected to that
23 question and Mr. Jeffery didn't answer it. We need to
24 resolve that issue because one thing that has come up in
25 this -- in my investigation, my investigator found over and

1 over again, is that every one of these co-Defendants is
2 terrified of the Abundiz family and has been told in one form
3 or another, from one person or another, that the Abundiz
4 family is going to put out hits, or has put out hits, on
5 them.

6 And one of the things that I've seen as I look through
7 the -- as I look through all of the witness statements, I am
8 seeing that as a huge incentive for a defendant to try to
9 distance himself from this thing and to try to blame someone
10 else for it. So not only is there the incentive of they're
11 looking at a long time in jail for their activity, there is
12 also -- just one moment -- another incentive that I saw was
13 revenge. That's another incentive. But another incentive to
14 lie is the fact that each one of these people, every time you
15 mention the Abundiz family, literally shrivels up and becomes
16 terrified. And it's clear that they are trying to distance
17 themselves from them.

18 And I think the evidence will show that. And I need to be
19 able to raise that issue and put it into evidence.

20 THE COURT: Mr. Burleson.

21 MR. BURLESON: I don't know whether it's relevant
22 or not, your Honor. It seems to me that it is not relevant.
23 But if it is, there should be an offer of proof. The Court
24 should hear it and rule on it at the appropriate time. I
25 think it is not necessary that that aspect, if it ultimately

1 Q Now you were charged initially with First Degree Murder, is
2 that correct?

3 A Yes.

4 Q Okay. Were you charged with, or was there any talk about
5 being charged with Robbery, or Conspiracy to Commit Robbery,
6 or anything like that?

7 A Not at first, not until just a couple months ago did I know
8 that there was also that possibility.

9 Q So within the last couple months there was that possibility
10 that you could be charged with Robbery and Conspiracy to
11 Commit Robbery?

12 A Yes.

13 Q If you didn't -- if what happened?

14 A If I withdrew my plea and went back to trial.

15 Q That that would come up, Robbery and Conspiracy to Commit
16 Robbery?

17 A And Arson and Kidnap.

18 Q And Arson and Kidnap?

19 A Yes.

20 Defendant's Exhibit No. 105 is
21 marked for identification.

22 Q (By Mr. Pimentel) Okay, okay. And I'm handing you what's
23 been marked as Defense Exhibit 105, okay. That's -- have you
24 ever looked at those?

25 A Yes.

1 Q Okay.

2 A I didn't know he was charged with Murder. I just know that
3 he was charged.

4 Q He was charged. What did you assume he was charged with?

5 A I don't know.

6 Q Okay. Your -- your addition of him came after you knew he
7 was charged?

8 A Yes.

9 Q And you'd agree with me, you are working with the State,
10 aren't you?

11 A I guess so. I'm just here telling the truth, trying to keep
12 up my end of the deal.

13 Q Okay. Was -- just to give the jury some insight. When you
14 told Detective Adams that several times and Detective Bergt
15 that about ten times, how was your demeanor then?

16 A I don't -- I don't recall how it was.

17 Q Did you say it with the same -- the same kind of passion that
18 you're saying it now that you told the truth?

19 A No, I was using a little bit more.

20 Q More passion?

21 A Yeah.

22 Q You were really trying to convince them you were telling the
23 truth?

24 A Guess so, yes.

25 MR. PIMENTEL: Nothing further.

1 Q (By Mr. Pimentel) Number 17. Did you ever hear any
2 information that indicated that Mike was a part of the
3 planning in Yakima?
4 A No.
5 Q Okay. When you spoke to Dros the several times the week
6 before, did Dros mention Mike in any way as a part of this
7 plan?
8 A No.
9 Q Okay. You said that while at Mike Gonzales Sr.'s house, he
10 said they were just supposed to rob him, right?
11 A Uh huh. Yes, uh huh.
12 Q He didn't say I was just supposed to rob him, did he?
13 A No, he didn't.
14 Q He said they, didn't he? And who was he referring to?
15 A I don't know who he was referring to.
16 Q Okay. By that point, everybody, including Velvet, knew that
17 the plan was to rob the guy, right?
18 A Oh, yes.
19 Q So that statement could come from anyone that was there, huh?
20 A Yes, uh huh.
21 Q And Mr. Burleson didn't read this part of 17. Read this
22 sentence here at 17. "Mike told me" --
23 A -- "told me that -- told me he didn't want any of the dope.
24 At some point he called Dros and he came over with this other
25 car, Ford Taurus."

1 Q But based on your knowledge of what they were doing, where
2 they were, how they were standing, where they were packing
3 and stuff -- let's start with Mikey.

4 A Uh huh.

5 Q Why didn't Mikey shoot at the guy when the guy pointed at
6 him?

7 MR. BURLESON: I'm going to have to object to
8 that, your Honor.

9 THE COURT: Sustained, state-of-mind.

10 Q (By Mr. Pimentel) Let me ask this. Was Mikey in a position
11 to shoot at the guy when the guy shot at him?

12 A He could have been, yes.

13 Q Did he have a gun in his hand?

14 A No, he didn't have one in his hand.

15 Q So was he in a position to shoot at the guy when the guy
16 pointed the gun at him?

17 A No. No, he wasn't.

18 Q Okay. Would that be a possible explanation as to why
19 Mikey --

20 MR. BURLESON: Once again, your Honor, I'm going
21 to have to object.

22 THE COURT: Speculation, sustained.

23 MR. PIMENTEL: Withdrawn.

24 Q (By Mr. Pimentel) Okay. Was -- where was -- where was
25 Patrick's gun?

1 MR. MICHAEL J. GONZALES: Guilty.

2 THE COURT: The indication is that you're not
3 wanting to make a statement in support of your plea, but
4 instead of making a statement you agree that the Court may
5 review the police reports and/or statements of probable cause
6 supplied by the Prosecuting Attorney to establish the plea.
7 Is that your statement?

8 MR. MICHAEL J. GONZALES: Yeah.

9 THE COURT: Does the prosecution wish to make any
10 statement in support of this plea?

11 MR. BURLESON: Your Honor, in addition to that I
12 would ask that the complete record of this trial be a basis
13 as well.

14 MR. PIMENTEL: I have no objection to that.

15 THE COURT: And Mr. Gonzales, is this your
16 signature in support of your plea?

17 MR. MICHAEL J. GONZALES: Yes, it is.

18 THE COURT: Has anybody threatened you in any way
19 to get you to plead?

20 MR. MICHAEL J. GONZALES: No.

21 THE COURT: Has anybody promised you anything that
22 I'm not being told about?

23 MR. MICHAEL J. GONZALES: No, sir.

24 THE COURT: The Court in considering the trial
25 record and the probable cause statements in this case, will

DECLARATION OF FILING; MAILING; and PROOF OF SERVICE

I declare and affirm under penalty of perjury, pursuant to Washington State and Federal laws, and rules: RCW 9A.72.085, Court Rules GR 3.1, GR 13; 28 U.S.C. § 1746, and FRAP 4(c) respectively; that on:

NOVEMBER 21, 2006, I deposited in the AHCC internal

mail system, AHCC Mail Log No. 5262, with arrangements for proper postage, the listed documents or copies thereof, properly addressed to the listed parties.

Sender's Signature, Name & Address: Michael Gonzales

MICHAEL J. GONZALES, 724909 AHCC,

P.O. Box 1809, UNIT LB 60, AIRWAY HEIGHTS, WA 99001

Document(s) and Addressee(s):

1.) Supplemental Reply Brief Of Petitioner, To Respondent's Supplemental Response Brief (10 Pages); with listed RP Exhibits (7 Pages). 2.) Declaration Of Filing, Mailing, and Proof Of Service. 3.) Affidavit Of Petitioner.

Mailed To: Mason County Prosecuting Attorney, 521 N. Fourth St., P.O. Box 639, Shelton, WA 98584;
Court Of Appeals Division II, Of The State Of Washington, 950 Broadway, Suite 300, Tacoma, WA 98402-4454.

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AFFIDAVIT / DECLARATION

I declare and affirm under penalty of perjury, pursuant to Washington State and Federal laws: RCW 9A.72.085; 28 U.S.C. § 1746; and Court Rule GR 13; that the foregoing and supplemental documents are true and correct, to the best of my knowledge and belief.

Dated this 15 day of NOVEMBER 2006

Signature: Michael Gonzales

Name & Address: MICHAEL J. GONZALES

724909, AHCC P.O. Box 1809, UNIT LB60

AIRWAY HEIGHTS, WA 99001-1809

This document was subscribed and sworn to before me on this

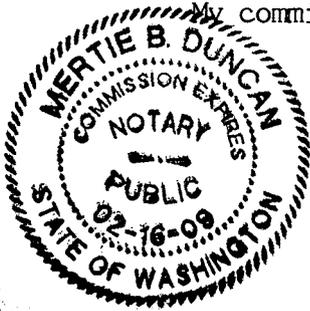
15 day of November 2006

Signature: Mertie Duncan

Notary Public in and for the State of Washington, residing

at Spokane County

My commission expires on: 2-16-09



BY [Signature]
STATE OF WASHINGTON
COUNTY

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