

decisions were illegal, but one could also argue that none of those decisions necessarily were the best possible choices I could have made, in retrospect.

With admitting these poor choices, I will also assert the truth. I never broke any laws on May 30, 2009. Specifically, I never assaulted (or threatened verbally, physically, or otherwise) any of the officers that night, nor did I grab a rock for any reason that night, even if what they did, in essence, was to illegally enter my property and subject me to a savage and unprovoked attack, and ultimately, and unlawful arrest.

The reason I write, today, is to set the record straight. I did tell the officers to stay off my property, I did record those officers that night, and I did continue to assert verbally that they had no right to enter my property. But I never pushed the fence, I never closed it on anyone's arm, and I never would do that. I simply stood up for my rights in a non-violent fashion, and because of that, I was punished by the "long arm of the law". I was the victim, on this night, of officers Kelly and Koskovich, both of whom made poor decisions that they then had to work together to cover up in order to protect their respective careers. They wrote false reports. They committed perjury in my trial. Unfortunately for me, their coworkers and peers did what they could to protect them from being subjected to the lawful consequences of their poor choices which I'm sure they feared might have resulted in a substantial civil suit, or other punitive measures. In fact, to call this case anything other than a complete sham would be incorrect and misleading. This case is a sham, a cover up, and unfortunately, the result of two officers working together with some of their coworkers to protect their career has resulted in me becoming a felon, my first criminal conviction, at age 31. That is the truth.

I am not writing to describe the nature of my significant injuries from this encounter, I am not writing to gain your sympathy, I am writing for justice. I pray for justice. Please consider my words in great detail. I have already suffered a great deal physically from the violent assault, been wrongly convicted of a violent felony, and spent 4 months in jail while my father was dying of cancer for a crime I did not commit. I beseech you to read on with great attention to detail with what I will put forth in this communication.

In my opinion, Mr. Neeb engaged in significant prosecutorial misconduct including flagrant misrepresentation and manipulation of information to achieve a conviction on a man he probably, based on his extensive experience, knew was innocent. Mr. Neeb did so strategically, to enflame the jury against me to the state's advantage. For instance, on several occasions, Mr. Neeb himself (RP 6/1/10: 71-74)(RP 6/2/10: 105), or through encouraging or allowing his witnesses to do so (RP 6/3/10: 276)(RP 6/7/10:449) , described my dog, Louie, as a "Pit bull"(RP 6/2/10: 34-36, 97-98), even though he was not a "Pit bull", and even after he had been specifically advised that Louie was indeed not a "Pit bull" but rather an American Bulldog (RP 6/1/10: 75,83) (RP 6/2/10: 48) by Mr. Moore, as well as Tacoma Animal Control. Mr. Neeb

understood that the word "Pit bull" would engender a certain, presumably negative, reaction from the jury towards me.

Furthermore, Mr. Neeb's misconduct extended to his unethical misrepresentation of my dog, Louie, to his own advantage in this trial. At times, Mr. Neeb strategically used the term "dangerous dog" or "potentially dangerous dog" to create the impression that the city had labeled the dog as such (RP 6/1/10: 10,14,71,72,85), or to create the perception that I was harboring a dangerous animal, even though my dog, on the night of May 30, 2009, had not been deemed a "dangerous dog" or a "potentially dangerous dog". He also allowed his witness, Paula Kelly, to use this term in her testimony (RP 6/3/10: 258). Mr. Neeb had been specifically advised to evidence to the contrary (6/1/10: 87).

Mr. Neeb, in his closing arguments, committed further misconduct in my estimation, by knowingly giving misleading information regarding the definition of "reasonable doubt" (RP 6/14/10: 1150). Also, Mr. Neeb stooped even lower, unleashing a personal attack on my character, including calling me names in front of the jury, such as "arrogant jerk" "obnoxious citizen", etc. (RP 6/2/10: 42). At one point, in closing arguments, he went "off the deep end" in this regard, describing me as "snide", "sarcastic", "self-righteous" and "arrogant", even "belligerent", "jerk", "attitudinal", "stupid" and suggested that I "richly deserved" to get "beat up" (RP 6/14/10:1128-1129,1131). Later, Neeb said "this defendant is not worth Paula Kelly's career (RP 6/14/10:1111-1112). He went on to interrupt my counsel's direct examination of the defense's eyewitness Sara Balasundaram without objecting and began asking questions of her directly out of turn. Judge Serko allowed this, and unfortunately Mr. Moore should've objected to this, but did not (RP 6/9/10: 823). All of these actions were clearly unethical, wrong, and clearly examples of misconduct committed by Mr. Neeb that unduly influenced my trial, making it less than "fair".

For many reasons, Mr. Moore provided ineffective assistance as my counsel during this trial. Mr. Moore did not adequately advise me of my rights, nor did he take sufficient measures to protect my rights.

For reasons unbeknownst to me, Mr. Moore chose to undermine the credibility of the defense's eyewitness, Sara Balasundaram, during closing arguments by contradicting her testimony in his statement: "he certainly could have been at that gate" (RP 6/14/10:1163). Even Neeb was stunned by this tactic, stating "Why did Mr. Moore tell you not to believe her testimony?" (RP 6/14/10: 1192). He further undermined my defense by suggesting that I was emotional, excited, upset, and not calm (RP 6/2/10: 51). He also described the altercation with police (essentially an illegal attack on me) as a "fight" which incorrectly implied that I was combative or resistant to arrest, which I was neither (RP 6/9/10: 825, 827).

Further, Mr. Moore did not allow me to testify, resting the defense's case against my wishes. It is true that the court did allow Mr. Moore and myself a short recess to discuss my testimony in private, off the record. During this time, I continued to emphasize to Mr. Moore my desire to testify in my own defense, even against his advice. He threatened to walk off the case if I testified, and demanded that I let him "be the lawyer". Never once (before, during, or after trial) did Mr. Moore advise me of my constitutional right to disobey him and testify in my own defense, even if it would have been against his advice (RP 8/6/10: 1232). I only discovered this when I fired Moore and hired Ms. Corey. Further, Mr. Moore stated on the record, as well, that he (not I) would decide whether or not I would testify after Ms. Balasundaram testified (RP 6/10/10: 965). He apparently made this decision that I wouldn't testify on his own, away from my presence in private, in a side bar meeting with the prosecutor and Judge (RP 6/10/10: 1033). Serko understood that sidebars did not involve myself, and did not allow the memorialization of exactly what was said (RP 6/3/10: 286).

Although he made valiant efforts in many regards, generally speaking, Mr. Moore was also ineffective because he made poor decisions that had a substantial chance of negatively affecting the outcome of my case. For instance, Mr. Moore insisted (in a private meeting we had off the record) that we stick with Judge Serko, rather than ask for a new judge, when she had advised us that she was in fact neighbors of Sergeant Kirk Martin, one of the police officers that had been involved in my case (RP 6/1/10: 44-45) and served as a critical witness for the state. In my opinion, this relationship made her biased toward the state from the beginning of this trial, which may have had a negative impact upon many of her decisions which had a bearing on my case, the evidence admitted or not admitted, etc. Another poor decision, in my estimation, was that Mr. Moore chose to entirely bypass the cross examination of the state's witness Ms. Cherylann McMahan, thereby allowing Mr. Neeb to put on a witness, uncontested, and therefore manipulate and enrage the jury against me regarding the dog attacks, which were entirely unrelated to the assault case (RP 6/8/10: 552) without defending me at all against such character defamation. Further, Mr. Moore never objected to the rock being admitted into evidence, even though the officers could not identify the rock as the one used in the alleged assault against them (RP 6/2/10: 59) even when they viewed it during trial (RP 6/9/10: 708-9). And Mr. Moore also did not adequately protect, or lay the foundation for, my constitutional right to a claim of self-defense (RP 6/1/10: 104-6) considering the excessive force used against me in this unlawful arrest scenario. For this reason, Judge Serko ended up denying the defense's jury instruction #17, which was a critical setback in my defense.

Worse, Mr. Moore was also very unorganized, thus making him ineffective in a fast-paced trial setting, where he struggled to keep up with the flow of the case in real-time. When questioned on his opinion on objections, case law, etc., Mr. Moore oftentimes had no input, or by his own admission "got lost in the flow" (RP 6/2/10: 7). At one point during jury instruction,

Mr. Moore said: “Your Honor, I’m pawing around as I do routinely for things that I can’t find including copies of—I might not have printed them out” (RP 6/10/10: 1088). Later, he says “there should be a Count 2, but I can’t—I may not have typed—proofread everything correctly when that got done,” (RP 6/10/10: 1089). One of the most egregious examples of an oversight by Mr. Moore is that upon conviction, for the first time, I was informed I could face up to 10 years in custody. Previously, Mr. Moore had incorrectly advised me that I would only face up to a possible 5 years in custody. Honestly, this information probably wouldn’t have affected my decision as to whether or not to take this case to trial, however it does not justify such a large mistake on his part. I believe Mr. Moore misrepresented his expertise to gain my business and, I believe, to have a shot at what he felt was a strong civil case against the Tacoma and Ruston Police.

Another reason Mr. Moore was ineffective was his lack of familiarity with Washington State criminal law. I didn’t find out until much later that he had no previous experience in Washington State criminal defense. It was my impression that he took my case because he wanted to represent me in my civil case, assuming the criminal defense was a success. He purported to me that he had the skills necessary to adequately represent me in this criminal case, and in retrospect, I believe this was not actually true. During many instances, his conduct demonstrated little to no familiarity with the Washington State criminal court system (RP 6/1/10: 28, 32,49-50) (RP 6/2/10: 11,12,16, 62, 63) (RP 6/3/10:362) (RP 6/9/10: 759,760). He missed many objections that he should’ve made, including one time when Paula Kelly erroneously described my dog as a “pit bull” (RP 6/3/10: 298) among others.

I believe a great example of Moore’s lack of familiarity is provided in the transcript taken from the trial record below:

Moore: “Are we allowed access to the exhibits to refer to during argument?”

Court: “Yes, absolutely.”

Moore: “I wasn’t sure....” (RP 6/14/10: 1108).

Mr. Moore also chose to offer no medical expert testimony to support the injuries I received, including the concussion, stitches, etc. to be both defensive in nature (inflicted while I was lying face down on the ground being beaten by a flashlight by Koskovich) (RP 6/2/10: 20) as opposed to the state’s version of events where they claimed I had rolled onto my back to face the officers and threaten them with a rock I had somehow managed to pick up from the ground when I had been detained by multiple officers. Koskovich admitted to hitting me on the left side of the head with his flashlight, which is consistent with the wounds/lacerations on the back of my head. Unfortunately, the fact is that I never turned over on my back at all anytime during the altercation, to grab a rock, or otherwise. I remained face down, prone, which is why the

worst lacerations are on the rear of my head (RP 6/9/10: 830). Unfortunately, the story of the rock was created, presumably to justify Koskovich's illegal use of deadly force (a flashlight to my head) while I was lying on the ground already having been tasered (RP 6/8/10: 692). I never resisted at all to any of the officers' illegal advances into my property, and this entire case is a sham, a cover up attempt, the charges have changed many times (RP 6/9/10: 756) and this case has completely destroyed my life from what it once was, and brought great pain to many people I care about.

In addition to the errors by Mr. Moore and Mr. Neeb, Judge Serko, in my estimation, also made many critical errors for various reasons. Despite Ms. Balasundaram's presentation of evidence in her testimony that the officers had completed an unlawful arrest of me and beaten me on my own property, Serko erroneously claimed that there was no evidence of an unlawful arrest (RP 6/10/10: 1093). For this reason, she incorrectly ruled that I would *not* be allowed a self-defense jury instruction, even though I had a right to defend myself against excessive force used against me during an unlawful arrest. Further, Serko arbitrarily denied a jury questionnaire requested by Mr. Moore during voir dire because it wasn't a "sex offense" case and because it would "slow the process down" (RP 6/2/10: 11).

For many reasons, due to significant inconsistencies in the evidence as presented by the state's key witnesses, I do not feel the state proved my guilt beyond a reasonable doubt. Everyone in the courtroom that I was aware of, including Prosecutor Neeb, predicted an acquittal, and was, presumably, shocked at the verdict. For many of these reasons, I believe I deserve a new trial, or, even more appropriate, a reversal of the guilty verdict. Not because people were shocked, but because I am innocent of all charges and because the state did not prove my guilt beyond a reasonable doubt.

For instance, officer Koskovich testified that in his original police report he hadn't written anything about me attempting to strike him with a rock (RP 6/9/10:739,753), or any efforts he used to prevent me from striking him with a rock, even though his testimony had included great detail about both of these. Koskovich testified that his report was accurate and complete (RP 6/9/10: 722, 739). Further, he also testified that Officer Kelly had advised me verbally that I was under arrest prior to entering my backyard, which is simply not evident in the audio recording, at any point (RP 6/8/10: 674,675).

Further, the audio evidence was arguably removed from property without a search warrant tampered with, or worse, altered by Tacoma Police to favor the state's case against me and to protect themselves from civil liability. It is clear that Tacoma Police removed my audio recording device from property on many occasions (RP 6/9/10: 711). There were large, unexplained gaps in the audio recording, and the audio recorder had been removed from the property room and placed in one of the internal affairs officer's desks for months (RP 6/1/10:

88). During this time, the audio recorder was used to make an additional recording on June 8, 2009 while the recorder was only in police custody, and before the police had obtained a search warrant on 10/27/09 (RP 6/1/10: 89,92,94). For some reason, there was no documentation made on the evidence seal to properly document the fact that Internal Affairs officer Rebecca Graef had accessed the property room on 6/5/2009 to obtain the recorder, upon which a new recording was made on 6/8/2009, before anyone had ever issued any search warrants (10/27/09) allowing access to this recorder (RP 6/10/10: 955, 956). In short, the Tacoma Police Department illegally accessed my recorder without consulting myself or my counsel, "didn't follow procedures, didn't notate the evidence seal of having accessed it, broke the evidence seal..." which now exists "in such a manner to give the impression that it was never accessed any earlier than the date of the search warrant" (RP 6/10/10: 956). An audio expert, in fact, told me on the telephone that the new recording made on June 8, 2009 on the audio recorder taken from me during the unlawful arrest on May 30, 2009 would have essentially wiped clean the "digital footprint" on the flash memory drive of the recorder, which would have otherwise been able to have been analyzed by an audio expert to affirmatively prove alteration had such alteration taken place. In essence, the TPD broke the law to erase proof of having altered evidence.

Another of the State's key witnesses, Paula Kelly, provided unreliable and inconsistent evidence. Kelly claimed that a taser was not used until after the recording cutoff off just as officer Koskovich said "stop resisting" (RP 6/3/10: 324) however the audio evidence reveals at least 2 taser applications before this point (sound of taser was present, possibly reduced during illegal audio editing, but yet still evident to the discerning listener) which prove Kelly to be an unreliable witness, at best. Kelly was caught in another untruth when she claimed that only one prong from the taser had penetrated the skin, thereby making it ineffective, leaving only one single hole in my abdomen (RP 6/3/10: 378) even though photographic evidence demonstrated clearly that there were two taser prong marks (holes) in my abdomen (RP 6/9/10: 823). Kelly also originally claimed that I drove up the scene at 50mph, and later changed this estimate to 10-15 mph (RP 6/7/10: 442).

Judge Serko committed another critical error when she allowed the state to offer a "listening aid" transcript of the audio to the jury. This was problematic to the defense because the words used were in many places inaccurate, or worse, completely misleading to the jury, and potentially incriminating towards the defendant. In essence, Serko allowed Mr. Neeb to offer material which biased the jury towards believing "their version" of the transcript, which the defense continued to strenuously, but unsuccessfully object to. In this way, Mr. Neeb was able to unfairly bias the jury's perception of what would have otherwise been the most reliable, neutral, and accurate evidence in my defense (RP 6/3/10: 311-312). This "Listening aid" (aka

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biasing aid) was admitted as Exhibit #5, with no mention of defense objections still withstanding (RP 6/3/10: 314).

A third witness of the state, officer Rob Nicolaus of Ruston Police Department, also proved his testimony to be unreliable by claiming both Officers Koskovich and Kelly had advised me I was under arrest around the time the "scuffle" started (RP 6/8/10: 568, 598) although the audio evidence does not support this, thereby undermining Nicolaus' credibility.

Even Sergeant Kirk Martin, (neighbors of the judge) proved to be an unreliable witness, though, admittedly, I found him to be the most professional officer of the bunch there that night (the bar was set very low!). He testified that he told me "identification officers were going to go around the back to do photographs in the back" of the house (RP 6/8/10: 620). He then went further with that untruth by testifying: "I wanted to explain in full what we were doing," which is quite misleading, since no reason was even given to me by him or anyone as to why the officers needed to go around back (RP 6/8/10: 620, 623). The audio evidence does not corroborate either of these claims by Martin.

Serko also demonstrated her partiality towards the state's case by treating their objections differently than those from defense counsel. In essence, Serko did not hold Mr. Neeb to the same standards with his objections, oftentimes sustaining Mr. Neeb's objections without asking him to state the reason for the objections. In some cases, she even provided the reason for Mr. Neeb (i.e. beyond the scope, etc.) rather than requiring Mr. Neeb to state the basis of his objection on his own (RP 6/8/10: 536, 656) (RP 6/9/10: 750). Mr. Moore oftentimes objected to this.

Serko also demonstrated her partiality towards her neighbor, Sergeant Kirk Martin of the Tacoma Police Department, while he was on the stand during my trial by allowing him to overhear private conversation between counsel and the court outside the presence of the jury, whereas she forced all of my witnesses or potential witnesses (i.e. Ms. Paquette) to remain outside of the courtroom except during their testimony. This made Martin, her neighbor, privy to information that should not have been offered in his presence while he was on the witness stand, being that he was a critical witness for the state (RP 6/8/10: 644).

Moreover, Serko and Neeb erroneously allowed the state to have Mr. Neeb direct the state's witness (Ryan Koskovich) to obtain evidence from the property room during trial, including one of the rocks recovered from the scene that had allegedly been used in the (alleged) assault against himself, and also the audio recorder used to record the incident (RP 6/9/10: 704-705, 710). To me, it seemed improper, not to mention downright risky, to have any evidence handled by any witness directly and intimately involved in such a case.

In conclusion, I pray that the truths I have articulated in this statement will help bring me the justice that I deserve.

Thank you from the bottom of my heart for having read this statement in its entirety.

Most Sincerely Yours,



Paul Gebhardt

paul@investintacoma.com

253-229-0148

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Statement of
Additional Grounds

Superior Court No. 09-1-02751-1
Court of Appeals No. 41068-1-II

State of Washington,
Plaintiff

v.

Paul William Gebhardt,
Defendant.