

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

COURT OF APPEALS  
DIVISION II

12 FEB 21 PM 12:16

STATE OF WASHINGTON

BY sw DEPUTY

STATE OF WASHINGTON )

Respondent, )

v. )

RONALD MENDES )

(your name) )

Appellant. )

No. 42161-5-11

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, Ronald Mendes, 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.

the STATE ERRORed when they Recharged me Additional Ground 1 for ASSAULT felony murder, when Appellate Judge Appelwick, Cox, HAV. CONCLUDED AND Ruled THAT The time and place that the STATE choosed that the predicate felony ASSAULT occurred, Mendes DID NOT discharge His WEAPON during this ASSAULT or the flight from. IN fact I WAS RE-treating and so WAS MR SAYLOR in two different directions, me to leave out front door MR SAYLOR to His bedroom to obtain a WEAPON to Re ENGAGE becoming the first Aggressor and trying to ASSAULT me outside His Home. This ASSAULT WAS NOT felony murder AT Sentencing, counsel filed A NOV Judgment NOT OBTAINING VERDICT the JUDGE DENIED IT AND INSTRUCTED US TO TAKE IT UP AN APPEAL  
UNPUBLISHED OPINION by Appellate Court DIV 1 No 38642-9-11  
STATE VS Mendes p.32, 156 WASH. APP. 1059, 2010 Wk 2816974 (WASH. APP. DIV 1)

Additional Ground 2

the STATE ERRORed: During CROSS EXAMINATION on me when the prosecutor Re-Scared to (LAST TIME YOU TESTIFIED) INSTEAD OF AT A PREVIOUS HEARING like she had BEEN till this WE ASKED FOR A SIDE BAR Had JURORS leave and we asked for or made A motion for A miss trial we were DENIED, we objected stating that the prosecutor clearly indicated I WAS ON THE STAND AT TRIAL Before, the prosecutor WAS ASKED to Re PHRASE the QUESTION AND WE moved ON. AFTER Sentencing JURORS were asked if they thought there WAS A PREVIOUS TRIAL AND ALL SAID YES they thought so

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

Date: 2-13-12

CERTIFICATE OF SERVICE

I certify that I mailed  
copies of 5

to S. Cunningham  
& B. Proctor  
Date 2/13 Signed sw

Form 23.

Signature: Ronald Mendes

Brief Summary for  
ADDITIONAL Grounds 3 thru 7

|                       |   |                         |
|-----------------------|---|-------------------------|
| State of Washington   | ) | No. <u>42161-5-11</u>   |
| Respondent,           | ) |                         |
|                       | ) | Statement of ADDITIONAL |
| v.                    | ) | Grounds for Review      |
| <u>Rowland Mendes</u> | ) |                         |
|                       | ) |                         |

## Additional Ground 3

The STATE ERRORED by DENYING our objection to SEVER AND SEPERATE the witness tampering from the murder charges PREJUDICING the JURORS. Because the tapes contained me talking ABOUT A PREVIOUS trial AND the JURORS getting the REVIVED self-defence INSTRUCTIONS, ALSO talking about my sisters testimony this time NOT to LET the PROSECUTOR MANIPULATE Her testimony AND ALL TEN TAPES TRANSCRIPTS. WERE HANDED OUT to JURORS AND RIGHT ON TOP IT STATES YOU HAVE A CALL FROM A INMATE AT PIERCE COUNTY JAIL I ALSO TALKED ABOUT GETTING FAMILY MEMBERS IN COURT ON my side of galley if BAIL BONDS MAN would CALL for me clearly IMPLICATING I'm going to be INCARCERATED during trial

## Additional Ground 4

WAS IT IN ERROR: TO NOT give full self-defence INSTRUCTIONS ON REVIVED self-defence. The INSTRUCTIONS WERE NOT IN FULL AS they were by the CASE LAW CITED STATE VS - RILEY 137 WASH. 2D AT 909, 976 P. 2D 624. Had the full INSTRUCTIONS been given ALONG WITH the full INSTRUCTIONS of W.P.I.C 17.02 16.02 15 AND 11 W.P.I.C 15.01 - AT 169 (1994) the JURORS MAY HAVE HAD A BETTER UNDERSTANDING of the charge when they asked for more INSTRUCTIONS AFTER 3 DAYS of deliberation ASKING what is Felon murder in LAYMAN terms WAS the QUESTION given to Judge they were told to REVIEW the INSTRUCTION'S given. Had they been given the SAME INSTRUCTIONS AS COUNT I AS COUNT II they could of found me NOT guilty ON BOTH COUNTS of 2nd degree murder NOT JUST ONE which BRINGS UP the Probable Cause (ENCLOSED) ON HOW IT READS COUNT I murder in the Second degree COUNT II murder in the Second degree, COUNT III ASSAULT in the Second degree with a Handgun AND then counts 4 thru 7 witness TAMPERING. the JURORS what the difference was and denied. JURORS found me NOT guilty of COUNT I Second degree murder. I would not this could a count II with out tampering

## Additional Ground 5

I WAS charged with 3 murder charges on the first trial for the death of one person. found NOT guilty of 1ST degree murder found guilty of 2nd degree murder and felony murder. won my appeal Had A New trial AGAIN charged with 2nd degree murder X 2 COUNT I COUNT II AS IT READS [ENCLOSED] found NOT guilty of 2nd degree murder COUNT I found guilty of 2nd degree murder COUNT II I believe IT IS IN ERROR to stack the charges multiple murder charges for the death of one person till you get A conviction I full this falls under Double Jeopardy / triple Jeopardy I've been found NOT guilty of two murder charges for the same person GAUL VS WASHINGTON 2011 COWITTS COUNTY was overturned for Double - Jeopardy

## Addition Grounds 6

IT WAS ERROR NOT to allow public into court room during VOIR-DINE there WAS A POOL of 60 JURORS in gallery 4 of which who had to SIT ON CHAIRS CAUSE the BENCHES were full, Security officers AT the door turned public and family members away cause court room WAS too small and they only had JURORS 12 seats left that were too close to me they said the State knew they would have a pool of 60 to go threw and the court room was limited A Head of Time 2 CASES IN PIERCE COUNTY have been overturned for this before

## Additional Grounds 7

I believe IT WAS JUDICIAL ERROR after state closed ITS case that there was plenty of EVIDENCE to Dismiss the murder charges ON self-defence by the state's own witness's who testified I WAS ATTACKED stopped the ATTACK by drawing A weapon and Had Retreated and OUTSIDE the Home leaving when ATTACKED AGAIN with A BAT AT full speed and had to shoot me several 1- call me call I am on the way in trial

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

STATE OF WASHINGTON,

Plaintiff,

CAUSE NO. 08-1-00527-7

vs.

RONALD MELVIN MENDES,

FOURTH AMENDED INFORMATION

Defendant.

DOB: 6/3/1963  
PCN#: 539357140

SEX : MALE  
SID#: 13478431

RACE: WHITE  
DOL#: UNKNOWN

COUNT I

I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse RONALD MELVIN MENDES of the crime of MURDER IN THE SECOND DEGREE, committed as follows:

That RONALD MELVIN MENDES, in the State of Washington, on or about the 28th day of January, 2008, did unlawfully and feloniously, with intent to cause the death of another person, DANNY SAYLOR, thereby causing the death of DANNY SAYLOR, a human being, on or about the 28TH day of JANUARY, 2008, contrary to RCW 9A.32.050(1)(a), and in the commission thereof the defendant, or an accomplice, was armed with a firearm, to-wit: A HANDGUN, that being a firearm as defined in RCW 9.41.010, and invoking the provisions of RCW 9.94A.530, and adding additional time to the presumptive sentence as provided in RCW 9.94A.533, and against the peace and dignity of the State of Washington.

COUNT II

And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the authority of the State of Washington, do accuse RONALD MELVIN MENDES of the crime of MURDER IN THE SECOND DEGREE, a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan, and/or so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the others, committed as follows:

FOURTH AMENDED INFORMATION- 1

1 That RONALD MELVIN MENDES, in the State of Washington, on or about the 28th day of  
 2 January, 2008, did unlawfully and feloniously, while committing or attempting to commit the crime of  
 3 ASSAULT IN THE SECOND DEGREE, and in the course of and in furtherance of said crime or in  
 4 immediate flight therefrom, did shoot DANNY SAYLOR, and thereby causing the death of DANNY  
 5 SAYLOR, a human being, not a participant in said crime, on or about the 28<sup>TH</sup> day of JANUARY, 2008,  
 6 contrary to RCW 9A.32.050(1)(b), and in the commission thereof the defendant, or an accomplice, was  
 7 armed with a firearm, to-wit: A HANDGUN, that being a firearm as defined in RCW 9.41.010, and  
 8 invoking the provisions of RCW 9.94A.530, and adding additional time to the presumptive sentence as  
 9 provided in RCW 9.94A.533, and against the peace and dignity of the State of Washington.

COUNT IV

10 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 11 authority of the State of Washington, do accuse RONALD MELVIN MENDES of the crime of  
 12 TAMPERING WITH A WITNESS, a crime of the same or similar character, and/or a crime based on the  
 13 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
 14 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
 15 proof of one charge from proof of the others, committed as follows:

16 That RONALD MELVIN MENDES, in the State of Washington, on or about the 21st day of  
 17 December, 2010, did unlawfully and feloniously attempt to induce LORI PALOMO, a witness or person  
 18 he has reason to believe is about to be called as a witness in an official proceeding, or has reason to  
 19 believe may have information relevant to a criminal investigation or the abuse or neglect of a minor child,  
 20 to absent herself from such proceedings, contrary to RCW 9A.72.120(1)(b), and the crime was aggravated  
 21 by the following circumstance: pursuant to RCW 9.94A.535(2)(c), the defendant committed multiple  
 22 current offenses and the defendant's high offender score results in some of the current offenses going  
 23 unpunished, and against the peace and dignity of the State of Washington.

COUNT V

24 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
 authority of the State of Washington, do accuse RONALD MELVIN MENDES of the crime of  
 TAMPERING WITH A WITNESS, a crime of the same or similar character, and/or a crime based on the  
 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
 proof of one charge from proof of the others, committed as follows:

That RONALD MELVIN MENDES, in the State of Washington, on or about the 21st day of  
 December, 2010, did unlawfully and feloniously attempt to induce CHARLES "CHUCK" BOLLINGER,  
 a witness or person he has reason to believe is about to be called as a witness in an official proceeding, or  
 has reason to believe may have information relevant to a criminal investigation or the abuse or neglect of

1 a minor child, to absent himself from such proceedings, contrary to RCW 9A.72.120(1)(b), and the crime  
2 was aggravated by the following circumstance: pursuant to RCW 9.94A.535(2)(c), the defendant  
3 committed multiple current offenses and the defendant's high offender score results in some of the current  
4 offenses going unpunished, and against the peace and dignity of the State of Washington.

#### COUNT VI

4 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
5 authority of the State of Washington, do accuse RONALD MELVIN MENDES of the crime of  
6 TAMPERING WITH A WITNESS, a crime of the same or similar character, and/or a crime based on the  
7 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
8 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
9 proof of one charge from proof of the others, committed as follows:

10 That RONALD MELVIN MENDES, in the State of Washington, on or about the 10th day of  
11 December, 2010, did unlawfully and feloniously attempt to induce MCKAY BROWN, a witness or  
12 person he has reason to believe is about to be called as a witness in an official proceeding, or has reason  
13 to believe may have information relevant to a criminal investigation or the abuse or neglect of a minor  
14 child, to absent himself from such proceedings, contrary to RCW 9A.72.120(1)(b), and the crime was  
15 aggravated by the following circumstance: pursuant to RCW 9.94A.535(2)(c), the defendant committed  
16 multiple current offenses and the defendant's high offender score results in some of the current offenses  
17 going unpunished, and against the peace and dignity of the State of Washington.

#### COUNT VII

15 And I, MARK LINDQUIST, Prosecuting Attorney for Pierce County, in the name and by the  
16 authority of the State of Washington, do accuse RONALD MELVIN MENDES of the crime of  
17 TAMPERING WITH A WITNESS, a crime of the same or similar character, and/or a crime based on the  
18 same conduct or on a series of acts connected together or constituting parts of a single scheme or plan,  
19 and/or so closely connected in respect to time, place and occasion that it would be difficult to separate  
20 proof of one charge from proof of the others, committed as follows:

21 That RONALD MELVIN MENDES, in the State of Washington, during the period between the  
22 8th day of November, 2010 and the 18th day of November, 2010, did unlawfully and feloniously attempt  
23 to induce JUDY ANDERSON, a witness or person he has reason to believe is about to be called as a  
24 witness in an official proceeding, or has reason to believe may have information relevant to a criminal  
investigation or the abuse or neglect of a minor child, to testify falsely or, without right or privilege,  
withhold testimony, contrary to RCW 9A.72.120(1)(a), and the crime was aggravated by the following  
circumstance: pursuant to RCW 9.94A.535(2)(c), the defendant committed multiple current offenses and

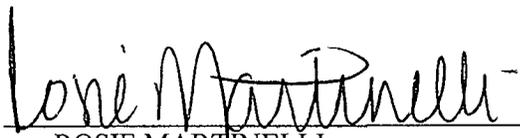
1 the defendant's high offender score results in some of the current offenses going unpunished, and against  
2 the peace and dignity of the State of Washington.

3 DATED this 14th day of February, 2011.

4 PIERCE COUNTY SHERIFF  
WA02700

MARK LINDQUIST  
Pierce County Prosecuting Attorney

5  
6 rvm

By:   
ROSIE MARTINELLI  
Deputy Prosecuting Attorney  
WSB#: 25078

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# 113 CALLS RECORDED

there WAS 10 of these ISSUED TO JURORS TO READ while LISTENING to Recordings where I talked ABOUT JURY INSTRUCTIONS this time AND ASKING BAIL BONDS to come to COURT AND call other people to be IN gallery DURING trial

Mendes, Ronald Melvin  
11/29/10  
253-671-2245

Bail Bonds.

RECORDING: You have a Quest collect call from Ron Mendes, an inmate at the Pierce County jail. The use of three way or call waiting will disconnect the call. This call will be recorded and monitored. To hear the costs...

UM: Hey what's up dude?

RM: Not much you busy or - -

UM: No no what do you need?

RM: I was trying to see if I could call my sister real quick.

UM: Go ahead.

RM: 228-

UM: Yeah?

RM: 6707.

UM: What's her name?

RM: Um Judy.

UM: Alright hold on alright?

RM: Yep yep.

UM: Hey Ron?

RM: Yeah.

UM: Alright I'm gonna put you guys on hold ok?

RM: Ok.

[sister]

JUDY: Hello?

No. 64912-4-1/13

homicide or attempted homicide. If homicide is involved, use WPIC 16.02, Justifiable Homicide—Defense of Self and Others.” WPIC 17.02, at 253–54 (2008). Although technically a defense to a homicide charge, because the ultimate charge was felony murder, the requested instruction in fact would have applied to assault, the predicate felony. It should have been given. The note on use is not correct and does not prevent the use of the instruction, on these facts.

On appeal, the State claims that State v. Ferguson, 131 Wn. App. 855, 129 P.3d 856 (2006), precluded the defendant’s requested instruction. In Ferguson, the defendant was charged with felony murder for stabbing the victim during a fistfight initiated by the victim. Id. at 856–59. The trial court refused to give a self-defense instruction for the predicate assault. Id. at 859–60. The Court of Appeals affirmed, holding that the trial court properly gave a justifiable homicide instruction rather than a general self-defense instruction. Id. at 862.

The court held that 11 Washington Practice: Washington Pattern Jury Instructions: Criminal 17.02, at 196 (2d ed. 1994) (WPIC), “can never be given in a felony murder case where assault is the predicate felony because it can never be reasonable to use a deadly weapon in a deadly manner unless the person attacked had reasonable grounds to fear death or great bodily harm.” Id.

In State v. Slaughter, 143 Wn. App. 936, 186 P.3d 1084 (2008), review denied, 164 Wn.2d 1033, 197 P.3d 1184 (2008), the court distinguished Ferguson. In Slaughter, the defendant claimed a defense of excusable homicide against his charge of felony murder. 143 Wn. App. at 938. The trial court gave the excusable homicide instruction, 11 WPIC 15.01, at 169 (1994), instructing the

No. 64912-4-I/14

jury that “[h]omicide is excusable when committed by accident or misfortune in doing any lawful act by lawful means.” Slaughter, 143 Wn. App. at 942. The court also gave a modified instruction based on WPIC 17.02 (1994) to explain the term “lawful force” as it related to the excusable homicide issue. Slaughter, 143 Wn. App. at 942. This court in Slaughter distinguished Ferguson by explaining that Slaughter could argue that he used reasonable force to prevent injury when the accidental killing occurred. Slaughter, 143 Wn. App. at 946. To the contrary, in Ferguson the defendant used the deadly weapon in a deadly manner, which constituted unreasonable force. Slaughter, 143 Wn. App. at 946. We held it was not an abuse of discretion to offer the modified WPIC 17.02 (1994) instruction in that case. Slaughter, 143 Wn. App. at 945–46.

This case can similarly be distinguished from the facts of Ferguson, where the underlying assault, the stabbing, caused the death. 131 Wn. App. at 856–59. The predicate assault there was the act that caused the victim’s death. Id. at 862. Here, the State based the predicate assault on Mendes’s brandishing the gun and stating that he could “smoke” Saylor. Ferguson does not control because Mendes did not use the gun in a deadly manner: he did not discharge the gun in that assault.

Here, sufficient facts support the self-defense instruction. Mendes testified that prior to the assault Saylor kicked him from behind without warning. He testified that he had not seen Saylor before the first kick. Brown testified that while Saylor punched Mendes several times, Mendes was flailing, attempting to punch back without success. Mendes said that he spun around and tripped