

Case # 315207

**Statement of Additional Grounds
For Review**

**State of Washington
v.**

Matthew Thomas Hibbard

COPY

FILED
Jun 23, 2014
Court of Appeals
Division III
State of Washington

No. 31520-7-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW HIBBARD,

Appellant.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

Statement of Additional Grounds

Dear Sir or Madame,

I am writing this letter in reference to my Appeal for my conviction of 3rd degree assault with aggravated circumstances. Below you will find information regarding my case that I feel bears importance

- Not enough emphasis was put on my foot placement in an effort to show me moving away, instead of forcing Ensign into the ground (trial counsel only briefly mentioned it in his closing argument, and asked that the jury take it upon themselves to look at it).
- Was not able to make full use of my character witnesses. Reputation for peacefulness / is that reputation good, were the only two questions my witnesses were asked, then we did not even get to use all of the witnesses. Should have asked if they ever knew me to be negligent, but were not. I feel that this would have been especially helpful considering that my charge was one of negligence.
- Did not bring up the “prosecutorial misconduct” on the part of Prosecutor Miller having evidence destroyed (erased). Even though I have documentation from a facebook conversation between Christina Feuerborn (administrator), and Andrea Gathwright (member), in which Ms. Feuerborn is quoted as saying *“hey had to delete the site cause I was contacted by my aunt and andy miller tonight about how hibbards lawyers could use it against us... everyone is now supposed to go to the google website ONLY”*. The “aunt” is Sheila Barichello, Ensign’s ex-stepmother, and Andy Miller is the prosecutor for Benton County.
- Witness for the state Joleigha Evans was asked by prosecutor miller to define and show Ensigns motions with his hands, to tell if his hands were open or closed, She did, showing closed fists. Prosecutor Miller immediately left it alone, my trial council never revisited or came back to this fact, even after I made a point of bring this fact to his attention. Being that my defense is one of self defense, I would assume that an eye witness account of his hands being closed fists would have been of significant importance.
- Never requested Abbi Olsen’s facebook messages of the threats that she received from Joe Webb so that we could show a vendetta. Those messages are now gone.
- Not nearly enough emphasis was placed on the fact that Ensign initiated everything that happened, that he, & he alone set this whole incident in motion!
- No emphasis was placed at all, on the fact that Ensign was injured while committing a crime... for the second time (*criminal trespassing*).

- It also was never brought up that Ensign has a history of this same behavior all over town (*Bonefish, The Pub, Cavanaugh's, Red Robin, Sportspage, Jokers*).
- My trial counsel never made use of Schauble's testimony that "*when Ben does not like something... He does not let it go*"!
- Change of Venue was never asked for, even with the over-saturation in the media of this story for the last 7 months. Not to mention all the posts on facebook, craigslist etc., this was my biggest concern after my charge, and was the first thing that I requested from my counsel. His response was "I don't think we would get it, there are capital murder trials that don't get venue changed". This should never have been tried in this County.
- States witnesses' criminal histories were never used. Point of fact, at no time did my trial counsel make an attempt to discredit or impeach any of the states witnesses. Even though one has charges of false reporting (Parker).
- Never capitalized on the fact that two of the states witnesses that saw so much, could not even identify me in court (*Huang & Parker*).
- Trial counsel continually allowed the state to use descriptors for Ensign such as *Young Ben, Young man, 20 yr old, etc.*. Ensign was 31 at the time of this incident. The use of statements as these was for no other reason than to create bias.
- Doctor never discussed the mechanism of injury, or what would have been required to receive such an injury, he focused on what was presenting at the time of treatment, and post-op treatment. I felt that we could have used that better to our advantage.
- Not enough emphasis was made regarding the fact that Huang is seen on video dropping ensigns' head several times on to the sidewalk as he attempts to pick him up.
- Was never told that I had the option of having my case tried in front of a judge only, that I didn't have to have it heard by a jury, and that I could have been a Bench Trial???
- During the trial there was a person on the KEPR facebook site that made a statement that there were jurors in this trial, on that site, commenting about the trial while it was going on. This is in direct violation of the jury instructions.
- Schauble made a statement on the stand that they had arrived at Jack Didley's around 9 pm, when in fact it was just before 11pm. By not discrediting this witness, could this have allowed the jury to think that we really did over serve Ensign, therefore, we and/or I, must now be held responsible for his conduct, and in doing so be responsible for everything that took place.
- Det. Roman Trujillo during the trial was not allowed to testify to the fact that after viewing the video, and that after his investigation of this incident, that it was his opinion that there was no "GROSS DEVIATION" on my part. Officer Pitts was also not allowed to testify that she stated that "there is no crime here" after viewing the video the night of the incident. Even though that both statements were included in the discovery info. Trujillo was even "polled" for his opinion, as well as being one of detectives in this case. Pitts made the statement in my office immediately after the incident happened. However, I did include that in my statement that I gave to KPD the night of the incident. John told

me that had we asked that question of Trujillo, that it would have opened the door for Miller to bring up all the other officers that stated that they thought it was a gross deviation. However, Miller never subpoenaed those officers and John knew this. By the time that we had Trujillo on the stand, the state had already rested its case. It is my understanding that once that happens they can no longer call witnesses. It would almost appear as though this was some kind of pre-arranged agreement between my trial counsel and Prosecutor Miller.

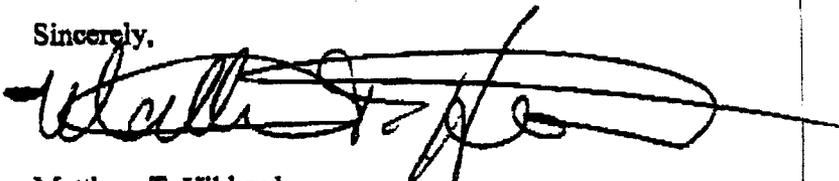
- My 6th Amendment right to call witnesses in my defense was denied when witnesses that were to testify on my behalf were “gagged” and not allowed to testify to their extent of knowledge regarding my history and/or this case. Then, it was ruled that not all of my witnesses would be allowed at all. Even though their testimony would have shown that I do not have any pre-disposition for negligence. Again, my trial counsel said it would have allowed Prosecutor Miller to ask them other questions as well, but our reputation with KPD is perfect and they would have nothing to say to the negative.
- My trial counsel never polled the jury after the verdict was rendered, even though I had requested it. This information would have been very helpful in the event of an appeal
- My trial counsel should have had me take the jury through the video as I had requested. There is absolutely no better person that could have done that.
- I believe that I was pursued with such vigor because my employer is married to a KPD officer, and that this was an attempt by KPD to go out of their way to not show favoritism. The possibility of a “cover up” was commented about a great deal in the media, and on facebook as well as Craigslist.
- George Penn overheard a conversation between Andy Miller & John Ziobro (former Kennewick City Attorney) in which they were talking about how inadequate Johns’ defense was during this trial (basically mocking him). This conversation took place in the common area right outside the courtroom.
- My trial counsel’s statement to me on the first day of trial, “*The only thing the court is concerned with, is getting thru this as quickly as possible, so that they can move on to other cases*”, was somewhat disturbing. I would have thought the courts ONLY concern would be to ensure justice is served, and that peoples constitutional rights are upheld.
- My trial counsel had Det. Veitenheimer from KPD testify, who was not on my witness list. But didn’t have Corporal Ball from KPD testify, who was on my list. Also, I never wanted Veitenheimer to testify, that was a decision made by trial counsel with out my prior knowledge.
- Trial counsel should have pursued the relationship that we have with WSLCB, as well as their view of me and the manner in which I conduct business. On 4/21/2013 around 0030 hrs we received a visit from two agents from the WSLCB, they were Lt. Kent Williams, and Caine Hilario. While speaking with them on the sidewalk, the topic of my case came up, I advised them that I was currently on work release. Caine asked if I was going to appeal the conviction, I stated that I had filed an appeal. His response was a very

emphatic "GOOD"! Kent then proceeded to tell me that he and agent Marie Reddout had viewed the video at KPD, and he stated that "just could not see it, we refused to prosecute, and I just didn't see any wrong doing by you". He then stated that they may have lost some "friends" on KPD because of this. I'm not sure what exactly that last statement meant. However, I had requested that we use Lt. Williams as a witness in my defense, my trial counsel never followed through with my request.

- Prior to the trial I was in my trial counsel's office on a Friday, and I noticed that he was carrying a concealed pistol, and asked him what he was carrying, he responded that he was carrying a Ruger SR9. He then stated that one of his other clients had been approached by an unknown person, and the they were told in a verbally abusive manner that they should find another attorney, and that "John was a piece of shit". John then said that he wasn't sure, but that incident may have something to do with my case. Could John have thrown this case out of fear?? John was certainly not the same attorney during the trial that he was at my sentencing hearing. It wasn't until my sentencing hearing that I actually felt that John was fighting for me.
- My trial counsel never explained to the jury the state's guidelines regarding "*No Duty to Retreat*".

Thank you for your careful consideration regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew T. Hibbard", written over a horizontal line.

Matthew T. Hibbard

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	NO. 31520-7-III
)	
MATTHEW HIBBARD,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 23RD DAY OF JUNE, 2014, I CAUSED THE ORIGINAL **STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW** TO BE FILED IN THE **COURT OF APPEALS - DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] ANDREW MILLER, DPA [prosecuting@co.benton.wa.us] BENTON COUNTY PROSECUTOR'S OFFICE 7122 W OKANOGAN AVE KENNEWICK WA 99336-2341	() () (X)	U.S. MAIL HAND DELIVERY E-MAIL BY AGREEMENT VIA COA PORTAL
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SIGNED IN SEATTLE, WASHINGTON THIS 23RD DAY OF JUNE, 2014.

X _____ 

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Seattle, Washington 98101
☎(206) 587-2711

WASHINGTON APPELLATE PROJECT

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Transmittal Letter

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Case Name: STATE V. MATTHEW HIBBARD

Court of Appeals Case Number: 31520-7

Party Represented: APPELLANT

Is This a Personal Restraint Petition? Yes No

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Comments:

No Comments were entered.

Sender Name: Maria A Riley - Email: maria@washapp.org