68814-6

68814-6

NO: 68814-6-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON

V.

Ronald Lee Gray III
Appellant,

COURT OF APPEALS
STATE OF WASHINGTON
2013 MAY 23 PM 1:17

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

STATEMENT OF ADDITIONAL GROUNDS

Ronald L. Gray III
D.O.C. # 345750
Appellant.
Washington State Penitentiary
1313 N. 13th AVE.
Walla Walla, Wa. 99362

1 A. INTRODUCTION

2 Mr. Gray, Appellant challenges his conviction of
3 Attempted Murder in the first degree due to
4 Misconduct of the prosecution, Newly discovered evidence,
5 Ineffective assistance of Counsel at trial, Irregularitys
6 in the proceedings of the trial court which prevented
7 a fair trial, and abuse of discretion.
8
9 Assignments of Error

10 1.) The prosecutor commited misconduct by not
11 disclosing requested material/evidence, Stating his
12 own opinions not supported by evidence, and inflaming
13 Passions and or presudice in the jury through improper
14 argument, also Misrepresenting the facts of the record.
15
16 2.) Newly discovered evidence is the testimony of
17 Witness Tony Goodnow for defense, and rebuttal
18 of the first aggressor instruction
19
20 3.) The Trial counsel for Mr. Gray was
21 ineffective for not calling defense witnesses
22 Tony Goodnow and James Starr to the Stand
23 on Mr. Grays behalf.
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4.) While the trial jury was present a correctional officer reprimanded Mr. Gray, letting the jury know Mr. Gray was in custody, causing irregularities in the proceedings

5.) The trial court wrongly labeled the complaining witness's statement as hearsay, causing an abuse of discretion.

STATEMENT OF THE CASE

Appellant adopts and incorporates the statement of the case as presented by appellate counsel in the brief of appellant. Additional facts will be presented as they relate to the issues presented herein.

Issues Pertaining To The Assignments of Error.

Misconduct of the Prosecution

During and before trial Mr. Gray requested both verbally and via hand written Motions that the video surviellance evidence of A st Food Mart mentioned in page 8 of the auburn police report be provided to the defense. If produced it would have impeached the prosecutors claims that Mr. Gray was starting altercations at the Mart.

1 MATERIAL

2 Many courts define material as whether there was a reasonable
3 probability that the result of the trial would have been different
4 if the exculpatory material had been turned over before trial.
5 "Material must be disclosed in time for its effective use in trial".
6 U.S v. GILL, 297 F.3d 93 (2nd cir. 2002)
7 Other courts have stated this standard for material
8 is incorrect and instead use the language in Brady, Bagley, and Kyles.
9 All of which speak of the prosecutors obligation to turn over anything
10 that is relevant to guilt or punishment and is exculpatory or favorable
11 to defense.
12 The surveillance video was material and was exculpatory,
13 meaning it tends to show the defendant is innocent of the charges.
14 The video if produced would have shown Mr. Gray was not acting
15 aggressive toward anyone at the Mart, rebutting the prosecutors
16 giving of the first aggressor instruction based on his argument
17 "That Mr. Gray was starting fights at the Mart which
18 he stated repeatedly over the course of the trial, It
19 would have created a reasonable probability that the outcome
20 of the trial would have been different.

21 RELEVANT

22 This simply establishes that Brady material consist of anything that
23 is helpful to the defense at either the guilt or sentencing phase
24 of a case.
25 I requested the material by motion of Brady to the courts for
26 both phases to no avail. The material obviously was helpful to Mr. Grays
27 defense for the latter reasons mentioned under the Material section.
28

1 YOUNGBLOOD v.s WEST VIRGINIA, ___ v.s ___, 126 S.Ct
2 2188 (2006) - (The prosecutor has an affirmative duty
3 to Seek out and learn of any exculpatory evidence
4 in the possession of anyone acting on the governments
5 behalf in the case including the police.)
6
7 Therefore the prosecutor Should have
8 disclosed the material, it was mentioned in the
9 police report that a copy was to be at the
10 police headquarters putting it in the prosecutors
11 constructive possession. In the E-mail to mr. Grays
12 trial counsel the prosecutor Stated "theres no
13 outside video of the mart" indicating he rendered
14 the surviellance material worthless.
15
16 MARSHALL v.s. HENDRICKS, 307 F.3d 36 (3rd cir 2002)
17 States: (1.) Error attributed to prosecutorial misconduct
18 is accumulated for purpose of harmless error analysis.
19 2.) Prosecutorial misconduct is not harmless when it
20 renders defendants evidence worthless.)
21
22 Also see Brady v.s. Maryland, 373 U.S 83 (1963)
23 it states: (The prosecutor must disclose any and all favorable
24 evidence to defense, even if the prosecutor thinks the material
25 is unreliable or unbelievable he or she must disclose it, it is for
26 defense, not the prosecution, to decide whether the Brady material -
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1 is reliable enough to be used.)

2

3 The reasonable probability standard is met here.
4 See - U.S v.s TURNER, 104 U.S F.3d 217 (8th cir.1997)
5 and - U.S v.s BLATS, 98 F.3d 647 (1st cir 1996)
6 (1.) Brady error occurs when government Suppresses
7 "Material" information that is Favorable to defense; information
8 is "Material" if there is a reasonable probability that,
9 had the evidence been disclosed to defense, result of
10 proceedings would have been different.
11 2.) Brady rule, which prohibits government from
12 Suppressing evidence Favorable to defense, applies to
13 impeachment evidence, as to exculpatory evidence.)

14

15 Reasonable means able to reason, probability
16 means liklihood; Chance Stronger than possibility
17 but falling short of certainty.

18

19 Therefore to meet the standard one
20 must be able to reason that theres a liklihood, had
21 the evidence been disclosed results would have been
22 different. In this case the prosecutor based alot of his
23 first aggressor and closing arguments on the unsupported
24 Statements "Mr. Gray was starting fights at the Mart". All the
25 witnesses Stated I didnt act aggressive toward them besides
26 one Mathew Kirk, who stated he seen Mr. Gray at the Mart
27 and that there were two people in White t-shirts, Only Mr. Gray
28 had on a White t-shirt. So there was alot of weight

1 on the Surviellance, which would have
2 Shown Mr. Gray was not acting aggressive or Starting
3 altercations at the Mart.
4
5 The video would re-butt the first aggressor
6 instruction which many courts have stated the
7 instruction essentially renders Self defense useless.
8 Meaning Mr. Gray would be able to present a more
9 Supported and full defense, with the disclosed evidence.
10
11 The prosecutor also fabricated evidence by
12 Stating the defendant had the folding knife at the
13 ready as he taunted the "victim" in an attempt to
14 get him to re-engage. Mr. Gray has a copy of an e-mail
15 the prosecutor sent to his trial counsel Kris Jensen in
16 Which the prosecutor states that he is considering
17 amending Mr. Grays charges based on the fabricated
18 fact.
19 To prevail on claim based on prosecutors presentation
20 of false evidence the defense must show 1.) the testimony
21 or evidence was actually false 2.) the prosecutor knew or
22 Should have known that the testimony or evidence was
23 actually false, 3.) that the false testimony or evidence
24 Was material.
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1 The evidence or testimony is false, In the police reports
2 and even on the Stand witnesses Ryan Leverenz and
3 Coral williams Stated they observed no weapon. The
4 alleged "Victim" Stated he didnt even know he was
5 Stabbed until afterwards, The only statment the
6 prosecutor could have tryed to infer his fabricated
7 or false fact from is Witness Leo Mattox
8 Statement to police that "Travers ran at Gray right
9 after Gray called williams a "whore". Travers came
10 toward Gray, running at him like he was going to
11 tackle him, Gray then turned around and started
12 walking backwards, reached behind toward his
13 side, then swung his hand into traverse side",
14
15 This later statement does not support the prosecutors
16 claim that "Mr. Gray had the Knife at the ready as he
17 threatened travers to re-engage. In fact all he could
18 assume is after a verbal argument Travers ran at Gray,
19 Gray then reached for his Knife, witnesses Stated
20 on the stand they seen Grays hands he had
21 nothing in them during the argument and
22 what Mr. Gray believes was his withdrawal.
23
24 The prosecutor should have Known it was false
25 The witness statements both on the Stand and
26 in the police reports show I did not have the
27 Knife at the ready, or threaten travers to
28 re-engage.

1 The False or Fabricated evidence is
2 "Material" because the prosecutor stated
3 the fabricated fact to the jury multiple
4 times and in closing arguments told the
5 jury to find the premeditation element of
6 attempted murder based on the "Fact".
7 See page 79 of the Verbatim Report of
8 Proceedings, lines 13, 14, and 15 for Dec, 6th
9 and 5th, 2011. This prejudiced the jury into
10 believing Mr. Gray called Travers to rush at
11 him while having the knife readily concealed.
12
13 (False evidence is "material" as required to
14 prevail on claim of prosecutors presentation of false
15 evidence, if there is any reasonable liklihood that the
16 false evidence could have affected the judgement of
17 the jury). Stated in **HEIN v.s SULLIVAN**, 601 F.3d 897 C.A.9 (CAL.) 2010
18 There is a reasonable liklihood that they used this
19 fabricated false evidence to meet the premeditation
20 element for Attempted Murder because the prosecutor
21 told the jury to do so. This violated my right to due process
22 under my 5th and 14th united States constitution also
23 my right of due process under Article 1, section 3, of
24 my Washington State Constitution.
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1 The State is supposed to prove every element
2 beyond a reasonable doubt, and every element must
3 be proven to convict someone of a crime. The
4 prosecutor based an element on false and or
5 fabricated evidence, rendering the conviction invalid.
6
7 CLINE v.s WAL-MART STORES, INC., 144 F.3d 294 (4th cir 1998)
8 (New Trial must be granted if verdict 1.) is against
9 clear weight of evidence; 2.) based on false evidence; or 3.)
10 will result in a miscarriage of justice.)
11
12 DEVEREAUX v.s ABBEY, 263 F.3d 1070-75 (9th cir 2001)
13 (There is a clearly established constitutional due process
14 right not to be subject to criminal charges on the
15 basis of false evidence that was deliberately fabricated
16 by the government.)
17
18 This also prejudiced my jury by exposing them
19 to facts not offered in evidence under-
20 ESLAMANIA v.s WHITE, 136 F.3d 1234 (9th cir 1998)
21 violating my confrontation rights, cross-examination,
22 effective assistance of counsel, and a fair trial
23 by an impartial jury all embodied in the 6th
24 United States constitutional amendment.
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1 The prosecution again committed misconduct
2 by Stating the alleged Victims Statement
3 "your right I would have done the same". Was
4 hearsay.
5
6 STATE v. JONES, 144 Wash.App. 284, 293, 183 P.3d 307 (2008)
7 (A prosecutor commits misconduct by misrepresenting
8 the facts of or in the record.)
9 Witness Leo Mattox in a pre trial interview
10 with Mr. Grays counsel at trial Kris Jensen Stated
11 that the alleged "victim" Travers had gone to Mattox house
12 to thank him for helping aid his injury until the ambulance
13 had arrived. Mattox then stated "you brought that on
14 yourself, if you would have ran at me like that I
15 would have shot you between the eyes" Travers reply
16 was "your right, I would have done the same".
17
18 A statement is not hearsay if the statement
19 is offered against a party and is A.) His own
20 Statement in either his individual or a representative
21 capacity B.) A statement of which he has manifested
22 his adoption or belief in its truth,
23 The statement was offered against his own party,
24 it goes against the states case. Its his own statement.
25 in his individual and representative capacity because he
26 Stated it to witness Leo Mattox.
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1 And he did manifest his adoption or belief
2 in its truth, "your right" basically stating Travers
3 believed it was true that he brought it on himself,
4 and "I would have done the Same" meaning I would
5 have used deadly force to defend myself, this
6 Statement is So contrary to the case Its believed
7 It wouldnt have been Said unless he believed it to
8 be true, making it an exception to the hearsay rule
9 under "Declaration of Interest" also.
10 So under the hearsay rule and atleast
11 one exception it was not hearsay. The prosecutor
12 argued it was hearsay and it was not admissed
13 at the 3.5 hearing though Mr. Gray has put
14 in numerous hand written motions showing not only
15 that it should have been admissed, it should
16 have had his case dismissed. The prosecutor
17 Misrepresented the fact and it resulted in
18 an abuse of discretion, miscarriage of justice,
19 and violated my right to effective assistance
20 of Counsel.
21
22 The prosecutor also expressed his personal
23 opinion before the jury Multiple times and under,
24 U.S. v.s. GALLOWAY, 316 F.2d 624 (6th cir 2003) it States:
25 (A prosecutor cannot express personal opinions before
26 the jury.)
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1 PEOPLE v.s TERRITORY OF GUAM V.T. ORRE, 68 F.3d 1177 (9th cir)
2 States; (Prosecutor may not assume prejudicial facts
3 not offered in evidence, nor may he insinuate possession
4 of personal Knowledge of facts not offered in evidence.)
5
6 In page 80 of the Verbatim report of proceedings
7 for december 5th and 6th, line 7 to line 9 the prosecutor
8 Stated; "luckily thats when the officer arrived, because
9 I am pretty sure Leroy Travers would not be here
10 today if that officer had not arrived.". This was a
11 prejudicial opinion stated to inflame passions in the
12 jury. Then in page 84 of the same verbatim, the
13 prosecutor assumes a very prejudicial opinion again
14 in lines 15 to 18, by stating "probably embarassed
15 him in front of his friends that he got knocked
16 down, so hes going to finish the job. so first aggressor
17 that alone eliminates self defense".
18 The prosecutor also violated the pre trial
19 order pre-cluding the word "victim" alot during
20 his explanation of the elements of the crime
21 to lessen the States burden of proof, and prejudice
22 the jury. see CrR 7.4(a)(2) also see -
23 State v.s Perez-Mejia, 134 Wn.App. 907, 143 P.3d 838 (Div 1, 2006)
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1 The primary purpose of trial is to determine
2 whether any crime was Committed and, therefore
3 whether there is, in fact, a victim. The use of the
4 term "Victim" during trial is inappropriate because
5 the term assumes that a crime has, in fact,
6 occured before the state has put on any proof.
7 This term assumes facts that are not in evidence,
8 lacks foundation, and is leading in nature.
9 See generally, ER 701.
10
11 Even if individually one of these errors
12 were harmless, There were so many prejudicial
13 errors committed by the prosecution that
14 combined they were very prejudicial and
15 an accumulation of errors may be grounds
16 for dismissal and or New Trial.
17
18 The prosecutors misconduct, especially
19 with withholding or Suppressing evidence, fabricating
20 and or presenting false evidence and, misrepresenting
21 the facts of the record by stating travers incriminating
22 Statement as hearsay detrimentally affected my
23 rights, and surely resulted in a miscarriage of
24 justice.
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2 Also Mr. Gray after bieng knocked out and Kicked
3 in the head got up and "Withdrew" over 400 feet.
4 Travers stated he knew gray didnt have a gun
5 So even with the states argument that
6 "The defendant yelled threats back at travers" the
7 threats would be meritless. Coral williams,
8 Travers's girlfriend and States witness stated
9 on the stand that Travers ran at Mr. Gray
10 because he called williams a name.
11
12 Obviously it was not because travers felt
13 threatened but because he was angry that
14 he decided to re-engage Mr. Gray. If
15 Words alone are not sufficient provacation,
16 and Travers wasnt threatened into pursuing
17 further aggressive action then Mr. Gray's
18 "Withdraw" was indeed just that a "Withdraw"
19
20 Many cases they invalidate the "withdraw" section of
21 self defense based on the fact the victim is
22 usually forced into action by feeling threatened.
23 In this case they stated Travers and Grays
24 verbal argument invalidated the withdraw, that
25 is an error, mere words alone do not give rise to
26 apprehension of harm. This constitutional error
27 could go under both abuse of discretion and
28 misconduct of the prosecution, and is a
29 violation of the defendant right to a fair
30 trial under his 6th U.S.C.A.
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2 NEWLY DISCOVERED EVIDENCE

3

4 Mr. Gray had a friend with him by the name
5 of Tony Goodnow, who was a witness to
6 Mr. Grays self defense act. He was interviewed
7 after the trial by Mr. Grays sentencing counsel
8 Lisa Mulligan, he stated Travers kept rushing
9 Mr. Gray and that Travers also got in Tonys
10 face first showing he was aggressive.
11 His statement would shed new light on
12 the first aggressor issue, so it could change
13 the result of the verdict.
14 The evidence was discovered after the
15 trial in the interview with Lisa Mulligan. It
16 could not have been produced before because
17 if Kris Jensen had his investigator look as
18 painstakingly as he claimed then it could
19 not be discovered before trial.
20 The evidence is material, theres a reasonable
21 probability that the first aggressor instruction
22 would have been rebutted.
23 Therefore the Newly discovered evidence
24 standard is met.
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1 INEFFECTIVE ASSISTANCE OF COUNSEL

2 Mr. Grays former Trial Counsel Kris Jensen was
3 ineffective because he failed to conduct a pre-trial
4 interview with States witness Mathew Kirk. Matt is
5 the only witness who Says Mr. Gray was aggressive
6 prior to the incident, though he Says there was
7 two people wearing white t-shirts, one was aggressive,
8 I was the only one in a white-t-shirt.
9 Kris Jensen was ineffective for not conducting
10 a pre-trial interview into this important area.
11 The Counsel was also ineffective
12 for not bringing fourth Mr. Grays witness
13 James Starr, He stated he couldnt find Tony
14 Goodnow but he had a pre-trial interview of
15 James Starr and Knew from his statement
16 he was a valuable witness. Mr. Gray stated
17 he wanted them brought fourth and counsel
18 did not listen, or consult him about it. Instead
19 he just made up his own reasons not to bring
20 them.
21 Few rights are more fundamental then that
22 of an accused to present witnesses in his own
23 defense. See-
24 HAWKINS v. COSTELLO, 460 F.3d 238 (2nd cir) 2008
25 RAMCHAIR v. CONWAY, 601 F.3d 66, (2nd cir 2010)
26
27
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1 IRREGULARITY OF THE PROCEEDINGS
2
3 While the Jury was present the honorable
4 judge called Mr. Gray up for a sidebar, as
5 Mr. Gray, Rose up the correctional officer
6 Stood up and yelled "what are you doing,
7 Sit down".
8 This led the jury to see that Mr. Gray
9 was in custody which is a violation of his
10 rights, and serves also as a basis for
11 new trial. Because I did not recieve the
12 sidebar transcripts I cannot pinpoint
13 the incident but there is a mentioning
14 of it on page 87, line 3. Then on page
15 99 of the supplemental verbatim transcription
16 of audio CD of proceedings for November
17 29th, 2011, (which is used for latter fact using
18 page 87) The judge asked if the correctional
19 officers changed there policy to fit a Supreme courts
20 ruling to allow the defendant to be allowed
21 to approach the bench for sidebars, the
22 C.O stated no, violating my rights to
23 be treated equal under my 5th and 14th
24 U.S.C.A.
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1 ABUSE OF DISCRETION

2

3 Abuse of discretion occurs when the trial
4 courts ruling was manifestly unsupported by reason.
5 The statement that Mr. Travers made was not hearsay
6 as I proved in the prosecutor misconduct section.
7 The prosecutor improperly labeled it hearsay though
8 under the hearsay rule, res gestae exception and
9 the declaration of interest exception it was not hearsay.
10 It was improperly precluded at the 3.5 hearing,
11 and was the truth in the matter asserted.

12 CONCLUSION

13 The lower courts conclusions are unsupported by
14 either the record or the facts of the case. The
15 accumulation of errors and prejudicial errors
16 that occured are of a constitutional magnitude
17 that if uncorrected will result in a miscarriage
18 of justice.
19 Therefore I ask the honorable court
20 to dismiss my charges based on the brady violation
21 and or the fabricated element alone. In the
22 alternative I ask the court grant a new trial
23 based on all the errors that occured that serve
24 basis for new trial, I also ask for any other relief
25 this court feels is necessary.
26 Respectfully Submitted
27 Dated this 19th, day of May, 2013 Ronald L. Gray III
28. Appellant