



Superior Court of the State of Washington
for the County of Spokane

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April 7, 2017

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*Re: Robert E. Larson; Tyler W. Gassman; & Paul E. Statler v. State of Washington
Case No. 2014-02-00090-6*

Dear Counsel:

This matter comes before this Court following a remand issued by the Court of Appeals. In reversing this Court, the Court of Appeals concluded that the plaintiffs' convictions were vacated based upon newly discovered evidence. Given this ruling, the plaintiffs have proven all but one element of their claims – that they did not engage in any illegal conduct alleged in the charging documents. As to this element, the Court of Appeals ruled that this Court erroneously imposed a heightened burden of proof upon the plaintiffs. As a result, this case was remanded back to this Court on a single issue, that being "a factual determination [as to] whether the claimants [plaintiffs] have proved by clear and convincing evidence they are actually innocent." Larson v. State, 194 Wn.App. 722, 743, 375 P.3d 1096, 1107 (2016). On remand, this Court is not tasked with entertaining additional evidence or allowing the parties to re-litigate their cases.

To prevail on a wrongly convicted claim, a plaintiff must prove, among other elements, that he or she did not engage in any illegal conduct alleged in the charging documents. RCW 4.100.060(1)(d). When this Court entered its original findings of fact and conclusions of law, it found the probable cause affidavit is included as a component of "charging documents."

Whether the Court considers the probable cause affidavit as a part of the “charging documents” is irrelevant as the probable cause affidavit is simply a factual statement used to support the criminal offenses alleged in the information. For purposes of clarity, the Court will not consider the probable cause affidavit as part of the charging documents. The “charging document” is the amended information.

To prevail on their claims, the plaintiffs are not merely required to prove they are actually innocent of committing the crime on the date listed in the information. Rather, the plaintiffs must prove by clear and convincing evidence that they “did not engage in any illegal conduct alleged in the charging documents.” *Emphasis added.* The illegal conduct alleged in the charging documents is what is alleged in the amended information, filed January 12, 2009. *See Exhibits 4, 5, and 6.*

Evidence has not been offered or argument presented that crimes alleged in the amended information did not occur. Rather, the plaintiffs claim they did not commit these crimes. The plaintiffs attempt to prove that the crimes alleged in the amended information occurred on April 15, 2008. If the crimes occurred on this date, the plaintiffs argue they could not have committed the crimes as they each have an alibi.

Rather than trying to make a finding as to when the crimes may have occurred, the Court will begin by making findings as to what evidence exists that shows the plaintiffs may have committed the crimes alleged in the amended information. After making these findings, the Court will analyze the evidence showing they may be actually innocent of the crimes alleged in the amended information.

The plaintiffs became affiliated with the crimes alleged in the amended information through two witnesses and one piece of physical evidence. First, Matthew Dunham told law enforcement that the plaintiffs were with him when the crimes were committed. Secondly, during a free-talk with law enforcement, Anthony Kongchunji implicated the plaintiffs in the crimes. Lastly, a shotgun matching the description of the shotgun used in the robberies was located at Mr. Statler’s residence.

At trial, evidence was presented that showed several robberies had occurred during the spring of 2008. Within a one week period, concluding on April 23, 2008, three separate but similar robberies occurred. In each of these robberies the victim(s) was a drug dealer, the perpetrators forced entry into the residences, the perpetrators wore dark clothing and had bandannas covering their faces, one of the perpetrator possessed a shotgun, the perpetrators sought drugs and money, and the perpetrators fled in a red pickup truck.

In the early morning hours of April 23, 2008, Aramis Turner and Jenalee Hall were robbed. Shortly thereafter, law enforcement found Matthew Dunham, his brother Larry Dunham, Mr. Kongchunji, and Nick Smith at Mr. Smith’s apartment. They also located a red pickup truck that matched the description of the truck used in the robbery, property stolen from the victims in a

nearby dumpster, and dark clothing. The shotgun was not recovered at Mr. Smith's apartment. All four individuals were arrested for the April 23, 2008, robbery.

After being arrested, Mr. Kongchunji and Matthew Dunham spent approximately one month housed together in the Spokane County Jail. During this time, they had the opportunity to communicate with one another daily. Mr. Dunham eventually admitted to law enforcement that he committed the robbery on April 23, 2008, that he committed a similar robbery on April 21, 2008, and that he was involved in the crimes alleged in the amended information. Mr. Dunham implicated the plaintiffs in the first two robberies but not the robbery of April 23, 2008. In consideration for cooperating with law enforcement and the prosecution, Mr. Dunham was granted an exceptional sentence of 511 days at a juvenile rehabilitation facility.

As previously found, after being arrested for the April 23, 2008, robbery, Mr. Kongchunji engaged in a free-talk with law enforcement. Mr. Kongchunji's goal in engaging in the free-talk was to avoid a prison sentence. After Mr. Kongchunji implicated the plaintiffs in the crimes alleged in the amended information, he discovered the State would not agree to a non-prison sentence. Mr. Kongchunji then recanted and informed law enforcement that he would testify at the criminal trial that the plaintiffs were not involved in the crimes alleged in the amended information.

Mr. Kongchunji asserts his recantation was based upon the original information he provided during the free-talk being false. He further asserts that Det. Marske threatened to charge him with perjury if he gave a conflicting story at the criminal trial. The State counters that Mr. Kongchunji's recantation was based upon him coming to the realization that he was facing a prison sentence. Mr. Kongchunji recognized the difficulties prison inmates face if they are found to have testified against codefendants. Compellingly, Det. Marske was eventually reprimanded by the Spokane County Sheriff's Office for the lack of quality of his investigation in this matter.

As previously found, this Court gives virtually no weight to Mr. Kongchunji's testimony. Mr. Kongchunji testified that he is never honest with the police. After his arrest, he implicated the plaintiffs in the crimes alleged in the amended information. Once his request for a non-prison sentence was not granted, he recanted. At trial, Mr. Kongchunji's testimony fluctuated as much as it did after his arrest. Additionally, Mr. Kongchunji has numerous convictions for theft, robbery, and burglary – all which reflect adversely on his credibility. If the Court cannot accept Mr. Kongchunji's testimony to exonerate the plaintiffs, how can the Court accept his testimony to inculcate them?

Likewise, Mr. Dunham implicated the plaintiffs in the crimes alleged in the charging documents. This was done after he previously presented numerous fabrications to law enforcement, after he had been housed with Mr. Kongchunji in the Spokane County Jail for a month, and after being promised an exceptional sentence downward for his cooperation. Further, by implicating the plaintiffs in this April 21, 2008, robbery and the crimes alleged in the amended information, his

brother, who was presumably involved in the earlier robberies, would receive the benefit of not being investigated or possibly prosecuted for these additional robberies. In short, the Court is skeptical of Mr. Dunham's testimony as he, at the time, was drug-addicted, was given substantial consideration for his cooperation, and had a motive to protect his brother from further investigation and prosecution.

Lastly, a shotgun matching the description of the shotgun used in the robberies was found at Mr. Statler's house. This evidence is, to some extent, insignificant as it was recovered from Mr. Statler's residence the day following the April 23, 2008, robbery that, by all accounts, he was not involved in. This supports the contention that Mr. Kongchunji requested he take the shotgun for safekeeping. It is also supported by the fact that the shotgun was not recovered when Mr. Kongchunji, Matthew Dunham, Larry Dunham, and Mr. Smith were all found at Mr. Smith's apartment.

Without even considering alibi, there is minimal evidence connecting the plaintiffs to the crimes charged in the amended information. However, if the plaintiffs are implicated through Mr. Kongchunji's statement, Mr. Dunham's statements, and Mr. Statler possessing the shotgun, there still exists a question as to their alibis. The crimes alleged in the amended information could not have occurred on April 17, 2008, as alleged in the original information. As previously found by this Court, Mr. Weskamp's time card proves the robbery could not have occurred on April 17, 2008. Due to the injuries Mr. Weskamp received during the robbery, he had to leave work early the day following the robbery. Mr. Weskamp's timecard shows he did not leave work early on April 18, 2008. Based upon this evidence, the Court finds by clear and convincing evidence that the plaintiffs did not engage in the illegal conduct alleged in the amended information on April 17, 2008.

The original information and affidavit of probable cause (although neither of which are the "charging documents") both allege the robbery occurred on April 15, 2008. Based upon the evidence, there exists a high probability the crimes occurred on April 15, 2008. Mr. Weskamp's timecard is useful for determining what dates the robbery most likely did not occur. As the State points out, there are at least three other dates in April 2008 that the robberies may have occurred, but it is unlikely.

The plaintiffs assert that if the crimes were committed on April 15, 2008, they could not have been the ones who committed the crimes. The State's primary witness in the criminal trial, Mr. Dunham, testified the robbery occurred while it was dark outside. Presumably this would put the robberies sometime after 9:00 p.m. Mr. Larson's time card from April 15, 2008, shows he clocked into work at 9:48 p.m. Thirteen minutes following Mr. Larson clocking into work, Mr. Statler was providing a breath sample into the VICAP machine as required by the Department of Corrections. Mr. Statler was required to be available for VICAP testing 45 minutes before and after the scheduled time of 10:00 p.m.

Mr. Gassman's alibi for the month of April 2008, consists of his testimony that during the month of April 2008 he resided in northern Idaho with his girlfriend, Elizabeth Holder. Mr. Gassman testified that he lived with Ms. Holder for approximately one year. Mr. Gassman further testified that during that period he was unemployed and never left the residence without Ms. Holder. The Court does not find it credible that Mr. Gassman resided with Ms. Holder for an entire year and never left the residence without her. His testimony is further scrutinized based upon his convictions for felony crimes of dishonesty.

Based upon the evidence, the Court finds it is highly likely the crimes alleged in the amended information occurred on April 15, 2008. The Court also finds it is highly likely the plaintiffs could not have committed the crimes on that date as the alibis presented by Mr. Larson and Mr. Statler are too close in time to when the crimes occurred. Both Mr. Larson and Mr. Statler would have been hard-pressed to make the deadlines they made – Mr. Larson arriving at work at 9:48 p.m. and Mr. Statler submitting to a VICAP test at 10:01 p.m.

More compellingly, Larry Dunham and Nick Smith both pled guilty to two counts of first degree robbery and one count of second degree assault and Matthew Smith pled guilty to two counts of first degree robbery and one count of first degree burglary, all arising from the robbery that occurred on April 23, 2008. The robbery that occurred on April 23, 2008, was substantially similar to the robbery that occurred on April 21, 2008, for which the plaintiffs were acquitted, and are substantially similar to the crimes alleged in the amended information. It is highly probable that two different groups of people did not commit these three similar robberies, especially in light of the plaintiffs' alibis.

In applying the appropriate burden of proof, that being by clear and convincing evidence, the Court concludes from the foregoing findings of fact that the plaintiffs did not engage in any of the illegal conduct alleged in the amended information. Based upon this conclusion, the plaintiffs have satisfied all of the elements of RCW 4.100.060(1) and are entitled to judgment in their favor.

Upon being found wrongly convicted, as is the case here, the plaintiffs are entitled to relief under RCW 4.100.060(5). RCW 4.100.060(5)(a) provides a wrongly convicted plaintiff may recover \$50,000 per year of incarceration, adjusted for partial years served. Mr. Larson was incarcerated from July 23, 2009 to December 14, 2012. Therefore, the State is ordered to pay a compensation award of \$169,725.12 to Mr. Larson. Mr. Gassman was incarcerated from July 9, 2009 to December 14, 2012. Therefore, the State is ordered to pay a compensation award of \$171,642.84 to Mr. Gassman. Mr. Statler was incarcerated from July 16, 2009 to December 14, 2012. Therefore, the State is ordered to pay a compensation award of \$170,863.98 to Mr. Statler.

The plaintiffs failed to present any evidence that they were subject to community custody following their release from prison. Therefore, the plaintiffs are not entitled to any compensation under RCW 4.100.060(5)(b).

Minimal evidence was offered at trial concerning any child support obligations that may have been due during the period of the plaintiffs' confinement. Since testimony was offered at trial concerning Mr. Statler's child support obligation, he may provide the Court documentation showing the payments due during his incarceration. If he satisfies this obligation, pursuant to RCW 4.100.060(5)(c) the Court will order the State to provide the child support payments owed, along with interest, to the Department of Social & Health Services for proper distribution.

Had any of the plaintiffs submitted any payments towards restitution, assessments, fees, court costs, or any other sums required by pretrial orders and/or the judgment and sentence, the Court will enter an order directing the State to issue reimbursement of those amounts as required under RCW 4.100.060(5)(d).

Since the plaintiffs were successful in their claims for wrongful conviction, they are entitled to attorney fees and costs under RCW 4.100.060(5)(e). By statute, the attorney fees are capped at ten percent of the award entered under RCW 4.100.060(5)(a) & (b). Therefore, Mr. Larson is awarded attorney fees totaling \$16,972.51. Mr. Gassman is awarded attorney fees totaling \$17,164.28. Mr. Statler is awarded attorney fees totaling \$17,068.39. Counsel for the plaintiffs may submit a cost bill before final judgment is entered.

Pursuant to RCW 4.100.060(9)(a) the Court will enter an order sealing the plaintiffs' records as they have been found to have been wrongly convicted. Lastly, pursuant to RCW 4.100.060(10), upon request, the Court will refer the plaintiffs to the Department of Corrections or the Department of Social & Health Services for access to reentry services such as counseling on the ability to enter into a structured settlement agreement, where to obtain free or low-cost legal and financial advice, community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, and mental health and substance abuse treatment.

Counsel for the plaintiffs is directed to prepare findings of fact and conclusion of law comporting with this letter decision. A presentment date is scheduled for Friday, May 12, 2017, at 8:30 a.m.

Sincerely,



JOHN O. COONEY