

Case # 30879-1

FILED
FEB 07, 2013
Court of Appeals
Division III
State of Washington

**Statement of Additional Grounds
For Review**

State of Washington

v.

Floyd Edward Koontz

COPY

page # 26 Issue of Brief

B#1. I have a bill of sales made out by Pete Flores and Jeri Anderson on June Fourth 2010 this is where the confusion lies, I came there to pay Pete Flores the first down payment of 250.00 dollars. As discussed by Jeri Anderson in the court transcripts, when Pete pulled a knife on me it was laughable a pocket knife which he dropped and I stepped out of the door separating myself from Pete. He was showing off for the two ladies Jeri Anderson and her sister Dierae Chambers. The ladies came over to get high with Pete and I was not part of that. I stood outside for 20 minutes, finally I yelled to Pete and said do you want the money 250.00 down, now as it says in the Brief that I was now embarrassed; and that is laughable because ~~was~~ not embarrassed in any way. I had already put 350.00 dollars into the truck just to get it movable and Pete still had the title there was complete trust between Pete and myself. There was a friendship between us, he even loaned me tools I needed to fix the truck and that job took me 2 months. Prior to June 4th 2010 off and on as time allowed,

page 2-26 B. Issue

No. 2

The Defendant did Testify to the fact that the alleged victim did attack him with out warning or provocation.

But the Defendant did not testify to the fact that NO witnesses saw the Beginning of the fight that cumulated ~~in the fight that cumulated~~ in the stabbing death of the alleged victim

I testified as shown in the transcripts that when I arrived Majin Saldana was standing by Pete Flores holding a knife and that Pete Flores was filing the cutting edge to sharpen it. Both he and Pete Flores were armed. And as to the statement recorded in this brief that says no witness saw the beginning of the fight that is out of context and untrue as I stated in my testimony; there was no fight I was attacked and fled for my life. upon seeing my little dog holding off Majin Saldana I shook my finger at him in essence asking him to stay away from me and fled after putting my dog in the car

page 2-26 Issue

B.4

This part is very out of context
I was at Pete Flores's home on
June 4 2010 To Buy the truck, as
the Bill of Sales Shows, Two weeks
after I'd payed our agreed down
payment I went by taking Mike Collins
To drive the truck to my house, And
Still There are no problems, on
July Fourth; The agreed payment day
I again went to Pete's house
He and Majin Saldana were both there
I told Pete the motor was no good
and I wasn't going to sink any more
money into it, and he could have
it back, He Pete Flores Said that
he wouldn't give me my money back,
And I said that's fine just come
get the Truck, And Majin was a
witness to that I did not see Pete
again until May 8 2011. That Truck
I Bought I put Lisence tabs Insurance
and Transferred Title I had 600.00
hundred dollars in the truck before
I had it fixed to move, and Pete
still had the title, which he did give me
this was total trust on my part
and on his as well, As Friends

page 4-26 Issue #4

on June 4 when I got my Social Security check I went down to pay the down payment and get the title so I could transfer title and license and insure the truck which I did at Rick Whitley insurance in Sunnyside Washington, and I can honestly say that I suffered no embarrassment from Pete, if I am not embarrassed by dressing like a woman that would not embarrass me either, it was a very non-threatening incident as Pete was occasionally a little nutty, other than that he was a very good friend to me.

THE EXHIBITS OF MAY 8 2011

page 443 Derk Artz

States Exhibit "39"

These were taken by officer Artz at Kadlec hospital

these were taken at my residence in Bentoncity

page 447,448 and states exhibit "40, "41

these wounds across my collar bone I recieved while tring to
flee, but could not get the car door to the car open fast enough.

I was stabbed 8, to 10, more times when mr Flores was tring
to stab me over the now open car door.

Exhibit "42 are the wounds in upper chest

page 448,449 states exhibit "43,"44,"45,

Exhibit, "48, chest area

Exhibit "52, blood on the crotch area of my jeans where Pete
fell upon his knife, the resulting wound on his back to the
flank area.

page. 450, Exhibits "55, "56, "57, "58, "59,

page, 456. Exhibit "64 bruse from the first contact of the
machette PETE FLORES ATTACKED ME WITH, THIS BEING THE FIRST
POINT OF CONTACT

Pete Flores swinging it with his left hand or left arm.

page. 451,

Q.A. Officer Derk Artz.

Lines 18 through 25

The testamony given as to my sobroity or mood or the clairity
of my comunication skill, deputy Artz stated He understood me
perfectly clear.

THE STATEMENTS OF WITNESSES TRIAL

pages 456

17 through 25

page 458, line 19, through 25.

page 460 full page

page 462, line 9, through 25,

page 472, page 473, all

page 483, line 1, through 15.

page 485, 6, through 25.

page 493, Bob,s testamony through page 494,

page 536, the file marks on the glove of Pete Flores

page 538 stab wound cutting the shirt

page 551, line 21, and 22,

Washington State Court of Appeals
Division III

STATE OF Washington
Plaintiff

v.

Floyd E. Koontz
Appellant

Defendants Motion
No. 3087-9 on Memorandum of
Additional Grounds

Appellant's
motion
to Compell

Superior Court
No. 11-1-00647-1
Court of Appeals
No. 30879-1-III

I Floyd Koontz Respectfully Request That This
Honorable Court accept This motion on Additional
Grounds.

#1. In closing the trial Judge Admits to knowledge
of conflicting Testimony throughout the whole trial and
not knowing what was truth or lies. During the reading
of the guilty verdict said "Guilty of Manslaughter
In the First Degree 1/6 beyond a reasonable Doubt.
with out the conflicting and untruthfull testimony from
the wittnesses who admitt not seeing and/or not Being
at the scene of the crime, The State Lacks any

Evidence to support the charge.

2 Bench Trial Judge vs. Trial Jury
Judge / prejudicial past events used
at the Trial, Events that were used
at the Trial, Events that happened 11
months before offence was committed
used in the Trial to wit: a confrontation
where the Defendant was pushed out.

of the victims house and told not to return without money owed. THIS in its context CANNOT be used to describe A persons actions, emotions, or knowledge of events 11 months later.

U.S constitution art 1, section 3 of the Washington state constitution "entitled to a trial free from prejudicial error". Bench trial the judge must be held to a higher standard than a trial by jury. Therefore its presumptive prejudicial for a motions judge be the same as the trial judge and to include testimony of witnesses about prior events.

Cases listed for assignments of error:

ER 404(b) Forbids evidence of prior acts.

ER 404(b) provides "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. It was improper to judge events that happened 11 months prior to judge the frame of mind of either the victim nor the defendant.

see:

State v. Evans, 96 Wn.2d 1, 5, 633 P.2d 83 (1981)

State v. De Vincentis, 150 Wn.2d 11, 17, 74 P.3d 119 (2003)

State v. Lough, 125 Wn.2d 847, 853, 889 P.2d 487 (1995)

State v. Foxhoven, 161 Wn.2d 168, 175, 163 P.3d 786 (2007)

State v. Smith, 106 Wn.2d 772, 776, 725 P.2d 951 (1986),

quoting, state v. Saltarelli, 98 Wn.2d 358, 362-63, 655 P.2d 697 (1982). De Vincentis, 150 Wn.2d at 17

State v. Myers, 49 Wn. App. 243, 247, 742 P.2d 180 (1987)

State v. Jackson, 102 Wn.2d 689, 693, 689 P.2d 76 (1984)

State v. Sexsmith, 138 Wn. App. 497, 505-506, 157 P.3d 901 (2007),

review denied, 163 Wn.2d 1014 (2008)

State v. Thang 145 Wn.2d at 642

3. Flight as guilt:

THE state has made references to flight as being guilt when Mr. Koontz left the scene of the crime instead of waiting for the police.

He left the scene for fear of his life as supported by evidence. He went to his friend Bobs who lived close by purely out of shock, he then went home to change the the clothes he deficated in from the fear he just endured. He was contacted by police before even exiting his car in the driveway of his own residence.

Testimony from the arresting officer was that Mr. ~~Frank~~ Koontz was very compliant to commands and claimed self defense for fear of his life from very first contact. Consistiting testimony all through trial proved his fear of being harmed or killed himself.

Cases listed for assignment of error:

State v. Nichols, 5 Wn. App. 657, 660, 491 P.2d 677 (1971)

State v. Freeburg, 105 Wn. App. 492, 498, 20 P.3d 984 (Div 1, 2001),

citing, State v. Jefferson, 11 Wn. App. 566, 571, 524 P.2d 248

(1974), quoting U.S. v. Robinson, 475 F.2d 376, 384 (D.C.

Cir. 1973)), Wong Sun v. United States, 371 U.S. 471,

483 n. 10, 83 S. Ct. 407, 9 LEd. 2d 441 (1963).

"We have consistently doubted the probative value in criminal trials of evidence that the accused fled the scene of an actual or supposed crime". It is precisely because of this that "While the range of circumstances that may be shown as evidence of flight is broad, the circumstances or inferences of consciousness of guilt must be substantial and real, not speculative, conjectural, or fanciful." *Freeburg*, 105 Wn. App at 498, citing, *State v. Bruton*, 66 Wn. 2d 111, 112-113, 401 P. 2d 340 (1965).

4. THE courts erred and abused its discretion when it allowed phone conversations between Mr. Koontz and his investigator to be played to the courts.

THE courts ruled that the investigator Stephanie Barnes was not part of Mr. Koontz legal team therefore allowing the recorded conversations be played.

The courts erred in its ruling. Even though Stephanie Barnes was no longer a part of the defense team, at the time the recordings were made she was! Ms. Barnes even had files at the time of the calls given to her by Mr. Klein to better help her with the investigation. For the courts to later rule she was not part of the defense team was abuse of its discretion. Therefore the phone recordings shouldn't of been admissible.

Closing:

THE DEFENDANT Wishes the courts to recognize the FACT, as all testimony has proven, there was never anything given nor proven of any aggression or physical action from Mr. Koontz prior to May 8th. For the defendant Mr. Koontz to think he was not welcome and that there was a possibility of a life threatening altercation may occur if he returns to his friends property over a \$250 debt is absolutely ludicrous AND the courts abused its discretion when it wouldn't allow a self defense theory because he was the aggressor. Furthermore it was an abuse of discretion to allow the aggressor theory be granted when there was no proof or history of violence or aggression from Mr. Koontz. The testimony used by the courts to prove its theory conflicts with the courts finding of facts where it states its concern about conflicting testimony between Desirae Chambers and Jeri Anderson. ~~It~~ It also states its concerns about all three witness Desirae Chambers, Jeri Anderson, and Majin Saldaña not the courts not being able to determine the difference between what's truth and what's lies. The courts used these testimonies to determine that Mr. Koontz was the aggressor with no

one physically seeing nor hearing the beginning of the altercation to which caused the death of his friend Pete Flores. Through other testimony given about Mr. Koontz no where was it said that he was being deceitful nor did the judge or any investigating officers say or prove he had conflicting testimony. In fact he had testimony from a minister he's known all his life testify that Mr. Koontz has always been a honest person and had never lied or been dishonest that she was aware of.

THEREFORE Mr. Koontz the courts knowledge of events is best said AND should've been considered as self defense and proof that he was not the aggressor from the testimony he gave about his friendship and of the events on May 8th. Mr. Flores could've called the cops and went into his house if he felt he was in danger especially since he had prior warning from Desiree Chambers that Mr. Koontz was on his way over and that he was upset, instead when Mr. Koontz shows up he takes the law into his own hands and attacks Mr. Koontz. As proven by testimony given he Mr. Flores has aggressive behavior and can be extreme when combined with a Meth addiction. Lab reports put the concentration of Meth in Mr. Flores at 3X the normal

user the day of MAY 8th. Mr. Koontz maintained self defense all through this case and no physical nor testimonial evidence proves he was the agressor. In testimony given by Mr. Koontz it states he did not take the truck to which the first confrontation stemmed from that Pete had physically and aggressively thrown him out of his house not off his property, but then he came back at a later date to retrieve the truck. He had no altercation at that time because he had no fear of trouble because of the friendship he had with Mr. Flores. For the courts to use that first incident to determine as to whether or not Mr. Floyd Koontz knew a conflict may occur and that a death could happen 11 months later is a abuse of discretion. To best describe Mr. Koontz relationship and his frame of mind during the events that took place the courts should recognize and take into consideration as to what Mr. Koontz says to the family of the victim:

Mr. Koontz: I would have never imagined something like this happening to me, and Pete was my friend despite what all these people have said in court. Pete was my friend. I loved that man.

Now, had I known he had a problem with me I wouldn't have gone there, but when

I WAS at DeZaree Chambers house she said she made a phone call I SAW her make it. she said Pete wants to see you. So, to me that's an invitation to go see Pete. OKAY. Her next words out of her mouth was I wouldn't go there if I WAS you. THAT WAS A WARNING and it went right over my head because I, you know, what, what's the warning about my friend? I, I've known this man for years. OKAY. So there was no, there WAS, I didn't expect it sir. Any, Any shape way or form and I, and I, and I made, I made a couple of drawings that I wanted to give the court and one to the family.

I, I had a letter that I wrote to the family. I need to read it because I, I can't remember.

For the Flores Family. You don't know me, but I Am a kind, soft, gentle soul. Every person on the witness stand the people who testified against me have robbed me over drugs. Monica Parrick \$265.⁰⁰ DeZaree Chambers \$750.⁰⁰ dollars and the reason it gets, that they despise me is, is I work. I have three jobs. I make money. I always have money and I'm kind of a, a little flamboyant about my money and, and maybe that's another reason that they, that I bother them.

Anyways, I work for Mr. Sharton down in Sunnyside cleaning stalls in his barn. I clean

STALLS for his horses. I Feed his cattle.

I work for Mr. Gibbs up in Benton city. I Feed his cattle. These men are in fact in their 80's and I work for the new owners of Sharton trucking Jerry and Carol. I unload railroad CARS of steel part time. I own my own business. I have in the past picked berries for Wycott farms. I am honest. I have always, I always have money and I always support myself on what I earn. These people are the reason that I was moving to Colorado and many other people just like them. Pete is not included in that. Pete is not included in that!

I wanted to start off fresh and breed rottweilers and English bull terriers. I had seven beautiful dogs and I just bought 10 acres in the blood of Christ mountains on the eastern rim of the Rockies. I've lost everything.

I gave Pete that truck back and let me tell you about my friend Pete. I could go to Pete with any problem and he would listen. Pete and I had a very good relationship. In our, in our interaction together I had bought two 40 pound bags of dog food for Pete one time because he had a dog named sugar and I also took groceries to his house \$40⁰⁰ dollars worth of groceries and I butchered livestock regularly

and I, and I gave him money or I gave him meat out of my freezer. I had a lot of meat and he was a friend. I stayed at Pete's. I fixed up his spare bedroom, my bedroom. I have two items that Pete gave me that belonged to his mother, Did you just hear what I just said? I loved Pete and help me selling me the truck and I took him at his word and its true when I decided to go to Colorado Pete and I talked about the truck. Majin was there. THE SAME MAJIN that says he never met and even before Dezaree WAS there this is when the incident when he was on the phone calling 911 yes, Floyd Koontz did this. You see he lied and everyone of those witnesses lied because they are scandalous dope fens. I have never known any of them that have a job in the years, in the 7 years I've known them. None of them and, and I, and I do. I support myself.

I've been alone since 1994. Pete was also alone and really lonely and those women are responsible for Petes poor financial situation this Dezaree and, and Jeri. All the ↓

Pg. continues on next page →

money These women wormed out of him, I
Hey come on you guys you see this was
the real Issue, He (Pete) was losing his
home, He had no water or power, and
Jeri stated she was with Glen now
and Glen is another drug dealer, and
I have personally bought drugs from Glen
myself at a time.

The court: Just a moment.

Mr. Koontz ... years ago.

The court: Hold on a second, Please, Go ahead

Mr. Koontz: I asked, okay, if Jeri Anderson
was with Pete which I doubt she was,

It didn't take her long to get with Glen.

Okay, And the phone call, That was between
Deserae and Pete was between her and Pete,

And she sent me There To Pete's, no other
phone calls went through or were taken,

By Pete Flores, he Pete was losing his house,

He was hurt, He was angry, and I owed
him money, (in his mind) I only bought

the Truck To help out Pete really. yes

I needed a truck, but I spent 350.00

dollars fixing it, plus 250.00 down, just to

get it out of the drive way, Okay, He

said it was a good Truck, I believed him,

It wasn't, and I gave it back to him.

All he had to do is come and get it. He said I want give you your money back, I said That's fine, (just come and get it) Majin was standing right there when I told Pete that, No arguments, just come get the truck. I wasn't going to put any more money into it, as it was a losing proposition, and I, was just starting to plan for my trip to Colorado and this was in July the 4th 2010. (this day was my first payment to Pete on the Balance, when I decided to give back the truck.) Pete never came for the truck I was trying to put all the money I could aside for my move, and the other truck I bought. It was a piece of junk too and I ended up putting 5,000 dollars in it just so I could get my trailer to Colorado, because I have a 28 foot self contained Trailer, And I took 5 to 6 months of working on that truck just to get it ready to go, And it hurts my heart to sit here and have all these people lie about me here on the witness stand. If you talk to Mr Sartan Pete Sartan of Sunny side ask him about me.

He caught a lot of flack hiring me, you see I was labled a level 3 sex offender 20 years ago and I was branded for that crime. Oh Im out there, but who does it hurt for me to dress like a woman, not you not me, OK Pete accepted me. He stood up for me in front of all his friends. I would never hurt pete, and despite what you think you know, you dont. Pete was my friend and I have no Idea what Deserae said in her phone conversation, but That phone conversation was over before anything about pete ever came into the conversation between her and I. And she sent me there, and out of courtesy I went to see Pete. Okay. You heard my side of the rest of this, As God is my witness, and I dont say those words lightly, as God is my witness, I told the truth and I am sorry for the loss of your little brother, your husband, and your father. I Truely am sorry That you had to go through this. How do you think I feel? Pete attacked me and died leaving me holding the bag, my Truck's gone, my whole life ruined, everthing Ive worked for gone, my dogs gone, my Trucks gone, my personal Things gone, I dont have brothers like you, who can help me out of a tight jam. its just me,

But most of all, I lost a friend, all that other stuff can be replaced, But not my friend Pete Flores. The only friends I have now in this world are Mr and Mrs John Cronquist, Pete Flores, Tom Bunce, and Bob Murray, and I don't know if you noticed or not, but Bob was really nervous when he was up here on the witness stand. He wanted to help me so bad. We've lost seven friends this year, Mike Collins, I just mentioned driving Pete's truck home, died in January of a heart attack 59 years of age. Besides John and Liz I only have Bob and Tom left of all my friends. So I pray in my hearts that you don't feel justified in seeing me punished, or in some way that this is just, because you need to blame the lady who sent me there to die, and we will never know what she said to Pete. I saw her make the first and only phone call that Pete picked up, and I was talking to Jerry as I was leaving. Dezerae hung up, Pete never took any other calls. That's when Pete came into the conversation, and Dezerae Chambers sent me there. No Pete was extremely high, and he was losing his house 14 months earlier. I went ~~there~~ with Pete, ~~to Pete's~~ and ~~we went~~ Credit

UNION, To my Bank,

And we went to his credit union and then we went to the new credit union, The Harpo community credit union to refinance in my name. You know nothing of me, I tried to help him (Pete) and another thing, I'm on Social Security I get 939.00 a month. we (Pete and I tried) Tried to get my check directly deposited to his account on the remaining 18,000.00 plus balance. Money that he borrowed to bury his step mother, The place where he lived she gave it to him, she gave it to him when she died. He refinanced and got 18,000.00 to bury her. and so that is what it was This 18,000.00 dollars against his house. I was going to directly deposit my check into his account. Check my story go to Pete's credit union or and, the other Harpo Community credit union, on 6th there by the Beauty School. Hear this why would I gubble over 250.00 measley dollars. ~~Come on people~~ I owed Pete? It would be the other way around dont you think. I have a 1,000.00 in my bank come on. Again I'm sorry for the loss and my heart goes out to you, That you have had to go through this ordeal, but its even worse for me because I've lost a friend and you dont go around killing people or theateing people over 250.00 measley dollars. , Come on you people are smarter than that.

And I hope, I hope as men you will look at this objectively, and again, I'm sorry, I'm sorry for the death of my friend Pedro Flores.

You see, Majin was hiding something, and I don't suppose we'll ever know, you might get to the bottom of it with Majin, like what happened to the butcher knife, you ^{see} Pete was filing the edge of that knife when I pulled up.

I wish you could have helped Pete, and I'm talking to the brothers here. I wish you could have helped Pete save his house. I wanted to buy the place and fix it up, not tear it down. Pete could have stayed as long as he wanted with me. And I'm sorry, I truly I didn't mean come off sounding harsh, but I'd be more than glad to sit down and talk with you over this whole thing and I know there was a lot of evidence that was overlooked.

You see I fled for my life all guilt then pointed to me at me, which was really bad for me. I was in, I was in fear and traumatic shock, fear and terror. I shit all over myself, and I don't really remember getting into the car, and I don't remember leaving, and I do I, I had no way of assessing further attack on me. All I knew was I was attacked and it was very scary.

And I have nightmares and in my nightmares Deserae Chambers and Majin and Pete all three are, are trying to kill me, hold me down and stabbing me. It is my belief that Deserae is responsible for Pete doing what he did and ~~conspiratorially~~ conspiratorially (sp) she should have been punished, and Majin stood by and did not restrain Pete. Had he, he'd still be alive. What were they thinking? What were they thinking while they stood there sharpening a butcher knife waiting for me to get there. Why? didn't his good friend stop him. Do you see what I, I mean. They went to murder me in cold blood Majin and Pete and truthfully I think Deserae thought I had money. I always carry a lot of money. (That being) (also) I was leaving for Colorado. And they went to kill and Rob me.

God Bless you all and I mean that. Pete was my friend. Also what could I do? What could I do? He tried to kill me and Rob me of my life over 250.00 dollars and That's bizarre.

and older brother you say you didn't go over there much well maybe you should have.

May the understanding of God find its way into your hearts!!!!

5. Entrapment - Prosecutorial misconduct - ineffective assistance of council.

On page 758 at 20-25 then continuing onto page 759 at 1-18 of the transcripts the prosecutor formed a question that could not be answered yes or no without implying he said something he never said.

Q: So you don't know why you'd ask god to help you not fight?

After denying ever saying (and not fight) his attorney Mr. Klein objected saying his client was rambling and ordered him to answer with a yes or no answer.

6. Reversal is required because cumulative error denied Mr. Koontz his constitutional right to a fair trial free from prejudice.

Reversal may be required due to the cumulative effects of trial court errors, even if each error examined on its own would otherwise be considered harmless.

State v. Coe, 101 Wn. 2d 772, 789, 684 P.2d 668 (1984);

State v. Badda, 63 Wn. 2d 176, 183, 385 P.2d 859, (1963);

State v. Alexander, 64 Wn. App. 147, 154, 822 P.2d 1250 (1992).

Reversal is required whenever cumulative errors

"Deny a defendant a fair trial" State v. Perrett 86 Wn.
app. ~~312~~ 312, 322, 936, P.2d 426, rev. denied,
133 Wn.2d 1019 (1997)

Thank you

Sworn by: Floyd Koontz
Signed by *Floyd Koontz*
Dated Nov. 7, 2012

Copy: 1 of 1

Attorney Janett Gemberling / pro se