

Case # 318621

**Statement of Additional Grounds
for Review**

**State of Washington
v.
James Bruce Hambleton**

COURT OF APPEALS
DIVISION THREE
OF THE STATE OF WASHINGTON

FILED

MAY 11 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON)

Respondent,)

v.)

James B Hambleton
(your name))

Appellant.)

No. 31862-1-III

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, James B. Hambleton, 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.

Additional Ground 1

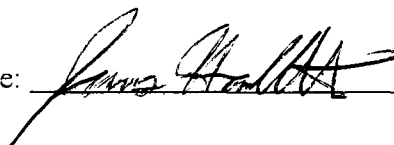
The trial court abused its discretion when it admitted photographs of generators, without authentication pursuant to FR 901(a)

Additional Ground 2

The state violated MR. Hambleton's rights to a fast-n-speedy trial, under 60 day rule Article 1 Sec. 22 Washington Constitution and CrR 3.3 (B) (1) 1979 Bindover does not allow state to re-start time. speedy trial rule was adopted to provide not adopted by case by case analysis required by the Constitution but also with in structure of Edward Decision (94 wn 2d 208 (1980) and rule 3.3 (B) (1) 1979

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

Date: 5-5-15
Form 23

Signature: 

Additional Ground 1

The trial court abused its discretion when it admitted photographs of generators, without authentication, pursuant to ER 901(a)

Discretion is abused when it is exercised on untenable ground or for untenable reasons, *State ex rel. Carroll v. Junke*, 79 Wash. 2d 12, 26, 482 P.2d 775 (1971)

Under ER 901 a party may authenticate a recording through, "Evidence sufficient to support a finding that the matter in question is what its proponent claims."

In trial the state, by way of offer of proof explains: They're photographs taken from the defendant's cellphone that he had with him the night of the incident and appear to be photographs of generators (6/27/13 RP 76)

* Video recordings follow the same standards for authentication as photographs. *JEE ER 901 (a) (State v. Sapp Wash App. Div. 3 182 Wn App 910, 332 P.3d 1058 (2014))*

The court asks the state by way of foundational information:

Do I understand that some other witness would lay -- that would testify to the foundational information

The state: Correct (6/27/13 RP 76)

To authenticate such evidence, the proponent must put forward a witness able to give some indication as to when, where, and under what circumstances the photographs were taken, and that the photograph accurately portrays the subject illustrated. (*Id* at 593, 484, P 2d 473, *State v. Newman* 4 Wash. App. 588)

In Mr. Hambleton's case, Denver McFarland was the only witness put forward as that should have been able to give some indication as to when, where, and under what indication/circumstances the photos were taken, and that the photographs accurately portray the subject illustrated

However Mr. McFarland fails to do so this authentication on multiple occasions: 1) Q. Can you just take a look at those (indications) I know you can't say they're exactly the same generators

* Det Gregory is asked which picture matches the generators stolen and he states "None!"

Additional Grounds # 1

A: They're the same style of generator, just different makes, which they are all different makes. So, it was its the same style (11 RP 81)

2) Q: in fact, when you were initially showed the photographs of one of the generator by Detective Gregory you couldn't identify the generator could you? A: Do what now.

Q: I said when you were contacted by Det. Gregory he showed you a photograph of a generator. A: Yeah

Q: Do you remember that you weren't able to identify the generator were you (6-27-13 RP 83)

A: NO

Q: Did you get serial numbers of the generators

A: NO all I had was the shipping order, the generators had never been unboxed (6-27-13 RP 84)

Q: So you couldn't identify all of them whether they were the same.

A: NO I cannot identify all the pictures to say that what was on the BUSF property (6-27-13 RP 85-86)

The witness McFarland couldn't by way of authentication say that those pictures of generators on Mr. Hambleton's phone were what the state purported them to be; generators stolen for purpose of trafficking, from the BUSF warehouse. Further emphasizing the fact that the photographs were not authenticated and or could not be.

The court: Are you contending that any of the photographs in exhibit "A" are photographs taken of any of the stolen generators.

The state: we have no way of knowing that, your honor

The court: okay it appears to me again correct me if I'm wrong, it appears to me that they are images that one might download from the internet and store on the phone, a smart phone, rather than photographs that were taken out in the field. Do you reach the same conclusion or disagree with that interpretation (RP 89)

The state: I don't have any reason to disagree with that interpretation your honor (6-27-13)(RP 89)

Thus, the court asserts itself that the photographs of generators depict on Mr. Hambleton's cell phone appeared to be internet downloads and that they weren't taken out in the field.

The photographs in exhibit A (photos) were not properly authenticated pursuant to ER 901(a)

Additional Grounds #1

MR. Hambleton cites (State v. Sapp 182 Wn. App. 910, 332 P.3d 1062)

"Accordingly, we hold that the victim's grandmother adequately authenticated the photographs and video recordings in this case when she identified the individuals in the exhibits, the victim's approximate age, and the location depicted in the exhibits."

In Mr. Hambleton's case similarly a witness was brought in to authenticate, however distinguishably in Mr. Hambleton's case the only witness Denver McFarland could not authenticate the photographs or give some indication as to when, where, and under what circumstances the photograph was taken and that the photograph accurately portrays the subject illustrated. (ER 901(a))

Therefore the Court did abuse its discretion in admitting the photograph evidence, MR. Hambleton respectfully asks that this case be dismissed.

Dated this 5th day of May 2015

James B. Hambleton
Appellant, CBCC
1830 Eagle Crest Way
Clallam Bay, WA. 98326

Case No. 61862-1-III

Additional Grounds #2

Arrest date is Jan. 12th 2013, on Jan 14th 2013 Judge found to have probable cause to hold 72 hr On Jan 16th 2013 I was arraigned in district court (Case # PC 8824) on Burglary 2^o, and theft of motor vehicle. On Feb. 7th 2013 these charges were dismissed without prejudice (Bindover) I was then arraigned in Superior court a few days later on same charges, Burglary 2^o and Theft of motor vehicle.

The state under speedy trial rule CrR 3.3 (b) (1) 1979 by using bindover in lower court last 26 days and then re-arraigning me in Superior court does not allow the state to restart 60 day rule. The 60 day rule starts date of arraignment "commencement date" and being detained in Jail. The "Edwards Decision (State v. Edwards 94 Wn. 2d 208 1980) states that the court and state had a duty to comply with defendants time for trial within 100 days from time of arraignment to trial date. Bindover being 26 days, and then time of start of trial 142 days later puts the violation (Article I Sec. 22) my right to speedy trial at 168 days well over the amount of time given by court rules 3.3 (b) (1) 1979. Speedy trial rule was adopted to provide degree of specificity not provide by case-by-case analysis required by the constitution, but also within structures of rule 3.3.

Prosecutors decision to submit to preliminary hearing by filing in district court is not such a burden as to required that time for trial run from defendants bindover to Superior court (Edwards 94 Wn. 2d. 208 1980) has no significance if defendant was arrested earlier, and thus such a hearing does not justify revival of speedy trial rule, time limit. Attempt to avoid speedy trial rule would be an appropriate reason for dismissal sought by prosecutors, who allegedly would seek to subvert speedy trial rule by filing and dismissing charges in District and Superior courts. Thus taking advantage of exclusion of time between Bindover (District court) and re-filing in Superior court calculating of time for speedy trial, without showing legitimate reason for delay.

Where defendant was arrested and arraigned in district court for two felonies, then the same acts being dismissed and re-arraigned in superior court is a violation of constitution, and rule 3.3 states 60 days from time of arraignment not continuance after 30 days, after five months into case the state wanted to release me to federal detainer in an attempt to get more time knowing if I missed next court date (failure to appear) the the time would stop and restart once my fed time was up. (See state v. Chavez-Romero 170 Wn App 568 2012) we denied the offer to be released and opted to proceed to trial. (See state v. Kray 31 Wn. App. 388 (1982)

Additional Ground #2

I never signed a waiver of my right to fast + Speedy trial we went round + round with the state on this matter (URP Docket items pg 5-6 ln 2-25 / 4-6) with the 30 day buffer being set pursuant 3.3 was final date of June 26th 2013, but this 30 day buffer was put into place 138 days into this case, The judge should have never allowed this continuance, which puts the state in violation of constitutional right to a Speedy trial under article 1 Sec. 22 Washington Constitution, CrR 3.3 (B)(1) 1979, CrRLJ 3.3(B) I respectfully ask that the court of appeals follow the law that's in place and dismiss this case.

State v. Kray 31 Wn. App. 388 (1982)
State v. Chavez-Romero 170 Wn. App. 568 (2012)
State v. Edwards 94 Wn. 2d 208 (1980)
State v. Darden 99 Wn. 2d 675 (1983)
"Edwards Decision"
CrR 3.3 (b) (1) 1979
CrRLJ 3.3(b)
WA. Const. Article 1, Sec. 22

Dated this 5th day of May 2015

James B. Hambleton
Appellant CBCC
1830 Eagle Crest Way
Clallam Bay, WA. 98326

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STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, James Hambleton, 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.

Additional Ground #3

The trial court abused its discretion when it erroneously admitted photographic evidence of generators depicted on Mr. Hambleton's phone; pursuant to ER 403 the evidence was irrelevant and unfairly prejudicial

Additional Ground #4

under 404(B) in limine was ruled that the Criminal history of defendant could not be brought up. The defendant will not be taking the stand, which the Judge ruled on, and then allowed the evidence to be brought in, after ruling that it won't be allowed.

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

Date: 5-5-15
Form 23

Signature: James Hambleton

Additional Ground # 3

The trial court abused its discretion when it erroneously admitted photographic evidence of generators depict on Mr. Hambleton's phone; pursuant to ER 403 the evidence was irrelevant and unfairly prejudicial.

A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. (State v. Powell 126 Wash. 2d 258, 813 P.2d 615)

In pretrial motion defense counsel objected to admission of generators allegedly stolen by Mr. Hambleton. On the grounds of irrelevance and unfair prejudice.

Legal Mail
Defense Counsel: I would suggest that perhaps it is not relevant from the stand point that the state of Washington has chosen to not charge my client with the theft of the generators, and by entering evidence of uncharged crimes. (6-27-13 RP 91) So that gets us to ER 403 if Mr. Jenny doesn't believe there's probable cause to charge my client with the theft of the generators then there is only one reason why Mr. Jenny the state of Washington wishes to present this to the jury. That is to prejudice this jury. To make it appear as if my client was engaged in unlawful conduct. That's just simply unfair (6-27-13 RP 91, 92)

The court erroneously admits the evidence all right. I don't believe that a charge is necessary to make it relevant the relevance is, isn't whether he committed that additional charge (theft). The relevance is that it would tend to connect him with the events that occurred at the time and place of alleged theft. (6-27-13 RP 92)

Additional Ground #3

LEGAL MAIL

The Court's decision is manifestly unreasonable and based on untenable grounds for the following reasons: The uncharged theft of generators, could not have completed the story of the crimes of Burglary 2^o, to wit: Theft of keys and Theft of a Motor vehicle.

Therefore the evidence should have been excluded because it was irrelevant and not *res gesta* to the underlying crimes. ER 401, ER 402

ER 403 requires exclusion of evidence, even if relevant, if its probative value is substantially outweighed by the danger of unfair prejudice. *State v. Smith* 106 Wash. 2d at 776, 725 P.2d 951

The Court admits the generator evidence:

I can see where a jury would reasonably conclude that the reason he had all of the photographs downloaded from the internet is part of some effort to traffic in generators as stolen property and if that -- you reach that -- you reach that conclusion, then that's probative on the question of whether or not he was there and whether or not he was involved in the theft -- therefore the theft of the truck and the burglary (Mot. Lim R. 92) - Pre trial rule.

This assertion by the Court only proves that the evidence was highly prejudicial and that it likely outweighed its probative value.

The stated evidence was highly prejudicial because it served solely as propensity evidence; that Mr. Hambleton had a propensity
(2)

Additional Ground #3

to traffic stolen generators. For example; in Closing arguments the State claims:

If you have ~~generators~~ pictures of generators on your cell phone you're interested in trafficking in generators, buying generators, either providing generators to someone who's into interested in buying some generators. That's why you would have generators on your cell phone. Maybe to show some body else what kind of generators you could obtain for them, but the bottom line is nobody does that for love. Nobody has pictures of generators on their cell phone for love. (Closing Argument - RP 406)

Pursuant to ER 404(B) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person to show action in conformity therewith. State V. Everybodytalks About 145 Wn.2d 456 at 39 P.3d 300

IN closing Arguments the States sole purpose of admitting the generators evidence fell under ER 404(B) and was used solely to imply propensity and bad character.

Mr. Hambleton cites: State V. Brieger (Wash. App. Div. 2 2012) 172 Wn App. 209 284 P.3d 698 - Reverse and Remand for New trial.

Here the State argues that even if the trial court abused its discretion in admitting testimony regarding Brieger's mountain
(3)

Additional Ground # 3

LEGAL MAIL

Climbing and participation in extreme sports, the error was harmless because participating in sports "is not a bad thing that inherently causes feelings among jurors Unlike prior Criminal acts do." at 289 P.3d 707. Here while the State is correct that participation in sports alone does not constitute an inherently "bad act", the extreme sports testimony in the context of the present case was unfairly prejudicial because it was without relevance to the charges against Briejer and because it suggested that Briejer deceived the State while receiving benefits after his claim reopened. [FN 4]

In Mr. Hambleton's case the error is reversible because the evidence constitutes a bad act; that Mr. Hambleton is a criminal type who traffics stolen generators and therefore inherently caused prejudicial feelings amongst the jurors.

Similarly in Briejer the evidence was without relevance to the charges. Notably, in Div. 3 court of Briejer the State itself argues that the evidence was harmless because participation in sports is not a bad thing that inherently causes feelings amongst jurors... unlike criminal acts. ID 289 P.3d 707.

However in Mr. Hambleton's case the evidence was a bad thing that constitutes a bad act.

Additional Ground # 3

MR. Hambleton also cites: (state v. trickler 106 wn app 727, 25 P.3d 445, 25 P.3d 448) reverse and remand.

MR. Trickler claims that the trial court erred when it permitted at trial evidence of numerous uncharged bad acts such as testimony regarding items of personal property belonging to MR. Wiley that were found in MR. Trickler's car as he was moving out of MR. Wiley's residence.

MR. Trickler was being tried for being in possession of a stolen credit card belonging to Kathleen Nunez. Most of the evidence the state introduced at trial concerned items of personal property belonging to others... This was highly prejudicial because MR. Trickler was not on trial for possessing any of these items.

The state claims was necessary to introduce all the above evidence under a res gestae theory. It maintains that the discovery of the other allegedly stolen evidence was so connected in time, place, and circumstances that it was necessary for the jury to hear exactly how the police discovered the stolen credit card.

ID: furthermore the jury's knowledge of the superfluous information was highly prejudicial to MR. Trickler. The jury was left to believe/conclude that MR. Trickler is a thief.

In MR. Hambleton's case the same purpose of the generators evidence was to show that MR. Hambleton was "trafficking stolen generators." The allegation that MR. Hambleton stole or had a hand in stealing the generators was an uncharged act.

which leads to admitting evidence of uncharged crimes, or prior bad acts not proven by the state, which lessens the burden of proof for the state.

State v. Hecht 179 wn App. 497

Additional Ground # 3

This evidence, like in trickler was highly prejudicial because Mr. Hambleton was not on trial for trafficking or ever burglary, or stealing Generators

The trial court abused its discretion for the above reasons

Mr. Hambleton respectfully requests a new trial in the least.

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Case # 31862-1-III CBCC
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Clallam bay, WA. 98326

Dated 5th day May 2015

Addition Grounds # 4

The Court also abused its discretion when it allowed Criminal history to be brought in by the witness. (Mrs. Osborn) The witness said that Mr. Hambleton couldn't leave the county, at this point Mr. Hambleton's attorney went to side bar to discuss the fact that he was worried that the witness was going to blurt out information about defendant's criminal history. This issue was also addressed in limine, and ruled on 404(B). Not a few questions later Mr. Lin asked a yes or no question and the witness answered, then in the same breath she added "He's been incarcerated for a few years" Mr. Lin objected and the judge overruled, this information should never have been allowed in a circumstantial evidence case. This is not a harmless error, the court should have warned the witness once the side bar was over. This is not a case of question asked, question answered especially after defense attorney warned the court of his concerns before it happens. There should have been some sort of preventive maintenance, since once the bell is rung, it can't be un-rung. (RP 303-306)

Then we bring up the fact that Mr. Hambleton's criminal back ground was brought up in voir dire with Mr. Main #37 Juror being questioned in front of 50 possible jurors states he would have a hard time being non-bias, and quote "I don't recall Mr. Hambleton He looks vaguely familiar but we got over 2,000 people incarcerated just in this facility." By doing this he just told all perspective jurors that I've possibly been to prison, the one he worked at. Any tierer of fact could possibly conclude that I've been to prison, then to hear Mrs. Osborn confirm this conclusion, lessens the burden of proof for the state. One error might not be harmless but the fact of the cumulative errors is definitely a procedural error that lead to the conviction of Mr. Hambleton. For this reason alone this case should be reversed.

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Dated 5th day May 2015

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Additional Ground ~~1~~ #5

The states jury instruction no 16 erroneously relieved
the state of its burden of proving every element of said
crime (Burglary 1st)

Additional Ground 2

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

Date: 5-5-15
Form 23

Signature: 

Additional Ground # 5

The states jury instruction No. 16 erroneously relieved the state of its burden of proving every element of said crime: (Burglary 1^o)

Instruction No. 16 reads as follows "To convict the defendant of the crime of Burglary in first degree"

The elements read should be for burglary 2, however the second element states "MR. Hambleton or an accomplice" entered or remained unlawfully in a dwelling"

Since the instruction read to convict the defendant of Burglary 1^o, the state was erroneously relieved of its burden of proving every element of the crime.

This error is a structural error affecting MR Hambleton Constitutional right to due process

MR. Hambleton respectfully requests a new trial.

Dated 5th May 2015

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Case No. 31862-1-III
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Clallam Bay, WA, 98326

State v. Berniard 182 Wn. App. 106 (2014)

State v. Embry 171 Wn App. 714 (2012)

~~Prosin v.~~

State v. Cronin 142 Wn. App. 568 (2000)