

NO. 44031-8-II

IN THE COURT OF APPEALS OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

PATRICK JOHN McALLISTER,

Appellant.

**RESPONSE TO STATEMENT OF
ADDITIONAL GROUNDS**

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RESPONSE TO STATEMENT OF ADDITIONAL GROUNDS

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ARGUMENT

In his statement of additional grounds, Mr. McAllister asserts three types of error: Ineffective Assistance of Counsel, Prosecutorial Misconduct, and Court error. All of these issues were previously argued by his appellate attorneys and the law covering these issues has already been covered and will not be repeated here. Uniformly, these Supplemental Grounds are unsupported by the record or have already been addressed.

A. INEFFECTIVE ASSISTANCE OF COUNSEL

Review of the trial transcript shows Mr. McAllister's trial attorneys presented a professional and thorough defense.

McAllister's supplemental grounds fall into several categories:

1. The trial attorneys argued a point in court, the court ruled against them, and they did not re-argue it at every opportunity. No prejudice has been shown and this was already presented in appellant's brief.
 - a. Nurse Culbertson's job title. VRP 38-39.
2. Failure to cross examine Ms. Lorega about several points that were subjects of pre-trial motions. These issues were raised with the court which ruled against them. The trial attorneys

may have determined the court was correct or that the cross examination would not help their case. No prejudice has been shown.

a. Physical exam of Ms. Lorega. VRP 37, 389.

3. Failure to present witnesses:

a. To rebut Mr. Perkins' testimony. There is nothing in the record to show any such witnesses exist, that the trial attorneys knew of them, or that the trial attorneys did not believe such testimony would aid their case.

b. Failure to call his mother, Kari Clark. Ms. Clark testified. VRP 466.

c. Recall Mr. Sabiniano to talk about Ms. Lorega's "love." Likely good trial strategy.

d. Ms. Lorega's boyfriend. Trial strategy.

e. Out of state witnesses. Trial strategy.

4. Failure to present an order reflecting court's rulings on motions in limine. CrR 3.6 only requires written findings if an evidentiary hearing is held. This was not the case here.

5. Failure to impeach Ms. Lorega's testimony. Actually, the defense attorney did cross examine Detective Garrett on VRP

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page 286-288 and note a discrepancy in Ms. Lorega's testimony.

6. Failure to have an interpreter present for Ms. Lorega's testimony. It is evident from the record that Ms. Lorega's English was adequate at the trial and an interpreter was not needed.
7. Failure to have Mr. Sabiniano's police report admitted. No foundation.
8. Failure to get or admit Rose Perkins' telephone records to show frequency of calls to Ms. Lorega (sisters). Not material.
9. Failure to object to Prosecutor's missing witness argument in closing. The prosecutor argued there was missing material under the defendant's control and this was argued in his brief.
10. Failure to elicit testimony regarding appellant's whereabouts and actions on April 20-21, 2010. In testimony VRP 465-470.

B. PROSECUTORIAL MISCONDUCT

Mr. McAllister's supplemental grounds fall into several categories:

1. Prosecutor asked leading questions.
 - a. Ms. White. Direct exam at VRP 368-373 reviewed and no leading questions found.

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- b. Ms. White Redirect at 377-378. No leading questions found.
 - c. Exam of Rose Perkins at 207-209. No leading questions found.
2. Prosecutor did not inform court of potentially exculpatory evidence.
- a. Prosecutor knew bleeding lesions were caused by sexually transmitted diseases and did not acknowledge it. There is no evidence or testimony to that effect.
 - b. Did not offer Mr. Sabiniano's police report as evidence. There was no foundation for such a report.
3. Prosecutor statement about U.S. immigration law
- a. Need for Ms. Lorega to see a U.S. immigration doctor. Covered in Respondent's brief.
 - b. U Visa requirements. Covered in Respondent's brief

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4. Prosecutor commented on character of witness at VRP 584.

Actually that exchange was during redirect of Mr. Temur Perkins by defense counsel. VRP 583-584.

5. Prosecutor mismanaged case by asking for a continuance.

On July 13, 2012, the Prosecutor requested a continuance because Nurse Culbertson, a key witness was out of the country and expected back on August 1, 2012. In addition, Temur Perkins and Rosemarie Perkins would be in Michigan for a preplanned vacation and would not be back in time for the trial. The court properly granted the motion.

6. Prosecutor mistaken about photos. No evidence to support Mr. McAllister's assertion.

C. COURT ERROR

McAllister's supplemental grounds fall into several categories:

1. The court excluded the wedding dress as irrelevant.

Appellant does not state any grounds for abuse of discretion.

2. Court System had bad audio. Good transcript belies that assertion.

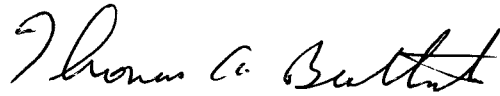
Mr. McAllister's Supplemental Grounds cite no additional authority nor valid errors and the Respondent again asks the court to deny this appeal.

CONCLUSION

The State respectfully requests that this Court affirm the trial court and that Appellant be ordered to pay costs, including attorney fees, pursuant to RAP 14.3,18.1 and RCW 10.73.

Respectfully submitted this 8th day of October, 2013.

SCOTT ROSEKRANS,
Jefferson County Prosecuting Attorney



By: Thomas A. Brotherton, WSBA # 37624
Deputy Prosecuting Attorney

PROOF OF SERVICE

I, Janice N. Chadbourne, certify that on this date:

I filed the State's RESPONSE TO STATEMENT OF ADDITIONAL GROUNDS electronically with the Court of Appeals, Division II, through the Court's online filing system.

I delivered an electronic version of same using the Court's filing portal to:

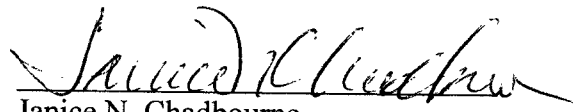
Backlund & Mistry
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And to Defendant via U.S. Mail, postage prepaid:

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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Port Townsend, Washington on October 8, 2013.



Janice N. Chadbourne
Lead Legal Assistant

JEFFERSON COUNTY PROSECUTOR

October 08, 2013 - 9:49 AM

Transmittal Letter

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Sender Name: Jan N. Chadbourne - Email: jchadbourne@co.jefferson.wa.us

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