

Case # 30640-2

**Statement of Additional Grounds
For Review**

**State of Washington
v.**

Joseph L. Shouse

COPY

COURT OF APPEALS
DIVISION THREE
OF THE STATE OF WASHINGTON

FILED

MAR 05 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON

Respondent,

v.

Joseph L. SHOUSE

(your name)

Appellant.

No. 306402

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

I, Joseph Shouse, 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

See Attached

Additional Ground 2

See Attached

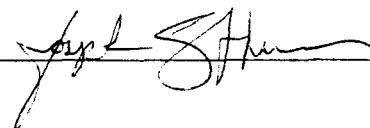
Joseph Shouse 763792
A-H-CC R-B-03
Po Box 2049
Airway Heights WA,
99001

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

Date: 3-3-13

Form 23

Signature: _____



1 (Cont.)

2 STATEMENT OF ADDITIONAL GROUNDS

3
4 **I. JURY INSTRUCTION AS TO PAST CONVICTION
FOR VIOLENT CRIME WAS PREJUDICIAL.**

5 Being accused of a crime as an 'Accomplice' the jury should not
6 have been instructed that Mr. Shouse had been convicted of a previous
7 'Serious' felony offense, as the instruction would be prejudicial and
8 lead to the unfair prejudicial inference that Mr. Shouse must be found
9 guilty of the crime of being a 'Felon in Possession of a Firearm' as
10 charged in 'Count 7'. See pg. 451-464. Having Mr. Shouse 'stipulate'
11 to committing a prior serious violent offense removed the State's burden
12 of proof. Mr. Shouse did not understand the effect that stipulation
13 would have.
14

15 **II. COUNSEL WAS INEFFECTIVE BY NOT PROPERLY
16 INFORMING MR. SHOUSE OF THE PREJUDICIAL EFFECT
17 THAT THE STIPULATION TO A PRIOR FELONY OFFENSE
WOULD HAVE RELATING TO ACCOMPLICE LIABILITY.**

18 Defense counsel failed to explain to Mr. Shouse the law relating
19 to the State's burden regarding the 'stipulation' to a prior serious
20 violent offense for purposes of relieving the State's burden of proof.
21 Had Mr. Shouse's Counsel explained that by stipulating to a prior serious
22 violent offense, the state would then be relieved of its burden of
23 proving that prior serious offense, thereby making the states case for
24 the 'Felon in Possession of a Firearm' more difficult to prove. When
25 the jury was instructed that Mr. Shouse had stipulated to a prior serious
26 offense, the trier of fact was left with the prejudicail inference that
27 because Mr. Shouse was guilty of a prior serious offense then it was

1 fair to assume that a firearm was used in the commission of the crime
2 for which Mr. Shouse was being tried for based upon the charge of 'Felon'
3 in possession of a firearm.

4 Mr. Shouse's counsel effectively tried the State's case. Under
5 the Strickland, standard, Mr. Shouse's attorney was 'deficient'. Mr.
6 Shouse's Counsel, having stipulated to a fact that relieved the State's
7 burden of proof as to the element of a charged offense can not be
8 measured by any standard as being an "objective standard of
9 reasonableness".

10 Mr. Shouse's Counsel, by relieving the State's burden of proof
11 relating to the 'Felon in Possession of a Firearm' was 'prejudicial'.
12 Had Mr. Shouse's attorney instructed Mr. Shouse that to stipulate to
13 a prior serious offense would not only relieve the State of its burden
14 relating to that prior serious offense, but too, it would lead to the
15 trier of fact being left with the prejudicial inference that Mr. Shouse
16 was a felon, therefore he was unlawfully in possession of a firearm
17 as an accomplice.

18 The affect of this prejudice is clear. Mr. Shouse was found guilty
19 of all the charges, including the 'Felon in Possession of a Firearm'
20 which was necessarily an element of several of the underlying crimes
21 for which he was found guilty. Had this prejudice not occurred the
22 outcome would have been different. Counsel's representation fell below
23 what is considered to be an "objective standard of reasonableness.
24 See Strickland v. Washington, 466 U.S., 687, 104 S.Ct. 2052, 2064, 80
25 L.Ed. 2d 674, 693 (1984). Part of these 'basic' professional standards
26 is a duty to advocate the defendant's cause, the duty to consult with
27 the defendant on important decisions and to keep the defendant informed

1 on important developments during the prosecution, and a duty to use
2 the level of skill and knowledge that make the trial truly adversarial.
3 See Strickland, supra.

4 Counsel's performance was 'Constructively Ineffective'. Prejudice
5 may be presumed in Mr. Shouse's Ineffective Assistance claim. See
6 Rickman v. Bell, 131 F.3d 1150 (6th Cir. 1997). Although the
7 circumstance of Rickman, may not be stare decisis, the principle stated
8 is the same. Counsel had effectively 'abandoned' Mr. Shouse by not
9 'testing' the State's position regarding the prior offense for purposes
10 of Jury Instruction on 'Felon in Possession of Firearm' thus, in effect
11 acting as a second prosecutor. See "RP 451-464; RP 587-88".

12 **III. COUNSEL WAS INEFFECTIVE WHEN HE DID NOT**
13 **CHALLENGE TESTIMONY OF CHAIN OF EVIDENCE**
14 **AFTER PHYSICAL EVIDENCE HAD BEEN DESTROYED.**

15 Trial counsel failed request a 3.5 hearing relating to the
16 destruction of physical evidence and the testimony that would be relied
17 upon by the State to support its existence relating to an 'Assault'.

18 Testimony to 'Chain of Evidence' was used to support prior testimony
19 even though all evidence was destroyed prior to trial. See "RP 32-38".
20 See State v. Stannard, 742 P.2d 1244 (1987)(Defendant charged with crime
21 has right to have material evidence preserved for use at trial). The
22 question becomes, (1) Did Mr. Shouse's trial counsel have a duty to
23 challenge any testimony and evidence to be used by the state by
24 requesting a 3.5. hearing in order to protect the Constitutional Right
25 of Mr. Shouse to a fair trial, and, (2) did that testimony on chain
26 of evidence after that evidence had been 'lost' or 'derstroyed' have
27 a prejudicial effect on the outcome of the trial.

28 Mr. Shouse has a Constitutional right to subject the State's case

1 to every possible challenge provided to him by law. Mr. Shouse's counsel
2 failed to request a 3.5 hearing relating to any evidence or testimony
3 of destroyed evidence that would be used to prove the State's case
4 against him. By not challenging the State's witness on chain of
5 evidence, trial counsel failed to subject the State's case to a
6 meaningful challenge, thus denying Mr. Shouse "effective assistance"
7 of counsel. Had Counsel challenged the State's use of testimony of
8 evidence that had been destroyed the trier of fact would necessarily
9 have weighed the evidence and testimony in favor of Mr. Shouse.

10 It is also reasonable to conclude that the Trial Court may have
11 not allowed the testimony having been presented with the fact that
12 evidence material to the trial had been destroyed thereby effectively
13 foreclosing Mr. Shouse from a fair trial. See State v. Mounsey, 643
14 P.2d 892 (Wn.App. Div. 3 (1982))(Where parties do not know whether
15 evidence is material to defense, prosecution has duty to preserve
16 evidence in general when there is reasonable possibility that destroyed
17 evidence could favor defendant.).

18
19 **IV. STATE FAILED TO PROVE 'MENS REA' AND 'ACTUS REUS'
FOR "TRESPASS" ELEMENT OF BURGLARY.**

20 Exculpatory Testimony was given as to Mr. Shouse having been given
21 prior permission by the alleged victim to be present on his property.
22 Having had been given permission to be on the property, the 'mens rea'
23 of 'trespass' does not exist. In order for the State to establish and
24 secure a conviction for the crime of 'Burglary', it must prove that
25 Mr. Shouse had, when committing a charged offense, "criminal intent
26 or recklessness". In order to prove that the Mr. Shouse 'trespassed'
27 upon private property, thereby violating the law, specifically 'Burglary'

1 | the state must prove that Mr. Shouse 'intended' to cross into anothers
2 | private property with the 'intent' to criminally trespass, thus
3 | committing the criminal offense of 'Burglary'. The state failed to
4 | prove the 'mens rea'. In fact Mr. Shouse, through examination of the
5 | States witness, the property owner, Mr. Moccardine, proved he was invited
6 | to visit the property. See "RP 343-44".

7 | Having established the absence of one of the two essential elements
8 | necessary to convict Mr. Shouse of the crime of 'Burglary', it is
9 | necessary to find the other, that being the 'actus reus'.

10 | Because the absence of the 'mens' rea' for criminal trespass has
11 | not been established, that being an essential element of 'Burglary'
12 | then it is just as equally reasonable to say that it is not possible
13 | to have acted with criminal intent, meaning to physically, with knowledge
14 | and intent trespass upon the private property of another if Mr. Shouse
15 | has been given permission or has otherwise been invited to do so, thus
16 | removing Mr. Shouse of the liability of the crime of 'Burglary'.

17 | **V. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING
18 | TO OBJECT TO PREJUDICIAL HERESAY EVIDENCE.**

19 | Counsel failed to object to testimony given that was clearly hearsay.
20 | See "RP 130-135".

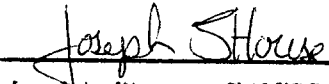
21 | **VI. CUMULATIVE ERRORS THROUGHOUT TRIAL BY
22 | TRIAL COUNSEL LED TO INEFFECTIVE ASSISTANCE
23 | OF COUNSEL DENYING MR. SHOUSE A FAIR TRIAL.**

24 | The overall cumulative effect of the errors and or failure of Trial
25 | Counsel to subject the State's case to a meaningful adversarial test
26 | denied Mr. Shouse of 'Effective Assistance' of Counsel thus denying
27 | him the right to a fair trial.

28 | The Issues presented above are being done so with the Best of my
STATEMENT OF ADD. GROUNDS - 5 JOSEPH SHOUSE

1 knowledge and belief.

2 SIGNED BY ME this 3 day of March, 2013.

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5 _____
6 Joseph Shouse 763792

7 cc:

8 Personal File

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30 STATEMENT OF ADD. GROUNDS - 6 of 6 (end)

JOSEPH SHOUSE