

66239-2

66239-2

2011 JUN 2 AM 10:43
FILED
COURT OF APPEALS
DIVISION I
SEATTLE, WA

**COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON
Respondent,

No. 66239-2-1

V.

**STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW**

FLORENCIO MORALES
Appellant,

PURSUANT RAP 10.10

I, Florencio Morales, have received and reviewed the opening brief prepared by my attorney and I do hereby submit my statement of additional grounds for review herein. I ask the Court to treat my pleadings with less stringent standards as a professional lawyer, but accept them as true facts set forth in this case and not mere speculation and conjecture.

ADDITIONAL GROUNDS

- (1) VIOLATION OF FUNDAMENTAL FAIRNESS OF DOCTRINE, VIOLATING PROCEDURAL DUE PROCESS OF LAW.**

- (2) VIOLATION OF DEFENDANT/APPELLANTS CONSTITUTIONAL RIGHTS UNDER HIS MIRANDA RIGHTS.**

- (3) BOTH ADDITIONAL GROUNDS ONE AND TWO ARE A VIOLATION OF BOTH THE UNITED STATES AND WASHINGTON STATE CONSTITUTIONS; U.S. CONST. AMEND V. & XIV SEC I, WASH. CONST. ART. 1 SEC 22 & SEC 29**

ADDITIONAL GROUND 1

VIOLATION OF FUNDAMENTAL FAIRNESS OF DOCTRINE, VIOLATING PROCEDURAL DUE PROCESS OF LAW.

When the government deprives a person of life, liberty, or property, it must act in a fair manner. **U.S. V. Salerno**, 481 U.S. 739, 746, 1075 S. Ct. 2095, 95 L.Ed.2d 697 (1987)(citing Mathews v. Eldrige, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L.Ed.2d 18 (1976)). Beyond any doubt fundamental fairness is at the heart of the due process of law guaranteed by the 5th & 14th Amendments to the United States Constitution article 1 section 14. **State v. Galbreath**, 69 Wash. 2d 664, 667, 419 P.2d 800 (1966); **State v Tang**, 75 Wash. App. 473, 478, 878 P.2d 487 (1994). Authors, LaFarve, Israel and King explain the rationale for the fundamental fairness doctrine in Criminal Procedure, Part 1 chapter 2, section 4; the premise that the Fourteenth Amendment's due process clause was designed to make applicable to the states the same basic limitation that had been imposed upon the federal government. That limitation, however is viewed broader in range and more flexible in context than other Bill of Rights limitation. "Due Process", the Supreme Court has noted is a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the "Bill of Rights", LaFarve, Israel, & King, quoting, **Betts v. Brady**, 316 U.S. 455, 86 L.Ed. 1595, 62 S.Ct. 1253 (1942). A key element of the fundamental fairness doctrine is its focus on The factual setting of the individual case. The asserted denial is to be tested by an appraisal of the totality of the facts in a given case. That which may, in

one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in light of other considerations, fall short of such denial. LaFarve, Israel and King, Criminal Procedure Part 1, chapter 2, section 2.4 (quoting *Bretts v. Brady*, 316 U.S. At 462. Due Process under the doctrine of fundamental fairness, has to be decided on a case by case basis by considering the totality of the circumstance-

-necks with reference to the universal sense of justice. In *United States v. Salerno*, 481 U.S. at 746 (1987), the United States Supreme Court asserted that substantive due process prohibits governmental conduct that either (a) interferes with the rights that are deemed fundamental or (b) shocks the conscience. Ultimately, the substantive due process clause is a bulwark against arbitrary government action, **Hurtado v. California**, 110 U.S. (1884). Courts may find a substantive due process violation-not only when the government's conduct unreasonably hinders a fundamental right-but when the governments action is arbitrary, irrational, or fundamentally unfair or unjust, as was in case at hand **Collins v. City of Jarker Heights**, 503 115, 117 L.Ed.2d 261, 1125. Ct. 1061 (1992); Duke Power Co. v. California ENVH. Study Group Inc., 438 U.S. 59, 84 (1978)(emphasis added) The United States Supreme Court, in U.S. v. Salerno, 481 U.S. 739, 746, 57 L.Ed 2d 595, 985 Ct. 2620 (1987) stated it this way: [The Due Process Clause of

the Fifth Amendment provides that “No person shall...be deprived of life, liberty, or property, without due process of law...” this court has held that the Due Process Clause protects individuals against two types of government-action, so called “substantive due process” prevents the government from engaging in conduct that shocks the conscience. Rochin v. California, 342 U.S. 165, 172 (1952) or interferes with rights implicit in the concept of ordered liberty. Palko v. Connecticut, 302 U.S. 319, 325-26 (1937). When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must be implemented in a fair manner. Matthews v. Eldridge, 424 U.S. 319, 335 (1976). The requirement has traditionally been referred to as “Procedural” Due Process. In case at hand both counsel, defense and the prosecuting attorney did not afford appellant the procedural due process of law allowing him to call witnesses to testify on his behalf, therefore violating his constitutional rights.(please see exhibit 1 with the single transcript of appellants son’s interview). If appellant’s son would have testified at trial the outcome would have been different, due to the fact his testimony would have proven that officer Michael Sant’s testimony was in conflict to the truth and facts of this case. Appellant sets claim to the fact that he was not driving when the officers arrived at the location of the van (please see exhibit 1 interview of appellants son).

What we have here is all about credibility, and due to the fact that we have an officer of the law versus a Spanish alien, well, one need not look any further to see the results, produced in this situation. By the State not allowing appellant Morales to have compulsory process to compel the attendance of witnesses on his on behalf, they have violated both the United States and Washington State Constitutions. U.S. Const. Amend V. & XIV; Wash.Const. Art.1 sec 22. At the core of fundamental fairness is the Integrity of the criminal justice system. That is due process requires the Criminal justice system—substantially and procedurally be fundamentally fair, if either is not then due process was violated. Washington State adheres to these principles, in **State v. Bryant, 146 Wn.2d 90,42 P.3d 1278 (2002)**. The right to procedural due process is guaranteed under the Washington Constitution article 1, section 3, and the United States Constitution, Amendments V. and XIV, sec. 1. The Washington Constitution provides the Same protection as the United States Constitution. **Manussier, 129 Wn.2d At 679**. It is a reasonable probability that if the State had of allowed the Appellant his right to have compulsory process to compel the attendance of his witnesses on his behalf the outcome of his trial would at best, have ended differently,“A reasonable probability is a probability sufficient to undermine confidence in the outcome”.

ADDITIONAL GROUNDS 2

VIOLATION OF DEFENDANT/APPELLANTS CONSTITUTIONAL RIGHTS UNDER HIS MIRANDA RIGHTS.

Appellant does hereby declare that his Miranda Rights were violated
Due to the fact that the arresting officers Walsh and Sant did knowingly
Mirandarize him with the English version instead of in Spanish, due to the
fact that Morales is full blooded Spanish (Mexican) and does not really
understand and comprehend American English that well. At trial there
seem to be much controversy as to whether Morales was even read his
rights, but the record definitely reflects that officer Sant openly admitted
that appellants Miranda Rights were not read to him in Spanish. Since
officer Walsh was deceased and Sant was unclear at times about how
everything that actually happened that night, but was very concise and
adamant about the fact that Morales was advised his Miranda rights in
American English and not Spanish, should be recognized by this Court
as a Constitutional violation. **Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.
2d 694, 86 S. Ct. 1602, 10 A.L.R. 3d 974 (1966)**. Even though the officers
set claim to reading Morales his Miranda rights in English, it would be as

not reading them to him at all, due to the fact he is Spanish heritage and he can barely understand any English whatsoever. Equal protection clauses command that no State shall deny to any person within its jurisdiction the equal protection of the laws (U.S.C.A. Const. Amend. 14) is essentially a direction that all persons similarly situated should be treated alike, so since he is Spanish, he should have been Mirandarized in the Spanish language not American English. Here it is clear on the face of the document that appellant Morales did not have his Miranda Rights read to him in the Spanish language. (please see Exhibit 2 Court Transcripts).

ADDITIONAL GROUNDS 3

BOTH ADDITIONAL GROUNDS ONE AND TWO ARE A VIOLATION OF BOTH THE UNITED STATES AND WASHINGTON STATE CONSTITUTIONS; U.S. CONST. AMEND. V. & XIV SEC 1, WASH. CONST. ART.1 SEC. 22 & SEC 29.

There is no reason that this court should not recognize the extreme state of Constitutional violation that has been committed against appellant Morales. The Washington State Constitution say in Art.1, Sec 29, that: The provisions of this Constitution are mandatory unless by express

words they are declared to be otherwise. To save the time of this Court appellant Morales will not add the wording of both the Constitutional Amendments that were violated, as the Court is well aware of the language. Also may the court recognize that this brief was drafted by a Jail-House Lawyer and I want to make it clear that every time we met I needed an Interpreter, as neither one of us could understand the others language. Appellant does hereby ask the court to carefully weigh the balance of this Case to suit the equality and ends of justice.

I, Florencio Morales, herein attest under penalty of perjury of the laws Of the State of Washington that the foregoing is true and correct.

Pursuant to 28 U.S.C 1746 AND Dickinson v. Wainwright, 626 F.2d 1184 (1980) sworn as true and correct under penalty of perjury has Full force of and does not have to be verified by notary public.

Dated this 26th day of May 2011


Florencio Morales 858050
LCC
15314 N.E. Dole Valley Road
Yacolt, Wa 98675-9531

EXHIBIT 1

1 other?" I was like, "No, no, we didn't." And I remember he had a, his partner was a little further
2 away from him.

3
4
5 **Investigator:** Umhm.

6
7 **Witness:** And, like he want, he asked me, he kept asking me if we were fighting, and I was like,
8 "No." And his partner asked him to come over, and then he asked me if we had a white van. And I
9 was like, "Uh, yes we do." And he's like, "Who's is it?" I'm like, it's my mom's. Like, "Where is
10 she now?" Like, "She's at work." And then he told me that they got saw, he asked me if I knew
11 somebody that lived, um, a few blocks away, uh, closer to Military Road, and I said, "Yeah, my
12 sister lives in that direction." And then he's like, "Oh, okay, cause we just found your dad over
13 there, um, at her house." And I was like, "Oh, okay." And at least after that he didn't ask any more
14 about if we're had been fighting or arguing. Then he just told me, he's like, "All right, well, we,
15 we're going to book him for some traffic violations." And I was like, "Okay." And then he just left
16 after that.
17
18

19
20 **Investigator:** Okay. Oh, go ahe-, do you have some more to say?

21
22
23 **Witness:** Uh, no, that's all I can remember.

24
25 **Investigator:** That you can remember? Okay. Do, does your father live with you?

26
27
28 **Witness:** Uh, yeah. He lived with us at the, at the time.

EXHIBIT 2

**(SEE TRANSCRIPT OF)
(PROCEEDINGS 10/13/10)
(PAGES 40-60)**

2011 JUN -2 AM 10:43
COMMUNICATIONS SECTION
COUNTY CLERK
KING COUNTY

CERTIFICATE OF SERVICE BY MAIL

This is to certify and state under the penalty of perjury under the laws of the State of Washington that I have mailed a true and correct copy of the following document(s):

Statement of Additional Grounds
with Cover letter

By depositing in the United States mail, marked *Legal Mail*, postage prepaid, on this 30th
day of May, 2011 to the following: King County
Prosecuting Atty. Appellate Unit King County Courthouse, W-554
Seattle, WA 98104; Court of Appeals Division I, One Union
Square, 600 University Street, Seattle WA 98101-4170; Eric J
Nielsen, Nielsen, Broman & Koch, PLLC 1908 E Madison Street Seattle WA 98122

Respectfully Submitted

Florencio M. Morales

Signature

Florencio Morales

Printed/Typed Name

LEC 15314 NE Pole Valley Rd

Address

Yacolt, WA 98675-9531

City

State

ZIP