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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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STATE OF WASHINGTON
COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON, Respondent, v. Kirt D. Jones Appellant.	)	No: 33828-9-II STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, Kirt D. Jones, have received and reviewed the opening brief 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

I Believe any matters that I discuss that are similar to my Attorneys brief are Not Adequately Addressed

Additional Ground 2

☒ There are additional grounds, a brief summary is attached to this statement.

Dated this 19th day of March, 2006.

Respectfully Submitted,

Kirt D Jones
Appellant

R.A.P 10.10

"Statement of Additional Grounds"

The following is the statement of additional grounds of me Kirt D Jones THURSTON COUNTY Superior court CASE NO.(04-1-2311-8) APPeals COURT CASE NO.(33828-9-II) I believe the facts I have Included Will bring to light a multitude of mistakes made throughout this case, a misapplication of the law, and a travisty of Justice. I do realize my knowledge of the law is minimal, but I am confident the Information I have provided will be relevant and useful in making a decision on my direct appeal. THank-You for this consideration.

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Rodney B Simonson, 91 Wn. APP. 874, 960 P2d 955	20,21,22,23
THomas MURPHY, 98 Wn. APP. 42, 988, P2d 1018	20,21,22,23
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(1). Search and seizure-Warrant-Informant test

When probable cause for the ISSUANCE of a search Warrant is based on a Informants tip, the Affidavit in support of the Warrant must establish the informants credibility. The Warrant must relate evidence obtained by independent police investigation that corroborates the substance of the tip.

The question we must look at is, had the informant Casey Irwin been used before, and was he credible. Was the Aguilar-Spinelli test Applied. Did the Warrant relate evidence obtained by independent police investigation that corroborated the substance of the tip.

I Would have to say No to the questions above.

(2) Interrogation-questioning-Confession-admissibility.

(Constitutional Provisions- Fifth Amendment Considerations)

Confessions made during custodial interrogations by police officers are admissible in a criminal case against a defendant only After an effective Waiver of the Fifth Amendment protection against compulsory self-incrimination.

There was no Waiver to my fifth Amendment right.

The giving of Miranda Warnings, Which is intended to preserve the fifth Amendment right against Compulsory Self-incrimination, should be the first test to which a confession is subjected. Failure of the police interrogators to give the warnings Automatically renders the confession inadmissible. If the Warnings are properly given the confession may still be excluded if the state does not meet the heavy burden of proof establishing that the defendants statement was made after an effective Wavier of the rights contained in the Warnings. Such relinquishment of Constitutional rights occurs only When it is Knowingly, Voluntarily and intelligently made.

There was no Miranda Warning prior to questioning-interrogation, Which must render (any) testimony to a confession inadmissible. The state did not meet the heavy burden of proof establishing that (any) statement was made After an effective Waiver of the rights in the Warnings.

When the state seeks to introduce a defendants admission to an interrogating officer, it has a heavy burden of proof, Without the assistance of any presumptions in demonstrating that the statements were Voluntary and that the defendant intelligently and Knowingly Waived his rights. State VS Collins, 74 Wn. 2d 729, 446 P. 2d 325

(Admissibility and Use)

CrR 3.5 and CrRLJ 3.5 govern the pretrial confession procedure. When a statement of the Accused is to be offered in evidence, the Court must set a hearing for the purpose of determining Whether a statement is Admissible. A CrR 3.5 hearing is mandatory.

The defendants failure to seek suppression of the statement before trial does not constitute a waiver of his right to an admissibility hearing. Defense Counsel may waive the CrR 3.5 hearing as a matter of trial strategy, although the preferred course is for the defendant to expressly waive the hearing on the record.

The court failed to grant me my right to a CrR 3.5 hearing this hearing was mandatory, and it was the duty of the court to inform me that I may, but need not, testify at the CrR 3.5 hearing on the circumstances surrounding the statement. I was never notified of any such hearing nor did I waive my right to the CrR 3.5 hearing. The trial court violated my right to a CrR 3.5 hearing and this case should be overturned.

(Procedures when right to counsel priviledge is Invoked)

Once an accused requests the assistance of counsel, all police interrogation must immediately cease until an Attorney is present, or the accused voluntarily and knowingly waives his right to counsel.

although no miranda warning was given, due to the seriousness of the charges against me and my past experience with law enforcement I requested counsel prior to interrogation.

There is no evidence outside police testimony that a miranda warning was given just as there was no ~~request~~ evidence of my request for counsel, but the fact that there was no taped or written waiver or a taped or written statement establishes a strong presumpion that either the interrogation was improper or the contents of the interrogation or statement was not what Police made it out to be. After I requested counsel officer Buculla's statement was we will get to that but right now I want to know about these guns. at that point I didnt know what my right's were. These are the facts as I know them.

(Substantive Evidence)

A conviction may not be sustained solely on the basis of an uncorroborated confession. The Admissibility of an extrajudicial confession is depentent upon its corroboration by other evidence. There must be other, independent evidence, outside the confession or statements, tending to prove the corpus delicti. The corpus delicti rule must be Applied

The mere fact that I was found in a van where stolen property was recovered along with a uncorroborated confession does not prove beyond a reasonable doubt that I committed any residential burglary, or unlawfully possessed any FireArms the evidence just doesn't support these charges.

(3). Violation of (CrR) Criminal Rules

(A). Criminal Rule 3.3 Right to Speedy trial

(Responsibility of the court)

It shall be the responsibility of the court to ensure a trial in accordance with this rule, to each person charged with a crime.

(Defendant detained in Jail)

A defendant who is detained in Jail shall be brought to trial within 60 days After the commencement date specified in this rule.

my Areignment was 3-15-05 trial did not Start until 6-29-05 thats 107 days, 47 days past the 60 day in custody right to speedy trial rule. The trial court failed to ensure me a trial in accordance with this rule.

(Trial Settings and notice)

(Resetting of trial date)

When the court determines that the trial date should be reset for any reason, including but not limited to the applicability of a new commencement date, the court shall set a new date for trial which is within the time limits prescribed and notify each party of the date.

The court failed to notify me of any trial date resettings while I was in custody beyond 5-2-05, and failed to bring me to trial within the time limits prescribed.

(Objection to trial setting)

A Party who objects to the date set on the grounds that it is not within the time limits prescribed by this rule must, within 10 days after the notice is mailed or otherwise given, move that the court set a trial date within those time limits.

I could not give notice to a objection to a trial setting within the 10 day rule because I was never given notice of any trial date resettings beyond 5-2-05.

(Continuances)

Continuances or other delays may be granted as follows

(Written Agreement)

upon written agreement of the parties which must be signed by the defendant, the court may continue the trial to a specified date.

I never waived my right to a speedy trial. I never signed any agreement to continue, nor did I agree to any of the continuances.

(cure Peroid)

The court may continue the case beyond the limits specified on motion of the court, made within 5 days after the time for trial has expired. Such a continuance may be granted only once in the case, upon a finding on the record or in writing that the defendant will not be substantially prejudiced in the presentation of his defense. The peroid of delay shall be for no more than 14 days for a defendant detained in Jail.

The original trial date was 5-2-05 then was continued to 5-16-05 then 6-6-05 then 6-9-05 then 6-13-05 then 6-20-05 then 6-22-05 and then trial finally began on 6-29-05 this was a clear violation of the cure peroid. This case should have been dismissed with prejudice on this violation alone.

(Dismissal With Prejudice)

A charge not brought to trial within the time limits determined by this rule shall be dismissed with prejudice.

The facts say it all, criminal rule 3.3 was violated on several issues and this case should have been dismissed with prejudice.

(B) Criminal Rule 3.5- Confession Procedure

When a statement of the accused is to be offered into evidence the Judge at the time of the omnibus hearing, shall hold or set a time for a hearing, if not previously held for the purpose of determining whether the statement is admissible. It is the duty of the court to inform the defendant that he may, but need not testify at the hearing concerning the circumstances surrounding the statement.

The first Omnibus hearing on 3-31-05 was continued to 4-7-05 then 4-14-05 then 4-21-05 and finally 4-28-05 I requested to be present at all of these hearings but was not granted the privilege of being present at any of the omnibus hearings. I requested through my Attorney John J Hansen a 3.5 confession Procedure hearing to see if officers testimony to the contents of my statement was admissible. John J Hansen failed to protect my rights to this hearing. I was harmed by not being granted a 3.5 confession procedure hearing.

(C). Criminal rule 3.6 Suppression Hearing

I also requested John J Hansen to protect my right to a 3.6 suppression hearing but was not granted this request. I was harmed by not being granted a 3.6 suppression hearing.

(4) Ineffective Assistance of counsel

(A) Witness list

my Attorney John J Hansen failed to subpoena or interview any of the Witnesses I supplied him with or interview any of the states witnesses. Good or bad the other occupant of the van Kelly Anderson and the Informant Casey Irwin should have both been called to testify, their testimony was crucial to my case. They were both on my witness list among others who could of testified to the truth on my behalf. I was harmed by not having their testimony.

(B). Rights of the defendant

I have the right to call and have Witnesses testify in my defense

I have the right as the accused to examine all evidence against me before pretrial and trial.

The right to communicate with counsel prior to pre-trial and trial on all phases of the criminal proceedings facing me the defendant.

The right to understand the evidence, proceedings and punishment of the charges against me in the event I lose at trial.

The right to effective assistance of counsel and a adequately prepaired defense.

Not one of these rights were afforded to me by appointed counsel John J Hansen.

my ignorance to the law and proceedings is not grounds for a inadequately prepaired defense.

(C)(Jury Instructions)

On count I (Residential Burglary) the Jury instructions should have included a lesser charge of possession of stolen property in the 1st or 2nd degree due to the fact that there was no evidence that I committed any residential burglary, at best a charge of possession of stolen property should have been ~~fiel~~ filed due to fact that I was found in a van where stolen property was recovered.

On count II (unlawful possession of a firearm in the first degree) my Attorney John J Hansen failed to include in the Jury Instructions at my request my defense of unwitting possession of a firearm.

(B) R.P.C - Rules of Professional conduct

(A) Rule 1.1 - Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

mr John J Hansen failed to Apply the proper thoroughness and preparation reasonably necessary for the representation of my case.

mr Hansen failed to apply his skills as a trial Attorney. He wouldn't ask for a dismissal at my request for voilation of criminal rule 3.3, 3.5, 3.6 he wouldn't ask for a dismissal on counts 1, 3, 4, 5 due to a lack of evidence, did not object to police testimony to an uncorroborated confession and failed to review the facts surrounding my case. mr Hansen failed to use the skill necessary for my representation.

mr. Hansens lack of interest in providing proper preparation and thoroughness reasonably necessary to represent me at trial is a clear violation of RPC rule 1.1 competence.

(B). Rule 1.2 scope of Representation

A lawyer shall abide by a clients decisions concerning the objectives of representation, and shall consult with the client as to the means by which they are to be pursued.

mr Hansen had no objectives concerning my representation he had no defense, and would not present my views as to my defense to the trial court. my defense was, on count #1 ask for a dismissal for Residental Burglary due to the fact that there was no evidence outside of a uncorrobated confession. on count #2 unlawful Possession of a firearm first degree mr Hansen failed to include ~~my~~ in the Jury instructions my defense of unwitting possession. On counts 3, 4, 5. unlawful possession of a firearm first degree dismissal for lack of evidence. I was Harmed by the scope of representation of mr Hansen.

(C) Rule 1.4 communication

A lawyer shall keep a client reasonably informed about the status of a matter and promply comply with reasonable requests for information.

A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

mr. Hansen failed to inform me of what was going on in any of the proceedings and failed to comply with my requests to be present at any of the omnibus hearings so I could personally request a 3.5 confession Procedure hearing or a 3.6 supression hearing in which mr Hansen failed to do on my behalf. mr. Hansen failed to comply with my reasonable requests for Information.

mr Hansen failed to keep me informed or explain the matter to the extent reasonably necessary for me to make a informed decision reguarding his representation.

(D) Rule 3.2 EXPediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

mr Hansen failed to make reasonable efforts to expedite litigation consistant with Criminal Rule 3.3 (Right to speedy trial) or consistant with my interests.

The results of this trial and sentencing fell squarely on my shoulders through my Attorney John J Hansen. If mr Hansen who is counsel for me, is ineffective in his representation of me, that ineffective representation harms me through a loss at trial and wrong sentencing due to the mis-calculation of my offender score. mr Hansen was ineffective and I was harmed by his representation.

(5) Insufficient Evidence

(A) ownership of the van-vehicle

There was no evidence to support ownership of the van. It was a cold december morning and the other occupant of the van Kelly Anderson and myself were trying to stay warm, we were both in back and no one was driving when the police

showed up. When the police asked Who the VAN belonged to, we both told them it belonged to Shawn. Neither Kelly Anderson or myself Knew his last name, but after the Search of the VAN, a CASINO CARD with the name I believe WAS Shawn mirr WAS recovered and admitted into evidence. This Shawn Mirr WAS the owner of the VAN. There WAS nothing in, or connected to the VAN to prove I owned the VAN, or anything in it. There WAS nothing in the VAN With my name on it. The VAN WASnt in my name, and I didnt have the Keys. NO property recovered from, or in the VAN WAS proven to be mine. It Would be SAFE to ASSUME that if the VAN WAS mine, or in my control, I Would have at least had the Keys. Police testimony that the VAN WAS mine does not make it factual. The evidence is insufficient to prove ownership.

RCW 9A.52.025 (Residential Burglary) (Count 1)

There WAS no evidence to support a charge or conviction for (Residential Burglary) outside of police testimony to a uncorroborated confession. There WAS no physical evidence to support this charge or conviction.

There was no eyewitness testimony that I comitted this crime, there was no fingerprint evidence linking me to the scene. There was nothing to prove beyond a reasonable doubt that I comitted Residential Burglary.

Residential Burglary - A person is guilty of residential burglary if with intent to commit a crime against a person or property therein, the person enters or remains unlawfully in a dwelling other than a vehicle.

The evidence was insufficent to support a charge or conviction of residential burglary.

Counts 3, 4, 5 - Unlawful possession of a firearm, First Degree

On counts 3, 4, 5 there was no evidence to support a charge or conviction of unlawful possession of a firearm first degree. not only was there no evidence that I possessed these firearms, but there was no evidence these firearms ever existed. The state could not produce a serial number, bill of sale or receipt for any of the alleged firearms described in counts 3, 4, 5, Nor were any firearms recovered for counts 3, 4, 5.

The state did not prove beyond a reasonable doubt that I possessed the alleged firearms listed in counts 3, 4, 5, nor did they prove their existence. The evidence was Insufficent to support this charge.

(Confession)

There was no evidence to confirm or corroborate the contents of any confession.

(Charging Information)

The charging Information was too vague and Insuffieent to support the charges on count 1, 3, 4, 5 The state had no idea when this crime happened.

(6) RCW 9.94A.589 "Same Criminal Conduct"

Criminal law - Punishment - Sentence - Criminal History - Same Criminal Conduct - Hard time for Armed Crime Act - Effect

The Hard Time for Armed Crime Act (Laws of 1995, ch 129 Initative 159) did not Amend the provisions of RCW 9.94A.589 formally 9.94A.400(1)(a) defining when two or more crimes constitute the same criminal conduct for sentenceing purposes.

Weapons - Possession - sentence - multiple charges - single offense

A conviction of multiple charges of unlawful possession of a firearm in the first degree, as defined by RCW 9.41.040(1)(A) constitutes a single offense for sentencing purposes if the three part test in RCW 9.94A.589 is met.

Same criminal conduct - Review - standard of reveiw

A trial courts ruling on whether multiple crimes committed by a defendant constitute the same criminal conduct for sentencing purposes under RCW 9.94A.589 is reviewed for an abuse of discretion or misapplication of the law. a trial court abuses its discretion by arbitrarily counting convictions separately without engaging in a "same criminal conduct" analysis.

The trial court erred by not engaging in a same criminal conduct analysis. The trial court should have counted my four unlawful possession of a firearm in the first degree convictions as same criminal conduct, thus giving me a lower offender score at sentencing. Preliminarily,

the state based each of the four firearm counts on RCW 9.41.040(1)(A) that statute was amended by the "Hard time for Armed crime" initiative, which passed in 1995. As amended it provides in part that each firearm unlawfully possessed under this section shall be a seperate offense. The state was authorized to charge one count for each firearm. Charging however is different from sentencing.

Sentencing is controlled by RCW 9.94A.589 which was not amended by the Hard time for Armed crime initative. Insofar as pertinent here RCW 9.94A.589 provides "That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. It further provides that same criminal conduct means two or more crimes that (1) require the same criminal intent. (2) Are committed at the same time and place and (3) involve the same victim. The Absence of any one of these criteria prevents a finding of same criminal conduct. All three of the required criteria Are present here. each of the four firearm counts involved

the same criminal intent. The state never established the exact date or time of possession but according to court documents between August 1, 2004 through December 19, 2004 I possessed the four firearms, from the Hutson home, and each of the four involved Norman Hutson as the victim. The four firearms must be ruled same criminal conduct.

In conclusion I believe the facts I have included along with the brief my Appellate Attorney Patricia A. Pethick has filed will show a multitude of mistakes made by Judge Paula Casey, to Prosecuting Attorney David H Bruneau to the incompetent representation of my trial Attorney John J Hansen. There was no question of whether or not I had a drug problem, or the question why was Kelly Anderson and myself in the back of a van doing drugs, but those are not the questions before us today, today the question is did the trial court abide by the criminal rules and did the court sentence me correctly, did my trial Attorney John J Hansen violate the rules of Professional conduct and was his representation effective. Was the evidence sufficient to support a

Charge or conviction for residential Burglary and unlawful possession of a firearm in the first degree. are there grounds for a new trial and or resentencing or should this conviction be overturned all together. I leave this in your hands, to apply the law as it is written and protect my rights as a american citizen.
Thank- you for this consideration.

respectfully submitted

Kirt D Jones
Kirt D Jones

Coyote ridge correction center
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