

No. 36182-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,
RESPONDENT,

V.

Antonio Ricardo Cross
Appellant

FILED
ORIGINALS
APR 15 PM 4:35
STATE OF WASHINGTON
DIVISION TWO

ON APPEAL FROM THE SUPERIOR COURT OF THE
State of Washington For _____ County
the Honorable _____ Judge

STATEMENT OF ADDITIONAL GROUNDS RAP 10.10

United States Constitutional

Casey Grannis & Attorney for Appellant

Nielsen, Broman & Koch. P.L.L.C.
1908 E. Madison St.
Seattle, Wash. 98122

* No Video no case,
State Witness were Illegal Immigrants, Violates 6 & 14 Amend.
and produces the Fraud upon the court review. of Right of
a United States Citizen to be tried by *Legal Registered Voters*

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Antonio Ricardo Cross D.O.C. #748840
B232
McNeil Island Correction Center
P.O. Box 88-1000
Steilacoom , Wa. 98388

dated this 30 day of Oct. 2007

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excluded evidence provides Prejudicial error

When Helpful evidence is not presented to the Court but hidden this evidence damages the judicial process to function in giving a Fair trial to the defendant.

"The defendant was Identified by the Illigal Aliens at the police Arrest and were speaking in another language resembling Mexican but it may have been Cuban.. The defendant said he had a long history of criminal conviction he could not escape the police telling him to freeze" this violates the defendants U.S.C.A. 5 Amend.

Confession of Victim

"[T]he analysis of the Elstad decision requires as a first step that the court determine whether the statement made by a defendant before the Miranda warning was actually coerced in violation of the fifth amendment....if it finds that the statement was voluntary, despite having been obtained in technical violation of Miranda, the court then should suppress the statement given after the Miranda warning only if it finds that the subsequent statement was not voluntarily made... The determination of voluntariness must turn on an evaluation of the surrounding circumstances (prejudice 1)

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Constitutional Magnitude review cont.

Conspiracy review: See state V. Harrison, 148 Wash. 2d 550, 61 P.3d 1104, Wash. Jan 23, 2003

Why wasn't defendant given the Lesser included of the Crime of Robbery,

For the review where is the Video tape from the alleged victim or Store..

No Video with Illegal Aliens eye witness have violated the defendant's right to confrontation but where is the Judge's approval to continue the Judge's bench trial..

see State V. Workman, 90 Wn. 2d, 443, 447-48, 594 P.2d 382 (1978) for Legal prongs. on Court.

See Personal Restraint of Hopkins 137 Wn.2d 897,976 P.2d 616 by Nielsen, Broman & Associates P.L.L.C. by Eric J. Nielson, for petitioner, Thomas J. Hopkins, pro se.

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Misidentification

"A conviction based on identification testimony that follows a pretrial identification violated the defendant's constitutional right to due process whenever the pretrial identification procedure is so impermissible suggestive as to give rise to a very substantial likelihood of irreparable misidentification..It is the likelihood of misidentification that violates the defendant's due process right.. the due process concern is heightened when that misidentification is possible because the witness is called upon to identify a stranger whom she / he has observed only briefly, under poor conditions, and at a time of extreme emotional stress and excitement.. see Ledbetter v. Edwards, 35 F.3d 1062 (6th cir. 1994)

defendant Failure to Testify violates U.S.C.A. 14 amene

see US. V. Francis, 170 F 3d 546 (6th Cir. 1999)

Prosecutor's conduct in eliciting agent's testimony regarding guilty pleas of individuals who do not testify at trial was flagrantly improper...

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Insuffienant authentication of
Evidence, Prejudiccial error

When the admissibility of evidence of other crimes or if any evidence with an inflamatory potential, is whether or not its probative value is outweighed by its prejudicial effect,, changes the review for prejudicial error and, defendants convictions must be reversed for Constitutional magnitude of the U.S.C.A. 14 Amend.

Constitutional Provision are that the order in which the provisions appear in the constitution with statement of additional ground for review....

Trial court Error:

The prosecutor errored in not interpretating the I'llegal Aliens language for the Defendant right to confront Evidence. see Burmeister V. State Farm Ins. Co. 92 Wn. App. 359,966 P.2d 921 [Insufficient Authentication of Police report]

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Prejudicial Constitutional review cont.

...circumstances and the entire course of police conduct."
see United States V. Gonzalez-Sondival, 894 F.2d 1043, 1049 (9th Cir. 1990)

When the Victim immigrant pointed at the Colored person who was 5 blocks away from the alleged crime seen... The police immediately told them they are under arrest because these People Identified you. (this violates U.S.C.A. 5 Amend)

The pretrial Identification was lost

"the Due process was lost when the immigrant pointed at a Colored person who just happen to have a warrant for his arrest. the Due Process Clause of the Fifth and Fourteenth Amendments forbids a lineup that is unnecessarily suggestive and conducive to irreparable mistaken identification, see Kirby V. Illinois, 406 U.S. 682, 691 (1972)

When the court produces Verbal evidence, including live-witness testimony, which is derived from an unlawful invasion may be no less the fruit of official illegality than the more common tangible fruits of the unwarranted intrusion...

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Such aggravating facts needed to be established by only a preponderance of the evidence, not beyond a reasonable doubt.

see *Cunningham v. California* (2007) 166 L.Ed.2d 856

SENTENCING _ RIGHT TO JURY TRIAL FACTFINDING BY JUDGE

The jury-trial guarantee of the Federal Constitution's Sixth and Fourteenth Amendments proscribes a sentencing scheme that allows a judge to impose a criminal sentence above the statutory maximum on the basis of a fact, other than a prior conviction, not found by a jury or admitted by the defendant. Except for a prior conviction, any fact that increases the penalty for a crime beyond the prescribable statutory maximum must be submitted to a jury and proved beyond a reasonable doubt for purposes of this rule, the relevant statutory maximum is not the maximum sentence that a judge may impose after finding additional facts, but rather the maximum that the judge may impose without any additional findings. If the jury's verdict alone does not authorize the sentence-if instead, the judge must find an additional fact to impose the longer term-then the Sixth Amendment requirement is not satisfied.

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United States 14 amend. review

For purposes of determining whether a state's determinate-sentencing system violated a criminal defendant's right to trial by jury under the Federal Constitution's Sixth and Fourteenth Amendments, where the system provided that the trial judge, and not the jury, had the authority to find aggravating circumstances that would permit the imposition of an elevated "upper term" sentence, only facts- and not mere policy judgments or subjective beliefs regarding the appropriate sentence-qualified as aggravating circumstances under the sentencing system, for such circumstances were referred to as facts by (1) the state's sentencing rules, and (2) decisions of the state's highest court.

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Statement of Facts

Mr. Antonio was denied access to a privilege in asking for the Police report. . . At trial he was denied evidence this violated his U.S.C.A 14 amend.

objections review

The trial court Judge allowed the Illegal Immigrants to testify, Insufficient Authentication, Police report, testimony see Burmiester V. State Farm Ins. Co. 92 Wn. App. 359,966,P.2d,921

Evidence is admissible for one purpose or against one party but is objectionable for other purposes or against other parties. in Rule 103 (a)(1) .

In Rule 104 of evidence this rule simply provides that those facts are to be "determined by the court" and makes not attempt to provide rules on burden of proof. (p.185 Federal Practice and Procedure, Wright and Graham)

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EVIDENCE RELIED ON

!. Court Transcript.. of _____

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Motion to Vacate Judgement & Sentence

Speedy Trial Rights violated review

Mr. Antonio Ricardo Cross, hereby duly says he was held in Jail, _____ beyond his ;72 hour hold from Sept. 22, 2006 and taken to Court on Sept. 25, 2006

The Court Erred in Marking Refused on the Transcrip. where this process violated the U.S.C.A. 5, 6,14 Amend.

COMES NOW the defendant, Antonio Cross, by pro se motion ^{writing} withing the Statement of Additional Crouds, herby Moves this court with this addendum, to CrR 3.3, CrR 8.3, and the Speedy Trial Clauses of the State and Federal Constitutions on grounds that the defendant [did not sign indictment] where the Pros. moved forward with trial.

This motion is based on the files and records hereing and the attached Memorandum of Authorities in support of defendants motion for reversal of conviction.

Dated This 30 day of Oct. 2007

Approved in Open Court _____,

Defendant

2007

10-30-07

Judge/Court Commissione

Attorney

Appealatte, Pros. Attorney

Stamp date of entry

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case #06-1-04524-8 Pierce

Mistake on Indictment

Case # 06-1-04525-6 becomes a charge of Assault

but on the Appeal it has this case #

What is the Appeal case Number the Prosecuting Attorney has
on record. _____

What is case # 07-9-04734-5 relating to

The Bench trial was for Robbery in the 2nd degree
according to RCW 9A.56.190 and 9A 56.210

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Rules of Evidence review

Mr. Antonia is a criminal that has been stereotyped as "habitual" the court failed to preserve the prior conviction of defendant according to Rule 103 (a) provides that evidentiary errors at trial are not grounds for setting aside the verdict or reversing the judgment on appeal "unless a substantial right of the party is affected."

fundamental right violated by State of Wash.

"The right of confrontation, the State of Wash. did not allow the cross-examination of the Illegal Aliens" this violated the U.S.C.A. 6 Amend... How can the prosecutor allow the Police to produce evidence of No registered Immigrants.

the Public defender withheld the Illegal Aliens from the State of Wash. because both the Defense and Pros. Conspired to Convict Mr. Antonia a Colored person under 30 years of age unlawfully.

The evidence of a States Witness to be Void is the right to present on Appeal. and Should Reverse conviction

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EXIBITS

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Constitutional Violation

In State V. Warfield 103 Wash. App. 152, 5P.3d- 128 Wash. App. div. 2 aug. 18, 2003 (Conviction should be dismissed State failure to prove element of crime.

When the prosecuting Attorney decided to use tampered 911 tape without the interpretation in writing for the defendant according to ABA Standards std. 5.11(b) indicates that disbarment is generally appropriated when a lawyer engages in intentional] conduct involving dishonesty, Fraud, Deceit, or misrepresentation / ABA Standards std. 6.31 (a) indicates that disbarment is generally appropriate when a lawyer intentionally tampers with a witness and causes potentially significant interference with the outcome of a legal proceeding. [When the State took the testimony of the illegal Spanish decent without the examination provide the hearing officer intended to bribe the witness and deceive the court.]

see State v. Thomas, 150 Wn.2d 821,860,83 P.3d 970 (2004)
It is unethical to label the defendant as incompetant to stand trialsee In re Disciplinary Proceeding Against Stroh,97 wn.2d 289, 644 P.2d 1161 (1982). The misconduct already cocurred that deprives Mr. Antonial of U.S.C.A. 14 Amend.

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LEGAL AUTHORITIES

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LEGAL AUTHORITIES (State)

1. State V. harrison, 148 Wash. 2d 550,61 P.3d 1104,Wash.
Jan 23, 2003
2. State V. Workman, 90 Wn. 2d,443, 447-48,594 P.2d 382 (1978)
3. Personal Restraint of Hopkins 137 Wn.2d 897,976 P.2d 616
4. Burmeister V. State Farm Ins. Co. 92 wn. App. 359,966 P.2d
921, Insufficient Authentication of Police report,[U.S.C.A. 5,,6,14]
5. State V. Warfield 103 Wash. App. 152, 5p 3d,128 Wash. App.
Div. 2 aug. 18, 2003 [Fraud,deceit]
6. State V. Thomas, 150 Wn.2d 821,860,83 P.3d 970 (2004) [U.S.14 Amend.
7. In re Disciplinary Proceeding Against Stroh,97 Wn.2d 289,644
P.2d (1982)
8. Appeal of Johanson, 632 F.2d at 1041
9. Winston v State of Wash. 40 Wash. at 274
10. State V. Soh, 115 Wash. App. 290,62 P.3d 900, Wash. App.
div. 1, Feb 03, 2003
11. State V. Farnsworth 130 P.3d 398,Wash. App. Div. 2 March
07,2006
12. State V. Quattlebaum,338 S.C. 441,527 S.E. 2d 105 (2000)
13. State V. Norby (1993, 122 Wash. 2d 258,858 P.2d 210 (Prejudice)
14. Shreeder V. Davis (1906),43 Wash. 129,86 P.198
15. In Re Disciplinary proceeding, Tasker 141 Wn.2d at 567-69
16. State V. Stroh, 588 P.2d 1182,91 Wash. 2d 580 [U.S.C.A. 14 amend]
17. State V. Edwards,131 Wn.App. 611,128 P.3d 631
18. Crawford V. Washington 541,U.S. 36,68124 S.Ct.1354,158 L.
ed 2d,177 (2004) Federal
19. State V. Sykes,27 wn.App.111,615 P.2d 1345 (1980) Guilty ,reversed

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LEGAL AUTHORITIES (Federal)

1. Ledbetter V. Edwards, 35 F.3d 1062 (6th Cir. 1994)
2. US Vs Francis, 170 F 3d 546 (6th Cir. 1999) U.S.C.A. 14
3. United States V. Gonzalez-Sondoal, 894 F.2d 1043, 1049
(9th Cir. 1990) U.S.C.A 5th Amend
4. Kirby V. Illinois, 406 U.S. 682,691 (1972) irreparable
mistaken identification,
5. Cunningham V. California (2007) 166 L.Ed.2d 856
6. Jencks V. United States, 353 U.S. 657,77 S.Ct. 1007 (1957)
7. Ny- Trongott V. byers 5 Cow at 480
8. 527 U.S. 1,17,119 S.Ct. 1827,144 L.ed 2d 35 (1999)

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impeachment review

" Jencks Material. Criminal procedure. A prosecution witness written or recorded pretrial statement that a criminal defendant, upon filing a motion after the witness has testified, is entitled to have in preparing to cross-examine the witness, the defense may use a statement of this kind solely for impeachment purposes. (Jencks V. United States, 353 U.S. 657, 77 S.Ct. 1007 (1957)

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Proposed Order Granting Reversal of Conviction

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case # 07-9-04734-5

Motion of Prejudice Answer to conform to Evidence
Motion

Mr. Antoni  Cross, defendant moves the court for an order to Dismiss, and Reverse conviction to assert a New Theory of defense which was not raised in the original answer: But which was tried by the consent of the parties, [reign of terror doctrine]

The new theory of defense is [The Court ruled that the prosecutor's motive in obtaining the evidence was to prepare for trial, which was an abuse of Process, see in Re grand Jury Proceeding (Appeal of Johanson, 632 F.2d at 1041, Winston, 40 Wash. at 274, [Defendant History, Prior I'llegal & Defense counsel's failure to inform the trial court of Mr. Quintero Morelo's Alien Status is Excusable neglect under Rule and Constitutes negligence sufficient to raise prejudicial error of Law.

How can the trial Judge allow the Non Speaking english to rule over a Colored person of english background but lacks to ability to be represented by a fair public defender. This concept developes the look at how Possession over a colored person took place. " Possession and acts of ownership over a colored person were regarded as Prima Facie Evidence of Prejudice and ownership:" see NY -Trongott V. Byer 5 Cow at 480 con

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case # 07-9-04734-5

Prosecutorial Misconduct Review

Empeachment: see State V. Soh, 115 Wash. App. 290,62 P.3d 900, Wash. App. Div. 1, Feb 03, 2003

"Where prosecutorial misconduct has materially affected right to fair trial, Rule of Criminal Procedure permitting trial court to dismiss criminal prosecution due to arbitrary action or government misconduct, crR 8.3(b), dismissal and empeachment,

when the Spanish spoke in Court with interpreter the public defender lost the ability to represent Mr. Cross..

It is in the transcript that the Victim gave False statement according to RCWA 36.95.190/ discovery Violation, see State V. Farnsworth 130 P.3d 398, Wash. App. Div. 2 March 07,2006

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Prosecutor eavesdropping on Defense

In the Bench trial when Mr. Antonio was discussing his questions of United States Constitutional Magnitude the Prosector listened to their conversation , Why didn't the Judge dismiss all charges against the Defendant. " the court disqualified the entire prosecutor office after a deputy prosecutor deliberately eavesdropped on private conversation between an attorney and his Client..see State V. Quattlebaum,338 S.C. 441, 527 S.E. 2d 105 (2000)

Shouldn't the defendant been given a Reversal of conviction for the appealatte review. for the Ommission of materiality element from Jury instruction see 527 U.S. 1,17,119 S.Ct. 1827, 144 L. Ed. 2d 35 (1999)

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case # _____

AFFIDAVIT OF PREJUDICE

Mr. Cross move this court for a motion of prejudic to explain the U.S.C.A. merits where U.S.A. 14 ha^l been damaged. See State V. Norby (1993) 122 Wash. 2d 258, 858 P.2d 210

1. Right of Confrontation review " without the right to confront Police, 911 tape, testimony of the Police at trial provided a *Miscarriage of Justice: RCW 9a.44.120 (2)(a) and Prejudicial Error for the Supreme Court to review and relief in [Prayer of Relief] see Shreeder V. Davis (1906) 43 Wash. 129,86 P.198

2. Prosecutorial Mismanagement

"The integrity of the Judicial process, which defiles the Court itself or is perpetrated by officer of the court in such a manner the impartial system of Justice fails to function [U.S.C.A. 6 Amend] see Threat to public in Re Disciplinary proceeding, Tasker 141 Wn. 2d at 567-69, crR 8.3 (b) dismissall all charge, defendant U.S.C.A. restored,, reversal of conviction

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Right of Confrontation review.

"Fact that statute defining crime of tampering with a witness did not expressly include as one of its elements an intent to obstruct justice did not render statute unconstitutional, as statute was based upon apparent legislative finding that attempts to influence a witness to change his testimony or to absent himself from trial or other official proceeding necessarily have as their purpose, and it is their natural tendency, to obstruct justice. see State v. Stroh, 588 P.2d 1182, 91 Wash.2d 580. and U.S.C.A. Const. Amend 14.

When defendant Cross sat and could not receive the valid interpretation of the 911 tape for oral argument this damaged the structure of a Fair trial.

The 911 tape written interpretation from "Spanish to english was not provided and the testimony of Victim violated the Fifth amendment Privilege

In State V. Edwards, 131 Wn. app. 611, 128 P.3d 631.
" Mr. Edwards also argues that detective Quist's testimony violated his Constitutional Right to confront his Accusers. See Crawford V. Washington 541, U.S. 36,68,124 S. Ct. 1354, 158 L.Ed 2d, 177 (2004). Whether the Court should insert the theory that the Failure of interpret Language to defendant provides a United States Constitutional deprivation of liberty for defendant to understand what is the statement of facts.

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United States Constitutional violation cont.
Obstructing Justice:

When the State of Washington Pierce Co. Prosecuting Attorney allowed the 911 tape played *Without giving the defendant the right to a interpretation in WRITING IN ENGLISH this violated his U.S.C.A. 14 amend.. in reviewing the trial before Judge Worwick , _____ we must carefully examing the rule of right of confrontation.

"Statute making it misdemeanor to "obstruct a public servant" by failing, "without lawful excuse," to provide true information "lawfully required" of individual by "public servant" was defective in failing to give fair notice about what activities were required or forbidden and as encouraging arbitrary and erratic stops and arrests. see West's RCWA 9A.04.110(22), 9A.76.020 U.S.C.A. Const. Amend 4 see State V. White, 640 P.2d 1061,97 Wash.2d 92.

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Impeachment by Prior Inconsistent

According to trial transcript the defendant did not testify before a Judge only trial..

Without the right to cross-examine the Illegal Alien of Spanish decent damaged the right of the inconsistent statement...At arrest the Police stated the Spanish was speaking in their language he could not understand anything. Spanish person made motion "it Him the police stated That Jim..

Defendant was arrested blocks away and was forced to get into police car so the officer could run his name.

While in custody the State of Washington failed to release the Defendant cross for holding him beyond the 72 hour hold... The State of Washington Police violated the U.S.C.A. 5 amend when the Defendant did not sign a police report until 30 days later while held on a Bail.

States Exhibit #1 is the 911 tapes

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conclusion Memorandum of Statement of Additional
Grounds Constitutional magnitude

How can a indictment be Valid when not signed

Proof of Lack of record

According to Federal Criminal rules in Mr. Cross hearing in Rule 44(b) we see the technical, mechanical problems of Unconstitutional because it denies [rule 27 Federal Criminal Rule] a criminal defendant the right to be confronted with the witnesses against him under the Sixth Amendment.

How can the State of Washington Pierce county proceed with this error on the indictment and present Fraudulant evidence that defiles the Judicial process and sixth Amend of the United States Constitution.

Without a Signatures how can the State proceed to convict Mr. Cross unless it happens with Deceit. See Evidence no signature in Violation of Speedy Trial rights .with vindictive prosecution.

SIGNATURE: " A person's name or mark written by that person or at the person's direction., see Blacks law dictionary

No Signature no right to proceed to convict a Colored person becomes the Investigation into the Evil Hand of Justice that Violated U.S.c.a. 5. [Mr. Cross conviction must be reversed,jus quaesitum]= right to recover!

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In conclusion for the following memorandums shall we not forget that the Insufficient evidence to sustain conviction is relevant to reverse conviction see Thompson V. Louisville 362 U.S. 199 (1960): Adderly V. Florida, 385 U.S. 39 (1966)

2. Speedy Trial Violation see Kloper V. North Carolina, 386 U.S. 213 (1967) / United States V. Ewell, 383 U.S. 116 (1966)

3. Counting Prior & current offense see State V. Wilburn, 51 Wn. 827, 755 P.2d 824 (1988)

4. The State Failed to prove Essential Element of offense see Jackson V. Virginia, 443 U.S. 307, 61 L.ed 2d 560, 99 S.Ct. 2781, 580 F.2d 1048/ State V. Kosanke, 23 Wn. 2d 211, 160 P. 2d (1945)

5. According to Oscar Wilde 1854-1900 "TRUTH IS RARELY PURE

Mr. Antonio Ricardo Cross is a victim also of erroneous instruction see State V. Mathews, 28 Wn. App. 198, 624 P.2d 720 (1981) erroneous instructions when a manifest error affecting a Constitutional Right. exist the Appellate court may make an independent evolution of the evidence and Guilty verdict reversed, see State V. Sykes, 27 Wn.App. 111, 615 P.2d 1345 (1980)

DECLARATION OF SERVICE

I, Antonio R. Cross , certify that I deposited today in the internal mail system of McNeil Island Corrections Center a properly stamped and addressed envelope directed to:

- (1) Court Clerk David C. Ponzoha, or superior
Court of Appeals Div. II
950 Broadway Ste 300
Tacoma, Wash. 98402-3694
- (2) Appellate Pros. Attorney
- (3) Nielsen, Broman & Koch, P.L.L.C. attn. Casey Grannis
1908 East Madison St.
Seattle, Wash. 98122

FILED
COURT OF APPEALS
DIVISION II
TACOMA, WASH.
OCT 30 2007

Containing the following documents (s)
Statement of Additional grounds, R.A.P 10.10
pages 1-30

***Special copies procedure request:**

Please Court Clerk mail a copy to all parties listed in case #36182-5-II and send me a copy with stamped dated of entry to: Appellant Antonio Cross

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

submitted this 30 day of Oct. 2007, at McNeil Island Corrections Center, Steilacoom, Washington.

by _____ D.O.C. # 748840
Antonio Cross
B232
McNeil Island Corrections Center
P.O. Box 88-1000
Steilacoom, Wa 98388-1000

Thank You

Court Stamp date _____