

FILED  
COURT OF APPEALS  
DIVISION II

09 APR -6 AM 9:25

STATE OF WASHINGTON  
BY       
DEPUTY

THE WASHINGTON STATE  
COURT OF APPEALS  
DIVISION II

Robert Allman,  
Appellant,

Case No.: 38064-1

v.

Statement of Additional  
Grounds

State of Washington,  
Respondent.

RAP 10.10

I, Robert Allman, 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. Following is a list of the issues this defendant wishes to raise before this Court:

GROUND ONE

1 Mr. Allman appeals his conviction because the  
2 statements used against him in trial should have been  
3 suppressed and the continued comments by the State  
4 on Allmans right to remain silent denied Mr. Allman  
5 a fair trial.

6 **Miranda rule.** The doctrine that a criminal suspect  
7 in police custody must be informed of certain constitu-  
8 tional rights before being interrogated. The suspect  
9 must be advised of the right to remain silent, the  
10 right to have an attorney present during questioning,  
11 and the right to have attorney appointed if the suspect  
12 cannot afford one. If the suspect is not advised of  
13 these rights or does not validly waive them, any  
14 evidence obtained during the interrogation cannot be  
15 used against the suspect at trial. *Miranda v. Arizona*,  
16 384 U.S. 436, 86 S.Ct. 1602 (1966). *Black's Law*  
17 *Dictionary 7th Edition.*

18 The Judge based his decision of allowing multiple  
19 statements into evidence on speculation that Mr. Allman  
20 was properly read his Miranda Rights.

21 Officer Scripps reasoned Mr. Allman was read his  
22 Miranda Rights in a similar fashion. When questioned:

23 Q. Do you have a specific recollection of him  
24 even telling you that he Mirandized him?

25 A. He Mirandized him, I am sure I would have  
26 asked that.

Q. How were you sure?

A. Why else would I interview him? That  
wouldn't make any sense for me to  
interview him, if he hadn't been  
Mirandized. I never done that before in  
the past. RP 30.

Then the Officer affirms his assumption:

Q. And how is it from memmory that you can do  
that if you can't remember where you are  
or what he said?

A. Because that's -- why else would I have  
interviewed him?

1 Q. You are making the assumption because you  
interviewed him you were told that he  
was Mirandized; is that correct?

2 A. Yes. RP 32.

3 This Honorable Court cannot affirmatively say that Mr.  
4 Allman was properly read his Miranda rights as required  
5 by law. It was an abuse of discretion for Judge Orlanda  
6 to admit the statements into Evidence based on  
7 speculation.

8 The Judge states:

9 But in my mind, and the testimony from Officer  
10 Ovens is that he Mirandized Mr. Allman right  
11 after he was put in the back of the patrol  
car that he properly gave him the Miranda  
Warnings. RP 80.

12 Officer Ovens testified he Mirandized Allman then placed  
13 him in the partol car. RP 11 & 129. He also testified  
14 that he "read" Mr. Allman his Miranda rights from  
15 memory:

16 Q. And can you tell the court how you advised  
17 him of his Miranda warnings?

18 A. I said he had the right to remain silent,  
19 anything he said could and would be used  
20 against him in a court of law. He has  
21 the right to an attorney. If he can't  
afford an attorney, one will be appointed  
for him. He has a right to attorney  
with him while being questioned and end  
questioning at anytime.

22 Q. And is that how you read the warnings  
23 to Mr. Allman on November 3rd?

24 A. That's how I read Miranda to everybody,  
25 yes; that's how I read it to him.  
26

1 Q. Do you read it from memory or do you  
2 have a preprinted card that you use?

3 A. I -- I advise people from memory. RP  
4 10-11.

5 Officer Ovens testified that he doesn't know the Miranda  
6 warnings verbatim and he reads everyone their Miranda  
7 rights from memory:

8 Q. And you did it completely from memory?

9 A. Yes.

10 Q. And that was exactly what you just  
11 repeated on the record here, correct?

12 A. I repeat the same thing to everyone when  
13 I handcuff them, place them into custody.

14 Q. Have you ever made a mistake?

15 A. I have made mistakes, yes. I am not  
16 perfect sir.

17 Even though Officer Ovens testified he read Miranda from  
18 memory, the Court didn't have the words in front of  
19 them to adequately determine that Mr. Allman was  
20 properly advised of his rights.

21 Go Back to Officer Ovens for a minute. He  
22 says he gave Miranda from memory all the time.  
23 But he doesn't do it the same way all the  
24 time. And he does not remember exactly the  
25 words that he said that night, but they were  
26 to the effect of what he testified to in  
27 here. That's not the same thing as giving  
28 him the exact Miranda warnings and coming  
29 here to court to testify what those warnings  
30 were.

31 You don't have in front of you right  
32 now the word's that describe the warning  
33 that Mr. Allman had. Unless you have those  
34 words in front of you, you cannot find that  
35 he was, in fact, properly advised, even if

1                   you find the timeliness of that warning is  
2                   appropriate. (Emphasis Mine).

3                   So as a consequence we don't have a  
4                   Miranda Warning, He is incapable of doing  
5                   that. Most officers read it from a -- they  
6                   keep it in the breast pocket, they read it  
7                   from a card. They say the same thing. They  
8                   produce that card in court. You know what  
9                   has been said. RP70.

10                   The record clearly shows that there is no valid  
11                   acknowledgment by Allman that he was read and understood  
12                   his rights. Officer Scripps testified he put down  
13                   Officer Ovens' name on the Miranda rights form:

14                   Q. You did not Mirandize Mr. Allman at any  
15                   time, did you?

16                   A. No. I didn't.

17                   Q. And yet you filled out the rights form?

18                   A. Yes.

19                   Q. And you put down Officer Ovens' name on  
20                   the rights form, correct?

21                   A. Uh huh.

22                   Q. Did you ask the defendant if he reads  
23                   spanish?

24                   A. There's English on the form.

25                   Q. Did you -- my question's pretty simple.

26                   A. No.

27                   Q. Did you ask him if he read spanish?

28                   A. No. We use the spanish form when we are  
                 out of the plain English forms. Rp 32-33.

The Judge noted:

                 And this whole thing on Exhibit 1 about

1 having the jail hand them this form to sign,  
2 where its really not any part or parcel of  
3 the Miranda warnings, makes absolutely no  
4 sense what so ever. The form itself, all  
5 it does is contain Mr. Allman's signature.  
6 The part that really is relevant to the issue  
7 whether somebody understands their right  
8 is the bottom two sections, which is to be  
9 completed by the officer, and that's blank.  
10 So that didn't help one way or the other.  
11 RP 78.

12  
13 Officer Ovens testified he read the Miranda  
14 warning but he doesn't know exactly what he said, when  
15 he said them or where he said them. Officer Ovens,  
16 Officer Scripps and the Judge all affirm that Officer  
17 Scripps was sure that Allman had been read his Miranda  
18 rights because, "he would not have questioned him  
19 without them".

20 Officer Ovens testified:

21 Q. Now, did you ever tell your partner you  
22 mirandized the defendant?

23 A. Yes.

24 Q. When did you do that?

25 A. I don't know exactly when I did that,  
26 but I know I indicated to him that he  
was Mirandized.

Q. How do you know?

A. Because he wouldn't of questioned him  
if he didn't know he was Mirandized.  
RP 129.

Officer Scripp testified:

Q. And how is it from your memory that  
you can do that, if you can't remember  
where you are or what he said?

1 A. Because that's -- why else would I have  
interviewed him?

2 Q. You are making the assumption because  
3 you interviewed him you were told that  
he was Mirandized; is that correct?

4 A. Yes. I mean you can explain something  
and not remember the exact words.

5 And Judge Orlando reasons:

6 My conclusion on the disputed facts is it  
7 would make no sense for the officers to  
question him without Miranda. There's no  
8 benefit to them to doing that. RP 79.

9 He wasn't perfect on his testimony as to  
10 the actual rights, but the sum and substance  
was sufficient for Mr. Allman to be properly  
11 advised of his rights that he already knew.  
And I think thereafter, Officer Scripps'  
12 questioning of Mr. Allman would be logical  
and would have followed normal procedure.  
RP 80.

13 So it's sort of a dilemma for the defendant  
14 to not have the statements in some sense  
because the statements at least raise an  
15 issue about where the care came from, what  
he was going to be doing with it. RP 79-  
16 80.

17 Allman testified that a totally different officer,  
18 a grey haired man, questioned him not Officer Scripps.  
19 RP 53-55, 59. The statements shouldn't have been  
20 allowed into Evidence.

21 The State consistently used Mr. Allman's statements  
22 against him as substantive evidence of guilt.

23 The Judge ruled:

24 Caveat is I don't think the officers can say,  
because at one point Mr. Allman did say,  
25 "I am not going to answer any more questions".  
I don't think the officers can comment upon  
26 his exerting his right to remain silent on

more questioning as to Crystal. (Emphasis Mine)

1  
2 Yet throughout the trial the State did comment on  
3 Allman's assertion of his right to remain silent.

4 Officer Scripps testified:

5 And he refused to tell us any more information  
6 about Crystal. RP 152.

7 The State in it's closing arguments states:

8 And then the officers were unable to get any  
9 further information from the defendant about  
10 who Crystal was. RP 254.

11 ...although he couldn't relay her last name  
12 or any other information about her. RP 259.

13 But the officers can't get any information  
14 out of him about who Crystal is. RP 260.

15 ...refuses to give full information to the  
16 officers. RP 266.

17 ...and then not be willing to fill in the  
18 details that an innocent person would  
19 naturally provide to the officers. RP 288-  
20 289.

21 Because he doesn't tell the officers any  
22 more information about Crystal aside from  
23 her first name. RP 296.

24 The Judge ruled that the officers and the State can't  
25 do this! But he also ruled:

26 ...They can say that they asked, you know, what  
27 where she lived, if he could give an  
28 address or something, and he did not respond  
29 to that. But I think beyond that, to say  
30 he refused to answer any more questions,  
31 that's entirely his right and is consistent  
32 with Miranda. RP81.

33 The State argues:

34 Innocent people provide information who  
35 Crystal is, where she is, what her last  
36 name is, how to Leech her. RP 247.

1 ... the refusal to provide information about  
2 who Crystal is,... Rp 302.

3 All these comments on Mr. Allman's right to remain  
4 silent were deliberate and ill-intentioned. Allman  
5 was denied his right to a fair trial.

6 GROUND TWO

7 **The prosecutor repeatedly sent a message to the jury  
8 that Mr. Allman was a bad guy and not innocent because  
9 he gave a false name depriving him of a fair trial.**

10 Defense Attorney Steimmetz argued:

11 I am objecting to it. Objecting to it on  
12 the grounds that I believe that it's  
13 prejudicial to the defendant to charge him  
14 with an alias and to put the fact that there  
15 is an alias in front of the jury. I think  
16 that reflects poorly upon the -- upon Mr.  
17 Allman. I believe that sends an implicit  
18 message to the jury somehow Mr. Allman's a  
19 bad guy. RP 2.

20 It is not for the purpose of accuracy or  
21 any other acceptable purpose. I think it's  
22 trying to send the jury a message. RP 2.

23 By the time Mr. Allman's trial was over the jury was  
24 well versed on Allman's alias.

25 Innocent people don't provide false names.  
26 RP 297.

The stolen car, the fact that the keys are  
shaved, the screwdriver, the false name,  
... RP 302.

The State used the alias as substantive evidence of  
guilt.

Let me ask you this. And this hasn't been  
touched on yet: If the defendant is telling  
the officers the truth, why did he give them  
a false name? He used his brother's name  
when he identified himself to the officers.

1 Dedra Caldwell told you that. You can look  
2 in your instructions, Jeffrey Ryan Allman,  
3 also known as Robert James Allman. Why is  
4 that there? Because the defendant lied to  
5 the officer about what his name was. Why  
6 would somebody innocent tell the officers  
7 somebody else's name? RP 288.

8 These statements were argued in the State's closing  
9 arguments and were ill-intentioned and calculated.

10 The argument was plain error and cannot be deemed  
11 harmless. Allman's due process rights were violated  
12 and he was denied his constitutional right to a fair  
13 trial.

14 GROUND THREE

15 **Mr. Allman was denied his constitutional right to a  
16 fair trial when the State used evidence of a damaged  
17 ignition and a screwdriver to infer guilt.**

18 Q. ...Now, in the report, it indicates  
19 Officer Scripps indicates that during  
20 your search, you told him you found the  
21 ignition was damaged; is that correct?

22 A. Yes. RP 132.

23 This colloquy was initiated by defense to show that  
24 the officers were in fact lying about the damaged  
25 ignition. The prosecutor uses the damaged ignition  
26 to paint a different picture. SEE ALSO RP 161.

...I have seen screwdrivers used to start the  
engine. Anything that can, you know, defeat  
that ignition, defeat the, you know, the  
key hole and get the -- and get it to turn.  
RP 144.

The prosecutor builds his case by arguing that a  
screwdriver "could" be used to steal a car.

1 But jam the screwdriver in there, and are able  
2 to defeat the locking cylinder, able to turn  
3 the key, and so they can, you know, start  
4 the car.

5 Q. So they actually stuff a screwdriver  
6 in the ignition and turn the screwdriver?

7 A. Yes. RP 145.

8 The damaged ignition, the screwdriver and the defendant.

9 ...were any types of these tools located  
10 during the arrest of the defendant, Mr.  
11 Allman?

12 A. Yes, there were.

13 Q. What was located?

14 A. Several shaved keys were located, and  
15 Officer Ovens also located a screwdriver  
16 as well. RP 146.

17 The damaged ignition was hearsay. RP 161. There was no  
18 damage to the ignition. RP 177-178. And in the closing  
19 arguments the State puts before the jury:

20 And then there's the screwdriver. The officer  
21 testified that screwdrivers are commonly  
22 used to defeat ignitions, break into cars,  
23 obviously a flat head screwdriver can be  
24 used to pry things open, whether it's a door,  
25 you can pry a stereo out of a dashboard,  
26 you can stuff this in the ignition to destroy  
the ignition and then... RP 257-258.

And as you can see, this is a flat head  
screwdriver, ...to pry things open, stuff  
it into anything to be able to get the torque  
necessary to turn that ignition. RP 258.

The flagrant comments were used to inflame the passion  
of the jury. The comments were prejudicial and denied  
Mr. Allman a fair trial.

GROUND FOUR

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**The reasons for denying Mr. Allman a DOSA sentence were based on untenable grounds.**

The Judge gave multiple reasons for denying Mr. Allman DOSA. 1) He wanted Mr. Allman to "really pay serious consequences" because his offender score was "off the charts". RP 9. 2) Mr. Allman went to trial "here", 3) Mr. Allman has "had multiple opportunities to do treatment". RP 9. 4) Allman's been on community custody and "violated that by committing new offenses". RP 9.

Mr. Allman is a prime candidate for the DOSA program. He meets all the criteria the legislature has determined for being eligible for DOSA. The above reasons shouldn't have been a factor to allow the judge to deny Mr. Allman treatment.

The Judge further argues:

I don't think that the State should open it's resources on a DOSA bed with somebody that's shown the complete disregard for the rights of other people that you have. RP 9.

The legislature has determined this not to be a reason for denying an eligible person DOSA.

The Judge furthers his argument of not giving a DOSA sentence with:

...another woman that was involved in this case has now been charged criminally, is is custody right now because she came in and testified that she is actually the one that stole the vehicle; testimony that I certainly didn't believe.

1                   ...And she is now in custody. So, that's  
2                   offensive to me. RP 9.

3                   Here the Judge is denying DOSA because someone  
4                   "testified" and "he" was personally offended. To  
5                   state this on the record is an abuse of discretion  
6                   and it is a violation of due process to deny DOSA for  
7                   this reason.

8                   The Judge gives one more reason for denying DOSA  
9                   to Mr. Allman.

10                   I suspect, if you get out in 25 months, back  
11                   out in the community, you ultimately would  
12                   be revoked. You probably would spend more  
13                   time in prison than you are now, but I just  
14                   don't think DOSA resources should be expended.  
15                   So, I will impose the 57 months. RP 10.

16                   The Courts in Washington has determined that  
17                   determinations of future dangerousness are usually  
18                   "always" wrong. And, this is "not" a reason that can  
19                   be used in sentencing offenders due to the unreliability  
20                   of the prediction.

21                   For this reason alone this Court should remand Mr.  
22                   Allman back to the Pierce County Superior Court to  
23                   be resentenced with a possible DOSA alternative.

24                   CONCLUSION

25                   It is the contention of the appellant that the  
26                   accumulation of numerous errors by the trial court  
                 deprived him of a fair trial. **U.S. Constitution 5th**  
                 **and 14th Amendments.** This Court has the authority  
                 under RAP 2.5 (a)(3) to review error claims whether  
                 they be properly preserved or not, if the cumulative

1 effect of all errors denies the defendant the  
2 constitutional right to a fair trial. State v.  
3 Alexander, 64 Wn. App. 147, 150-51, 822 P.2d 1019 (1992)  
4 Although it is my contention that many of the errors  
5 listed warrant reversal on their own merit, this  
6 appellant would ask this court to also view all of  
7 the errors in light of, "the total effect of a series  
8 of incidents creating a trial atmosphere which threatens  
9 to deprive the accused of the fundamentals of due  
10 process." SEE: State v. Swenson, 62 Wn.2d 259, 382  
11 P.2d 614 (1963). "The cumulative error doctrine  
12 mandates reversal when the cumulative effect of  
13 nonreversible errors materially affects the outcome  
14 of a trial." State v. Newbern, 95 Wn. App. 277, 297,  
15 975 P.2d 721 (1999).

16 Mr. Allman is not an attorney and should not be  
17 held to professional standards. He asks this Honorable  
18 Court to uphold his constitutional rights and grant  
19 him a new trial and or remand for resentencing with  
20 a DOSA alternative.

21 I declare under penalty of perjury that the  
22 foregoing is true and correct to the best of my  
23 knowledge.

24 Dated this ~~1<sup>st</sup>~~ day of April, 2009.



25 Robert J. Allman 726410  
26 H2A23L  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, Wa 98520

09 APR -6 AM 9:26

CERTIFICATE OF SERVICE BY MAIL

STATE OF WASHINGTON

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 (RAP 10.10)  
FOR REVIEW CASE NO. 380641

By depositing in the United States mail, marked *Legal Mail*, postage prepaid, on this 2<sup>ND</sup> day of APRIL, 2009 to the following: 1, 2, 3

1) - STEPHANIE C. CUNNINGHAM  
ATTY. @ LAW 4616 25<sup>TH</sup> AVENUE NE. #552  
SEATTLE WASHINGTON 98105

2) - COURT OF APPEAL DIVISION II  
950 BROADWAY STREET STE. 300  
TACOMA WASHINGTON 98402-3694

3) - PROSECUTOR - GERALD HORNE / DEPUTY  
930 TACOMA AVENUE SOUTH # 946  
TACOMA, WASHINGTON 98402

Respectfully Submitted,

*Robert J. Allman*

Signature

ROBERT ALLMAN

Printed/Typed Name

D.O.C.# 726410 Unit # H2 Cell # A23L

Stafford Creek Corrections Center

191 Constantine Way

Aberdeen, WA 98520

BERT J. ALLMAN DOC# 726 410 H2 H2SL  
FAD CREEK CORRECTIONS CENTER  
CONSTRUCTION WAY  
EDER WASHINGTON  
98520

RECEIVED  
APR 06 2009  
CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

COURT OF APPEAL DIV II  
950 BROADWAY STREET STE-300  
TACOMA, WASHINGTON  
98402-3694



J. Widman



7/2

1857