

FILED
COURT OF APPEALS
DIVISION II

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
FOR DIVISION II

SEP 19 PM 1:18
STATE OF WASHINGTON
BY [Signature]
DEPUTY

State of Washington,

Plaintiff,

v.

Kevin Michael Abuan,

Respondent,

Case No. 38325-0-II

STATEMENT OF ADDITIONAL
GROUNDS, PURSUANT TO
RAP 10.10

I, Kevin Michael Abuan, the petitioner, have received and reviewed the opening brief prepared by my attorney. Summarized below are the Additional Grounds for review that are not adequately addressed in the brief. I understand the Court will review this Statement of Additional Grounds for review when my appeal is considered.

ADDITIONAL GROUND 1

In persistent attempt to Pyramidal the evidence on a motion to reconsider the gun that was dismissed. But yet on his own admission (Prosecutor Gregory Greer) by his statement (Granted it's a different gun under the seat" He keeps misleading the court to believe in a statement he can not produce on record, Referring to a gun which has been dismissed by expert testimony, his own witness, In a feeble attempt to bring in a ruling of totality of Circumstance in his favor. In return it produced crystal clear Manifest injustice. Prejudicial statements from the detective to mislead the jury of my innocents. Shown on Pg 3 thru 6. In return the defense lawyer's rebuttal argument was that on pg 8 of the 15th volume motion to reconsider The arresting officer testified that he had to open the door, get down on his knees and look underneath and feel with his hands in order to extract the weapon when the traffic stop occurred.

In the Judges own words on his ruling he stated "As I say, if
there's enough inferences that a reasonable trier of fact
could reach that conclusion then the case should
go forward "I don't think so," I'll adhere to my ruling.
The case should have been dismissed right after the judge
made his ruling. That's when my lawyer showed ineffective assistance
of counsel by not asking for a dismissal. Judges ruling is on
volume 15 of verbatim report on pg 11 line 2-11. Manifest injustice
is described as "An injustice that is obvious overt not
obscure.

~~Additional Grounds~~
state v. Paul 103 Wn. App 487, 494 (2000) (quoting state v. Branch
129 Wn.2d 635, 641 (1996) state v. Taylor 83 Wn.2d 594 596
(1974))

In conclusion the Appeals court should uphold or
impose the Trial Judges ruling. By reversing and dismissing,
all charges, or send the case back to the trial courts,
and have them uphold or impose the ruling by
dismissing all charges, that Kevin M Abuan has been
charged with, based on the Judges ruling,

Additional Ground 3

Trial Court erred by giving Defendant Kevin Michael
Ahwan firearms enhancements to charges 5 and 6
which is the Assaults in the Second degree. The
instruction was the Defendant Kevin Michael Ahwan,
armed with a firearm at the time of the Commission
of the Crime. Answer was Yes. on pg 8 in volume 17
Aug 20, 2008. In conclusion the Appeals Court should
reverse and dismiss the Sentencing in part and
send the defendant back to trial Courts to be
re-sentenced without firearms enhancement

Additional Ground 4

On June 10, 2008 on pg 694 line 5-25 in verbatim report Defense
Lawyer for Kevin Ahwan was questioning Detective John Bair if
he read the report of the Arresting officer (Bett's) During the
officers interview with Ahwan. Detective said he reviewed
them. Defense's Question to the Detective Bair Q. So when you
reviewed that report, then you are aware that when Mr. Ahwan
was interviewed, he claimed Native Gangster Blood Affiliation? Again
you are reviewing that report to refresh your recollection. Detective
Answer. That's correct, By reviewing, yes, I recall that, But
in the Declaration of Determination of probable
cause Detective

Detective John Barr was the Gang expert at trial
John Barr said during his interview with Kevin Abuan.

That Abuan claimed membership or is affiliated with the
Native Gangster Crips. During trial the State knowingly and highly
prejudiced the Defendant by telling the jury that NGB's
and NGC's do drive-by's together. The State never disclosed that
part of the statement that Detective Barr put in the Declaration of
probable cause to the jury. The State knowingly and highly prejudiced
the defendant through the whole trial by making the jury
believe NGB's and NGC's do driveby together. But never discovered
that they was accusing Abuan of being from NGC in the
FIRST place. In conclusion The Appeals Court should reverse and
dismiss all charges based on prosecutorial misconduct and due
process

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

DATED this 4th day of September, 2009.

Kevin Abuan
(Appellant Signature)

KEVIN ABUAN
(Appellant's Printed Name)

Stafford Creek Correction Center
191 Constantine Way, Unit# A-1-B-68
Aberdeen, Washington 98520

August 20 2007 12:45 PM

KEVIN STOCK
COUNTY CLERK

1 SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

2 STATE OF WASHINGTON,

3 Plaintiff,

CAUSE NO. 07-1-04327-8

4 vs.

5 KEVIN MICHAEL ABUAN,

DECLARATION FOR DETERMINATION OF
PROBABLE CAUSE

6 Defendant.

7 JAMES S. SCHACHT, declares under penalty of perjury:

8 That I am a deputy prosecuting attorney for Pierce County and I am familiar with the police
9 report and/or investigation conducted by the TACOMA POLICE DEPARTMENT, incident numbers
072271453 and 072290047;

10 That the police reports and/or investigations, along with a verbal description of facts from
11 Tacoma Police Detective John Bair, provided me the following information;

12 That in Pierce County, Washington, on or about the 15th day of August, 2007, defendants
13 KEVIN MICHAEL ABUAN and RAYMOND MITCHELL HOWELL committed the crime of DRIVE-
BY SHOOTING. Furthermore the defendants committed the crime of UNLAWFUL POSSESSION OF
A FIREARM IN THE SECOND DEGREE on or about the 17th day of August 2007. The crimes were
committed as follows:

14 According to the reports from Tacoma Police Officer Donald Rose and other patrol officers, the
15 drive-by shooting incident took place at 3589 East J Street at approximately 10:20 pm on August 15,
2007. That location is the residence of victims Fo. Leoso and Fr. Leoso. Victim B. Stafford was a
16 neighbor. Officer Rose and several other officers were dispatched to the area of the Leoso residence in
response to a report of a drive-by shooting. Emergency 911 callers had reported that a vehicle had been
17 seen driving by the Leoso residence and that several shots were fired. It was also reported that a second
vehicle had left just after the shots were fired at a high rate of speed. The second vehicle was described
18 by make and color and stopped a short distance away. The occupants of the second vehicle were victims
Fo. and Fr. Leoso.

19 Victim Fo. Leoso was interviewed by patrol officers and reported that his residence located at
3589 East J Street was the target of the drive-by shooting. He stated that five shots had been fired into his
20 residence and that when he ran outside he saw a dark red colored hatchback speeding away. Mr. Fo.
Leoso further reported that he chased after the vehicle and was stopped by the officers a short time after
21 giving chase.

22 Victim Fr. Leoso was also interviewed. He too stated that the residence had been the target of the
drive-by shooting and that he had run out side and returned fire at the suspect vehicle. He stated during
23 an interview with Detective John Bair that he thought that he had hit the back of the suspect vehicle with
one of his shots.

24 DECLARATION FOR DETERMINATION
OF PROBABLE CAUSE -1

Office of the Prosecuting Attorne
930 Tacoma Avenue South, Room 94
Tacoma, WA 98402-21
Main Office (253) 798-74

1 In his interview with the patrol officers, Fr. Leoso admitted gang membership in a California
2 Blood street gang set. He further admitted affiliation with a local Blood gang set, the Eastside Piru. Mr.
3 Fr. Leoso had tattoos consistent with Blood gang membership. He stated that a rival Crip street gang set,
4 the Native Gangster Crips, were responsible for the shooting.

5 Victim neighbor B. Stafford was also interviewed by patrol officers. He stated that he had been
6 in his residence near by the Leoso residence. He stated that he heard several shots and looked out the
7 window. He saw what appeared to be an orange suspect vehicle travel South on East J Street and turn on
8 East 36th. Mr. Stafford stated that the vehicle had all of its lights off. As it made the turn Mr. Stafford
9 heard several more shots. One of the shots penetrated Mr. Stafford's house passing through an exterior
10 wall and into the living room.

11 The patrol officers were not able to locate the suspect vehicle on August 15 and thus made no
12 arrest that day for the drive-by shooting. The incident was assigned to be further investigated by
13 Detective Bair. His investigation was conducted both before and after a traffic stop arrest of the two
14 defendants on August 17, 2007.

15 On August 17, 2007, at 0055 hours patrol officers from the Tacoma Police Department conducted
16 a traffic stop (expired registration) on a car being driven by defendant HOWELL in the 1400 block of
17 East 27th Street. A records check showed that HOWELL'S driver's license was suspended in the third
18 degree. HOWELL was arrested. Defendant ABUAN was the front seat passenger in the car.

19 During a search incident to arrest, from under the driver's seat of HOWELL'S car officers
20 recovered an unloaded 9mm handgun. HOWELL told police that the handgun was his and that just prior
21 to the traffic stop he had removed the gun from his waistband and placed it under the driver's seat. The
22 gun matched ballistic evidence recovered from the drive-by shooting with respect to the caliber of the gun
23 used to fire the shots at the Leoso and Stafford residences. Also the vehicle driven by HOWELL matched
24 the description of the suspect vehicle in the drive-by shooting. Furthermore it had what appeared to be
bullet damage to the rear passenger side brake light assembly that was consistent with the report from
victim Fr. Leoso of having returned fire and hit the suspect vehicle.

1 Detective Bair interviewed victim Fr. Leoso and the two defendants. Victim Fr. Leoso reported
2 that he would be able to recognize individuals from the suspect car in the drive-by shooting. He was
3 shown a photo line-up that included the photograph of defendant HOWELL and identified HOWELL as
4 the person who had fired the shots on August 15.

5 Detective Bair also interviewed defendant ABUAN. ABUAN stated, following an advisement of
6 his rights, that he had been the driver of the car during the drive-by shooting at the Leoso residence. He
7 further stated that the shots were fired from his car and that he had intended to go to the residence for the
8 purpose of showing gang signs. (Both defendants claim membership or affiliation with the Native
9 Gangster Crips.) Finally, ABUAN stated that he knew that during the drive-by shooting incident that the
10 car he had been driving had been shot at.

11 According to their Washington State Criminal Histories both of the defendants had been
12 previously convicted of felony crimes. In defendant ABUAN'S case he has reportedly been convicted of
13 Taking a Motor Vehicle Without Permission. In defendants HOWELL'S case he had reportedly been

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

convicted of Theft in the First Degree, Attempting to Elude a Pursuing Police Vehicle, and Theft in the Second Degree.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: August 20, 2007
PLACE: TACOMA, WA

/s/ JAMES S. SCHACHT
JAMES S. SCHACHT, WSB# 17298

IN THE Division II Appeals COURT FOR WASHINGTON
IN AND FOR Pierce COUNTY

09 SEP 09 PM 1:18

STATE OF WASHINGTON

State of Washington,
Plaintiff

No. 38325-0-IT BY [Signature]
DEPUTY

v.

DECLARATION OF SERVICE BY
MAILING

Kevin Michael Loran
Defendant.

I Kevin Michael Loran, the Defendant, in the above entitled cause, do hereby declare that I have served the following documents;

Statement of Additional Grounds Pursuant
to RAP 10.10

PARTIES SERVED:

CLERK OF THE COURT

PLAINTIFF / PROSECUTOR

David C. Ponzona
Court of Appeals Division II
950 Broadway Ste 300
Tacoma WA, 98402-3694

Stephen D Trinen
Pierce County Prosecutors ofc
930 Tacoma Ave S RM 946
Tacoma WA, 98402-2102

That I deposited in with the Unit Officer's Station, by processing as Legal Mail,
with First Class Postage at: Stafford Creek Corr Center
191 Constantine way, Aberdeen wa 98520

Dated this 4th day of Sept, 2009

I certify under the penalty of perjury under the laws of Washington that the
aforementioned is true and correct.

[Signature]

(Signature)