

FILED
COURT OF APPEALS
DIVISION II

2017 DEC 14 AM 11:34

STATE OF WASHINGTON

BY  DEPUTY

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

TAMMY RUSH
Appellant/Petitioner

No. 50075-2-II

v.

STATEMENT OF
ADDITIONAL GROUNDS

STATE OF WASHINGTON
Respondent

I, the petitioner in this matter, TAMMY RUSH, 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.

First Additional Ground:

THE TRIAL COURT VIOLATED MY DUE PROCESS RIGHTS UNDER THE 14TH AMENDMENT WHEN IT DID NOT ALLOW KEITH TO TESTIFY

My husband, Keith, admitted that I did not know this guy (the informant in this matter) was coming over to put in there in exchange for taking the

money out. I did not know any of that. (See trial transcript January 30, 2015 lines p. 526, 360-61). The trial court was in error and violated my due process rights by excluding my husband's admission that the drug was his and I had no knowledge. To be ordered by the jury – the fact finder of my case – due process requires that criminal defendants receive a meaningful opportunity to present a complete defense. *State v. Wittenbarger*, 124 Wn. 2d 467, 474, 880 P.2d 517 (1994). Absent a valid justification, excluding relevant defense evidence “deprives a defendant of the basic right to the prosecutor’s case encounter and survive the crucible of meaningful adversarial testing”. *Crane v. Kentucky*, 476 U.S. 683, 689-90, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986).

Second Additional Ground

THE TRIAL COURT VIOLATED MY RIGHTS UNDER THE 6TH AMENDMENT AND WA CONST. ART 1 §22 WHEN IT DID NOT ALLOW KEITH TO TESTIFY

In addition, the 6th Amendment and WA Const. Art 1 §22 guarantee a criminal defendant the right to confront and cross-examine adverse witnesses. *Davis v. Alaska*, 415 U.S. 308, 316, 39 L.Ed. 2d 347, 94 S.Ct. 1105, 1110 (1974); *State v. Russell*, 125 Wn.2d 24, 73, 882 P.2d 747 (1994), cert denied, 514 U.S. 1129 (1995). Confrontation is a fundamental “bedrock” protection in a criminal case. *Crawford v. Washington*, 541

U.S. 36, 42, 124 S.Ct. 1354, 1359, 158 L.Ed. 2d 177 (2004). The jury was entitled to have evidence before them so they could make an informed decision as to the weight to put on Keith's testimony. *See Davis*, 415 U.S. at 317-18.

Therefore, the trial court violated my right of confrontation, right to present a defense and my due process by excluding Keith's testimony to the jury.

Third Additional Ground

THE STATE FAILED TO PROVE EVERY ELEMENT OF MY CHARGED CRIME

With Keith's admission that I knew nothing about the informant, the state had failed to prove every element of my charged crime. The due process clause requires the State to bear the burden of proving every element of the charged offenses beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed. 2d 368 (1970); *State v. Cantu*, 156 Wn.2d 819, 825, 132 P.3d 725 (2006).

Possession may be actual/constructive. *State v. Callahan*, 77 Wn. 2d 27, 29, 459 P.2d 400 (1969). A person has actual possession when she has physical custody of the item. *Callahan* 77 Wn.2d at 29, 459 P.2d 400. A person has constructive possession when she has dominion and control

over the item. *Callahan* 77 Wn. 2d at 29, 459 P.2d 400. This dominion and control need not be exclusive. *See State v. Tadeo-Mares*, 86 Wn.App. 813, 816, 939, P.2d 220 (1997). Courts determine whether a person has dominion and control over an item by considering the totality of the circumstances. *State v. Partin*, 88 Wn. 2d 899, 906, 567, P.2d 1136 (1977). When a person has dominion and control over a premises it creates a rebuttable presumption that the person has dominion and control item on the premises. *State v. Cantabrana*, 83 Wn.App. 204, 208, 921 P.2d 572 (1996), *Tadeo-Mares*, 86 Wn.App at 816, 939 P.2d 220. *See also Partin*, 88 Wn.2d at 906-07, 567 P.2d 1136. (

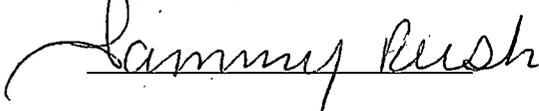
In the trial transcripts pg. 340 Ln 11-23, Keith Rush stated January 30th he made contact with the “Mark” that was going to be the first one he set up for Multnomah police. Keith told the “Mark” we were leaving, he was leaving and where to go in to find his money and drop off some stuff. This means the drugs were not there prior to us leaving the house. Transcript of trail pg. 339 Ln 4-5. Keith signed the cooperation agreement January 28th, 2015. Trial transcript pg 342-343 Ln 25, Ln 1-7. (“At what point during this process, if any, did Tammy Rush become aware of your informant status?” “Halfway through the nine month process”). Mr. Lewis asked Mr. Rush: “so what are you trying to tell me is that your wife, Tammy Rush, knew nothing about the drugs in the house?” Mr. Rush: “that’s

correct.” The affidavit for search from January 2015 contained information all about Keith Rush dealing drugs. The only information in the affidavit about Tammy Rush was the last sentence stating that Keith and Tammy were 50/50 partners, but provided no information or evidence to support that statement.

For the reasons listed above, I respectfully request this Statement of Additional Grounds be taken into consideration for the purpose of my appeal.

Signed this 12 day of December, 2017.

Respectfully,

A handwritten signature in cursive script that reads "Tammy Rush". The signature is written in black ink and is positioned above the typed name and address.

Tammy Rush #830106
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