

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON)
)
 Respondent,)
)
 TIMOTHY E. PUGH,)
 Appellant.)
 _____)
 (your name))
)
 Appellant:)

80850-3

No. 56935-0-I

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

2006 SEP -7 AM 10:59
COURT OF APPEALS
STATE OF WASHINGTON
CLERK
#1

I, Timothy e. Pugh, 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.

Additional Ground 1

The trial court violated my constitutional rights to confront my wife's inability to show up in court. The state failed to persue having Mrs. Pugh appearance allowing her statements to be introduced violating my ability to cross. My trial lawyer either forgot to or was unable to place in evidence a handwritten note written by Mrs. Pugh that would have exonerated me.

Additional Ground 2

The admission of the 911 tapes were highly prejudicial, allowing no response or inquiry. The 911 tapes were after the alledged assault and did not reflect the situation of exactly what was going on. It was testimonial and should have been subject to cross. The

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

Date: September 5, 2006

Signature: [See Page 2]

STATEMENT OF ADDITIONAL GROUNDS
FOR REVIEW (Continued)

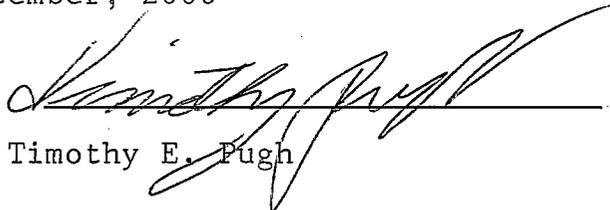
prior criminal contact by Mrs. Pugh both in prostitution and drug abuse she had was not produced in court for the jury to consider

Additional Ground 3

3. Reasons for breaching the no-conduct, as well as returning despite the police involvement were lost in the state's rush to convict and in the process biased my conduct. My attorney was unable to produce, both from DSHS as well the police records to show my wife's prior criminal convictions which would have supported my actions.

4. The prosecutor took advantage of the fact that their witness [Mrs. Pugh] was a no show which was prejudicial by stating facts not in evidence. The prosecutor's comments to the jury, stating that her absence was somehow attributed to me was in error and prejudicial. The prosecutor should not have made the argument to the jury that the victim [Mrs. Pugh] prior history showed exactly why I should be found guilty on all counts.

Dated this 5th day of September, 2006



Timothy E. Pugh

No. 56935-0-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondant,

v.

TIMOTHY E. PUGH,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Theresa Doyl

APPELLANTS BRIEF IN SUPPORT OF

RAP 10.10

Timothy E. Pugh

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TABLE OF CONTENTS

A. <u>SUMMARY OF ARGUMENT</u>	1
B. <u>ASSIGNMENTS OF ERRORS</u>	1-2
C. <u>ISSUES PERTAINING TO ASSIGNMENT OF ERROR</u>	2
D. <u>STATEMENT OF THE CASE</u>	2-4
E. <u>ARGUMENT</u>	4-8
1. THE TRIAL COURT VIOLATED MY CONSTITUTIONAL RIGHTS TO CONFRONT MY WIFE'S INABILITY TO SHOW UP IN COURT.....	4
a. The State failed to persue having Mrs. Pugh appearence allowing her statements to be introduced violating my ability to cross.....	4
b. My trial Lawyer either forgot to or was unable to place in evidence a handwritten note written by Mrs. Pugh that would have exonerated me.....	5
2. THE ADMISSIONS OF THE 911 TAPES WERE HIGHLY PREJUDICIAL, ALLOWING NO RESPONSE OR INQUIRY.	6
a. The 911 tapes were after the alleged assault and did not reflect the situation of exactly what was going on. It was testimonial and should have been subject to cross.....	6
b. The prior criminal conduct by Mrs. Pugh both in prostitution and drug abuse she had was not produced in Court for the jury to consider.....	7

3.	REASONS FOR BREACHING THE NO-CONTACT, AS WELL AS RETURNING DESPITE THE POLICE INVOLVEMENT WERE LOST IN THE STATE'S RUSH TO CONVICT AND IN THE PROCESS BIASED MY CONDUCT.....	7
b.	My attorney was unable to produce, both from DSHS as well the police records to show my wife's prior criminal convictions which would have supported my actions.....	7
4.	THE PROSECUTOR TOOK ADVANTAGE OF THE FACT THAT THEIR WITNESS [MRS. PUGH] WAS A NO SHOW WHICH WAS PREJUDICIAL BY STATING FACTS NOT IN EVIDENCE.....	8
a.	The Prosecutor's comments to the jury, stating that her absence was some how attributed to me was in error and prejudicial.	
b.	The Prosecutor should not have made the argument to the jury that the victim [Mrs. Pugh] prior history showed exactly why I should be found guilty on all counts.	9
F.	<u>CONCLUSION</u>	9

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Davenport
100 Wn.2d 757; 675 P.2d 1213 (1984)..... 7

State V. Bautista-Caldera
56 Wn.App. 186; 783 P.2d 116 (1989)..... 8

State v. Rivera
51 Wn.App. 556, 560 ; 754 P.2d 701 (1988)..... 8

State v. Swan
25 Wn.2d 319; 171 P.2d 222 (1946)..... 6

State v. Wicker
66 Wn.App. 409, 414; 832 P.2d 127 (1992)..... 3

CONSTITUTION

Sixth Amendment.....2

A. SUMMARY OF ARGUMENT

I was convicted on charges that were convoluted by the fact that I was unable to confront the State's witness Mrs. Pugh, my wife.

Admissions of the 911 tapes was highly prejudicial in that no response or inquiry was allowed by the defense, as a result I felt that my actions could not be explained fully.

The Prosecutor took advantage of the no-show [Mrs. Pugh] which hampered my explanation of my actions but allowed the State to allege facts not in evidence.

A. ASSIGNMENT OF ERRORS

1. The trial court violated my constitutional rights to confront my wife's 911 statements due to her absence.

2. The admission of the 911 tapes were highly prejudicial in allowing no response or inquiry.

3. Both reasons for breaching the no-contact as well as returning again despite the police involvement were lost in the state's rush to convict me rather than understand what was really involved.

4. The prosecutor took advantage of the fact that their witness [my wife] absence enabled him to make statements concerning facts not in evidence.

C. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

1. My rights to confront prior statements of my wife on the 911 tapes as well as the 911 operator herself being allowed in court did not allow us to challenge the events flaws portrayed by the tapes.

2. By not insuring my wife's presence in court, her prior statements were in fact entered into evidence via the back door which violated my 6th amendment to the U.S. Constitution that guarantees me the rightto be confronted with the witnesses against him...[me].

3. The prosecutor was allowed to skirt around the issues that could been more fully explained had my wife been present.

D. STATEMENT OF THE CASE

Mr. Pugh has a history of problems with his wife Bridgett. Apparently she has a criminal record of both prositution and drug abuse. In addition there is a child DB age 4 that was placed in care of both. The Department of Social and Health Services have had a troubled history of foster care by Mrs. Pugh.

It seems that Mrs. Pugh has a history of making false claims to the King County Sheriff's Office

Mrs. Pugh, despite the no contact order asked me to take care of DB lead to the events of March 31, 2005 on or about 4:00 AM Mrs Pugh called 911 to make a report that she had been attacked by me. A report was taken by the 911 operator. At that point I was some 8 blocks away. I returned to the residence about 10-15 minutes later due to my concern for DB's safety. It was apparent that Mrs. Pugh as she had done in the past made the contact herself as she had done in the past.

The same factors had occurred back in November 29th 2004, however this time the shoe was on the other foot. The Sheriff came in response that I had been attacked by Mrs. Pugh and as a result she was arrested and taken to jail.

The original no contact order was done on or about August, 2004. That was when the Sheriff again was called by Mrs. Pugh alleging an assault by me and I was taken to jail. The court then issued a no contact order based on alleged statements made by Mrs. Pugh. The order was set for 3 years.

72 hours after my arrest no charges were filed and I was released custody and returned home again despite

the no contact order all basically due to the concern I had for DB.

The entire case revolved around the concern I had for DB. It is a matter of record that Mrs. Pugh would leave asking me to take care of DB stating she would be back in a couple of hours which would frequently become days due to her drug abuse.

Coincidentally, the arrest and charges that are entwined just happened that I was in the wrong place at the wrong time. due entirely to my concern for DB.

In fact 2 months after my arrest DB was taken away as a result of the neighbors complaining and DSHS involvement. He remains in their care to this day.

E. ARGUMENT

1. THE TRIAL COURT VIOLATED MY CONSTITUTIONAL RIGHTS TO CONFRONT MY WIFE'S INABILITY TO SHOW UP IN COURT.

a. The state failed to persue having Mrs. Pugh appearence allowing her statements to be introduced violating my ability to cross. I was arrested for events that did not happen. The prosecutor introduced evidence in court that was not subjected to cross despite objections. This evidence were statements obtained from my wife when I was arrested. Evidence obtained exactly as stated above including only a cursory attempt to locate her.

On review the court found that it was error to admit the statements without requiring the prosecutor to make an adequate showing of the witnesses unavailability. State v. Mael Jose Rivera 51 Wn.App 556; 754 P.2d 701 (1988).

b. My trial lawyer either forgot or was unable to place into evidence a hand written note written by my wife that would exonerate me. My wife has made prior statements on the record known to the King County Sheriff to be false. In addition my wife has a criminal record for prostitution and drug abuse. DSHS has been involved with DB and was concerned about DB's safety and well being. Their focus of concern came from the long track record of my wife as well adjacent neighbors complaints.

The failure to have input from the Sheriff, DSHS or neighbors allowed the prosecutor to present favorable evidence of my wife's out of court statements. In so doing disallowed evidence that would have told a completely different story. Evidence of a non testifying expert [DSHS] opinion constituted hearsay and that it's admission violated the defendants constitutional right to confront adverse witnesses, the error was not harmless. State v. Wicker 66Wn.App. 409, 414; 832 P.2d 127 (1992).

2. THE ADMISSION OF THE 911 TAPES WERE HIGHLY PREJUDICIAL, ALLOWING NO RESPONSE OR INQUIRY ON MY BEHALF.

a. The 911 tapes were after the alleged assault and did not reflect the situation of exactly what was going on and was testimonial and should have been subjected to cross. Husband shall not be examined for or against his wife without the consent of the wife, nor a wife for or against her husband without the consent of the husband. There inheres in the statute the mandatory provision that no inference of guilt shall arise from the failure of a wife to testify for or against her husband or for a husband to testify for or against the wife. It follows that the full protective force of the statute is not secure if the silence of the construed against the husband in a criminal action. State v. Swan 25 Wn.2d 319; 171 P.2d 222 (1946).

b. The prior criminal conduct by Mrs. Pugh both for prostitution and known drug abuse was not produced in court for the jury to hear. However the prosecutor was allowed to make statements to the jury essentially impeaching their own witness.

Statements by the prosecution or defense to the jury upon the law must be confined to the law as set forth in the instructions given by the court State v. Davenport 100 Wn.2d 757; 674 P.2d 1213 (1984).

While it is not unconstitutional to charge a person as a principal and convict him as an accomplice the court must instruct the jury on accomplice liability. Davenport supra HNG.

3. REASONS FOR BREACHING THE NO CONTACT AS WELL AS RETURNING AGAIN DESPITE THE POLICE INVOLVEMENT WERE LOST IN THE STATE'S RUSH TO CONVICT AND IN THE PROCESS BIASED MY CONDUCT.

a. My attorney was unable to produce records both from DSHS as well the police records to show my wife's prior criminal convictions which would have supported my actions. The prosecutor made comments to

the jury that my involvement was to abuse my wife , while in fact my focus and concern was for DB not myself.

Without her presence and relying on the 911 tapes the material fact were unavailing. Statements of prosecuting attorney to jury that he could not produce...his own witness because of circumstances beyond his control was prejudicial. State v. Bautista - Calders 56 Wn,App. 186; 783 P.2d 116 (1989)

4. THE PROSECUTOR TOOK ADVANTAGE OF THE FACT THAT THEIR WITNESS [Mrs. Pugh] WAS A NO SHOW WHICH WAS PREDUCIAL BY STATING FACTS NOT IN EVIDENCE.

a. The prosecuting comments to the jury stating that her absence was some how attributed to me was in error and prejudicial. The confrontation clause requires, at a minimum that the prosecution makes a good faith effort to obtain a witness presence at trial. Good faith has been interpreted to mean untiring efforts in good earnest. There must be evidence of a substantial character to support the conclusion of due diligence, what is required is a through painstaking and systematic attempt to locate the witness, clearly this did not happen in my case State v.Rievera 51 Wn.App. 556,560;

754 P.2d 701 (1988).

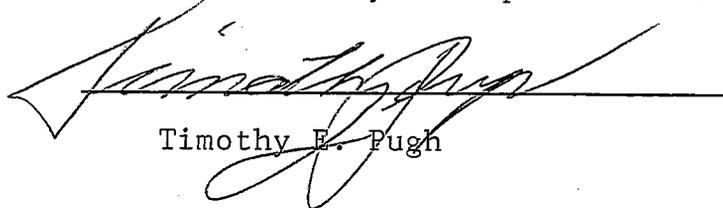
b. The prosecutor should not have made the argument to the jury that the victim [Mrs. Pugh] prior history showed exactly why I should be found guilty on all counts. Impeachment is for the purpose of showing that a witness is untrustworthy and unreliable, and the right can be involved only by a litigant against whom the testimony is injurious, to permit a party to show that on other occasions, his witness has made statements more favorable to him than he has made when a witness on the stand, would be to permit him to fill in the gaps in his proof by testimony that has not the sanction of any witness, in other words, it would be to permit a party to prove his case by hearsay testimony. State v. Swan 25 Wn.2d 319; 171 P.2d 222 (1946).

F. CONCLUSION

The full story was never allowed to be told. The jury was there to judge if my actions were in fact wrong, under the circumstances.

Finding guilt in this case should not have happened when the court is charged to seek the truth, in the maze. My concern was focused on DB. My trial never allowed my wife to be confronted as to what actually transpired the true facts were lost in the process.

Respectfully submitted this 5th day of September 2006



Timothy E. Fugh

