

68495-7

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Court of Appeals  
Division II  
Of the State of Washington

FILED  
STATE OF WASHINGTON  
2011 FEB -14 AM 1:19

Schloredt, Phillip,  
Appellant,

No: 68495-7-1

Vs.

The State of Washington  
Respondent.

Statement of Additional  
Grounds for Review

I, Phillip Schloredt, 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

I was denied effective assistance of counsel when Mr. Tarvin submitted inflammatory testimony from an officer without objection, violating a motion in limine to exclude such testimony.

On December 5, 2011, the trial court granted my motion in limine to exclude any evidence of needles (large animal syringes). RP 9-10. Mr. Tarvin elicited testimony from Officer Alan Hardick concerning needles being

found three times during trial. RP 183 and 189. Along with the "needles" testimony, Officer Hardwick testified about me being "unstable", "wouldn't walk straight," and "under the influence of something." RP 187-188. Mr. Tarvin then asked, "And so what you observed were mannerisms that you said made you wonder whether he was under the influence of a narcotic?" Officer Hardwick answered, "Yes." RP 187. Then the following colloquy ensued:

Q. Okay. And based on your training and experience, which sounds significant, were you able to conclude or you felt that I guess in your opinion he was under the influence of a drug, whether it was a balance dysfunction of some sort or whether -- a physical disability, I should say, or whether it was something else? Were you able to develop an opinion on that?

A. I had an opinion, but I don't know how strongly I would stand for that opinion.

Q. What was it?

A. My opinion was, especially when he said something about needles in the bag, I wondered if possibly he had been using heroin or had used it in the past or something like that. But again, I don't know. Those are thoughts that crossed my mind at the time.

Q. But did you know that certainly or were you just speculating?

A. No. Not mere speculation. It was based on some observations: The way he spoke, the way he walked, his nervousness. But all those things together and then the comment about the needles made me wonder maybe he's used heroin... RP 189.

The argument only served to further the prosecution. Counsel's actions without objection to Officer Hardwick's testimony fell below the reasonable standard required by law. The testimony was highly inflammatory and denied me a fair trial. The submission of the testimony without objection cannot be deemed as objective trial strategy. I was denied effective assistance of counsel. U.S. Const. Amend. 6.

### Additional Ground 2

I was sentenced to an offender score of 24. My offender score is incorrect and my Judgment and Sentence is invalid.

A cursory check will show that there has been more than a five year period between this sentence and my last prior conviction. My current J & S was issued

March 14, 2012, with my last prior conviction being 4/25/05. More than the 5 year period has expired, therefore all my prior criminal history washes out. Prior to this wash out period, there was another wash out period between a 10/2/98 conviction and a 11/12/04 conviction. Either way my current J & S's offender score of 24 is in error and my Judgment and Sentence is invalid.

### Additional Ground 3

There is insufficient evidence to find me guilty of Second Degree Burglary.

The "intent" element of Burglary 2<sup>o</sup> was not met in this case. The State cannot prove that I "entered or remained" in the tire store "unlawfully", but can merely speculate and infer. The State did not meet its burden, that of "intent to commit a crime". Not only can the State prove that I "entered or remained unlawfully" in the tire store, but the State offered no evidence to prove "intent". The burden of proof was not met by the State in this case. There is no evidence of intent.



## Additional Grounds 4

During Direct examination of prosecution's First witness Ms. Jerral Sidles at 4:22:56. Question. Okay, Do you remember anything about the silhouette that you saw, clothing or anything like that? Answer. Well I didn't remember he had ~~on~~ a leather <sup>Jacket</sup> on, but Beverly saw that. No. It was dark. He had dark clothes on. RP 28

Issue: Ms. Jerral Sidles is testifying about something Beverly saw. The prosecutor talked about the defendant wearing a leather jacket in the opening statement. ~~The opening statements were right before this witness.~~ The opening statements were right before this witness.

Argument. Does hearsay evidence affect the fairness and integrity of defendant's trial? Did the uncorrected hearsay testimony affect defendant's substantial rights? Is there any reasonable possibility that the use of inadmissible evidence was necessary to reach a guilty verdict?

The Fourteenth Amendment is violated "When the state, although not soliciting false <sup>testimony</sup> allows it to go uncorrected. The evidence that the state relied on was "false" in the sense that it was incomplete and misleading.

## Additional Grounds 5

During Cross Examination of Office Micheal Bower at 0:04:29 Question. Lets Just ask this: Did you lift Fingerprints From any location while investigating this case? Answer, I dusted a rim inside of the tire yard that the manager pointed out appeared to have been Moved and I did not get any suitable prints for submission. There was smudges on it. [Another time] 0:05:26 Question,

And the one latent print that you attempted or the places you tried to pick up a latent print were you said on a rim inside the yard? Answer,

It's inside of the yard. It was a rim that was kind of greasy, a lot of dirt, and there was no latent ridge detail like a fingerprint has. It was more of a pull or a smudge, not suitable for being able to I.D. Question, Okay. And is fingerprint evidence a form of what we call forensic evidence?

Answer, Correct. RP 131 #132

Argument- Is it exculpatory evidence that Officer Bowers attempted to withhold until the middle of my trial? Or if Officer Bowers had found suitable prints for submission aren't those part of the discovery that we asked for before the trial began? Was the petitioner denied due process of law by the State's

suppression of evidence before the trial began? Must the proceeding commence again from the stage at which the petitioner was overreached? Was there harm to the defendant's case resulting from the nondisclosure? Is the suppression by the prosecution of evidence favorable to an accused upon request violate due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution?

Does evidence that is material need to be disclosed in time for effective use at trial?

The State should have disclosed the fingerprint information when asked in discovery.

## Additional Grounds 6

During direct examination of Officer Alan Hardwick. Question. And do you remember what he said? 1:37:05 Answer. Well the first thing I asked him was: So, ~~this~~ is this you bag in the truck? I just looked in the truck and there were all these tires and in the back I also saw a duffel bag. So I asked him, "Is that your bag?" And he said, No. No. I said, "Okay. So, there's not anything in there that's going to concern me?" "Oh, there might be some needles." He said something about that. RP 183

Issue Motion in Limine - Document # 33 Number 4, Officer Bowers reference to the potential existence of needles in Mr. Schloredt's vehicle. With the exception of a very large syringe used for animals, there is no indication in the police reports that needles were discovered. The defendant requests that any reference to needles, the existence of the animal syringe, or the potential of finding needles be suppressed. ER 402, ER 403

Dated this 5<sup>th</sup> DAY OF DECEMBER, 2011. Respectfully submitted  
At pg. 10. 9:44:51 THE COURT: All right. The State has no objection. Motion 4 is granted. And I would ask that we very carefully instruct the witnesses on these so they don't accidentally -- MS. WALTERS: I will. THE COURT: -- state them. Are there any other Defense motions? RP. 11



Argument. Is it improper to violate a motion in limine? Could testimony that violates a motion in limine be prejudicial or harmful? Is there a valid reason to introduce testimony in violation of a court order? If they are improper, is there consideration whether there was a "substantial likelihood" that the comments affected the jury? Is having a standing objection to prohibited testimony offered by a police officer not preserved without requesting a curative instruction.

There was no curative instruction that can logically be said to remove the ~~prejudicial~~ prejudicial impression created where the evidence admitted into the trial is inherently prejudicial and of such a nature as to likely impress itself upon the minds of the jurors. This renders my trial fundamentally unfair under the 5<sup>th</sup>, 6<sup>th</sup> and 14<sup>th</sup> Amendment to United States Constitution and article I, section 216 and 227 of the Washington Constitution. Attorney Tarvin was ineffective when he failed to object to the violation of the motion in limine. RP 183. I was denied a fair trial when the State introduced the testimony of needles, in violation of the motion in limine. I was denied effective assistance of counsel, U.S. Const, Amend, 6.

Conclusion  
Phillip Schloredt hereby Prays that Relief is Granted!

Respect Fully Submitted on this 30<sup>th</sup> day of January <sup>2013</sup>  
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