

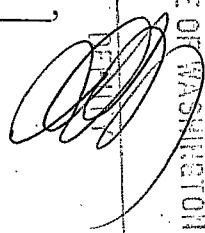
No. 45132-8

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

David Talynn Peck
Appellant,

v.

STATE OF WASHINGTON,
Appellee.

FILED
COURT OF APPEALS
DIVISION II
2014 FEB 21 PM 1:32
STATE OF WASHINGTON
BY 

STATEMENT OF ADDITIONAL GROUNDS, RAP 10.10

name: David T. Peck
DOC# 326808, Unit A2/A12
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520-9504

Statement of Additional Grounds

1.) Mr George Maelton failed to act upon alibi information provided by Mrs Dana Beixey and failed to declare her on the defense witness list.

a.) Mrs Dana Beixey signed and dated a Sworn Affidavit stating I was working with her at the time in question and provided it to my attorney.

b.) Mr Maelton declared the alibi before the prosecutor and presiding judge on the Omnibus Application for Defendant at the Omnibus hearing held on December 11, 2012.

c.) Mr Maelton failed to declare Mrs Dana Beixey on the defense witness list at Omnibus hearing on April 18, 2013 and again on June 20, 2013 and June 26, 2013 when the witness list was amended.

d.) Alibi and witness list issues were raised by Mr Maelton at my request on July 1, 2013. Presiding Judge ruled the request untimely.

Mr. Maelton's failure to act upon this information and failure to declare Mrs Dana Beixey on the defense witness list left me with no defense strategy and no witness testimony in favor of the defendant.

Additional Grounds (cont.)

2.) Mr. George Marlon failed to address the unlawful seizure of the prosecution's one piece of alleged evidence at the 3.5 and 3.6 hearing (06-21-2013TG) on April 24, 2013. State could not prove a nexus or connection from the evidence seized and the crime.

a.) Physical evidence seized was not found at the crime scene, no other evidence was seized with it to connect it to the crime, and no other evidence was found at the crime scene which would support a connection from the evidence seized and the crime.

b.) Physical evidence seized was never identified on the date and time of the crime by either of the two witnesses, or confirmed as part of a disguise.

According to Rules and Procedures governing search and seizures; "There must be a nexus between the item seized and the crime in order for there to be probable cause to seize as evidence." With my DNA on the physical evidence and no connection to the crime, the jury will infer a connection. This makes the alleged evidence highly prejudice against me.

Mr. Marlon was obligated to attack the prosecution's one piece of alleged and attempt to suppress it unless he could show a strategically sound reason why it would be in the best interest of the defense not to do so.

Additional Grounds (cont.)

3) Photograph of alleged physical evidence allowed to be shown during trial to witness for identification purposes was prejudice against me.

a.) Physical evidence (the wig) was never shown to witnesses at the date and time of the crime, or anytime before trial to obtain verification. Photograph was not valid for identification purposes due to amount of elapsed time (16 months) between date of offense and attempt to verify.

b.) Witness was shown one photograph to choose from for identification. This was highly prejudice against me. For identification purposes, the prosecutions photo of the alleged evidence should have been placed in a line up of other photos of wigs of a similar nature, color, and style.

c.) Witness - Ms. McMurry never positively identified the prosecutions photo of the alleged evidence. Only stated it looked similar.

4) Prosecution was allowed to present a prior criminal history to the jury even though I never testified in my own behalf. County Jail Records and Booking and Photograph and Fingerprint officers were allowed to testify to my arrest and conviction on two separate charges. This is highly prejudice against me.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Sworn to this 3rd day of February, 2014

David Peck

David Peck 326808

Stafford Creek Corp. Center

191 Constantine Way

Aberdeen, WA 98520

THE Court of Appeals, DIVISION II
IN AND FOR OF THE STATE OF WASHINGTON

State of Washington
Plaintiff

Vs.

David Talynn Peck
Defendant(s).

Case No.: 45132-8

DECLARATION OF Additional
Grounds

I, David T. Peck, declare and says:
(Name)

On January 29, 2014 I received the transcripts of my trial. The transcripts state the pre-trial hearing on July 1, 2013 in which my attorney, George Marilton declared my alibi, failed to record.

For purposes of Additional Grounds, this declaration concerns the statements made by Mr. George Marilton, Judge Susan Clark, and prosecutor, Ms. Anna Klein during the pre-trial hearing on the morning of July 1, 2013.

On July 1, 2013, I requested defense attorney, George Marlton declare my alibi in court.

During the pre-trial hearing on the morning of July 1, 2013 Mr George Marlton declared the alibi before the presiding Judge Susan Clark and requested additional time to develop it for the defense.

Judge Susan Clark asked if the alibi could be developed within one weeks time and Mr. George Marlton stated that amount of time would be sufficient.

Prosecutor, Ms. Anna Kein, argued the request was untimely.

Judge Susan Clark ruled the defense request untimely and for the trial to move forward without delay.

After a brief recess, Judge Susan Clark stated the earlier pre-trial hearing failed to record. (See the trial transcript for July 1, 2013)

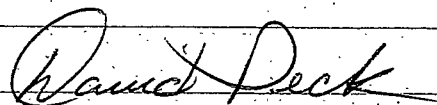
After the trial, I filed a Declaration with the courts dated July 11, 2013, concerning the alibi and the failure of the court to record Mr. Marlton's statements declaring the alibi.

A copy of the Declaration with letters of support was mailed to Judge Susan Clark from the Clark County Jail Facility within the require 10 days.
(See attached copy of Declaration dated July 11, 2013.)

I requested my attorney, Mr George Marlton bring the issue of the Declaration forward at sentencing and Judge Susan Clark declined to rule upon the issue at that time.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Sworn to this 2nd day of February, 2014.



David Peck # 326808

Stafford Creek Corr. Center

191 Constantine Way, H2-A12

Aberdeen, WA. 98520

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, to the best of my knowledge.

SWORN to this ~~28~~²⁹ day of January, 2014.

David Peck

Signature

David Peck 326808

Printed Name

DOC#

Stafford Creek Corrections Center

191 Constantine Way, Unit # H2/A12

Aberdeen, WA. 98520

IN THE SUPERIOR COURT OF WASHINGTON
IN CLARK COUNTY

STATE OF WASHINGTON,
Plaintiff,

v.

DAVID TALYND PECK,
defendant,

CAUSE NO. 12-1-01633-0

DECLARATION

I, DAVID PECK, certify and declare under the penalty of perjury under the laws of the State of Washington the following:

I am the defendant herein. I make this declaration on my personal knowledge and belief of the facts contained herein.

I have had an alibi from the very beginning of my arrest on September 6, 2012. There is a signed and sworn affidavit by Mrs Dana Beixey in the defendants case file stating that I was with her at the time in question.

Both past attorney Mr Jeffery Barrar, and present attorney Mr George Marlon knew about the alibi. (letters in case file)

There is a letter addressed to Mr Barrar dated October 15, 2012 (Evidence Letter A) and a second letter dated November 22, 2012 (Evidence Letter B) requesting that he guide and instruct alibi witness, Mrs Dana Beixey in the correct and proper legal form of a sworn affidavit in support of my alibi and requesting that he declare the alibi in court.

There is a letter addressed to Mr Marleton dated January 6, 2013 (Evidence Letter C) in which I state, "it's important for you to remember I have an alibi." Again, I request that the alibi be declared in court. Mr Marleton declared my alibi on the Omnibus Application for Defendant at the Omnibus hearing, yet failed to put alibi defense witness Mrs Dana Beixey on the defense witness list.

On the day of my trial, July 1, 2013, I requested my alibi be brought forth and declared in court even though Mr Marleton had failed to put alibi defense witness, Dana Beixey, on the defense witness list. (Att. Chris Dumm, witness)

The prosecutor, Mrs Anna Klien, argued it was untimely and requested the trial go forward without delay. The presiding Judge, Susan Clark, ruled in favor of the prosecution and did not allow my alibi to be brought forward. On this same day, before jury selection, Judge Susan Clark stated the earlier court record of the morning hearing failed to record.

Mr Marleton failed to declare my alibi again for the record.

I, do hereby affirm under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 11th day of July, 2013, in Vancouver, Washington.

David Peck

David Peck, Defendant

David Peck 194136
PO Box 1147
Vancouver, WA 98666

RECEIVED February 7, 2014
FEB 21 2014

Court of Appeals Clerk : CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

I received the transcripts of my trial on January 29, 2014. I filed additional grounds with the court of appeals on January 17, 2014 on case # 45132-8 without the benefit of these trial transcripts.

These transcripts are important to the additional grounds and with them I have identified an error that I wish to add to the additional grounds I have already submitted to the court of appeals.

I would like to request the following Declaration be attached to the additional grounds on file. If for some reason you are unable to do this, I would like to request additional time to properly prepare my additional grounds due to the late arrival of the trial transcripts.

Your help regarding this issue is very much appreciated.

Respectfully Submitted,


David Peck

David Peck 326808

Stafford Creek Coor. Center H2/A12

191 Constantine Way

Aberdeen, WA 98520

FILED February 2, 2014
COURT OF APPEALS
DIVISION II
2014 FEB -5 PM 12:01
STATE OF WASHINGTON
BY 
DEPUTY

Court of Appeals Clerk:

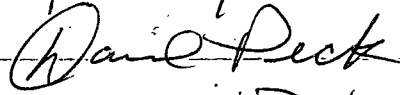
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Your help regarding this issue is very much appreciated.

Respectfully Submitted,



David Peck 326808

Stafford Creek Corr. Center H2/A12

191 Constantine Way

Aberdeen, WA 98520

FILED
COURT OF APPEALS
DIVISION II

2014 FEB -5 PM 12:01

STATE OF WASHINGTON

BY DM
DEPUTY

THE
IN AND FOR OF THE STATE OF WASHINGTON

State of Washington
Plaintiff
Vs.
David Talynn Peck
Defendant(s).

Case No.: 45132-8

DECLARATION OF _____

I, David Talynn Peck, declare and says:
(Name)

On January 29, 2014 I received the transcripts of my trial. The transcripts state the pre-trial hearing on July 1, 2013 in which my attorney, Mr. George Marlton declared my alibi in court failed to record.

For purposes of Additional Grounds, this Declaration concerns the statements made by Mr. George Marlton, Judge Susan Clark, and prosecutor, Ms. Anna Kein during the pre-trial hearing on the morning of July 1, 2013.

On July 1, 2013, I requested defense attorney, George Marlton declare my alibi in court.

During the pre-trial hearing on the morning of July 1, 2013 Mr George Marlton declared the alibi before the presiding Judge Susan Clark and requested additional time to develop it for the defense.

Judge Susan Clark asked if the alibi could be developed within one weeks time and Mr. George Marlton stated that amount of time would be sufficient.

Prosecutor, Ms. Anna Kein, argued the request was untimely.

Judge Susan Clark ruled the defense request untimely and for the trial to move forward without delay.

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After the trial, I filed a Declaration with the courts dated July 11, 2013, concerning the alibi and the failure of the court to record Mr. Marlton's statements declaring the alibi.

A copy of the Declaration with letters of support was mailed to Judge Susan Clark from the Clark County Jail Facility within the require 10 days.
(See attached copy of Declaration dated July 11, 2013.)

I requested my attorney, Mr George Marlton bring the issue of the Declaration forward at sentencing and Judge Susan Clark declined to rule upon the issue at that time.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Sworn to this 2nd day of February, 2014.


David Peck # 326808

Stafford Creek Corr. Center
191 Constantine Way, H2-A12
Aberdeen, WA. 98520

In The Superior Court of Washington
In Clark County

State of Washington,
Plaintiff,

✓

David Talynn Peck,
Defendant,

Cause No. 12-1-01633-0

Declaration

I, David Peck, certify and declare under the penalty of perjury under the laws of the State of Washington the following:

I am the defendant herein. I make this declaration on my personal knowledge and belief of the facts contained herein.

I have had an alibi from the very beginning of my arrest on September 6, 2012. There is a signed and sworn affidavit by Mrs. Dana Brexey in the defendant's case file stating that I was with her at the time in question.

Both past attorney, Mr. Jeffrey Barrar, and present attorney, Mr. George Marlton, knew about the alibi. (Letters in case file)

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, to the best of my knowledge.

SWORN to this _____ day of _____, 20____.

Signature

Printed Name

DOC#

Stafford Creek Corrections Center
191 Constantine Way, Unit # _____
Aberdeen, WA. 98520

There is a letter addressed to Mr. Barrar dated October 15, 2012 (Evidence Letter A) and a second letter dated November 22, 2012 (Evidence Letter B) requesting that he guide and instruct alibi witness Mrs Dana Brexey in the correct and proper legal form of a sworn affidavit in support of my alibi and requesting that he declare the alibi in court.

There is a letter addressed to Mr. Marlton dated January 6, 2013 (Evidence Letter C) in which I state, "its important for you to REMEMBER I have an alibi." Again, I request that the alibi be declared in court. Mr Marlton declared my alibi on the Omnibus Application for Defendant at the Omnibus Hearing (See Case File) yet failed to put alibi defense witness, Mrs Dana Brexey, on the defense witness list.

On the day of my trial, July 1, 2013, I requested my alibi be brought forward and declared in court even though Mr Marlton had failed to put alibi defense witness, Mrs Dana Brexey, on the defense witness list. (Attorney Chris Dumm, witness)

The prosecutor, Mrs Anna Klien, argued it was untimely and requested the trial go forward without delay. The presiding judge, Susan Clark, ruled in favor of the prosecution and did not allow my alibi to be brought forward. On this same day, before jury selection, Judge Susan Clark stated the earlier court record of the morning hearing had failed to record. Mr. Marlton failed to declare my alibi again for the record.

I, do hereby affirm under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 11th day of July, 2013, in Vancouver, Washington.

David Peck

David Peck, Defendant