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Form 7. Statement of Additional Grounds for Review
[Rule 10.10(a)]

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

State Of Washington
Respondent,

v.

Royal Drayton,
Appellant.

No. 70558-0-I
Court of Appeals Cause No.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I Royal Drayton, 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 I

Insufficient Evidence

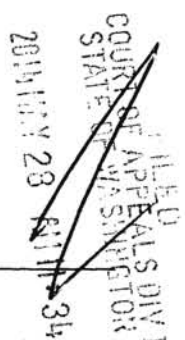
Additional Ground II

Abuse OF Discretion

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

Date: 5-21-14 Signature: Royal D

SAG: ISSUE # 1



Petitioner contends herein, that the evidence presented by the state in his criminal trial is insufficient to sustain his conviction,where his conviction is based entirely on "unreasonable inferences" premised on evidences established on an out of court statement made by the states (key witness), who subsequently recanted under oath in open court, and therefore, petitioners convictions and sentence should be reversed "in the interest of justice." RAP 16.4(c)(3).

FACTS:

On September 15,2012, Ricky Wilturner was shot outside the Noc Noc Club in Belltown,a neighborhood in Seattle,during the early morning hours. Before the shooting occurred,the petitioner(Mr. Drayton),was also in the area of the Noc Noc Club. Mr. Draytons car was stolen the day before(September 14,2012),by a Carlito King-Martinez.

Mr.Drayton discovered the stolen car in the area of the Noc Noc Club and called 911 between 3:00am and 3:10am for police assistance.After Mr.Drayton made the 911 calls reporting the stolen cars discovery and location, Mr.Drayton got in his wifes car(not the car stolen),and left the area.

At approx. 3:16am Ricky Wilturner was shot by an unknown assailant while outside the club. During the police investigation of the crime scene,into the shooting of Mr.Wilturner, Mr.Carlito King-Martinez approached officers under the guise of being his brother(Alberto King-Martinez),and subsequently offered the name of SpongeBob(A popular t.v. cartoon character),as being the potential shooter. Detective T.Janes recieved this information from Mr.Alberto King-Martinez(who was actually Carlito King-Martinez),after he'd transported the witness to the precinct for an interview. While at the precinct,the witness believed to be Alberto Martinez made several declarations(under a false name),while being interviewed by Detective T.Janes. In so doing,Mr.Carlito King-Martinez did implicate the above noted petitioner(Mr.Drayton),the owner of the car Mr.Martinez had stolen earlier,as possibly being the person who shot Mr.Wilturner(althou-

gh he was not a witness to the actual shooting). Mr.Drayton was subsequently arrested days later and charged with assualt in the first degree, as well as Unlawful Possession of a Firearm,which he was subsequently convicted.

MEMORANDUM:

A claim of insufficient evidence admits the truth of the states evidence and all "reasonable" inferences that can be drawn from it. See; State v.Thomas,150 Wash.2d at 874,83 P.3d 970(2004);"reasonable inferences" from the evidence must be drawn in favor of the state and interpreted most strongly against the defendant.State v.Salinas,119 Wash.2d at 201, 829 P.2d 1068.; A party must assign error to a finding of fact for it to be considered on review.Eggert v.Vincent,44 Wash.App.851.

Petitioner again contends as he did during trial, that the facts presented by the state cannot be "reasonably" determined (by way of inference) or any other way to establish the "elements" of the charged offense by any "rational trier of fact",and so,any and all evidences premised on the initial statement made by the now recanting witness should be excluded from this phase of judicial review(RAP 10.10.).

The due process clause of the fourteenth amendment mandates that the state prove every essential component of a crime beyond a reasonable doubt.In re Wilson,397 U.S. 358.; Appellant must assign error to a finding of fact entered by a trial court or they become verities on appeal,and review is limited to determination of whether the findings support conclusions of law and judgment.Id.

Petitioner contends that "no rational trier of fact" could "reasonably" (infer) guilt from the facts presented by the states evidence,(because),"all of the states evidences were predicated on a statement given in a police interview by an untruthful declarant who subsequently recanted his initial statement to Detective T.Janes (in open court),during petitioners trial while testifying (under oath) as the states "key-witness". See: Rpt.(522).

> "Before testifying,every witness shall be required to declare that the witness will testify (truthfully),by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with duty to so." See ER. 603. Oath or Affirmation.

When the defendant is convicted "soley" on the testimony of the now recanting Witness,the court has squarely (held) that it is an abuse of discretion not to grant a new trial. State v. Landon,69 Wash.App. 83,848 P.2d 724(1993); quoting State v. Rolex, 84 Wn.2d 836,838,529 P.2d 1078(1974); Wright v. Morris,85 Wash.2d 899,540 P.2d 893(1975); to the same effect, State v. Powell,51 Wash. 372,98 P. 741(1909); State v. York,41 Wash. App. 538,543,704 P.2d 1252(1985). "Following these authorities, (we hold) that an unsworn out of court statement is not the equivolent of an in-court recantation.Landon,69 Wash.App. 848, at [7].

> To "recant" is "to withdraw or repudiate formally or publicly. See: Black's Law Dictionary 1267 (6th ed. 1990)(citing Pradlik v. State,131 Conn. 682,41 A.2d 906,907(1945).

(One factor related to recantation is whether witness admitted her perjury on the witness stand)State v. Sena,105 N.M. 686,736 P.2d 491,492(1987). In the present case, Mr.Carlito king-Martinez did just that. See Rpt.633/Para.22-23; Rpt.635/para.1-25;and Rpt.633-639.

As seen above,the Washington courts have required new trial when "essential witness (recants under oath) in open court." Powell,51 Wash. at 373,98 P. 71; York,41 Wash.App.at 542,704 P.2d 1252; Rolex,84 Wash. 2d 836,529 P.2d 1078. Petitioner asserts that he has been arrested,charged and convicted "soley" on the out of court statements made initially by the now recanting witness, and it was done without anyother independant eyewitness accounts,which would've in-turn corroborated the statements made by (Carlito King-Martinez) initially.

Reviewing courts place considerable weight on trial courts findings of fact,especially when the findings arise out of contridictory testimony. McNear v. Rhay,65 Wn.2d 530,535,398 P.2d 732(1965).Never-the-less, the reviewing court will make it's own independant examination of the record when fundemental constitutional rights are involved.McNear,Id. at 535.

Petitioner was charged with assault in the first degree pursuant to RCW 9A.36.011,based on information gathered by police after a late-night shooting incident outside a Seattle night club. All the information obtained implicating Mr. Drayton came from Carlito King-Martinez, who then admits under oath during trial testimony that he did not tell the truth when making his initial statement in an attempt to avoid his own legal troubles.Rpt.633-639. Although defendant made a half-time motion to dismiss,the court chose to disregard this motion, as well as

the witness' act of recanting,and allowed the state to continue in it's unfounded prosecution. Petitioner contends that those facts presented (outside of those predicated on the initial statement of the now recanting witness),would not be inferred by any "rational" trier of fact, as being sufficient in establishing the required elements of the offense charged.(RCW 9A.36.011). Direct and circumstantial evidence carry the same weight. State v. Varga,151 Wn.2d 179,201,86 P.3d 139(2004).Petitionasserts that direct or circumstantial, the evidence still (must) establish the essential elements required by the charged offense, and in the present case, the charged offense is assault in the first degree(RCW 9A.36.011). "We interpret all (reasonable inferences) in the states favor." State v. Hosier,157 Wash.2d 1,8,133 P.3d 936(2006).However,"mere suspicion and speculation should not be the bases for creation of logical inferences." United States v. Thomas,453 F.2d 141,143(9th Cir. 1971);Circumstantial evidence must be inconsistent with (any) "reasonable" theory establishing innocence. State v. Dugger,75 Wn.2d at [692].

Petitioner asserts that the facts presented outside of those predicated on the statement of Carlito King-Martinez,cannot establish the elements required to convict. Those facts predicated on King-Martinez' initial statement and offered by the state as evidence are as follows:

(1) Ex. 13-14 Photos of victim

(2) Ex. 15 911 calls(track 1-5)

(3) Ex. 47 cell tower information

(4) Ex. 29 Defendants cellphone

(5) Ex. 31 Photo of Car(Maroon Buick)

(6) Ex. 32 Box of ammunition(9mm)

Further,petitioner points out that the 'to convict' instruction charged upon the jury in his trial,along with the courts other duty instructions charged upon the jury,"prohibits" the jury from considering the lawyers statements as evidence of the case.(See Courts Jury Instructions) Reading in relevant part; "the lawyers remarks,statements, and arguments are intended to help you understand(the evidence)and apply the law. It is important,however,for you to remember that the lawyers statements are not evidence. The evidence is the testimony and exhibits.

The law is contained in my instructions to you. You must disregard any remark,statement or argument that is not supported by the evidence or the law in my instructions. As noted above,there is absolutely no evidence that I(Royal Drayton),was the person that shot Mr.Wilturner on September 15,2012, outside the Noc Noc Club. Yet, I(the noted petitioner), was still convicted of "committing" assault in the first degree pursuant to RCW 9A.36.011.(which states in relevant part);"A person is guilty of assault in the first degree if he or she,with intent to inflict great bodily harm: a) assaults another with a firearm. RCW 9A.36.011. Petitioner asserts that the duty instructions given in his trial,which was not excepted to at trial,became the law of the case.State v.Louie,68 Wn.2d 304,312,413 P.2d 7(1966); State v.Byrd,25 Wn.App. 282,287,607 P.2d 321 (1980); also: "Evidence is sufficient to support a conviction (if), when viewed in the light most favorable to the state, it permits a "rational" trier of fact "to find the essential elements" of "the crime" beyond a reasonable doubt. State v. Thompson,150 Wn.2d 821.; In re Wilson,397 U.S. 358(1970);State v. Alvarez,128 Wn.2d 1,13,904 P.2d 754(1995). It is axiomatic that the state prove every element of the crime charged. State v. Renhard,71 Wn.2d 656,430 P.2d 557(1967). The state must prove every element of a crime beyond a reasonable doubt for a conviction to be upheld. State v. Jackson,137 Wn.2d 712,727,976 P.2d 1229(1999); State v.McCullum, 98 Wn.2d 484,493-94,656 P.2d 1064(1983).

> RCW 9A.04.100. PROOF BEYOND A REASONABLE DOUBT. (READS):
> (1) A person charged with the commission of a crime is presumed innocent unless proved guilty. No person may be convicted of a crime unless each element of such crime is proved by "competent evidence"beyond a reasonable doubt.

We defer to the trier of fact on decisions resolving conflicting testimony and the credibility of witnesses. Thompson,Id. The record clearly establishes the truth of petitioners assertions,and there is absolutely no evidence whatsoever presented which would establish the elements of the charged offense(per.RCW 9A.36.011). #1) The states key witness recanted under oath in open-court(See Wash.Prac. ER.602-603); #2) The states allegations are premised on a recanting witness' initial out of court statement(declared under an assumed name and also not under oath).

Petitioner argues that "any fact" predicated on an untruth,"a lie", (which is the initial out of court statement made by Carlito King-Martinez), "cannot possibly be (reasonably inferred) by any (rational) trier of fact as being "competent evidence", to do so would be "objectively unreasonable", and therefore, cannot "reasonably" satisfy the standard of of proof required - beyond a reasonable doubt. RCW 9A.04.100.

CONCLUSION:

Considering the above noted assertions, petitioner respectfully asks that the Court reverses all sentences and convictions imposed upon petitioner.

SAG: ISSUE #2

Petitioner contends that the (box of ammunition), and the car evidence was irrelevant, and unfairly prejudicial, and offered by the State as propensity evidence inadmissable under ER 404(b) as well as ER 403.

Facts:

On September 18, 2012, a car, and a box of ammunition were confiscated and taken as evidence from the residence of Kelli Turner. During the search of the vehicle glass shards were recovered from the right passenger side of the vehicle, and taken as evidence. The car was later released, and given back to its owner after no firearm-related material was recovered. The car, the glass shards, and box of ammunition were used as evidence in the trial of the petitioner, which he was subsequently convicted.

Memorandum:

A court abuses its discretion only when its decision is manifestly unreasonable, or based on untenable grounds. State v. Stenson, 132 Wash. 2d 668, 701, 940 P.2d 1239 (1997). ; State v. Powell, 126 Wash. 2d 244, 258, 893 P.2d 615 (1995).

Petitioner contends that the car evidence, and the box of ammunition were irrelevant. No witness ever testified to seeing the car at the crime scene, the glass from the crime scene and the glass shards found in the car never had any forensic test done to see if they were the same type of glass. The box of ammunition never had any ballistics test done, and was never tested for fingerprints. No shell casings were ever located in the vehicle, or at the crime scene.

We review a trial courts evidentiary rulings for abuse of discretion. State v. Finch, 137 wn. 2d 792, 810, 975 P.2d 967 (1999). A trial court abuses its discretion when its evidentiary ruling is "manifestly unreasonably, or excercised on untenable grounds, or for untenable reasons." State v. Downing, 151 wn. 2d 265, 272, 87 P.3d 1169 (2004). (quoting State ex rel. Carroll v. Junker, 79 wn. 2d 12, 26, 482 P.2d 775 (1971). The burden is on the appellant to prove abuse of discretion. State v. Wade, 138 wn. 2d 460, 464, 979 P.2d 850 (1999).

ER 404(b) prohibits a court from admitting "evidence of other crimes, wrongs, or acts . . . to prove the character of a person in order to show action in conformity there-with". This prohibition encompasses not only prior bad acts and unpopular behavior, but any evidence offered to show the character of a person to prove a person acted in conformity with that character at the time of the crime.

The due process clauses of the Fourteenth Amendment and Const. art. I § 3 require fundamental fairness in a criminal prosecution.

Failure to exclude the box of ammunition and all evidence premised on it, deprived the defendant of a fair trial and due process. USCA Const. Amend. 14; ER 404(b) the same rule applies for the Car and all evidence premised on it.

We will not disturb a trial courts ruling under ER 404(b) absent a manifest abuse of discretion such that no reasonable Judge would have ruled as the trial court did. State v. Mason, 160 Wash. 2d 910, 133-34, 162 P.3d 396 (2007).

Evidence of other crimes, wrongs, or acts is not admissable to prove the character of a person in order to show action in conformity with it. ER 404(b). It may be admissible for other purposes, such as proof of motive, plan, preparation, intent, or identity, but before a trial court may admit such evidence, it must (1) find by a preponderance of the evidence that the misconduct occurred, (2) identify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect. State v. Thang, 145 Wash. 2d 630, 642, 41 P.3d 159 (2002). The trial court must conduct this analysis on the record. State v. Lillard, 122 Wash. App. 422, 431, 93 P.3d 969 (2004).

The Court admitted the "ammo" under the 404(b) res gestae exception RP 457. Under the res gestae exception to ER 404(b), "evidence of other crimes or bad acts is admissible to complete the story of a crime, or to provide the immediate context for events close in both time and place to the charged crime." Lillard, Id. But, unlike most ER 404(b) evidence, res gestae evidence is not evidence of unrelated prior criminal activity but is itself a part of the crime charged.

Questions:

1- Did they ever present a pink slip to any of Kelli's cars? (page 451)

2- Did the court err in admitting the box of 9mm ammunition confiscated from the residence of Ms. Kelli.

Petitioner argues that all information pertaining to the ammunition was of no relevance as to the question of guilt or innocence, and the court abused its descretion in allowing its admissions.

1) There was never any ballistics report.
2) The projectile (bullet fragment) was never retrieved from the victims body.
3) They never recovered a handgun.

The only reason for offering the box of ammunition is if it could be proven to be linked to the offenses charged, or if the state wished to mislead the jury with the use of prejudicial evidence. The state could not provide to the court (any) specifics about the gun used to assault Mr. Wilturner. Futher more the state offers no confirmations about the actual caliber of the bullet that assaulted Mr. Wilturner either. For the court to allow the state to argue a theory based on evidence not relevent to the actual assault can only prejudice petitioners right to a fair trial.

The States testimony from the lead detective, was that there was absolutely no evidence linking this ammunition to the offenses charged so without any sort of information that the box of 9mm ammunition is linked to the crime, for the court to allow the ammunition to be admitted would be an "objectively unreasonable" decision based on "untenable grounds." The ammo was found during a search of the defendants girlfriends home, there is absolutely no forinsic evidence establishing that the ammo belong to Mr. Drayton. There also was never any testimonial statements by Ms. Turner (the homes legal resident) about who the ammo actually belong to, her or Mr. Drayton). Therefore, the only logical purpose the state can have for submitting the ammo to the jury would be to mislead them, and to allow them to speculate that Mr. Draytons the kind of person who has ammunition and therefore the type of person to have a gun, although (no gun was "ever" recovered.)

The Court asserts in its reasoning; given the description of the weapon is a nine-millimeter, the evidence of the bullets is relevant evidence to both counts. These assertions are not supported by the record.

Motion to reconsider and Vacate Judgment.

I (Royal Drayton) the plaintiff, pursuant to these reasons stated ask this Court to reverse my conviction and remand for a new trial.

Dated May 18, 2014.

Royal Drayton
Royal Drayton

In support of this Motion, the plaintiff refers the court to their pretrial and post-trial briefs filed in this matter and make them part of this Motion by reference.

Sec. 4354

SAG: ISSUE #3

Petitioner contends that he has a constitutional right to face his accuser under Crawford v. Washington. The victim in Mr. Drayton's case never attended trial, or any of the court proceedings. The victim never made any statement about Mr. Drayton assaulting him, In fact he told detective Janes he didn't no who it was that assaulted him. Mr. Drayton filed to motions to have case dismissed under crawford RP 1186-87 The court denied both motions

Conclusion:

Considering the above noted assertion, petitioner respectfully asks that the court reverses all sentences and convictions imposed upon petitioner.