

REC'D

JUN 17 2013

To: Jared B. Steed
Attorney for Appellant
Nielson, Broman & Koch, PLLC
1908 E. Madison Street
Seattle, Wa. 98122

King County Prosecutor
Appellate Unit

6/6/2013

From: Corey Alexander Schumacher DOC. 358676
State v Schumacher, COA No. 69449-9-1
Regarding: The Statement for additional grounds for review

2013 JUN 17 PM 4:09
COURT OF APPEALS
STATE OF WASHINGTON
FREDIA S. DIVI

STATEMENT FOR ADDITIONAL GROUNDS FOR REVIEW

1) At trial the prosecution established that the alleged crime occurred in the summer months between 2006 and 2009. This is reflected in the States Sentencing Recommendation, dated 8/24/2012, as noted by the prosecution "Determinant because defendant was under 18 at the time of commission of counts I, II and III", and received a determinant sentence. The defendant's date of birth is 10/5/1991 and turned 18 years old on 10/5/2009. Count II shows the date of crime to be between 12/29/2010 through 3/1/2011. This is over 14 Months after the defendant turned 18. Furthermore, at the end of trial the defendant's trial Attorney (Justin Wolfe) made a motion to dismiss on the grounds that "The defendant's date of birth was not established at trial", the motion was denied. This count should be dismissed.

2) On 8/26/2011 the state filed a Subpoena Duces Tecum for text messages between defendant and S.B. At a subsequent hearing the state requested a continuance because they still did not have the phone records. Judge Kessler asked what was taking so long to get the records. The prosecutor replied she was unsure, and was granted the continuance. At trial there were no phone records admitted into evidence. However the jurors did hear a redacted version of the audio between the detective and the defendant in which all they heard was that the defendant answered a text message from S.B. There were no Written Findings of Facts and Conclusions of Law as required by CrR 3.5 in regards to the admissibility of the audio between the detective and the defendant.

3) During a motion hearing Mr. Wolfe requested a continuance because "The defendant did not accept a plea offer and he would need more time because it was his understanding that the prosecution intended to add additional charges and would not be prepared for them". Judge Kessler asked the prosecutor if she intended to add additional charges. The prosecutor responded "Yes, we will be adding additional charges". Judge Kessler reprimanded the prosecutor and told her that was against Dan Satterburg's Protocol and no new charges could be added at that time. Shortly before trial was to start the defendant was offered another plea agreement and declined. Within days after the defendant declined the offer another charge was added. At trial one charge was dismissed because, as the prosecutor stated at trial "It didn't go as I planned". Another charge was a mistrial and dismissed. This has the appearance of "Stacking the Deck". The more charges against the defendant could lead the jury to believe he must be guilty if he has so many charges against him.

4)A) Almost a year after the defendant was incarcerated and awaiting trial Mr. Wolfe asked for a continuance, stating, " I must fall on my sword your Honor,I have not done anything on this case.The continuance was granted.

B)Mr. Wolfe was given a timeline of where the defendant was in the summer months between 2006 and 2010(See affidavit in support of Corey Schumacher and addendum dated 6/29/2010).Mr. Wolfe did not use this information at trial nor did he investigate any further in order to narrow down a date in which the alleged crime occurred.If the state is held to a specific date instead of a span of several years and the defendant can prove they were somewhere else,it would prove the defendant is innocent of the charges.

C)The only witness Mr. Wolfe put on the stand was the defendant.Mr. Wolfe could have called the defendants mother to the stand to testify to the defendants timeline and verifiable proof to where the defendant was at the time the state believes the alleged crime took place.It would have shown the jury that there were not many days that the defendant could have been there.This would certainly go to reasonable doubt.

D)Mr.Wolfe should have objected to the admission of the audio between the detective and the defendant on the grounds that there is clearly a break in the tape.We do not know what happened in that break or even how long of a break it was before the audio resumed.Instead Mr. Wolfe agreed to an extremely redacted version of the audio for which the jury only heard about the defendant answering a text message from S.B..During deliberations the jury requested to listen to the audio between the detective and the defendant again.While there is uncertainty as to how much weight the jury gave this evidence,it is clear that it played a role in the defendants conviction.The prosecution never admitted any phone records.

5)If the Court of Appeals decides,for whatever reason,that the audio between the detective and the defendant is inadmissible,then that would be ground for a retroactive misjoinder.Retroactive misjoinder is when the defendant offenses were originally properly joined but due to developments thereafter the offenses would no longer be properly joined.This issue arises when one offense or count is dismissed for whatever reason and the other count remains in the indictment.The audio between the detective and S.B. would not be admissible at trial regarding S.H.

6) Issue number 1 of this statement (count II) should be dismissed

Issue number 2 thru 5 of this statement:While one of these issues standing alone may have some significance,all of these issues including issue number one,in their totality and taken as a whole has the appearance of unfairness.Counts I,II,and III should be dismissed.


Corey Alexander Schumacher DOC. 358676,

6-13-13
Date