

FILED
COURT OF APPEALS
DIVISION II

2015 JUL 20 PM 1:06

STATE OF WASHINGTON

BY S
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No. 47377-1

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION TWO

Jeremy Rose
Appellant.

v.

STATE OF WASHINGTON,
Appellee.

STATEMENT OF ADDITIONAL GROUNDS, RAP 10.10

name: Jeremy Rose
DOC# 376100, Unit 6B15A
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520-9504

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
FOR DIVISION Two

Jeremy Rose
Petitioner,

vs

State of Washington
Respondent

Case No.: 47377-1

STATEMENT OF ADDITIONAL
GROUND, PURSUANT TO
RAP 10.10

I, Jeremy Rose, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in the 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, Jeremy Rose, argue that the trial court erroneously instructed the jury on the special verdict for a deadly weapon enhancement. Jury instruction #19 should not have been given to the jury, because the State failed to meet its burden of proof; that I was, by definition, "armed" with a deadly weapon. Also, the knife was never recovered.

to determine if it was a "deadly weapon" or not.

This will be further argued in the attached papers
accompanying this document (Titled "SAG")

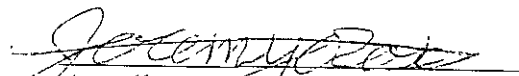
Additional Ground 2

I believe that the trial court made a mistake in not
instructing the jury the defense's proposed instructions of lessor
included Assault in the Third degree (Record's Page, 703-706).

~~Additional Ground 3~~

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

DATED this 16th day of July, 2015.


(Appellant's Signature)

Jeremy Rose
(Appellant's Printed Name)

Stafford Creek Correction Center
191 Constantine Way, Unit# 6B154
Aberdeen, Washington 98520

1.A "The statute authorizes an enhancement only if the defendant was "armed" with a deadly weapon during the commission of a crime. A person is "armed" if a weapon is easily accessible and readily available for offensive or defensive purposes." State v. Yaldobinos, 122 Wash. 2d 270 (1993)

The knife did not belong to me. The knife was not in my possession before the alleged assault. I was defending myself from imminent deadly force coming from Ms. Orloff and had to struggle to obtain possession of the knife (Record's Page 657). Without further evidence from the State, this does not meet the definition of "easily" accessible, therefore it should be determined that I was not "armed" under the statute RCW 9A.01.0825 and that jury instruction #19 is improper.

The State did not demonstrate that the knife meets the definition of a "deadly weapon." I argue that the State did not meet its burden of proof required by law because "the knife was never recovered" and it is on the record that it "had not been established that the blade was three inches or greater" (RP 620).

1.B The State relied on using the defendant's testimony to make its case that I attacked Ms. Orloff with my own knife.

In the State's closing argument:
"I submit the evidence truly indicates that it was the defendant's knife from the get-go. I mean, back up from that just a step and consider it's inside the apartment. They're outside the apartment."

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He can hear them coming and he doesn't arm himself. Does that really make sense, who's seeing? "

(State's Closing Argument, RPT76)

The prosecutor is presenting his beliefs to the jury on what a reasonable person would do in this situation and implicates me of arming myself in the process. "He did arm himself. He had a knife and he armed himself." The prosecutor makes these accusations over the course of the entire trial which the State has not proven.

2.

In Conclusion:

The State having insufficient evidence to convict but relying on improper jury instructions, I respectfully ask the Court to remand for a new trial on the single charge of second degree assault. Also I ask that the Court strike the Special verdict for a deadly weapon enhancement, as the State has not produced the evidence to meet its burden of proof. The jury has already found me not guilty of the greater offenses of first degree assault.

Respectfully submitted this 16th day of July, 2015.

~~Jeremy Rose~~
Appellant