

63478-0

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63478-0

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,)
)
Respondent,)
)
v.)
)
DANIEL A. JOHNSON,)
Pro se.)
Appellant.)

No. 63478-0

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW
RAP 10.10

I, DANIEL A. JOHNSON, 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.

FILED
COURT OF APPEALS CIVIL
STATE OF WASHINGTON
2010 JUN 21 PM 4:38

Additional Ground 1

Please refer to attachment, Additional Ground I.

Additional Ground 2

Please refer to attachment, Additional Ground II.

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

Date: June 16, 2010

Signature: *Amiel A. Johnson*

ADDITIONAL GROUND I

ILLEGAL SEARCH AND SEIZURE: Detective Pitts and Detective Ditusa came to appellants, shared at or around 9:00 A.M., December 7, 2002. Det. Pitts informed Johnson that there had been an allegation made by a Morganna Baker, to her father, that she had sex with Dan back in 2005.

Johnson denied any such contact, of that nature, with M.B..

Pitts asked Johnson if he would come downtown so they could record an interview?

Johnson advised Pitts that he had been through similar b.s. back in 1986, "I need to call an attorney."

(At that instant all related discussion, discussion must end)

Pitts asked Johnson, why he wanted an attorney? He wasn't under arrest. They only want to get his side of the story recorded and they could put this to rest.

Johnson asked Pitts where he needed to go?

Pitts said, he could ride with them and they would bring him home when they were done.

Johnson agreed and said, let me get my keys and coat. Johnson went to his bedroom, followed by Ditusa. She stood inside Johnson's bedroom door and began looking all around the bedroom. Ditusa commented that he had a lot of TV's (3) and VCR's (3) in his room.

Johnson told Ditusa there was a lot of programs on at the same time so he records the one's that are on at the same time so he can watch them another time.

ADDITIONAL GROUNDS I (cont.)

Ditusa then asked, do you have any porno's?

Johnson told her that he had 4 or 5 classic's, like Deep Throat, The Devil in Miss Jones, Behind the Green Door, and a couple of other ones but he's had them packed away and hadn't seen them in more than 5 or 6 years.

Ditusa said that she liked watching porno's and had quite a few of them.

Johnson told Ditusa that she should bring a couple over sometime and they could watch them.

Ditusa smiled and said, Ya right!

They returned to the living room where Pitts was closing a door on the desk and a drawer was still open.

Johnson asked Pitts what he was looking for?

Pitts blushed but didn't reply except to ask Johnson if he was ready?

Ditusa informed Pitts, "he's got a lot of electronic equipment in there, TV's, VCR's, computer's, and a couple laptops.

Johnson asked Pitts where his brother went?

Pitts said, "I asked him if he would leave for a little while while we talked to you."

Johnson asked, "then we're not going downtown?"

Pitts said, "Ya, I guess we are."

Johnson had his keys in his hand to lock the door but Pitts told Johnson to give him the keys and he would hold on to them until we're done.

ADDITIONAL GROUNDS I (cont.)

Ditusa asked, "are you gonna cuff him?"

Pitts said, "no he's not under arrest."

Ditusa reminded him, "it's just that it's procedure."

Pitts said, "I know procedure, he's not gonna run...
are you? "

Johnson said, "why would I? I ~~hadn't~~ done anything
wrong."

Ditusa surveying Johnsons bedroom, when he wasn't
under arrest, entering his bedroom uninvited, making a
mental note of what she seen in the bedroom, and Pitts
unlawful opening of the desk door and the desk drawer, in
the living room, while Johnson was in his bedroom, pre-
ceded the soon to come seizure, later that same day.

The unlawful search on it's own should, should decree
that any and all items seized, in the upcoming seizure,
must be suppressed.

In addition, a search warrant requires a, Certificate
of Probable Cause. Pitts and company performed the Search
and Seizure on December 7, 2007 leaving a copy of the Search
Warrant on the desk, which was dated December 7, 2007.

The required, Certificate of Probable Cause, of course,
was not. Johnson later received a copy of the Certificate
of Probable Cause which was signed by Judge Fox and had a
date of December 12, 2007 which had a line through the 12
making the date December 11, 2007. Four days after Seizure.

ADDITIONAL GROUNDS I (cont.)

Therefore the entire Search and Seizure, for both reasons, was unlawful, illegal, and unjust. Thus, again any and all items seized must be suppressed and could be considered "Fruit of the Poisonous Tree."

We can also look to the United State's Constitution Amendment IV, Search and Seizure, and the heightened Protection of the Washington Constitution Article I, sec. 7 which gives us greater protection than the Fourth Amendment.

BLACK'S LAW DICTIONARY 9th EDITION:

PROBABLE CAUSE: ...under the 4th Amendment, probable cause--- which amounts to more than a bare suspicion but less than evidence that would justify a conviction---must be shown before an arrest warrant or search warrant may be issued.

"Probable cause may not be established simply by showing that the officer who made the challenged arrest or search subjectively believed he had grounds for his action as emphasized in, Beck v. Ohio [379 U.S. 89, 85 S. CT. 223 If subjective good faith alone were the test, the protection of the 4th Amendment would evaporate, and the people would be "secure in their person, houses, papers, and effects" only in the discretion of the police."

ADDITIONAL GROUND II

RIGHT TO REMAIN SILENT/RIGHT TO AN ATTORNEY: Every person has the right to remain silent and to have an attorney during questioning. Johnson was not afforded that right.

First, as noted in Johnsons, Statement of Additional Grounds For Review, on the attachment of "Additional Ground I, Page 1, "I need to call an attorney."

Again, as noted on the Transcripts of Det. Spong.[3.5] By Julie Kays, Prosecutor, in of Det. Spong, VOL. II, Feb. 12,2007, 9:13 a.m.,pg. 181, Line 13: Kays hands Spong States Exhibit 3.

Pg. 182 Line 5-8: Kays asks Spong, what about page 3, Detective, when Pitts is in the process of advising the Defendant if he would like to exercise his right--not to exercise his right and--and speak with Det. Pitts, the Defendant says what to him?

Line 9:He says, "Then I better have an attorney."

(AT THAT STATEMENT, ANY AND ALL QUESTIONING MUST STOP.)

Pitts violated Johnsons constitutional rights yet again. The interview should be deleted from the record, the transcripts including video/audio and States Exhibit 3 as it relates to Det. Pitts and to Det. Spongs interview of Johnson.

ADDITIONAL GROUND III

TAINTED VOIR DERE JURY POOL: Voir Dere jury pool was tainted from statements made by Jury Pool member No. 77, the Public Defender, Kevin McConnell, and Judge Regina S. Cahan, creating irreversible damage and prejudice.

During the voir dere portion of the trial, on page 222 Jury Selection, 2/19/09 at Line 20-25, MR. MCCONNELL: Thanks the Judge at Line 15...

20 Does anybody here now believe that anyone who's
21 going to be part of this trial has been touched,
22 sexually assaulted, offended in any way?

23 Does anyone here believe that anybody who's going
24 to come to this trial has been offended, sexually
25 assaulted, touched improperly, anything like that?

On page 223 Jury Selection, 2/19/09 at Line 1-16.

1 COURT: Counsel, I don't think your question is
2 clear.

3 MR. MCCONNELL: So who thinks right now that
4 MR. JOHNSON has sexually assaulted someone? Anybody?
5 It's a fair raise of the hand. Okay. Juror No. 77.

6 JUROR: I work at Harborview Medical Center
7 where these victims come all the time. I have
8 definite feelings about this. Obviously I wouldn't
9 want to taint your entire pool with what I have to say,
10 about it.

ADDITION GROUND III (cont.)

11 MR. MCCONNELL: Okay, Okay. So before any
12 evidence is presented--

13 JUROR: (Inaudible)

(What Juror 77 said could be heard in the courtroom)
Like I said, I work at Harborview and I was there
when they brought his victim in. I know he did it.
I know he's guilty.

14 MR. MCCONNELL: Okay. Anybody hear that from
15 you?

16 JUROR: No.

At Line 17-22.

17 COURT: I thank you very much. You can be
18 excused. Juror No. 77. And let me just clarify.
19 There's nothing anyone--I mean, you think the
20 defendant is guilty at this time? That's correct?
21 Okay. I thank you very much. You can be excused. You
22 need to go back to the first floor.

23 MR. MCCONNELL: There's virtually nothing wrong
24 with what Juror No. 77 said. Virtually nothing wrong
25 with that. And I do want to know if anyone else feels

Obviously this would prejudice the jury pool to Johnsons
disadvantage and the entire jury pool should have been dismissed
and a new jury pool should have been picked.

ADDITIONAL GROUND IV

AMENDED CHARGING DATES: On the first day of Johnsons trial Kays submitted a Motion to Amend the charging dates on Counts 1,2,and 3, and to add Counts 4,5,6, and 7.

The original charging dates for Counts 1,2,and 3 was from 3/1/05 through 11/1/05. Kays Motion was to broaden the charging period for Counts 1,2,and 3 to 7/23/03 through 12/7/07.

Johnson moved into there home on 9/30/04 through 12/17/05.

Johnson did not know them what-so-ever until he had moved into the converted garage, next door to their home, which was on 4/1/04. This was only knowing that they existed, saying "hi in passing, until early June when Jasson Baker invited Johnson to his daughters fourth birthday party which was on June 23,2004.

Kays broadened charging dates of 7/23/03 is 8 months 8 days prior to Johnson even moving in nest door to them. The broadened charging date to 12/7/07 is 23 months 11 days after Johnson had moved out of there home and had no contact with them what-so-ever until Johnson met the grandmother, Marilyn Montgomery at a Safeway store and he gave her his phone number and told her to have Jasson give him a call. Jasson called Johnson on or about June 15th and invited Johnson to come to dinner and meet his new wife and to attend Morganas birthday party on 7/23/07. There was a total of 31 months 19 days added to the charging period where Johnson did not have any contact with, or even see the family.

Kays also added a Motion to bootstrap the counts 4,5,6,and 7 onto the charges,causing undue prejudice. The broadened charging dates must be revised to the original dates of 3/1/05 through 11/1/05.

DECLARATION OF SERVICE BY MAIL
GR 3.1(c)

I, DANIEL A. JOHNSON, declare that, on
this 16th day of June, 2010. I deposited the forgoing documents:

STATEMENT OF ADDITIONS GROUNDS FOR REVIEW

DECLARATION OF SERVICE BY MAIL

or a copy thereof, in the internal legal mail system of

CLALLAM BAY CORRECTION CENTER
1830 EAGLE CREST WAY
CLALLAM BAY, WA 98326-9723

And made arrangements for postage, addressed to: (name & address of court or other party.)
COURT OF APPEALS DIV. I GREGORY C. LINK

ONE UNION SQUARE

WASHINGTON APPELLATE PROJECT

600 UNIVERSITY WAY

1511 THIRD AVE. SUITE 701

SEATTLE, WA 98101

SEATTLE, WA 98106

KING COUNTY PROSECUTOR APPELLATE UNIT

KING COUNTY COURTHOUSE

513 THIRD AVENUE, W-544

SEATTLE, WA 98101

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

Dated at SEATTLE, WASHINGTON on June 16, 2010
(City & State) (Date)

Signature

DANIEL A. JOHNSON

Type / Print Name

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document **Appellant's Pro Se Statement of Additional Grounds for Review** to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 63478-0-I** and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to each attorney or party or record for respondent **Brian McDonald - King County Prosecuting Attorney-Appellate Unit**, appellant and/or other party, at the regular office or residence or drop-off box at the prosecutor's office.



MARIA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: June 21, 2010

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