

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
 DAVID JAMES EIMER)
 (your name))
 Appellant)

No. 73643-4-I
STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, David Eimer, 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 1

(PLEASE SEE ATTACHED; 8 PAGES)

Additional Ground 2

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

Date: 2/24/2016

Signature: David Eimer

2016 FEB 29 AM 11:38
SUPERIOR COURT
STATE OF WASHINGTON

ADDITIONAL GROUND 1

The court erred in denying defendant's CrR 3.5 motion to suppress defendant's statements that the defense contends were made while he was intoxicated and/or without the advisement or voluntary waiver of Miranda rights.

ADDITIONAL GROUND 2

The court erred in denying defendant's motion to exclude the recording of the defendant's transport from the Tukwila Police Department to S.C.O.R.E. by Officer Danninger because of unduly prejudicial statements made and conduct engaged in by the defendant.
ER 401-404.

ADDITIONAL GROUND 3

The court erred in admitting emotional hearsay statements made by the alleged victim at the scene of the alleged crime as "excited utterances" where there was an opportunity for

fabrication and the statements appealed to passion and prejudice.

State v. Brown, 127 Wn.2d 749, 903 P.2d 459 (1995) (Statements of alleged victim to authorities not admissible as excited utterance where there has been an opportunity for alleged victim to fabricate her story); ER 403.

ADDITIONAL GROUND 4

The court erred in denying defendant's motion to examine Officer Richardson at trial regarding statements made to ~~Officer~~ Officer Shuck by the alleged victim at the alleged crime scene, after the alleged victim and Officer Shuck testified they did not recall whether the alleged victim had asserted at the scene that the defendant was the one who had inserted a bottle in her vagina while co-defendant Everybodytalks-about had held her down, which was contrary to the alleged victim's testimony regarding the distinct roles played by the defendant and Everybodytalksabout in her alleged sexual assault.

ER 613 and 803 (a)(2).

ADDITIONAL GROUND 5

The court erred in not allowing the defense to impeach the testimony of the alleged victim by examining Officer Shuck at trial about the context in which the alleged victim claimed she and others in the motel room became aware of when the police arrived at the scene and the circumstances which led to her release from the room where the alleged crimes occurred. More specifically, the court erred in not allowing the defense to impeach the alleged victim with a contradictory version of events wherein she had told Officer Shuck that the alleged rape of her with a bottle stopped when one of the men in the room noted the presence of the police, especially after the State misled the jury by having Officer Shuck testify that the alleged victim's reference to when the police arrived had to do with when she was released from the motel room as opposed to when the alleged sexual assault with a bottle was halted.

ER 613.

ADDITIONAL GROUND 6

The court erred in allowing the State to elicit testimony from medical and DNA experts about how findings in the present case compared to findings in other cases of alleged sexual assault in that the testimony was irrelevant, more prejudicial than probative, and impermissibly commented upon the credibility of the present complaint and the guilt of the accused.
ER 401-403, 702 and 704.

ADDITIONAL GROUND 7

The court erred in not allowing the defense to ~~examine~~ examine the alleged victim regarding the specifics of the harmful things she had done to her family while addicted to drugs, as first referenced during her direct examination.
U.S. Const., Amends. 6 and 14; Wash. Const., Art. 1, Sec. 22.

ADDITIONAL GROUND 8

The court erred when the prosecutor engaged in misconduct during his closing argument by calling attention to what his personal notes contained in terms of disputed testimony.

CrR 7.5 (a)(2); State v. Jones, 71 Wn.App. 798, 808, 863 P.2d 254 (1993) review denied, 124 Wn.2d 1018, 881 P.2d 254 (1994) (a prosecutor may not make reference in closing argument to matters outside of the evidence).

ADDITIONAL GROUND 9

The court erred in denying the defense motion to dismiss because of a de facto amendment of the First Amended Information following closure of the state's case-in-chief.

State v. Dallas, 126 Wn.2d 324, 892 P.2d 1082 (1995); State v. Pelkey, 109 Wn.2d 616, 745 P.2d 854 (1987); and State v. Griffith, 129 Wn.App. 482, 120 P.3d 610 (2005).

ADDITIONAL GROUND 10

The court erred in not instructing the jury on the definition of consent and the state's burden to prove an absence of consent given the instruction proposed by the defense was a correct statement of the law and was necessary to the defense's theory of the case.

Patterson vs New York, 432 U.S. 197, 97 S. Ct. 2319, 53 L. Ed. 2d 281 (1997); State v. McCullum, 98 Wn. 2d 484, 656 P. 2d 1064 (1983); State v. W.R., 181 Wn. 2d 757, 336 P. 3d 1134 (2014); and State v. Johnson, 92 Wn. 2d 671, 600 P. 2d 1249 (1979).

ADDITIONAL GROUND 11

The court erred in not instructing the jury regarding marked-but-unadmitted exhibits, as proposed by the defense, because it was a correct statement of law, necessary to the defense theory of the case, and jurors could be misled or confused by WPIC 1.02 to believe that they could not consider testimony that was related to a marked-but-admitted exhibit when they are effectively told they can consider

evidence only from exhibits admitted into evidence.

State v. Johnson, 92 Wn.2d 671, 600 P.2d 1249 (1979); State v. Warrrow, 88 Wn.2d 221, 559 P.2d 548 (1977); and State v. Hayes, 73 Wn.2d 568, 439 P.2d 978 (1968).

ADDITIONAL GROUND 12

The court erred in including "or an accomplice" in the to-convict jury instructions given the language was contrary to the WPIC pattern instructions and the subject of accomplice liability was already addressed in a separate instruction.

State v. Hightower, 36 Wn. App. 536, 676 P.2d 1016 (1984) (no need to give duplicative instruction).

ADDITIONAL GROUND 13

The court erred in commenting on the evidence when it limited the gender of the offender to males in its definition of the crime of rape in the second degree, contrary

to WPIC 41.01.

State v. Foster, 91 Wn.App. 18, 560 P.2d 789
(1979).

ADDITIONAL GROUND 14

The appellant submits that any one or any combination of the additional grounds for review warrant a finding that substantial justice has not been done; and, thereby, constitutes grounds for arrest of judgment and/or a new trial.

CrR 7.5(a)(8).

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

Respectively Submitted,
David Eime