

COURT OF APPEALS
 DIVISION TWO
 OF THE STATE OF WASHINGTON

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 STATE OF WASHINGTON
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STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
)
FLOYD R. DAHMAN, JR.,)
)
 Appellant.)

No. 35650-3-II

STATEMENT OF ADDITIONAL
 GROUNDS FOR REVIEW

I, Floyd R. Dahman JR., 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

Trial Counsel Was Ineffective In failing to "Object" to the highly prejudicial evidences Which likely would have been excluded if objection had been made: see: Attachments page 3, 4

CERTIFICATE OF SERVICE
 I certify that I mailed
 copies of SAG
 to M. COBB
 & SEALOR *KAC*
 Date Signed

Additional Ground 2

There was Insufficient evidence elicited at trial to prove beyond a reasonable doubt, that Mr. Dahman JR. Was guilty of two counts of burglary in the second degree (count I & III). In support of This I would like to give some additional findings & Fed. Authorities. See: Attached page 5

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

Date: Aug. 13, 2007

Signature: Floyd R. Dahman Jr.

TABLE OF AUTHORITIES

Wash. Cases

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State V. Escolona 49 Wash.App.251, 742 P.2d 190(1987)

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State V. McFarland ,127 Wash.2d, 322, 337, 899 P.2d 1251(1995)

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State V. Mierz ,127 Wash. 2d 400, 471, 901 P.2d 286(1995)

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Federal Cases

Crotts V. Smith 73 F.3d 891, 9th.Circ.(1996)

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Jackson V. Virginia 443 U.S.307,318,99,S.ct. 2781,61, L.ED. 2d. 560, (1979).

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Strickland -V- wash. 466, U.S. 668, 686, 1045, S.Ct. 2052, 2063-4, 8 L.Ed. 2d 674 (1984)

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In Re winship, 397, U.S. 358, 90, S.Ct. 1068,25, Led.2d 368, (1970)

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Washington Const.:

Act. I § 22 Amend. VI.

3

Constitution amend.

U.S.C.A. CONST. AMEND.#6

3

U.S.C.A. Const. Amend. #14.

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ARGUMENT

1. Trial Counsel was ineffective in failing to object to highly prejudicial evidence which likely would have been excluded if an objection by counsel had been made.

Without objection from trial counsel Attorney Charles Lane, Officer Maiava was allowed to introduce testimony into evidence showing he knew Mr. Dahman from "Prior Contacts."

"SEE RP.(P. 42 at 21-23) . I claim that counsels failure to object to the testimony of Officer Maiava knowing me from ("Prior Contact") constitutes ineffective assistance of counsel. (RE:) Crotts V. Smith 73 F.3d 891,(9th. Circ.) (1996).

Effective Assistance of Counsel is guaranteed by both U.S. Const. Amend. VI and also the state of Wash. Const. Art. I § 22 (Amend. X). Strickland V. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063-4, 80 L. Ed. 2d 674 (1984) ; State V. Mierz, 127 Wash. 2d 460, 901 P. 2d 286 (1995).

In Strickland the court established a two - part test for Ineffective Assistance of Counsel, is to be meet in all cases refer to;

- (1) That counsels performance fell bellow an objective standard of reasonableness, and ;
- (2) That the Counsels deficient performance prejudiced the defendant resulting in an unreliable or fundamentally unfair outcome of proceedings.

In my case, the Prosecutor used tactical questioning to elicit evidence of myself having "Prior Contact" with Shelton Police Officer Taesa Maiava (SEE RP P. 42 at 21-23) The Prosecutor also asked "Was the fact that the vehicle in question was Mr. Dahmans was the only reason why it was suspicious to him", Officer Maiava answered,"yes". (SEE RP P. 55 at 23-25). Even though it was legally parked in a private driveway. (SEE RP P. 51 at 21-22) This prejudicial testimony by Officer Maiava could easily be percieved by any of the juror's as prior criminal behavior. What kind of contact do people have with Law Enforcement thats good? I cannot discern a reason why my lawyer would not have objected to the same potentially damaging and prejudicial testimony given by Officer Maiava that was later objected to in the testimony that was to be given by Deputy Mark Reed later in the proceedings. (SEE RP P. 87 at 4-24)

I should have been able to keep from the jury the fact that I do have a criminal record or any references of knowing me from prior contacts due in part to the fact that I did not take the stand. I believe the first prong of the Strickland Test has been satisfied.

In order to show prejudice, the second Strickland Prong, we must determine but for the counsels failure to object to Officer Maiava's prejudicial testimony of "knowing me from prior contacts" that was later in the proceedings objected to by Deputy Reed, would the outcome have been any different?

First we must determine if the Trial Court would have (SEE 129 Wn. 2d 80) sustained my lawyers objection to the introduction of Officer Maiava's statement "knowing me from prior contact." I hold that such evidence would not have been admissible because its prejudicial effect would have outweighed its probative value.

Next we must determine whether the admission of the objectionable evidence prejudiced my right to a fair trial. To support this argument I am citing State V. McFarland, 127 Wash. 2d, 322, 337, 899 P. 2d 1251 (1995) and State V. Escalona, 49 Wash. App. 251, 742 P. 2d 190 (1987). There the Court of Appeals is held that the Trial Court abused its discretion by not calling a mistrial after a states witness gave prejudicial objectionable testimony, when a Trial Court later granted a Motion in Lamine to exclude the same prejudicial objectionable testimony.

ARGUMENT

2. There was insufficient evidence elicited at trial to prove beyond a reasonable doubt that I was guilty of two counts of Burglary in the Second Degree. (Count I & III) In support of this I would also like to give some additional Federal Authorities.

The test for Sufficient Evidence is whether the evidence would justify a rational trier of fact to find guilt beyond a reasonable doubt. Jackson V. Virginia, 443 U.S. 307, 318, 99 S. Ct. 278, 61 L. Ed. 2d 560 (1979). This rule follows from the Winship Doctrine that due process requires the Government prove every element of a crime upon which a Defendant is convicted beyond a reasonable doubt. In RE Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) In this case, the U.S. Supreme Court held that "the due process clause protects the accused against convictions except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." This requirement is necessary "to safeguard men from dubious and unjust convictions with resulting forfeiture of life, liberty, and propensity," secured by the Fourteenth Amendment. (U.S.C.A. Const. Amend. #14)

CONCLUSION

Based on the above ARGUMENTS 1 & 2, I respectfully requests this court to reverse and dismiss my convictions for Burglary in the Second Degree (Counts I & III).

CERTIFICATE OF SERVICE

I certify that on the date listed below, I served by United States Mail a copy of this pleading on the following individuals:

Court of Appeals Division II
950 Broadway, Suite 300
Tacoma, wa 98402-4454

Patricia A. Pethick
Attorney at Law
P.O. Box 7269
Tacoma, wa 98417

DEPARTMENT OF JUSTICE
STATE OF WASHINGTON
BY: [Signature]
DATE: 8/13/07

I declare under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge and belief.

EXECUTED ON THIS 13 day of August, 2007.

Floyd R. Dahman Jr.
Name:

Floyd R Dahman Jr. #833706 JD001
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