

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

NO. 40777-9-II

STATE OF WASHINGTON

Respondent,

vs.

MICHAEL PIERCE

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR JEFFERSON COUNTY
Cause Number: 09-1-00058-7

**RESPONSE TO STATEMENT OF ADDITIONAL
GROUND**

SCOTT ROSEKRANS
Jefferson County Prosecuting Attorney
Attorney for Respondent

P.O. Box 1220
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(360) 385-9180

Date: March 3, 2011

RESPONSE TO STATEMENT OF ADDITIONAL GROUND
State of Washington v. Pierce

Mr. Pierce has submitted additional grounds for review that fail to support any grounds for appeal.

Appellant correctly states that a bailiff overheard a seated juror make a comment to another juror, outside of the jury room and before deliberations have begun, to the effect that he hoped he got picked as an alternate because he did not want to have the responsibility of the feedback he would get from the community. RP (3/25/10) 1156.

The bailiff reported this to the judge, who had the bailiff relate this to the attorneys and they discussed the implications. RP (3/25/10) 1157-1158. The court brought in the juror who made the comment and asked him if the community pressure would affect his ability to sit as a juror and he responded, "No sir. Not at all." RP (3/25/10) 1161.

The attorneys then had an opportunity to question the juror and then he was excused. RP (3/25/10) 1161-1162. The attorneys and the court agreed that the juror made an offhand remark and none of them felt he should be removed from the jury. RP (3/25/10) 1162. The trial continued.

Mr. Pierce mistakenly states that two jurors discussed their feelings about the case before deliberations. The record shows no discussion

RESPONSE TO STATEMENT OF ADDITIONAL GROUNDS

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occurred. Rather, a lone juror made a statement showing a preference for being an alternate. He made no statement about the case, the evidence, or his opinion about Mr. Pierce's guilt. The other juror did not respond. Mr. Pierce has incorrectly portrayed the occurrence and has shown no evidence he was prejudiced.

Here, a juror believed there would be some community pressure in response to the jury's verdict and he was concerned about how he would be perceived in the aftermath by his family, friends, and neighbors. He had a rational fear, but he persevered. He did not want to be on the jury. His service could have a negative effect on how he was perceived by those whose opinion he valued. He could easily have told the judge that he was biased and been excused. Fortunately for the community, there are people in our midst who will do their duty despite their fears.

"Courage is not the absence of fear, but rather the judgment that something else is more important than fear." – *Ambrose Redmoon*

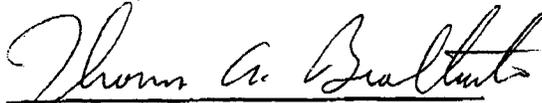
The event described by Mr. Pierce shows not a biased jury, but a courageous one.

CONCLUSION

The State respectfully requests that this Court reject the Appellant's request to add this event as an additional cause for review.

Respectfully submitted this 3rd day of March, 2011.

SCOTT ROSEKRANS, Jefferson County
Prosecuting Attorney



By: Thomas A. Brotherton, WSBA # 37624
Deputy Prosecuting Attorney

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,
Respondent,
vs.
MICHAEL JOHN PIERCE,
Appellant.

Case No.: 40777-9-II
Superior Court No.: 09-1-00058-7

DECLARATION OF SERVICE

Janice N. Chadbourne declares:

That at all times mentioned herein I was over 18 years of age and a citizen of the United States; that on the 4th day of March, 2011, I served a copy of the State's RESPONSE TO STATEMENT OF ADDITIONAL GROUNDS, electronically to the following:

David C. Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Mark A. Larranaga
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****Via US Mail****

Michael J. Pierce, DOC #750786
Washington Corrections Center
PO Box 900
Shelton, WA 98584

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

Dated this 4th day of March, 2011 at Port Townsend, Washington.


Janice N. Chadbourne
Lead Legal Assistant

DECLARATION OF SERVICE
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JEFFERSON COUNTY PROSECUTOR

March 04, 2011 - 11:41 AM

Transmittal Letter

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Case Name: State v. Michael John Pierce

Court of Appeals Case Number: 40777-9

- Designation of Clerk's Papers
- Statement of Arrangements
- Motion: ____
- Answer/Reply to Motion: ____
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: Response to Statement of Additional Grounds

Sender Name: Jan N. Chadbourne - Email: jchadbourne@co.jefferson.wa.us

A copy of this document has been emailed to the following addresses:

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