

67425-1

67425-1

No. 67425-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

DAVID SIONA SOLOMONA,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Jay V. White

BRIEF OF APPELLANT

THOMAS M. KUMMEROW
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

FILED
DIVISION I
COURT OF APPEALS
STATE OF WASHINGTON
2011 DEC 21 PM 4:55

TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR..... 1

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR..... 1

C. STATEMENT OF THE CASE 1

D. ARGUMENT 5

THE TRIAL COURT’S REFUSAL TO ALLOW MR.
SOLOMONA TO TESTIFY VIOLATED HIS
CONSTITUTIONALLY PROTECTED RIGHT TO
PRESENT A DEFENSE AND TESTIFY ON HIS OWN
BEHALF..... 5

1. The right to testify on one’s own behalf is a fundamental
right..... 5

2. The court’s refusal to reopen the defense case to allow
Mr. Solomona to testify on his own behalf violated his right to
testify. 7

3. The court’s error in barring Mr. Solomona from testifying
was not a harmless error. 11

E. CONCLUSION..... 13

TABLE OF AUTHORITIES

UNITED STATES CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V.....	5
U.S. Const. amend. VI.....	5
U.S. Const. amend. XIV	5, 12

WASHINGTON CONSTITUTIONAL PROVISIONS

Article I, section 22	6
-----------------------------	---

FEDERAL CASES

<i>Chambers v. Mississippi</i> , 410 U.S. 284, 93 S.Ct. 1038, 35 L.Ed.2d 297 (1973)	9
<i>Chapman v. California</i> , 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967)	12
<i>Crane v. Kentucky</i> , 476 U.S. 683, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986)	12
<i>Crane v. Sowders</i> , 889 F.2d 715 (6th Cir.1989).....	13
<i>Faretta v. California</i> , 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)	6
<i>Ferguson v. Georgia</i> , 365 U.S. 570, 81 S.Ct. 756, 5 L.Ed.2d 783 (1961)	6
<i>Gill v. Ayers</i> , 342 F.3d 911 (9 th Cir.2003)	14
<i>Holmes v. South Carolina</i> , 547 U.S. 319, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006)	7
<i>Luce v. United States</i> , 469 U.S. 38, 105 S.Ct. 460, 83 L.Ed.2d 443 (1984)	7
<i>Martínez v. Ylst</i> , 951 F.2d 1153 (9th Cir.1991).....	7

<i>Nix v. Whiteside</i> , 475 U.S. 157, 106 S.Ct. 988, 89 L.Ed.2d 123 (1986)	6
<i>Owens v. United States</i> , 483 F.3d 48 (1 st Cir.2007)	8
<i>Rock v. Arkansas</i> , 483 U.S. 44, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987)	6, 7, 8, 9
<i>United States v. Larson</i> , 596 F.2d 759 (8th Cir.1979)	11
<i>United States v. Walker</i> , 772 F.2d 1172 (5th Cir.1985).....	9, 10, 11, 12
WASHINGTON CASES	
<i>State v. Brinkley</i> , 66 Wn.App. 844, 837 P.2d 20 (1992)	7
<i>State v. Robinson</i> , 138 Wn.2d 753, 982 P.2d 590 (1999)	6, 8
<i>State v. Thomas</i> , 128 Wn.2d 553, 910 P.2d 475 (1996)	6

A. ASSIGNMENTS OF ERROR

1. The trial court violated Mr. Solomona's constitutionally protected right to testify on his own behalf.

2. The trial court erred in refusing to allow the defense to reopen its case so that Mr. Solomona could testify in his defense where his testimony would have been the *only* defense.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A defendant has a fundamental right to testify on his own behalf. Here, the trial court refused a defense request to reopen its case after resting in order to allow Mr. Solomona to testify. Did the trial court's action deny Mr. Solomona his fundamental right to testify, mandating reversal of his convictions?

C. STATEMENT OF THE CASE

David Solomona was charged with eight counts of felony violation of a court order and one count of witness tampering. CP 14-19. During the State's case-in-chief, Mr. Solomona moved the court to dismiss his attorney and appoint new counsel.

5/25/2011(am)RP 3-5. Mr. Solomona was concerned about his attorney's lack of cross-examination and in his perception, lack of trial preparation. *Id.* After hearing from Mr. Solomona, the trial court denied his motion. 5/25/2011(am)RP 5-7.

Mr. Solomona again raised his motion to dismiss counsel at the close of the State's case-in-chief but prior to the defense case:

Yes Your Honor. I just want to put this on the record that my attorney and I are really having problems communicating with each other. I have asked him numerous times to recall the witnesses for questioning reasons and his whole – his answer is it's just strategy. I guess I got to sit back and watch and listen to his strategy. I'm not sure what it is, but I have a ton of questions here, three pages worth, for the witnesses. I guess it's not part of his strategy. I just want to put that on record and that's it.

5/25/2011(pm)RP 5. Again, based upon its prior ruling, the court denied the motion.

Mr. Solomona decided not to testify, seemingly with reservations, and the defense rested.

COURT: You clearly have an absolute right to remain silent and not take the stand. Is that your intention?

MR. SOLOMONA: Yes.

COURT: And have you had enough time to talk to your attorney about the advantages and disadvantages of doing that?

MR. SOLOMONA: Yes.

COURT: Do you need any more time to do so?

MR. SOLOMONA: Uh –

COURT: Pardon?

MR. SOLOMONA: *Well I just – we're not.* No I don't.

COURT: All right. All right. I mean I just wanted to make sure because I was just a moment ago told the opposite, that you were going to testify.

MR. SOLOMONA: *Well it depended on the witness coming back . . .*

5/25/2011(pm)RP 6-7 (emphasis added). The defense rested and the parties spent the rest of the day engaging in discussions about jury instructions. 5/25/2011(am)RP 8.

At the beginning of the next day before the court had instructed the jurors or the closing arguments had begun, Mr. Solomona decided to withdraw his waiver of the right to testify and take the stand on his own behalf:

THE DEFENDANT: I just – I was thinking about it last night and I decided I was going to ask the Court if I can take the stand. I know you told me or asked me yesterday if I wanted to and I declined it. But I thought about it, and I feel like I should help my defense. So, I am asking the Court if I can [testify].

THE COURT: Thank you. Did you have any comment about this, Mr. Felker [defense counsel]?

MR. FELKER: I don't think there is anything I can do.

THE COURT: Mr. Baker [the prosecutor], what's the State's position?

MR. BAKER: The defense has rested, your Honor. Time for that has passed. He was given the opportunity and your Honor had a extensive colloquy with him where you asked him multiple times if he

was certain that he did not want to testify; and he stated he did not want to testify. We are ready to close now, and we have the jury instructions ready.

THE COURT: Thank you. Is there anything that you wanted say, Mr. Solomona?

MR. SOLOMONA: Yeah, I don't think it would take too long as far as – I am not sure how many questions the State has. I just – I feel like my testimony and being able to get the jury in and out wouldn't affect anything, really.

5/26/2011RP 3-4.

The trial court denied Mr. Solomona's request:

All right. Thank you. Well, the Court will deny your request. I appreciate your courtesy, but the defense has rested. The Court does not see any legal basis or other basis to now reopen the testimony at this point. As the State points out, I did have a pretty long discussion with you and lots of time to discuss whether or not to testify. The decision was made to rest.

So, we will at this point with the record reflecting your request and the denial by the Court proceed to closing arguments.

5/26/2011RP 4. The court instructed the jury and the parties completed closing arguments. 5/26/2011RP 5-33. Mr. Solomona was subsequently convicted as charged. CP 25-33.

D. ARGUMENT

THE TRIAL COURT'S REFUSAL TO ALLOW MR. SOLOMONA TO TESTIFY VIOLATED HIS CONSTITUTIONALLY PROTECTED RIGHT TO PRESENT A DEFENSE AND TESTIFY ON HIS OWN BEHALF

1. The right to testify on one's own behalf is a fundamental right. The United States Supreme Court has recognized that a criminal defendant has a constitutional right to testify on his or her own behalf. *Rock v. Arkansas*, 483 U.S. 44, 52, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) (“[T]he most important witness for the defense in many criminal cases is the defendant himself.”).¹ The right to testify on one's own behalf is one of the rights that “are essential to due process of law in a fair adversary process.” *Faretta v. California*, 422 U.S. 806, 819, n. 15, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). The right to testify is implicitly grounded in the Fifth, Sixth, and Fourteenth Amendments. *Id.* at 51-52. In addition, it is axiomatic

¹ The right of criminal defendants to testify in their own defense is of relatively recent origin. *Nix v. Whiteside*, 475 U.S. 157, 164, 106 S.Ct. 988, 89 L.Ed.2d 123 (1986). Until the latter part of the nineteenth century, criminal defendants were disqualified from giving sworn testimony at their own trials because of their interest in the outcome of the case. *Id.* at 164. The disqualification was abolished in the late nineteenth century by state and federal statutes. *Id.* Before this abolition, a practice developed at common law of permitting defendants to tell their side of the story in unsworn statements that could not be elicited through direct examination and were not subject to cross-examination. In *Ferguson v. Georgia*, 365 U.S. 570, 596, 81 S.Ct. 756, 5 L.Ed.2d 783 (1961), the United States Supreme Court struck down a Georgia statute that limited a defendant's presentation at trial to an unsworn statement, holding that the statute denied the defendant his right to have his counsel question him to elicit his statement.

that an accused person has the constitutional right to present a defense. U.S. Const. Amend. VI; *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006).

In Washington, a criminal defendant's right to testify is explicitly protected under our state constitution. Art. I, § 22 ("In criminal prosecutions the accused shall have the right to appear and defend in person, . . . *to testify in his own behalf*, . . .") (emphasis added). This right is fundamental, and cannot be abrogated by defense counsel or by the court. *State v. Robinson*, 138 Wn.2d 753, 758-59, 982 P.2d 590 (1999); *State v. Thomas*, 128 Wn.2d 553, 558, 910 P.2d 475 (1996). Only the defendant has the authority to decide whether or not to testify. *Id.* The waiver of the right to testify must be made knowingly, voluntarily, and intelligently. *Id.* at 558-59.

A defendant's testimony could be crucial in any trial, and it could be difficult for us to determine whether or not a jury would have found his testimony credible. See *Luce v. United States*, 469 U.S. 38, 42, 105 S.Ct. 460, 83 L.Ed.2d 443 (1984) ("[An] appellate court could not logically term 'harmless' an error that presumptively kept the defendant from testifying."); *Rock v. Arkansas*, 483 U.S. 44, 52, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987) ("There is no justification today for a rule that denies an accused the opportunity to offer his own testimony."); *Martínez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.1991) (deciding that where counsel failed to inform defendant of his right to

testify, “it is only the most extraordinary of trials in which a denial of the defendant's right to testify can be said to be harmless beyond a reasonable doubt”).

Owens v. United States, 483 F.3d 48, 59 (1st Cir.2007).

Generally, the issue of whether to allow a party to reopen its case to present further evidence is a matter within the discretion of the trial court. *State v. Brinkley*, 66 Wn.App. 844, 848, 837 P.2d 20 (1992). But, the United States Supreme Court has held that “[t]here is no justification today for a rule that denies an accused the opportunity to offer his own testimony.” *Rock*, 483 U.S. at 52. Thus, given the nature of the right asserted, the trial court’s myopic reliance on its ruling that the parties had rested, thus barring Mr. Solomona from testifying, violated his constitutionally protected right to testify.

2. The court’s refusal to reopen the defense case to allow Mr. Solomona to testify on his own behalf violated his right to testify. Mr. Solomona submits the trial court’s myopic reliance on the fact the defense rested violated his right to testify.

Although the right to present relevant testimony is not without limitation, the right “may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process.” *Chambers v. Mississippi*, 410 U.S. 284, 295, 93 S.Ct.

1038, 35 L.Ed.2d 297 (1973). Any restrictions on a defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve. *Rock*, 483 U.S. at 55-56. In applying its evidentiary rules a State must evaluate whether the interests served by a rule justify the limitation imposed on the defendant's constitutional right to testify. *Id.*

The seminal case addressing reopening in order to allow the defendant to testify is *United States v. Walker*, 772 F.2d 1172 (5th Cir.1985) (addressing court's failure to reopen evidence where defendant asked to testify after resting case but before closing arguments).² In *Walker*, the defendant informed the court he was under too much emotional pressure to testify "right now" or "today." The defense then rested that day, a Friday, and the State called two "apparently insignificant" rebuttal witnesses, then rested. The following Monday, before closing arguments, the defendant moved to reopen his case so he could testify, which the trial court denied. *Id.* at 1175-76, 1181.

² The only reported case in Washington involving the denial of the right to testify on one's own behalf arose out of an ineffective assistance of counsel claim where the allegation was that trial counsel barred the defendant from testifying. *Robinson*, 138 Wn.2d at 758-59. Thus, whether the right to testify on one's own behalf is violated where the trial court refuses to reopen is one of first impression.

In reversing the trial court, the appellate court noted that the reopening of a criminal case was within the sound discretion of the trial court. *Walker*, 772 F.2d at 1177. However, the Court set out the following factors for the trial courts to consider:

In exercising its discretion, the court must consider the timeliness of the motion, the character of the testimony, and the effect of the granting of the motion. The party moving to reopen should provide a reasonable explanation for failure to present the evidence in its case-in-chief. The evidence proffered should be relevant, admissible, technically adequate, and helpful to the jury in ascertaining the guilt or innocence of the accused. The belated receipt of such testimony should not 'imbue the evidence with distorted importance, prejudice the opposing party's case, or preclude an adversary from having an adequate opportunity to meet the additional evidence offered.

Id. at 1177.

In applying this test, the Fifth Circuit concluded that the defendant's untimeliness was minor under the circumstances, because, had defendant elected to take the stand on Friday, the testimony would likely have carried over into Monday morning anyway. *Id.* The Court concluded that the character of the proffered evidence weighed very heavily in favor of the defendant, because it was the testimony of a criminal defendant who had not previously taken the stand in his own trial. *Id.* The Court also

concluded that the record did not show that the effect of granting the defendant's motion would have prejudiced the State's case. Finally, the Court concluded that the reasonableness of defendant's excuse of emotional inability to testify on Friday "mildly favor[ed]" the defendant's position, as it was "apparently bona fide and not significantly unreasonable," as opposed to a desire to "delay the proceedings" or "gain a strategic advantage over the government." *Walker*, 772 F.2d at 1177-85.

There is a distinct similarity in the factual scenarios between Mr. Solomona's case and *Walker*. Here, Mr. Solomona's request to reopen the evidence and allow him to testify, as in *Walker*, was after one day, which as in *Walker* was not significantly untimely. Although Mr. Solomona did not indicate his wish to testify immediately after his attorney rested his case, he made his wish known as in *Walker* at the very beginning of the next day of trial. Thus, any delay involved in requesting that his case be reopened was minimal. *Walker*, 772 F.2d at 1177; see also *United States v. Larson*, 596 F.2d 759, 778-79 (8th Cir.1979) (finding abuse of discretion in court's refusal to allow additional defense witness on Monday morning where defense had rested Friday afternoon). The effect of allowing Mr. Solomona to testify would not have been

anything more than a minor disruption in the orderly flow of testimony. As in *Walker*, closing arguments had not been heard nor had the jury been charged. *Walker*, 772 F.2d at 1179-80. Moreover, there is no indication in the record that the State's case would have been prejudiced by reopening the evidence, and the State made no argument that it would have been prejudiced when given the opportunity to comment on Mr. Solomona's request. *Id.* Finally, Mr. Solomona's presence on the stand would have "afforded him the opportunity to have the jury observe his demeanor and judge his veracity firsthand." *Walker*, 772 F.2d at 1179.

The trial court's myopic ruling denied Mr. Solomona's constitutionally protected fundamental right to testify in his own behalf.

3. The court's error in barring Mr. Solomona from testifying was not a harmless error. A constitutional error requires reversal unless the State can prove beyond a reasonable doubt that the error did not affect the verdict obtained. *Chapman v. California*, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967).

In *Crane v. Kentucky*, 476 U.S. 683, 691, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986), the Supreme Court held that Kentucky's

exclusion of a habeas petitioner's testimony bearing upon the circumstances of his confession violated his Fourteenth Amendment right to a fair trial, reasoning as follows:

[A]n essential component of procedural fairness is an opportunity to be heard. That opportunity would be an empty one if the State were permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant's claim of innocence. In the absence of any valid state justification, exclusion of this kind of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case encounter and "survive the crucible of meaningful adversarial testing."

Id. at 690-91 (citations omitted). The Supreme Court remanded the case to the state court for application of a harmless error analysis.

Id. After remand, the Sixth Circuit determined that the exclusion of the proffered testimony was not harmless due to its noncumulative nature and because it cast doubt upon the reliability of the confession, the crucial element of the prosecution's case. *Crane v. Sowders*, 889 F.2d 715, 718 (6th Cir.1989).

Here, Mr. Solomona's testimony was not only central to his defense, it was his only defense. Further, Mr. Solomona's continued distrust and disappointment in his attorney's tactics in presenting the defense case made him feel he had to take control so that his side of the story came to light.

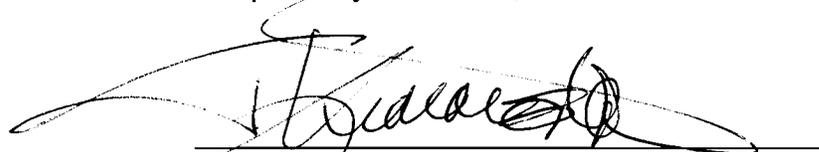
The denial of the right to present that testimony deprived Mr. Solomona of his constitutional right to present a defense. The error was not harmless. See *Gill v. Ayers*, 342 F.3d 911, 922 (9th Cir.2003) (concluding that, where the precluded testimony was the defendant's only defense, the preclusion of the testimony violated the defendant's right to due process of law and was not harmless under the more lenient federal habeas corpus standard). Mr. Solomona is entitled to reversal of his convictions and remand for a trial where he would be allowed to testify on his own behalf.

E. CONCLUSION

For the reasons stated, Mr. Solomona requests this Court reverse his convictions and remand for a new trial.

DATED this 21st day of December 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas M. Kummerow', is written over a horizontal line. The signature is stylized and cursive.

THOMAS M. KUMMEROW (WSBA 21518)
tom@washapp.org
Washington Appellate Project – 91052
Attorneys for Appellant

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 67425-1-I
v.)	
)	
DAVID SOLOMONA,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 21ST DAY OF DECEMBER, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> DAVID SOLOMONA BA: 211001153 KING COUNTY JAIL-KENT 620 WEST JAMES KENT, WA 98032	(X) () ()	U.S. MAIL HAND DELIVERY _____

**COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
2011 DEC 21 PM 4:55**

SIGNED IN SEATTLE, WASHINGTON THIS 21ST DAY OF DECEMBER, 2011.

X _____ 

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710

WAP

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington
Seattle
98101-4170

DIVISION I
One Union Square
600 University Street
(206) 464-7750
TDD: (206) 587-5505

NOTICE TO APPELLANT RE:
STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

Re: Case No. 67425-1
State v. David Solomon

Dear Appellant:

Your attorney has filed a proof of service indicating that you were mailed a copy of the opening brief in your appeal. If, after reviewing that brief, you believe there are additional grounds for review that were not included in your lawyer's brief, you may list those grounds in a Statement of Additional Grounds for Review. RAP 10.10.

Because the Statement of Additional Grounds for Review is not a brief, there is no required format and you may prepare it by hand. No citations to the record or legal authority are required, but you should sufficiently identify any alleged error so that the appellate court may consider your argument. A copy of the rule is enclosed for your reference.

Your Statement of Additional Grounds for Review must be sent to the Court within 30 days. It will be reviewed by the Court when your appeal is considered on the merits.

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

DATE: 12/22/11

Form 7. Statement of Additional Grounds for Review
[Rule 10.10(a)]

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION I**

_____)	
)	
Respondent,)	Court of Appeals Cause No.
)	
v.)	STATEMENT OF ADDITIONAL
)	GROUND FOR REVIEW
_____)	
)	
Appellant.)	

I _____, 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 I

Additional Ground II

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

Date: _____

Signature: _____

RULE OF APPELLATE PROCEDURE 10.10
STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

(a) Statement Permitted. A defendant/appellant in a review of a criminal case may file a pro se statement of additional grounds for review to identify and discuss those matters which the defendant/appellant believes have not been adequately addressed by the brief filed by the defendant/appellant's counsel.

(b) Length and Legibility. The statement, which shall be limited to no more than 50 pages, may be submitted in handwriting so long as it is legible and can be reproduced by the clerk.

(c) Citations; Identification of Errors. Reference to the record and citation to authorities are not necessary or required, but the appellate court will not consider a defendant/appellant's statement of additional grounds for review if it does not inform the court of the nature and occurrence of alleged errors. Except as required in cases in which counsel files a motion to withdraw as set forth in RAP 18.3(a)(2), the appellate court is not obligated to search the record in support of claims made in a defendant/appellant's statement of additional grounds for review.

(d) Time for Filing. The statement of additional grounds for review should be filed within 30 days after service upon the defendant/appellant of the brief prepared by defendant/appellant's counsel and the mailing of a notice from the clerk of the appellate court advising the defendant/appellant of the substance of this rule. The clerk will advise all parties if the defendant/appellant files a statement of additional grounds for review.

(e) Report of Proceedings. If within 30 days after service of the brief prepared by defendant/appellant's counsel, defendant/appellant requests a copy of the verbatim report of proceedings from defendant/appellant's counsel, counsel should promptly serve a copy of the verbatim report of proceedings on the defendant/appellant and should file in the appellate court proof of such service. The pro se statement of additional grounds for review should then be filed within 30 days after service of the verbatim report of proceedings. The cost for producing and mailing the verbatim report of proceedings for an indigent defendant/appellant will be reimbursed to counsel from the Office of Public Defense in accordance with Title 15 of these rules.

(f) Additional Briefing. The appellate court may, in the exercise of its discretion, request additional briefing from counsel to address issues raised in the defendant/appellant's pro se statement.

[December 24, 2002]
