

68275-0

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COURT OF APPEALS
STATE OF WASHINGTON
2012 AUG -3 AM 11:52

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

STATE OF WASHINGTON

Respondent,

v.

Pierce DuBois
(your name)

Appellant.

No. 68275-0

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Pierce DuBois, 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

Additional Ground 2

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

Date: 7/31/12

Signature: Pierce DuBois

(1) ADDITIONAL GROUNDS,

(A) Assignment of error

All statements is inadmissiable

(B) Statement of the case

a. Trial testimony

1) Detective Savaaetasi testifies that when he and Detective Santiago interviewed Mr. DuBois, he asked if he was mirandized and read his rights and if he understood them. Mr. DuBois nodded in affirmative. **RP. April 21, 2011 pg. 11 line 14-16.** Detective Savaaetasi and Detective Santiago was in the interview room with Mr. DuBois the whole time together. **RP. April 21, 2011 pg. 14 line 14-21.**

2) Detective Santiago testifies also that the two detectives was together the whole of the interview with Mr. DuBois. **RP. April 21, 2011 pg.39 line 18-22.** Also that neither detectives recorded audio or video of the interview being conducted in the seventh floor interview room. **RP. April 21, 2011 pg.41 line 12-15.** Detective Santiago didn't advise Mr. DuBois of his miranda rights but he believes Detective Savaaetasi did. **RP. April 21, 2011 pg.43 line 3-8.**

3) After being interrogated by Detective Savaaetasi and Detective Santiago, Homicide Detective Tim Devore testifies that him and Detective Jeffrey Mudd conducted an interview in the same room on the seventh floor with Mr. DuBois. It was documented with audio-video recordings. **RP. April 28, 2011 pg.62 line 16-23.**

(C) Argument

The prosecution may not use statement, whether exculpatory or

inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safe guards effective to secure the privilege against self incrimination. U.S.C.A. Const. Amend. 5. Miranda v. Arizona, 384 U.S. at 474.

It is clear of course that, absent a valid waiver, the defendant has the right to the presence of an attorney during any interrogation occurring after the first formal charging proceedings. The point at which the sixth amendment right to counsel initially attaches. Moran v. Burbine, (1986) 106 S.Ct. 1135; United States v. Gouveia, 467 U.S. 180, 187, 104 S.Ct. 2292, 2297 81 L.Ed 2d 146 (1984); Kirby v. Illinios, 406 U.S. 682 689, 92 S.Ct. 1877, 1882, 32 L.Ed 2d 411 (1972).

A waiver of a constitutional right must be knowing, intelligent, and voluntary. City of Bellevue v. Acrey, 103 Wn.2d 103, 207, 691 P.2d 957 (1984); State v. Harris, 123 Wn. App. 906, 921, 99 P.3d 902 (2004) overruled on other grounds. State v. Hughes, 154 Wn.2d 118, 152 n.16, 110 P.3d 192 (2005), Rev. granted and remanded on other grounds, 154 Wn. 2d 1032 (2005). Absent an adequate record to the contrary, a reviewing court must indulge every reasonable presumption against the validity of an alleged waiver of a constitutional right. Johnson v. Zerbst, 304 U.S. 458, 469, 58 S.Ct. 1019, 82 L.Ed.2d 1461 (1938); State v. Wicke, 91 Wn.2d 638, 645, 591 P.2d 452 (1979). The court does not "presume acquiescence in the loss of fundamental rights." Zerbst 304 U.S. at 458. In order to be effective, "the waiver of a fundamental constitutional right must be an intentional relinquishment or abandonment of a known right or privilege." State v. Thomas, 128 Wn.2d 553, 558, 910 P.2d 475 (1996)(citing Zerbst, 304 U.S. at 458). The state bears the burden to demonstrate a valid waiver on the record. Thomas, 128 Wn.2d at 558. "Presuming waiver from a silent record is imremissible." Boykin v. Alabama, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969).

(D) Conclusion

Mr. DuBois did not waive his rights while being interrogated by the two gang detectives. The statements should be inadmissible. Both of DuBois's convictions should be reversed.

Pierre DuBois

Pierre DuBois #87732L

To: Court of Appeals clerk

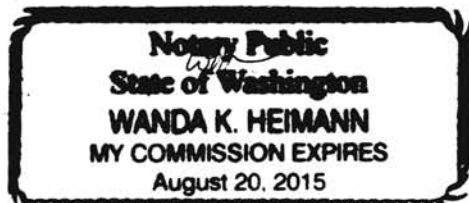
7/31/12

My name is Pierce DuBois. Just for the record my appellant brief is dated June 29th, 2012, and I received it July 5, 2012. The paper work I received says I have 30 days from the time I received the brief to do my additional grounds. That means I have to August 3rd, 2012. I just want to make sure you know this, so there isn't any problem in receiving my additional grounds brief. Thank you.

Pierce DuBois #877326
Pierce J. DuBois

Pierce J. DuBois
Pierce DuBois #877326

Subscribed and Sworn to me before this 31st day of
July, 2012



Wanda K. Heimann
Notary Public in and for the
State of Washington
Residing in Walla Walla,
Washington. My commission
expires 8/20/15

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AFFIDAVIT OF SERVICE
BY MAILING

I, Pierce DuBois, being first sworn upon oath, do hereby certify that I
have served the following documents: additional grounds brief

Upon: Prosecuting Attorney
Erin Becker
King County Courthouse
516 3rd Ave
Seattle, WA 98104

Washington Court of Appeals
Division 1 Clerk
One Union Square
600 University St.
Seattle, WA 98101-4170

Nelson Brennan F Koch
Jennifer Winkler
1408 E. Madison St.
Seattle, WA 98122

By placing same in the United States mail at:

WASHINGTON STATE PENITENTIARY
1313 NORTH 13TH AVENUE
WALLA WALLA, WA. 99362

On this 31 day of July, 2012.

Pierce DuBois #877326
Name & Number

Affidavit pursuant to 28 U.S.C. 1746, Dickerson v. Wainwright 626 F.2d 1184 (1980); Affidavit sworn
as true and correct under penalty of perjury and has full force of law and does not have to be verified
by Notary Public.