

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II

2012 SEP -5 PM 1:13

STATE OF WASHINGTON )

Respondent, )

v. )

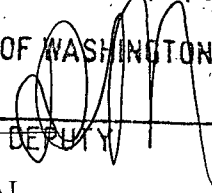
Manuel Merino )

(your name) )

Appellant. )

No. 43339-7-II

STATE OF WASHINGTON

BY  DEPUTY

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, Manuel Merino, 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~~

Additional Ground 2

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

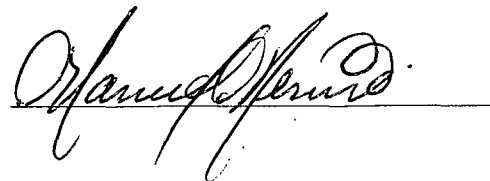
PLEASE SEE ATTACHED

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

Date:

August 31/2012

Signature:



## STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

### ADDITIONAL GROUND 1

#### Ineffective Assistance Of Council:

The Prosecutors evidence included two bags containing crack cocaine obtained from a Confidential Informant, (CI), on separate days as a "controlled buy operation". Allegedly one bag came from Co-defendant Malcom Hampton and the other bag allegedly came from Merino, (the Defendant). In addition to the aforementioned drugs, the prosecutor submitted two other bags of evidence, one being \$300 found in Hampton's car, and the other bag containing \$1050 taken from the Defendant's wallet. The Prosecutor also submitted into evidence a video recording taken from a Safeway surveillance camera showing the Defendant meeting with the CI, (Tamika Foley).

At the notice of Appeal for Division II, Defense Attorney Matt A. Renda pointed out concerns regarding the Defendants right to due process as it relates to the sufficiency of the evidence and/or the admissibility of the evidence. However, Mr. Renda failed to aggressively argue those issues at anytime during the trial and it was never mention during closing arguments.

### ADDITIONAL GROUND 2

#### Ineffective Assistance Of Council:

At one point during the trial, the jury didn't have a clear understanding of what a delivery charge was. So the court took a recess to allow Honorable Judge John McCarthy to write out on paper that; "A delivery of a controlled substance is a constructive transfer from one person to another", which he handed to the jury. Defense Attorney Renda failed to explain to the jury exactly what a delivery of a controlled substance was and that the video taken at Safeway never showed a, "hand to hand transfer" or any body contact indicating that a transfer had ever taken place. (Please see video). No other supporting evidence or State witness supported any finding that a transaction took place including officers involved in surveillance of the Safeway store.

According to the States own witnesses, when the police officers deemed it necessary to search Ms. Foley, (the CI), they only searched her coat pockets, purse, and shoes. When asked by the Defense Attorney if they took her socks off, the officers replied; "No". This clearly indicates that she was not thoroughly searched by a female officer prior to the "undercover operation" as normal procedure dictates for a controlled buy. This important fact was not mentioned by the Defense Attorney during closing arguments. The only evidence they had that a transfer had occurred was from the Confidential Informant herself.

## STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

### ADDITIONAL GROUND 3

#### Ineffective Assistance of Council:

During the jury selection process the Defense Attorney asked one of the potential jurors what he thought about a defendant not taking the stand. The potential juror's response was that if a defendant does not take the stand, then he must have something to hide. The Defense Attorney did not dismiss this potential juror for bias and was allowed to serve on the jury. If this juror had been replaced with a impartial juror who understood the Defendants right to exercise his 5th Amendment Right, the outcome come of the trial may have been different.

### ADDITIONAL GROUND 4

#### Ineffective Assistance of Council:

Witness for the Defense, (Mr. Lattimar), who was leasing a residential house, testified that the Defendant was designated by him as the manager of the transitional house, located at 1008 South 7th, Tacoma, WA. 98405. The witness further testified that he gave the defendant \$600 to go toward home improvements and that the defendant was authorized to collect rent and deposits from renters and otherwise oversee the general operation of the house. At the time of the Defendants arrest, arresting officers found \$1050 in his wallet. The authorities assumed that these funds were related to some illegal transaction when in fact all the money found on his person was legitimately related to his position as house manager. Since the Defendant had exercised his 5th Amendment Right it was the responsibility of the Defendant's trial attorney to explain to the jury why the Defendant went to the Safeway store to meet Tamika Foley as it related to his job as a house manager.

### ADDITIONAL GROUND 5

#### Violation Of Due Process:

During the course of the trial, the Judge declared a recess. At that time the Prosecutor asked the Judge if they could conduct further research on the currency confiscated from the Defendant, which had already been officially entered as evidence. The Judge questioned the reasoning for this unusual request at such a late date. The Prosecutor insisted that they had previously recorded the serial numbers of the money to be used in the operation against the Defendant and this would prove that the serial numbers on record would match the numbers on the bills submitted as evidence. However, none of the serial numbers matched. Yet the Prosecutor showed the jury the bags of money as proof that the funds were related to the control buy. The Prosecutor violated the Defendants Due Process Rights when the Prosecutor knowingly submitted erroneous evidence in order to get a conviction.

STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

ADDITIONAL GROUNDS 6

Violation Of Due Process:

During the sentencing phase, the Defendant took the opportunity to explain to the Judge that the jury had found him guilty based on assumptions, vague conclusions, and a single piece of evidence derived entirely from a witness with a questionable history of drug abuse and arrests and who may have had motivation to enthusiastically cooperate with the authorities involved. In addition, the money that was shown to the jury was done so to incite the jury to bring forth a finding of guilt with full knowledge that this evidence was not related in any way to the allegations. This goes against the Judges instructions that in order to find the Defendant guilty, it must be beyond a reasonable doubt. Considering the lack of evidence in this case, and the prevalence of "reasonable doubt", it was, (and still is), my assertion that this case should have been dismissed from the onset.