

**FILED**

AUG 21 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

COURT OF APPEALS  
DIVISION  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON )

Respondent, )

v. )

No. 310370

Christopher G. Nichols  
(your name)

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

Appellant. )

I, Christopher G. Nichols, have recieved 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

The state practiced prosecutorial misconduct  
by allowing a states witness to lie and  
not correct this reversible error when it  
appeared.

Statement of Additional Grounds

Additional Ground 2

Further, there was insufficient amount of evidence to support verdict's of guilty. The insufficient amount of Evidence comes in the form's of testimonies, Negative Identification, Lack of physical evidence, No evidence to support proof of Dominion or Control.

Court Errored by not allowed the evaluation of the DC's to be used against witness as Character and truthfulness witness's

Additional Ground 3

Breaking sight to confrontation by verbally bringing up evidence that was not present or entered into Evidence.

Also numerous court error's and abuse of descretion by the trial court.

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

Date: 8-18-13

Signature: 

1.  
2.  
3.  
4.  
5.  
6. - Table of Authorities -

7. Napue v. Illinois, 79 S. Ct. 1173. Pg. 7

8. Dexter v. State, 544 S.W. 2d 426, 428 Pg. 19

9.  
10. - Statutes -

11. RCW 5.60.050 Pg. 16

12. RCW 9A.82.050 Pg. 17

13.  
14. - Rules -

15. ER 901 pg. 9-10

1.  
2.  
3. I have had a few complications  
4. with the process of doing this statement  
5. of Additional Grounds. My first and  
6. most important issue is that I  
7. have not received a copy of  
8. the prosecutor's or the defense's  
9. opening arguments. The trial transcripts  
10. that I have receiving did not  
11. contain these two opening arguments.  
12. Because of that I never had ~~an~~ an  
13. chance to read or write on these  
14. opening arguments. My second issue  
15. is that it took me 10 days  
16. once I got the Court's Notice  
17. of appeals, I was not able to gain  
18. priority access or adequate legal  
19. access for the first 10 days  
20. of your 30 day Notice. I believe  
21. both of these are violations  
22. of Due process of Law.  
23.  
24.  
25.  
26.



STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

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**PRIORITY**

LAW LIBRARY REQUEST FOR  
PRIORITY SCHEDULING DEADLINE

CBCC LAW LIBRARY

**Directions:** Please use a separate form for each case that you are requesting priority scheduling for. Please fill out this form in its entirety, as failure to do so may result in our inability to process your request.

Offender Name Christopher Nichols Date 7-25-13  
Facility Clallam Bay Correction center DOC # 873304  
Housing Unit C-unit

Identify the deadline for which you are seeking priority access (if there is a letter, court order, or other document relating to this deadline, you may wish to attach a copy to assist in verifying the deadline). Today's from 7-18-13

Date your judgment was entered 8-1-12 8-19-13

Status of any appeal from that judgment ANitial appeal

Court in which you have the deadline Court of appeals Division 3

Case, cause, or docket number Case # 310370 / Court # 111001746

Court/Statutorily imposed deadline for 30 days from 7-18-13

Identify which rule or statute imposes this deadline R.A.P. 10.10

Comments: I have been sending the Law Librarian Kites to get priority access since 7-20-13

Approved  Denied

Reason: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Separates checked (if applicable)

Staff Signature (Optional) \_\_\_\_\_

Date \_\_\_\_\_

B Grouseth  
Law Librarian/Designee Signature

7-28-13  
Date

Facility CPM/Captain Signature (Optional) \_\_\_\_\_

Date \_\_\_\_\_

The contents of this document may be eligible for public disclosure. Social Security Numbers are considered confidential information and will be redacted in the event of such a request. This form is governed by Executive Order 00-03, RCW 42.56, and RCW 40.14.

1. The State failed to substantiate  
2. witness's testimony during the testimony  
3. of state's witness, which violates defendant's  
4. due process of Law.

5. Crystal Fellmin-Shimmin sister to another  
6. state's witness was on the stand testifying  
7. against Mr. Nichols. Ms. Fellmin Shimmin was  
8. asked if she made a deal with the  
9. prosecutor to testify against Mr. Nichols  
10. where Ms. Fellmin-Shimmin stated "No," but  
11. which in fact she did have a deal  
12. to testify against Mr. Nichols for  
13. a drop of charges and lesser  
14. charges.

15. The State being the only person  
16. to know of this deal beside's Ms.  
17. Fellmin-Shimmin and her attorney did  
18. not correct his witness or point  
19. out that she did in fact have  
20. a deal with the state to testify  
21. against Mr. Nichols.

22. The defense counsel had to  
23. investigate her statement and plea  
24. deal on a court break and find  
25.  
26.

1. that Ms. Fellmin-Shimmin did make a  
2. plea for Leniency with the state  
3. and the defense counsel brought  
4. up the misconduct to the court  
5. after the witness's testimony where  
6. the state finally admitted the  
7. error. Only after witness was dismissed  
8. and after defense counsel had  
9. to discover the error and bring  
10. it to the court's attention. The  
11. state knew of Ms. Fellmin-Shimmin's plea  
12. deal to testify against Mr. Nichols  
13. and admits he is the one who  
14. personally made the deal.

16. At the end of Ms. Fellmin-Shimmin's  
17. direct examination by the prosecuting  
18. attorney the state asks, "Q. And in  
19. exchange for your statement were  
20. you promised anything?" "A. No" State  
21. - Judge I have no further questions.  
22. - Page 580 at the end of Ms. Fellmin-Shimmin's  
23. direct examination -

25. During defense counsel's cross  
26. examination on page 588 the

1. Question of an alleged deal came  
2. up again. "Q. And have you been  
3. charged with a crime related to  
4. this?" "A. No" "Q. No" "A. No" "Q. Is  
5. that because you agreed to  
6. testify in this matter?" "A. No, They  
7. didn't offer me anything."

9. Ms. Fellmin-Shimmin denied being  
10. charged with a crime and denied  
11. being giving anything for her testimony.  
12. The state was given two chances  
13. to correct these lies, once when  
14. he asked his witness and once  
15. when it came up in cross  
16. examination.

18. At the end of Det. Michael  
19. Gilmore's direct examination Defense  
20. Counsel brought up the lie to the  
21. court when the jury was not  
22. present. -Page 634- "Defense - I know,  
23. unfortunately I think there is. I  
24. need the court's assistance, if you  
25. can give it to me, in what  
26. direction we're going to handle this.



1. When MS. Fellmin-Shimmin testified  
2. she testified that there was no  
3. plea agreement, there was no charges.  
4. I received a letter from the prosecuting  
5. attorney which outlines the deal  
6. that she had received -- from him.  
7. And I thought this would be a  
8. simple matter; I could just call  
9. Det. Gilmore and we could get  
10. through it that way. "I'm being  
11. advised that nobody besides Mr. --  
12. Counsel, the prosecuting attorney, has  
13. knowledge of this. And I don't  
14. think I can't let that pass  
15. without the truth coming out. And --  
16. So, I've asked if there could be  
17. some representative of the prosecutor's  
18. office that would voluntarily come  
19. in to testify as to, you know what  
20. this arrangement was. The only other  
21. suggestion I could think of is  
22. if I would be able to call  
23. the secretary -- unless Counsel  
24. typed the letter up himself --  
25. who typed up that letter and  
26.

1. Sent it to me, and have her read  
2. it."

3. The Court: "So, essentially you're --  
4. You're saying there's an inconsistent  
5. statement here, inconsistent testimony."

7. Defense: "Correct"

9. The Court: "-- That you didn't  
10. otherwise have an opportunity to --  
11. and I'm sorry, Detective, you can  
12. go ahead and take your seat,  
13. recognizing we'll see you first thing  
14. in the morning. -- So that there  
15. had been what you call perjurous  
16. testimony. So what about that Mr.  
17. Radzimski?"

19. State: "Judge, I -- my own emails,  
20. so I'm the one who wrote  
21. the email to Mr. Maxey."

22. - End quote's -

24. The Court allowed Det. Gilmore  
25. to read the plea agreement

1. then take the stand and testify  
2. to its contents, which was an  
3. error by the court. The prosecutor  
4. had an ethical obligation to correct  
5. the lie when it appeared and  
6. in this case it appeared twice  
7. and both times the state allowed  
8. the prejudicial lie to go un-  
9. corrected when it appeared.

11. If the defense counsel would  
12. not of found the plea agreement  
13. and brought it to the court's  
14. attention then it would have  
15. not gotten brought up at all.

17. The trial court abused its  
18. discretion by allowing Det. Gilmore  
19. to talk about MS. Fellmin-Shimmin's  
20. plea deal and not striking her  
21. testimony or ordering a mistrial  
22. on the basis of prosecutorial  
23. misconduct and bias.

25. Not only is this ethical misconduct

1. but this Lie Led the Jury to  
2. beleive that witness's were testifying  
3. out of good faith rather than  
4. out of a deal for Leniency and  
5. implied promises. This misconduct  
6. was very prejudicial to the  
7. Jury on the issue of credibility  
8. of witness's in this case, and was  
9. not adimittly and properly addressed  
10. to the Jury by the court.

11.  
12. Had the Jury fairly, directly and  
13. completely been apprised of the  
14. true fact's, it might have well  
15. concluded that Crystal Fellmin-Shimmin  
16. and her brother Jesse Fellmin-Shimmin  
17. another state's witness had collobrated  
18. and fabricated testimony to  
19. gain favor and Leniency with  
20. the State.

21.  
22. The state allowed the prejudicial  
23. Lie to go uncorrected when it  
24. appeared as outlined in: Napue V.  
25. Illinois, 79 S. Ct. 1173.

1.  
2. - Insufficient Evidence -

3. There is insufficient amount  
4. of evidence to support a finding  
5. of guilty on the Residential  
6. Burglary, theft of a motor vehicle, 9  
7. Count's theft of a firearm, 9  
8. Count's unlawful possession of a  
9. firearm and trafficking in stolen  
10. property.

11.  
12. Before the alleged accomplice  
13. and State's main witness  
14. testified to all the above charges  
15. he was asked by the State to  
16. identify the defendant Christopher  
17. Nichols the man he claimed  
18. did these crimes. Eric Lee Booth  
19. was given two chances by  
20. the state to identify Christopher  
21. Nichols and both times booth  
22. failed to identify the defendant,  
23. and both times were at the  
24. start of Mr. Booth's testimony. Through  
25. his accusations he had ample  
26.

1. time during day and night to  
2. observe the defendant but failed  
3. to identify Mr. Nichols. With the  
4. lack of material and physical  
5. evidence against Mr. Nichols the  
6. identification of the defendant  
7. is the primary issue at this trial.

8. There was no physical evidence  
9. linking defendant to the residential  
10. burglary, 9 counts theft of a  
11. firearm, theft of a motor vehicle  
12. of 7 counts unlawful possession  
13. of a firearm. So the co-defendant's  
14. lack of identification is the  
15. principle issue.

16.  
17. None of the requirements  
18. of Authentication or identification  
19. in Rule 901 of Evidence Rules, are  
20. met by Mr. Booth's lack of  
21. identification of defendant twice  
22. at trial.

23.  
24. There is not sufficient enough  
25. evidence to support that the  
26.

1. matter in question is what it's  
2. proponent claims. It can be  
3. believed by Mr. Booth's testimony  
4. that he committed these crimes  
5. but the matter in question is  
6. with who? Mr. Booth claims he did  
7. these crimes with the defendant  
8. Mr. Nichols but fails to identify  
9. defendant in or out of court so  
10. therefore his testimony falls short  
11. of E.R. 901 to prove that the  
12. matter is what Mr. Booth claims  
13. it to be.

14.  
15. On page 232 the state asked Mr. Booth  
16. to point out Christopher Nichols  
17. and Mr. Booth failed to do that  
18. twice. Q. "Okay, Mr. Booth do you know  
19. somebody by the name of  
20. Christopher Nichols?" A. "Yes." Q. "Okay,  
21. is Mr. Nichols anywhere present in  
22. the courtroom today?" A. "I didn't  
23. see him." Q. "Okay, can you take a  
24. look around the courtroom, please?  
25. Do you see Mr. Nichols anywhere in  
26.

1. the courtroom?" A. "No." -End quotes-  
2. With a Lack of identification  
3. and no prior Identifications the  
4. court erred by allowing Mr. Booth  
5. to testify, the court further  
6. erred by not allowing the  
7. defense to use Mr. Booth's  
8. evaluation and erred in not  
9. allowing defense to call the Doctor's  
10. who did the State ordered evaluation  
11. as witness's against Mr. Booth's  
12. character and truthfulness. With no  
13. physical evidence Linking Mr. Nichols  
14. to the crime's Mr. Booth's Negative  
15. identification is a paramount issue.

16.  
17. The Doctor's or mental evaluation  
18. itself should have been allowed  
19. as character evidence where the  
20. character and credibility of Mr.  
21. Booth were impartitive issues at  
22. trial-Pre-trial motion page 135- The  
23. evaluation talked about his mental  
24. state during and after comission  
25. of crimes, during his incarceration



1. and during and after his statements  
2. to the police and other doctors.

3. The state stated that the  
4. evaluation Dr's were willing to  
5. testify on the character and  
6. truthfulness of Mr. Booth but the  
7. court denied the defense's request  
8. for character witness's. The State  
9. initially ordered the evaluation then  
10. turned around and asked the  
11. court to deny the defense to  
12. impeach Mr. Booth with it. The  
13. court erred by not allowing  
14. the Doctor's to testify as  
15. character witness's, at a trial  
16. where Mr. Booth was the only  
17. eye witness to the Residential  
18. Burglary, 9 theft's of a firearm  
19. and theft of a motor vehicle.

20.  
21. During Eric Booth's cross examination  
22. he admit's to hearing voice's during  
23. his statements to the police  
24. which would make his evaluation  
25. and the doctors who conducted

1. the evaluation relevant to his  
2. character and truthfulness. During  
3. cross examination of Eric Booth by  
4. defense counsel it stated on page  
5. 268 Q. "Now in regards to --- were  
6. you still hearing voices when you  
7. were talking to them?" A. "yes"  
8. Q. "were those voices talking to  
9. you about wanting to get out of  
10. Jail?" A. "somewhat yes." Q. "And ---  
11. were those voices telling you that  
12. you were thinking about even  
13. harming law enforcement officers  
14. to get out?" A. "At certain times  
15. ---" Q. "That's how bad you  
16. wanted to get out of jail, wasn't  
17. it?" A. "well it's --- it's just what they  
18. kept telling me, is to get out."  
19. Page 283 - End quote -

21. Further on cross examination of  
22. Mr. Booth when defense asked about  
23. a statement the witness made to  
24. the police he was asked who's  
25. idea it was to Rob Hannigan's which  
26.

1. is the Residential Burglary charge  
2. where the gun's came from he  
3. make's eight referenc's to they  
4. or them. Page 283 Q. "So, --- okay.  
5. Do you recall this conversation when  
6. you gave your statement on July 26<sup>th</sup>  
7. of 2011; you were asked by Det.  
8. Mike Gilmore, "okay whose idea was  
9. it to go to hannigan's?" "I knew --  
10. I knew -- I knew you -- you worked"  
11. and he say's "I know you worked  
12. there before" Q. "Do you recall  
13. responding "I'm not sure, you know they  
14. called, and, you know, they said  
15. they needed money and they --  
16. and, you know they wanted money  
17. fast, and I had just told them,  
18. I had told them about, you know  
19. I had told them about, you  
20. know, that house and that place  
21. I had went." "In that statement  
22. you made eight referenc's to "they"  
23. or "them", you were talking about  
24. Collette and Jesse weren't you?"  
25. A. "I'm not sure." "End quote's" - In

1. previous statements he was not  
2. sure who did it with him, but  
3. during his testimony claims it was  
4. the defendant Chris Nichols but  
5. fails to point out Chris Nichols  
6. as the defendant twice during  
7. his testimony and did not  
8. describe or make any in-court  
9. or out of court identification  
10. of the defendant.

11.  
12. Mr. Booth by two negative identifications  
13. of Chris Nichols as the defendant  
14. failed to give a prima facie  
15. showing and was incapable of  
16. receiving just impressions of the  
17. facts, respecting which he was  
18. being examined. Mr. Booth claimed  
19. memory issues at the time of  
20. his testimony and could not  
21. point out facts of the defendant.  
22. Defense impeached witness about  
23. just impressions of the facts  
24. surrounding the Residential Burglary.

25. -Page 285- Q. "So when you were  
26.

1. telling the police about doing this  
2. with Chris Nichols, you couldn't keep  
3. it straight, could you, whether or  
4. not you were coming back from  
5. Spokane, whether you were coming  
6. back from -- driving your car or  
7. coming back from Chewelah to  
8. get cigarettes, or whether you were  
9. at the casino in his truck; you  
10. couldn't keep it straight, ~~no~~ could you?"

11. A. "Cause sometimes I have a  
12. memory --- I have memory issue, and."

13. Q. "because it wasn't true. Isn't that  
14. right?" A. "No; I don't know if it --

15. I can't remember -- sometimes I  
16. can't remember things, and sometimes  
17. it takes me longer to memorize  
18. things and I come back later  
19. and then -- be able to memorize  
20. them.

21.  
22. Per the rules of RCW 5.60.050  
23. who are incompetent (2) Those  
24. who appear incapable of receiving  
25. just impressions of the facts,  
26.

1. respecting which they are examined, or  
2. of relating them truly.

3.  
4. Because of Mr. Booth's certainty  
5. that defendant was not Chris  
6. Nichols, witness's testimony was  
7. insufficient to link defendant  
8. to the scene of the crime's. The  
9. lack of physical evidence at scene  
10. of crime supports witness's negative  
11. identification of the defendant.

12.  
13. There is also insufficient evidence  
14. to support the finding of guilty of  
15. the trafficking of stolen property.  
16. AS it states in RCW 9A.82.050 (2) (a)  
17. and in the jury instruction for  
18. trafficking in stolen property, knowingly  
19. initiated or organized or planned or  
20. financed or directed or managed or  
21. supervised theft of property for  
22. sale to other's; or (b) knowingly  
23. trafficked in stolen property. There  
24. is no evidence to support I  
25. knowingly pawn the two stolen rings

1. with the knowledge that they  
2. were stolen.

3.  
4. There was also insufficient  
5. evidence to support 7 of the  
6. 9 unlawful possessions of a  
7. firearm. Neither MC Booth or  
8. MC Fellmin-Shimmin claim to  
9. have seen me open the gun  
10. safe or pull guns out of  
11. the safe.

12.  
13. They failed to enter any gun  
14. into evidence on count 9 of  
15. unlawful possession of a firearm.  
16. The state failed to present a  
17. firearm on count 9 and the  
18. witness's failed to identify  
19. it or describe it.

20.  
21. The state relied on prejudice  
22. of unrelated murder and on  
23. confusing and conflicting testimony  
24. in lieu of actual evidence.

25. "An individual should only be  
26.

1. convicted upon evidence that  
2. demonstrates he is guilty of the  
3. offense charged and not through  
4. an attempt to arouse prejudice  
5. in the minds of the Juror's "

6. -Dexter V. State, 544 S.W. 2d 426, 428-

10. Defendant's right to confrontation  
11. was violated when Det. Gilmore  
12. brought verbally evidence of a  
13. rail mounting piece that was  
14. not entered into evidence and  
15. was only verbally brought up  
16. to create prejudice in the  
17. eyes of the Jury. -Page 664 of

18. Det. Gilmore's direct examination - A. "yes  
19. there was --- a rail mount for ---

20. I believe an --- either an AR-15 or  
21. an assault rifle that -- Mr. Hannigan  
22. reported that his AR-15 "

23. Defense - "Objection" The court - "Just  
24. a sec" Defense - "I don't remember  
25. Mr. Hannigan talking about that,



1. So object, your honor." The court--  
2. Sustained" Q. Detective, what  
3. else was located without -- that  
4. you believe to be from Hannigan's  
5. residence." A. there was a rail  
6. accessory cam that goes onto a--  
7. AR-15 or an assault-type rifle  
8. that I believed was one that  
9. was stolen from Robert Hannigan."  
10. - End quote's - Not only was this  
11. a violation of right to confrontation  
12. it was also very prejudicial.

13.  
14. It was also error to allow  
15. a telephone recording of defendant  
16. and his girlfriend to be allowed  
17. to be entered as evidence. The  
18. phone recording was not an admission  
19. of guilt or testimonial in nature.  
20. It was made by either party  
21. not knowing that there were  
22. being recorded. The state failed  
23. to show adequate ~~that~~ evidence  
24. that the defendant or/and the  
25. girlfriend knew that the phone  
26.

1. Conversation was being recorded, state's  
2. Exhibit No. 1 "Phone recording" was taken  
3. by a violation of due process of  
4. Law and trial court abused  
5. its discretion by allowing it  
6. into evidence. Neither called knew  
7. that the call was gonna be  
8. recorded or consent to the recording.  
9. - Page 717 - Defense Counsel continuously  
10. objects to exhibit NO. 1.

11. Female "Hello" ~~and~~ operator "you have  
12. a collect call from" Male "Chris"  
13. operator "an inmate at -- Beep"  
14. Male "Hello" Female "Hi" - end quote's -

15. There was no warning or consent  
16. to the recording of this conversation.  
17. Per Washington State Statutes.

18.  
19. 18<sup>th</sup> of August 2013

20. Respectfully,  
21. *Christopher Nichols*  
22. Christopher Nichols 873304  
23. Clallam Bay Correction Center  
24. 1830 Eagle Crest way  
25. Clallam Bay, WA 98326  
26.

**FILED**

AUG 21 2013

DECLARATION OF SERVICE BY MAIL  
CR 3.1(c)

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

I, Christopher G. Nichols, declare that, on  
this 18 day of August, 2013 I deposited the forgoing documents:

statement of additional grounds. 26  
Pages.

or a copy thereof, in the internal legal mail system of

And made arrangements for postage, addressed to: (name & address of court or other party.)

Court of appeals Div. III  
500 N. Cedar St. PO. Box 2159  
Spokane, WA 99201

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

Dated at Clallam Bay, WA on 8-18-13  
(City & State.) (Date)

*Christopher Nichols*  
Signature

Christopher Nichols  
Type / Print Name