

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

FILED  
COURT OF APPEALS  
DIVISION II  
2014 JAN 22 PM 1:05  
STATE OF WASHINGTON  
BY DM  
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STATE OF WASHINGTON )  
 )  
 Respondent, )  
 )  
 v. )  
 )  
 David T. Peck )  
 (your name) )  
 )  
 Appellant. )

No. 45132-8-11  
STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, David Peck, 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

See attached paperwork.

Additional Ground 2

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

Date: 1/17/14

Signature: David Peck

## Statement of Additional Grounds

- # 1.) Mr George Marlton failed to act upon alibi information provided by Mrs Dana Brixey and failed to declare her on the defense witness list.
- a.) Mrs Dana Brixey signed and dated a Sworn Affidavit stating I was working with her at the time in question and provided it to my attorney.
  - b.) Mr Marlton declared the alibi before the prosecutor and presiding judge on the Omnibus Application for Defendant at the Omnibus hearing held on December 11, 2012.
  - c.) Mr Marlton failed to declare Mrs Dana Brixey on the defense witness list at Omnibus hearing on April 18, 2013 and again on June 20, 2013 and June 26, 2013 when the witness list was amended.
  - d.) Alibi and witness list issues were raised by Mr Marlton at my request on July 1, 2013. Presiding Judge ruled the request untimely.

Mr. Marlton's failure to act upon this information and failure to declare Mrs Dana Brixey on the defense witness list left me with no defense strategy and no witness testimony in favor of the defendant.

## Additional Grounds (cont.)

# 2.) Mr. George Marilton failed to address the unlawful seizure of the prosecution's one piece of alleged evidence at the 3.5 and 3.6 hearing (06-21-2013TG) on April 24, 2013. State could not prove a nexus or connection from the evidence seized and the crime.

a.) Physical evidence seized was not found at the crime scene, no other evidence was seized with it to connect it to the crime, and no other evidence was found at the crime scene which would support a connection from the evidence seized and the crime.

b.) Physical evidence seized was never identified on the date and time of the crime by either of the two witnesses, or confirmed as part of a disguise.

According to Rules and Procedures governing search and seizures; "There must be a nexus between the item seized and the crime in order for there to be probable cause to seize as evidence." With my DNA on the physical evidence and no connection to the crime, the jury will infer a connection. This makes the alleged evidence highly prejudice against me.

Mr Marilton was obligated to attack the prosecution's one piece of alleged and attempt to suppress it unless he could show a strategically sound reason why it would be in the best interest of the defense not to do so.

## Additional Grounds (cont.)

- #3) Photograph of alleged physical evidence allowed to be shown during trial to witness for identification purposes was prejudice against me.
- a.) Physical evidence (the wig) was never shown to witnesses at the date and time of the crime, or anytime before trial to obtain verification. Photograph was not valid for identification purposes due to amount of elapsed time (16 months) between date of offense and attempt to verify.
  - b.) Witness was shown one photograph to choose from for identification. This was highly prejudice against me. For identification purposes, the prosecutions photo of the alleged evidence should have been placed in a line up of other photos of wigs of a similar nature, color, and style.
  - c.) Witness Ms. Mc Murry never positively identified the prosecutions photo of the alleged evidence. Only stated it looked similar.
- #4) Prosecution was allowed to present a prior criminal history to the jury even though I never testified in my own behalf. County Jail Records and Booking and Photograph and Fingerprint officers were allowed to testify to my arrest and conviction on two separate charges. This is highly prejudice against me.