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

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

STATE OF WASHINGTON

Respondent,

v.

PAUL LOISELLE

Appellant.

Court of Appeals Cause No. 67909-1-I

STATEMENT OF ADDITIONAL
GROUND FOR REVIEW

I Paul Loiselle, 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

See attached statement.

Additional Ground II

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

Date: October 25, 2012

Signature: Paul Loiselle

COURT OF APPEALS
STATE OF WASHINGTON
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ORIGINAL

It is my assertion that an error occurred concerning admission of evidence, testimony related to that evidence, the subsequent Defense Motion for Dismissal, and the Court's denial of the motion without proper relief.

Officer Joel Gingrey was called to testify concerning his involvement with the initial incident and his return to Yen Wor Garden to collect alleged evidence, a silver, key shaped object that had a knife and a flat tipped screwdriver that folded into the key. This item was later identified and admitted as State's Exhibit No. 36.

During his testimony, Officer Gingrey testified that there was blood on State's 36, and stated that he had received an email to support his claim. During Defense Voir Dire and Cross, Officer Gingrey could neither confirm the presence of blood nor produce the email. Following a brief recess, Defense made an oral Motion to Dismiss. During the discussion relating to the motion, Mr. Ferrell admitted to the Court that the State did not consider State's 36 to be the weapon used in this case. The Court granted the State time to address issues related to Officer Gingrey's testimony and allowed Mr. Ferrell to call the State's next witness, Rex Waters, without ruling on the Defense motion.

Following the testimony of Mr. Waters, and a Recess, the Court returned to the Defense motion and Officer Gingrey's testimony as it related to State's 36. When an agreement could not be reached on how to deal with Officer Gingrey's testimony, the Court allowed the State to recall Detective Paul Takemoto to rebut Officer Gingrey's testimony. During Detective Takemoto's Direct Mr. Ferrell was manipulating the clear plastic bag that contained State's 36 for display on the Elmo, when the Court interrupted and issued the following jury instruction:

Court: Members of the Jury, whenever anything has what we call human biologicals on it , typically blood, and it's admitted into evidence, you need to be extremely careful with it in the jury room. You will wear gloves and whatever you do, don't pull it out of the bag and let the dried blood get into the air. You have to handle it very, very carefully.

At the conclusion of Detective Takemoto's testimony, the Defense maintained its Motion to Dismiss, which the Court denied.

It is my contention that the Court erred in the following ways:

- 1) State's Exhibit No. 36 was accepted and admitted as evidence without proper foundation or relevance being established by the State. Upon being informed by the State, that State's 36 had no relevance to the Defendant or the Victims, the Court allowed it to remain in evidence, which was prejudicial to the Defense.

2) The testimony of Officer Gingrey as it relates to State's 36 was prejudicial to the Defense to the point that the State was compelled to recall Police Detective Takemoto to refute Officer Gingrey's testimony.

3) The Court's Jury Instruction concerning State's 36 during Detective Takemoto's direct by the State was ill timed and emphasized the presence of blood on State's 36, despite Detective Takemoto's testimony and the State's position to the contrary. This act by the Court cannot be seen as harmless error as it directly pertains to the reason for the Defense Motion to Dismiss and shows a bias in favor of the State.

4) The Court's denial of the Defense Motion to Dismiss left the Defense with no relief concerning Officer Gingrey's testimony. Even with Detective Takemoto's rebuttal, there was no jury instruction from the Court to disregard any of Officer Gingrey's testimony. Without direction from the Court, the jury was left with the conflicting testimony of the officer and the detective with no reasonable explanation.

In conclusion, it is my belief that the Court could have excluded State's 36, struck Officer Gingrey's testimony with regard to State's 36, and issued the appropriate jury instruction concerning both that would have given the Defense adequate relief and eliminated its need to seek a Motion to Dismiss. As it stands, I see only two options to correct these errors, remand for a new trial, or upholding the Court's ruling as it pertains to sentencing.

Thank You for Your Consideration,


Paul D. Loiselle