STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

STATE OF WASHINGTON, Respondent, v. Roiland Fernandez Medina, Appellant.	No. 45938-8-II STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW (RAP 10.10)

I, Roiland Fernandez Medina, have received and reviewed the opening brief prepared by my attorney Catherine E. Glinski. I understand the Court will fully review this "Statement of Additional Grounds" for Review when my appeal is considered on it's merits.

For the purposes of these Additional Grounds, this Appellate incorporates these statements of fact in his Appellate Counsel's opening brief on Appeal as submitted to this Court.

Additional Ground 1

Did the trial Court violate Fernandez-Medina's 6th Amendment to the Constitution Art 1 § 22 (Amend 10) rights by not "severing the trials" for him and his two co-defendants. Did the trial Court "abuse its discretion"

by not "severing the trials" pursuant to Cr.R 4.4(C) 2(i), which would have protected and promoted a fair determination of guilt or innocence.

It is Fernandez-Medina's contention that the trial Court never fully ruled on this important issue. The Hon. Judge John Mc Carthy, totally and explicitly jumps back and forth on the issue at bar. After initially signing on to sever the trials, see: VRP Volumes 3-5 page 220 at 11b, Judge Mc Carthy states:

> "So unless the State is prepared to proceed with eliminating any reference at all to any other people in any of the statements of each defendant, and unless the State is prepared to proceed with only inculpatory statements made by a defendant that relates just to their actions or activities and not with the other's did or thought or what they knew of them, unless the State is prepared to do that", [I am gonna sever the trials in this case]

Now while the Judge gives the prosecutor more time to redact the statements, he never really gets around to actually making a ruling on the matter. see: VRP Volume 3-5 pages 223-224. Here Judge Mc Carthy, (flip flops), earlier he said (I am gonna sever the trials), now he says (Quote), "I am not gonna take time to study it now since I have a jury waiting, but if you want to proceed - so I am either gonna suppress all

the statements, or I am gonna limit them pursuant to my ORDER this morning"? This statement makes no sense, and is not supported by the record. The Prosecutor Mr. Schacht, states: "he thinks he understands the Court's ruling". Mr. Fernandez-Medina dosen't, the prosecutor didn't, and this Court won't either. see: Crawford v. Wash, 541 U.S 36 124 S.Ct. 1354, 158 L.Ed (2004). Judge Mc Carthy abused his discretion, and mis-managed this trial in this aspect repeatedly.

Additional Ground 2

Did the trial Court violate Fernandez-Medina's Constitutional rights to a fair trial and right to confront a witness against him, by the trial Court allowing the introduction of co-defendant(s) Barrasso's statement that was read to the jury, in violation of the confrontation clause, and contrary to the provisions in Crawford and Bruton v. United States, 391 U.S. 123, 131, 20 L.Ed. 476, 88 S.Ct. 1620 (1968). see: (Exhibit 17 A)

The issue of custodial statements made by co-defendants was addressed several times in this cause. The first time, and most telling was when Judge Mc Carthy ruled that the past Miranda statements could only be used in the defendant's "respective" trials. Websters dictionary describes (respective) as: relating to two or more person's or things

considered individually". The Judge does not misstate in this context. Obviously he is talking about the trials being "severed", and those statements being attributed to each defendant in their individual trials. VRP Volumes 3-5 page 216. at 13.

The second time this is mentioned, Judge Mc Carthy states:

> "I am not gonna take the time to study it now since I have a jury waiting, but if you want to proceed - so I am either gonna suppress all the statements or I am gonna limit them pursuant to my order this morning".

VRP Volumes 3-5, pages 223 at 24 to page 224 at 1-3.

From this "statement", it is un-clear if Judge Mc Carthy ever followed through on his ruling, or if he ever made a ruling at all. Not only is it (not clear), nowhere in the record can any ruling on the subject be found that is different than the one mentioned above. The State makes it plainly clear, that it seeks to skirt the Court's supposed ORDER and ruling, by introducing Barrasso's statement. The problem here, is the Court, Mr. Schacht, representing the State, Ms. High representing Fernandez-Medina, and Mr. Peale representing Mr. Barrasso, either fails to remember or either dis-regards what the Court's ruling actually was, or was not. VRP Volume 7 pages 6014-6019.

The Court's explicit ruling was, that the statements of each defendant had to be radically (redacted), or the State would be, "to just suppress (all) the statements". VRP Volumes 3-5 page 223 at 20-23. Mr. Barrasso's statement was ultimately introduced and read to the jury, in direct opposition to the Judges position and in violation of Mr. Fernandez-Medina's right to confront a witness against him, even though it was not addressed at a later time. see: Pointer v. Texas, 380 U.S 400, 13 L. Ed. 2d 923, Lily v. Virginia, 527 U.S. 116 119 S. Ct. 1887, and Gray v. Maryland, 523 U.S 185, 140 L. Ed. 2d 294. The fact that this statement was introduced as evidence was inherently prejudicial to the defendant, Roiland Fernandez-Medina.

Additional Ground 3

Was detective Brian Johnson, properly disclosed and deposed as a "expert" witness for the purposes of testimoney pursuant to Cr.R 4.7 (a)(1) and (a)(2)(ii), ER 702. also see: State v. Kalakosky 121 Wash. 2d at 541 852 P.2d 1064.

Appellate Fernandez-Medina, argues that the trial Court incorrectly admitted and allowed Det. Brian Johnson's testimony regarding blood evidence, which was neither proper lay opinion evidence, nor was it proven factual scientific evidence. Here the

State abridged their responsibility by the "omnibus" hearing date to identify Det. Johnson as an expert witness, the subject of his testimony and any reports or statements prepared by him that relates to his expertise in blood analysis or testing proceedures. In this trial, no expert had been identified. Also here, not only has no one been identified as a expert, but no law enforcement officer ever admitted to having any expertise in areas encompassing expert opinions on blood evidence during subsequent defense interviews.

Again, here the Court abused it's discretion, and violated Fernandez-Medina's rights to fair trial by allowing highly inflammatory and prejudicial testimony to be dragged in front of the jury, improperly. Fernandez-Medina's attorney Ms. High, brings this issue to the forefront, VRP Volume 8 page 909 at 18-25. Judge Mc Carthy, states he has "ruled", but it is (un-clear) to what he has ruled to. He overules her objection, but never explains why? The question from Ms. High is specific in intent. Judge Mc Carthy says he has ruled, but "no-where" in the record, does a factual basis for this ruling exist?

Additional Ground 4

Here Fernandez-Medina asserts Det. Johnson's trial testimony as to blood in the entryway to apartment

No. 5, see: Exhibits 53, 55, 56, 57, which the State contends is proof that Fernandez-Medina, actually entered and remained in said apartment is just parlayed by inference into the evidence by generalities, and suspect untested evidence. These generalizations, and impermissible inferences and questionable opinions are not supported by factual evidence. VRP Volume 8 pages 901-907.

Here, whats interesting is Judge McCarthy tries to actually rescue the prosecution from impermissibly entering inadmissible evidence, (or facts not in evidence) by stating:

"In my opinion, every part of the trail dosent require a blood test"

VRP Volume 8 page 907 at 8-9

"However" (no test) was ever conducted on (any) blood evidence, on any blood trail regardless where it stemmed from. Not once was any of the reported blood drops tested or collected or tested to provide facts to support actual blood evidence. Mere discriptions, and inferences of what a substance is, does not pass the Frye test for admission into trial. see: Frye v. United States, 293 Fed. 1013 (D.C. Cir 1923), State v. Stenson, 132 Wn. 2d 668, 717-18 940 P. 2d 1239. Also see: ER 401 402 702.

Again highly preiudicial to the overall case-in-chief.

ADDITIONAL GROUND 5

Here Fernandez-Medina assigns error to his in Court identification pursuant to State v. Sanchez and Salinas 1109, Wash. App. There were several mis-identifications by the witnesses as to who was who, and as to who did what. Appellate contends the independant source test of United States v. Wade and Stovall v. Denno, although derived from an identical formulation in Wong Sun, seeks only to determine whether in Court identification is sufficiently reliable to satisfy his 4th Amendment due process rights.

More on point with this issue, is the testimony of Jeffery Taylor, and the State's own admission through testimony, that this witness in fact did just that. (In Court Identification). The only way this witness was able to positively identify Fernandez-Medina, was the fact through his own testimony. VRP Volume 9 page 1100 at 7-18. The fact that this witness rode in the police car with the defendants, and was only able to place them at the scene of the crime, by admission, makes the "In Court identification all the more telling and all the more prejudicial. See: State v. Sanchez, 171 Wash. App 518 288 P.3d 351 (2012), State v. Salinas, 1109 Wash. App 210 224 279 P.3d 917 (2012), Perry v. New Hampshire, 565 U.S 132 S.Ct. 716 181 L.Ed. 2d 694, 705 (2012), Wong Sun v. United States, 371 U.S 471 484-85 S.Ct (1963).

CONCLUSIONS

In amplification of these statements, he asks leave to incorporate the following:

Appellate Railand Fernandez-Medina, charges that a 14th Amendment violation of the Constitution, and the grounds for the charges are, in substance, that the sole basis of his conviction was perjured testimony, in which fact Det. Johnson, knowingly presented to the jury evidence and facts not in evidence when he testified to blood (drops) in the entryway "being blood". (see: exhibits 50-57)

Based on the issues presented, Appellate request that this Court review the violations of his 5th, 6th 8th, 14th, Amendment rights to the United States Constitution, and Article 1 section 3 and Article 4 § 16 of the Washington State Constitution, and violations of Cr.R 401, 402, 403, 404, 406, 609, 615, 701, 702 and 803, along with presented case law, and overturn and dismiss his cause with prejudice for these violations for and to his rights at trial.

Respectfully submitted,

Railand Fernandez-Medina

Railand Fernandez-Medina

Dated this 18 day of January, 2015.

COA No. 45938-8-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
Division II

STATE OF WASHINGTON,

Respondent,

v.

ROILAND FERNANDEZ MEDINA,

Appellant.

STATEMENT OF ADDITIONAL AUTHORITIES
PURSUANT TO RAP 10.8

Roiland Fernandez Medina

Roiland Fernandez Medina
Coyote Ridge Corrections Complex
1301 N. Ephrata Ave., MSC EB-13
Connell, Washington 99326-0769

I. IDENTITY OF PARTY SUBMITTING AUTHORITY

Comes Now, the Appellant Railand Fernandez Medina Pursuant to RAP 10.8 submits the following additional authorities in support of his Statement of Additional Grounds for review, without oral argument.

II. STATEMENT OF ADDITIONAL AUTHORITIES

This Appellant submits the following additional authorities and citations:

1. California v. Green, 399 U.S 149 158 90 S.Ct (1972),
2. Richardson v. Marsh, 481 U.S 200, 107 S.Ct 702 (1987),
3. State v. Medina, 112 Wn. App. 40 Division 1 (2002),
4. State v. ex rel. Carroll v. Junker, 79 Wash. 2d 12, 21, 482 P.2d 775 (1971),
5. Arizona v. Gant, U.S 129 S.Ct 1710 L.Ed 2d 485 (2009),
6. State v. Cole, 74 Wn. App. 571 874 P.2d 878 1994
7. State v. Cameron, 100 Wn. 2d 520 674 P.2d 650 (1983)

Respectfully submitted,

Railand Fernandez-Medina

Dated this 18 day of January, 2015

IN THE SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

Railand Fernandez Medina, Appellate,	Court of Appeals No. 45938-8-II
	Superior Court No. 13-1-01481-7
vs.	
	PROOF OF SERVICE
THE STATE OF WASHINGTON,	RAP 5.4(b)
Respondent.	

I, Railand Fernandez Medina the Appellant in the above listed cause numbers, do hereby certify under the penalty of perjury under the laws of the State of Washington that I am older than 18 years, and am a party to this action that on, January 19, 2015, I sent a copy of my Statement of Additional Grounds pursuant to Rap 10.10, and my Statement of Additional Authorities pursuant to Rap 10.8. Said documents were sent via the U.S postal service postage pre-paid to the following:

Catherine E. Glinski
P.O Box 7461
Manchester, WA 98353

Signed at Coyote Ridge Correction Center, Connell WA on this day 18th of January, 2015.

Railand Fernandez Medina
Appellate

PROOF OF SERVICE