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In the  
**Washington State Court of Appeals**  
Division I

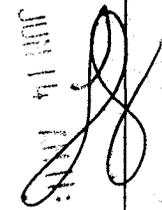
**State of Washington,**  
Plaintiff,

COA No. 64537-4-I

-Vs-

**ADDITIONAL GROUNDS  
FOR REVIEW**  
(as per RAP 10.10)

**David Johnson,**  
Defendant.

2010 JUN 14 11:11 AM  


I, **David Johnson**, defendant, have received and reviewed the opening brief prepared and presented in my behalf. Summarized below are the additional grounds for review that are not addressed in the brief. I understand and have full confidence that the court will review this Statement of Additional Grounds for Review in its entirety when my appeal is considered on its merits.

**ADDITIONAL GROUND**

**No. (1)**

1) **The Sentencing Court Errored when it failed to grant the Defendant's 'MOTION TO SUPPRESS' due to the in exacting description of the "Suspect" and the Constitutionally Infirm Search of the Defendant and his person, 'WITHOUT A WARRANT'.**

Upon the direct examination of Officer Davisson, he states clearly that the physical description he and the other members of his "Sting Operation" was, "That of a Black Male wearing a black jacket, black pants and a [White Stocking Cap]. (Pages 23 - 24, Line 23 on pg. 23 and lines 1 - 2 on pg. 24).

When Officer Sheperd took the stand and was examined he also was asked the direct question, "What did the suspect look like"? Officer Sheperd's response was, "Just like he did, he was wearing a ... I believe a ... I'd have to look at my notes. He was wearing a [White T-Shirt with a black Stocking Cap].

There was no distinct description given to or collaborated descriptions by the two arresting officers to justify the unwarranted stop and subsequent search that was inflicted upon the defendant and the sole means of obtaining inadmissible evidence used to convict him.

1 (The Sworn testimonies of these self professed very experienced over 1000 similar type arrests and  
2 operations performed by them combined), yet these 'trained observers are both certain enough of their  
3 suspects dress and description that they both swear on the stand during the trial in which the defendant was  
4 convicted and under penalty of perjury, they were both waiting and looking for a different person to stop  
5 and search. (The only agreed upon nature of their stop would be that of a "Black Man" at that location).

6 During the testimony Officer Davisson is also asked, "Were you involved in a 'Buy - Bust'  
7 operation that took place on June 8<sup>th</sup> 2008"?

8 His response was, "Yes, I was". Again, the officer is attempting to simply 'ad-lib' to meet the  
9 anticipated direction of the state and strengthen the arrest to support the conviction, (*the unquestioned date*  
10 *of the "Buy - Bust" was 06 June, 2008, ( Page 19, Lines, 10 - 12).*

11 Even with the aid of his own notes is unable to collaborate or to support the testimonies of the  
12 other, "Trained Professional Observers, and 'Tactical' Buy - Bust team members", with untold prior  
13 convictions and arrests using the same tactics.

14 Citing similar execution of purpose and intent instead of Truth and Fact supported by evidence or  
15 exhibit, Officer Sheperd, is also unable to testify as to the date of the 'Buy - Bust', and with the assistance of  
16 his own notes testifies that it took place on the date of 14 January, 2008, or 06 June, 2008.

17 The testimonies relied upon the strongest by the State, in which Officers Davisson and Sheperd,  
18 are at best Ambiguous, Contradictory and Inconclusive, but in no way support the search and seizure of  
19 evidence allowable in the trial of the defendant in this case instant.

20 The defense counsel did object and seek to suppress the items secured as "evidence" at the time of  
21 the unwarranted and infirm search, the bench denied the motion.

22 I Begin with the proposition that appellate courts are error-correcting courts that confine their  
23 review to the trial court record. Unless a party files a motion to suppress evidence seized pursuant to a  
24 constitutionally infirm search, the trial court will not enter findings of fact or conclusions of law and will not  
25 issue a ruling. In this case the Defendant did file motion to suppress and the court did enter a ruling  
26 unfounded and in support of the prosecution and not based on fact or evidence of the testimony given by  
27 the state's witnesses, had the evidence been disqualified and the suppression granted the findings of the jury

1 would have been in favor of the defendant and the trial ending with a "not guilty". *State v. Tarica*, 59  
2 Wn. App. 368, 372, 798 P.2d 296 (1990).

3 In any trial where there is a manifest error, meaning an error appearing on the record affecting a  
4 constitutional right, and the outlines of CrR 3.5(c) are followed as is the case here, the allowance of the trial  
5 court to enter the challenged evidence was in fact actual prejudice, and committed an error of constitutional  
6 magnitude by admitting such evidence.

7 Further, In *U.S. v. Hankton*, 432, F.3d 779, (7<sup>th</sup> Cir 2005), "a defendant has the due process  
8 right to be sentenced on the basis of accurate information".

9 The testimony of the two 'Arresting Officers' are of such confliction that no basis of determining  
10 the events leading to the arrest of the defendant or even the most basic of guides, even the accuracy of the  
11 dates noted and testified to differentiating from the actual date to the event, and only changed after the  
12 additional challenge of the defense after examination of the defendant's DOC Community Corrections  
13 Officer. That the defendant was not in or physically able to have been in the described area on the date that  
14 was stipulated by the Officer's testimony.

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**ADDITIONAL GROUND**  
**No. (2)**

2) **The Sentencing Court Errored when it failed to allow impeachment of the State's witnesses, *Davisson and Sheperd*, and proceeded with the trial in violation of the defendant's "Due Process" rights, which require that 'a person be neither sentenced nor convicted based upon materially untrue assumptions or misinformation'.**

During direct examination by the Defense, Officer "Rocky" Bronkhorst, states under sworn testimony on (Page 92, Lines 23 - 24 and on Pg. 94, Lines 14 - 25), in detail how his specific duties entail the "Chronological Notes" that are carefully encrypted within a 'Cursory System' that is used by the Seattle Police, "whenever there is someone stopped by the Seattle Police", and lists his set "policy and the procedures" in which he enters the reported information.

When Officer Bronkhorst is questioned about the defense's 'Exhibit' No. 20, and asked if he recognizes it, his response is "Yes ... some portions are cut out, but yes I do". Officer Bronkhorst goes on to state that he recognized it as a detainer. In Lines 24 - 25, he is once again asked, "is it an arrest warrant"? A department of Corrections Arrest Warrant/Detainer. Officer Bronkhorst again states on (Page 95, Lines 1 - 25), that this is a document that was created by he himself, and that "it is one of the duties assigned to him during his regular course of business", when asked if it is a document that would be relied upon by him and also by the Department of Corrections, Officer Bronkhorst answers, "Yes Ma'am", and again states that he created in on the 6<sup>th</sup> of June 2008.

Officer Bronkhorst also states clearly that he is familiar with the defendant, Mr. David Johnson, so that there is no question that he is able to recall the events and the documents in question and the specific dates involved.

Officer Bronkhorst is clear in his testimony, (Page 97. Lines 3 - 15). That the date is that of 6<sup>th</sup> of June 2008, that the document was created on, and cites the date of entry on the document itself, and also cites the authors name as "Rocky" Bronkhorst, saying, "That's Me"!

1 Bronkhorst is again asked; "How do you know that you are indeed the person who made that  
2 entry"? His answer is, "I was working that day, I am the NCI officer out of the South Precinct - 'NCI South',  
3 and it also indicates here that it has my name down as the author. (These Chronological Notes entered on  
4 the 6<sup>th</sup> of June '08, by officer Bronkhorst, are quoted by the defense counsel after admitted as Defense  
5 Exhibit #21.

6 "SPD officer stopped and talked with him, (Mr. David Johnson), at 1500 hrs at the location of 23<sup>rd</sup>  
7 Ave and Union St. in Seattle. 'P' was found to be in possession of one... [I believe that's one gram but it  
8 only says one]. (Page 98, Lines 6 -15).

9 [Continuing - (Page 65, Lines 4 - 12)], The Defense counsel states to the court 'for the record', "and this is  
10 not cumulative evidence. This is "Rocky" Bronkhorst certifying, under penalty of perjury - very similarly - that he was  
11 given this information, issued a detainer, and the information and a description of the amount and type of substance  
12 found in Mr. Johnson's possession, and was 'by his own hand' entered into his *Chronological Notes*. These are part and  
13 parcel to the relevance of "Rocky" Bronkhorst's credibility as compared to the conflicting memories of the two "Bust -  
14 Buy", officers. Bronkhorst's job is to capture and document in a 'hard copy' file a detailed accounting of the acts and  
15 events that occurred, when, by whom, and in an understandable manor to relay the information. Officer Bronkhorst's  
16 notes and testimony is sufficient to 'Impeach' both the testimonies of Officer's Davisson and Sheperd, and the  
17 rendition of the events and causes and actions, even the dates as presented by the State's witnesses. SEE: *U.S. vs.*  
18 *Miller*, 263 F/3d 1 (2<sup>nd</sup> Cir 2001), "Due process requires that a convicted person not be sentenced on materially  
19 untrue assumptions or misinformation".

20 The only actual facts in this case are the "*Chronological Notes*" of Officer "Rocky" Bronkhors, which  
21 distinctly agree with the testimony of the defendant's DOC Community Corrections officer, but differ in  
22 most all relevant issues that were testified to by the State's witnesses.

23 In the Verbatim Report of 05 August '08, on (Page 6, line 4 - 19), "the business record rule is clear,  
24 it is not about Mr. Bronkhorst establishing a foundation for each entry himself, is only that this is the type  
25 of record that is kept.

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She continues stating in *Lines 14 - 19*, "I brought the white-out with me just in case other things needed to be removed. But I believe that in the detail section, ... column I mean that this is really argument that this document is more like a log as related to Mr. David Johnson around the correct period of time.

NOTE: *Superior Court Evidence Rules '2009'*, (*Rules of Evidence*), the section of, Business Records, Absence of entry of records, hearsay exception (*Rule 803*), Pg 254, Title VIII. *Availability of Declarant immaterial*, No. 5, Recorded Recollection. Also on Pg 255, No 8, *Public Records and Reports*. [Reserved. SEE *RCW 5.44.040*]. (No. 10 on Pg 255, Absence of Public Record Entry).

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**ADDITIONAL GROUND  
No. (3)**

(3) The Sentencing Court by means of allowing the State to introduce evidence not provided through the normal discovery process; the Prosecutor withholding evidence which would mitigate or raise sufficient 'reasonable' doubt to harbor a "not-guilty" finding by a reasonably informed jury; did in fact extend the bounds of neglect or mistake into the clearly defined regions of "Procedural Misconduct" denying the defendant of a fair and unbiased trial by rendering the Defense Counsel 'Functionally Ineffective' and unable to properly prepare or present a defense to which would be considered reasonable if procedure was followed.

\*\*\* Verbatim Report of 04 August 2009, **State -vs- Johnson** \*\*\*

Trial Attorney for the Defense, Ms. Stephens, (Page 110, Lines 8 – 14), states... "I haven't had an opportunity to look at the contents, and am not aware what's inside the envelope, or the evidence it may contain".

In further reference to the 'Surprise' evidence, the defense counsel asks the court, "is it opened yet"? And clarifies her position of not being aware of the contents states, "but I do want to take a look at it once it is opened if that's what we're about to do before it is published".

CITING: *U.S. v. Gil*, 297 f3D 93 (2<sup>ND</sup> Cir. 2002), "According to Brady material must be disclosed in time for its effective use at trial".

It is at this specific point the appellant believes his counsel "fell below an understood objective standard or reasonableness", and trusts the "first Prong" of *Strickland -vs- Washington*, as well as meeting the ruling encompassed in and by the *Brady Violation Decision*".

The 2<sup>nd</sup> part of "Prong" is met when the State Surprised the defense by entering evidence during the middle of the trial after withholding it from the defense and entering it at the last minute – extremely prejudicing the Defendant and his defense efforts, denying him a fair trial.

- Point of issue is - that the defense was never provided a copy by the prosecution, nor had an opportunity to review or be made aware of that piece of controversial evidence until it was made known

1 and presented in front of the jury at the last minute, denying defense any chance to refute or impeach  
2 either it or testimonies relating to it by forming any defense strategy.

3  
4 In, *Stricker -vs- Greene*, 527 U.S. 263, 144 Led 286, 110 S.Ct. 1936 (1999). Under *Brady*,  
5 “an inadvertent nondisclosure has the same impact on the fairness of the proceedings as deliberate  
6 concealment”.

7 Also in, *Paradis -vs- Arave*, 240 F.3d. 1169 (9<sup>th</sup> Cir. 2001), “Prosecution’s obligation  
8 under Brady to disclose exculpatory evidence extends to impeachment evidence, and to evidence that  
9 was not requested by the defense.

10  
11 The above is true and correct to the best of my belief and understanding,  
12 it is submitted in good faith with the sincerest trust that the issues will be  
13 reviewed by this court at the time which the Attorneys’ Opening brief is  
14 reviewed and the merits of the facts will be the determining factors resulting in  
15 the Impartial and fair opinion of this court in the interests of justice and  
16 protection of the rights guaranteed to the accused by both the Washington  
17 State Constitution, RCW and Court Rules as well as the Constitution of the  
18 United States of America and it’s Articles.

19  
20 **DATED THIS** 8 day of *June*, 2010 A.D.

21  
22  
23 *David Johnson*, #  
24 Coyote Ridge, “CB”-24  
25 PO Box 769  
26 Connell WA 99326  
27

In the  
**Washington State Court of Appeals**  
Division I

2010 JUN 14 11:14 AM

**State of Washington,**  
Plaintiff,

-vs-

**DAVID A. JOHNSON,**  
Defendant.

Case No. 64537-4-I

**AFFIDAVIT of SERVICE**  
by MAIL

I, **DAVID A. JOHNSON**, Defendant, **Being First Duly Sworn On Oath**, state that I am at least 18 years of age, a citizen of the United States of America and competent to make this statement:

**THAT ON THE 8** day of *JUNE*, 2010 A.D. I served the following documents:

1. **'STATEMENT of ADDITIONAL GROUNDS for REVIEW'**,
2. **'AFFIDAVIT of SERVICE by MAIL'**,

Upon the following persons at the mailing addresses listed as:

- |   |  |
|---|--|
| 1. Washington State Court of Appeals<br>(Division I)<br>c/o Richard D. Johnson, (Court Admin/Clerk)<br>One Union Square,<br>600 University Street<br>Seattle, WA 98101-4170 | 2. King County Superior Court<br>(County Prosecutor's Office)<br>c/o Court Clerk's Office<br>516 Third Ave.<br>Seattle, WA 98104 |
|---|--|

By placing same in, Postage Pre-paid 1<sup>st</sup> Class Envelopes, in the United States Mail via the "Legal Mail System" at the Officer's Booth in "C"-Unit at the Coyote Ridge Corrections Center, 1301 Ephrata Ave., Connell, WA 99326.

I declare, pursuant to **28 U.S.C. § 1746** and Washington State **Court Rule GR 13**, under the penalty and perjury the foregoing is true and correct to the best of my knowledge and belief.

DATED THIS 8 day of JUNE, 2010 A.D.

*David A. Johnson, # 731208*

Coyote Ridge Corrections Center, "CB"-24  
PO Box 769  
Connell WA 99326

This Affidavit in Support of the filing of the Appellant's AFFIDAVIT OF SERVICE BY MAIL relating to the documented delivery of his, 'ADDITIONAL GROUNDS for REVIEW' (as per Washington State RAP 10.10), to the Washington State Court of Appeals Division I, and the King County Superior Courts Prosecutor's Office, was signed and delivered in the presence of a notary as indicated below:

STATE OF WASHINGTON

SS.

COUNTY OF King

I, being a Notary Public in and for the State of Washington, do hereby certify that on the date noted below, David Johnson, personally appeared before me, known by me to be the individual described in and who executed the within instrument and acknowledged that he signed the same as his free and voluntary act and deed for the uses and purposes herein mentioned.

David A. Johnson  
(Signature)

David A. Johnson #731208  
(Print name & DOC #)

Coyote Ridge corrections  
C-unit CB24-U  
P.O. Box 769  
Connell, Wash 99326  
(Address)

GIVEN UNTO MY HAND AND OFFICIAL SEAL, this 9<sup>th</sup> day of June, 2010.



Melisa Gilbert  
Notary Public, State of Washington.  
Residing in Connell, WA.  
My Commission Expires: 10-10-2012