

COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

OCT 12 PM 2:15

STATE OF WASHINGTON

BY: [Signature]

DEPT. OF SOCIAL & HEALTH SERVICES

STATE OF WASHINGTON)
)
 Respondent,)
)
 v.)
 Robert Dingman)
 (your name))
)
 Appellant.)

No. 34719-9-11

STATEMENT OF ADDITIONAL
GROUNDS FOR REVIEW

I, Robert Dingman, 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

Please See Attached Statement

Additional Ground 2

Please See Attached Statement

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

Date: Oct 10 - 2007

Signature: Robert Dingman

Additional Ground 1

That the Forensic Accountant brought in by the prosecutor, to explain the actual cost spent on all 20 jobs on contracts in question, had misled the jury with his testimony, and with the help of 5' x 3' cardboard placards made-up by the prosecutor. These placards contained all 20 jobs with breakdowns of money spent by Quality Home Construction on each project. The prosecutor's forensic accountant who said he was an expert, detailed by job the amount of money he said was spent by Quality Home Enclosures based on information he retrieved from our files.

(A) The forensic accountant did not figure any labor into these jobs; his testimony was that he didn't find an invoice for labor in the customer file. That's because labor is figured on time cards, as I had employees and the cards are with payroll which the forensic accountant and the prosecutor had at their disposal. When questioned about why he didn't figure in or look for labor charges, he said quote; "I was not asked to look for labor". Also, the labor was on the computers, per each customer, which they the prosecutor had in their possession, and we were denied access to, because they refused to give us a mirror image. The prosecutor and the forensic accountant knew that tear down of existing structures, and footings were dug and poured, decks built, blueprints drawn, concrete pads or slabs poured to build rooms on and inspected. Yet they did not include the labor to perform these services. This cost breakdown was used to convince the jury that a theft must have occurred based on how little money was spent on each job. The facts are had we had access to the information on the computers, and a forensic accountant along with the rest of the costs actually incurred as shown below in sections A, B, C, and D, I believe we would have got a much different verdict.

(B) The forensic accountant when figuring costs spent on said jobs did not include any overhead. In a company our size based on number of employees and cost of rent for building, electricity, gas, water, bookkeeping and secretaries, also phone bills both office and cells, trucks, trailers and storage facilities. The overhead is calculated at 25% of the gross contract. Example is a \$20,000 contract has a \$5,000 overhead charge to offset actual costs. Employees such as a permit specialist, and draftsmen to do the blueprints, are also included in these figures.

(C) The forensic accountant did not figure any commission paid to a salesman; this amounts to 10% of contract. Example; \$20,000 contract pays \$2,000 in commission. Every job sold pays a commission, this commission is paid after the three day right-of-rescission and on the first pay day following that right.

(D) The forensic accountant did not include in his cost spent on jobs, advertising. The amount of money spent on advertising is based on the amount of money spent in one year divided into the gross sales (Good Business) for that year. Example; our company spent \$150,000 in advertising one year and wrote 1,000,000 Gross Business. We would have a 15% advertising cost per job. This form of advertising comes from the cost of mall space, on average \$2,000 a month. Yellow Page advertising \$500 a month. Advertising in a Home Owners magazine monthly with picture spread \$2,500. Fair space both spring and fall \$20,000 for the year, flyers and presentation books are also included in these figures. We also had the mall spaces and fairs manned. These wages are part of the cost of advertising along with the marketing manager. This 15% is a real cost to the job and is due upon sale of job. Also we have to figure in the cost of the displays.

Example 1A Breakdown of contract.

Typical Contract	\$20,000
Materials/Labor is 50%	=\$10,000
Overhead is 25%	=\$ 5,000
Commission is 10%	=\$ 2,000
Advertising is 15%	=\$ 3,000
Total 100%	\$20,000

Conclusion: Without the actual cost listed above included in each job, a jury would be making decisions as to the amount of money spent on each job. They could not know the actual costs, as these were left out. Had the jury known the actual amount of monies spent I believe they would have come out with a totally different verdict.

Had my attorney hired a forensic accountant as he said he would, all this evidence would have come out and those 5' x 3' placards with the underestimated cost would not have been admissible. These placards were sent into the jury room during deliberations to be used in determining whether a theft was committed.

Additional Ground 2

Ineffective Counsel

(A) My attorney did not prepare for trial, notwithstanding the fact that he had 18 months to get prepared. I was in prison until December 31, 2005 and was back on trial on January 3, 2006. My attorney had asked for a continuance on January 3, 2006 on the grounds he was not prepared to start this case. He was denied this motion by the Judge Honorable Linda C. J. Lee.

(B) My attorney had not put together any witness or expert in construction, nor did he hire a forensic accountant as he said he would have to in an effort to explain the workings of a construction company and how it calculated costs to build a job. This had to be explained to the jury by the forensic accountant as he was not qualified as to how a construction company of this size operated.

(C) The prosecutor entered into evidence 4,000 pieces of evidence, contracts, checks, pictures of jobs and such. My attorney entered into evidence 0 pieces of evidence. Why and how is this possible when defending your client?

(D) Evidence such as the 5' x 3' placards that the prosecutor brought into court and got accepted as evidence, was so underestimated and misleading that the jury did not have a chance to come to a truthful conclusion. This evidence should not have been and would not have been introduced to the jury with these underestimated costs, had my attorney hired a forensic accountant as he told me he would. Furthermore, during trial when I brought up the fact that the costs were underestimated and did not include labor, overhead, commissions, he did not argue to keep this from being entered as evidence.

(E) The prosecutor got to bring both husband and wife to testify on their jobs or contracts. This amounted to 40 people giving their testimony as to how their jobs didn't get completed. Of the 20 jobs I was put on trial for theft and money laundering, ten of these jobs were completed at no extra charge to these home owners, and I was and am responsible for the cost incurred to Four Seasons through a Civil Settlement. Yet my attorney let the prosecutor charge me with theft and money laundering on jobs that were completed and am held responsible for. I was only allowed to bring in three customers that I had built jobs for and completed, even though I had completed more jobs my last year in business than any other year. About 150 projects during the same time frame as the 20 unfinished projects. My attorney said that the judge was only allowing me three witnesses as this trial had gone on so long what with the prosecutor taking two months and the defense got two weeks and she, the judge wanted this case done in that time period. This was certainly not fair in trying to find the truth or putting on a prepared defense.

In closing, I'd like the court to know that I talked to about twenty lawyers and they all told me the same thing. That my case was very complicated and would be costly to defend because they all agreed that I would need a forensic accountant who would reconstruct the company accounting so that the jury would be able to make the right decision. I am not guilty of theft and money laundering as I was still working on completing jobs even after I shut the doors, by selling my car and my boat and truck.

Signed Robert Dingman