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STATE OF WASHINGTON

BY YUN  
DEPUTY

IN THE WASHINGTON STATE COURT OF APPEALS

DIVISION TWO

C.O.A. No. 34953-1-II

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STATE OF WASHINGTON,  
Respondent,

v.

JEFFREY M. FOSTER,  
Petitioner.

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STATEMENT OF ADDITIONAL GROUNDS RAP 10.10

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JEFFREY M. FOSTER  
DOC# 954441, Pro-se  
Petitioner,  
AIRWAY HEIGHTS CORR. CNTR.  
P.O. BOX 2109 RA-14L  
AIRWAY HEIGHTS, WA.  
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STATEMENT OF ADDITIONAL  
GROUNDS RAP 10.10

JEFFREY M. FOSTER, )  
Petitioner. )

Comes Now, Jeffrey M. Foster, petitioner, pro-se, seeks review of his Statement of Additional Grounds pursuant to RAP 10.10.

I. ISSUES PRESENTED FOR REVIEW:

GROUND ONE

- 1). WERE THE PETITIONER'S SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION VIOLATED BY INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL?
  - a). When he failed to Motion the Court for Suppression of Evidence under CrR. 3.5 or CrR. 3.6, or Motion in Limine.
  - b). When he failed to challenge the Authenticity of Miranda Waiver.
  - c). When he failed to challenge the Veracity of the Confidential Informant under the two prong Aguilar-Spinelli test.
  - d). When Defense counsel Stipulated to an out-of-State conviction that was either nonexistent or not equivalent to the same type of crime under Washington State statute.

1 e). When Defense Counsel failed to provide a limiting  
2 instruction to the Jury pertaining to the  
3 Confidential Informant and Officer Gill's perjured  
4 testimony.

4 GROUND TWO

5 2). WERE THE PETITIONER'S SIXTH AMENDMENT TO THE  
6 U.S. CONSTITUTION VIOLATED BY INEFFECTIVE  
7 ASSISTANCE OF APPELLATE COUNSEL?

7 a). When appellate counsel failed to request trans-  
8 cription of entire Voir Dire Proceedings.

8 II. ARGUMENT:

9 GROUND ONE

10 1). THE PETITIONER'S SIXTH AND FOURTEENTH AMENDMENTS TO  
11 THE U.S. CONSTITUTION WERE VIOLATED BY INEFFECTIVE  
12 ASSISTANCE OF TRIAL COUNSEL:

12 The petitioner has a right effective assistance of  
13 counsel guaranteed by the Sixth and Fourteenth Amendments  
14 of the U.S. Constitution. (For any criminal proceedings).  
15 The petitioner, did not receive Constitutionally adequate  
16 counsel at the trial level.

16 The Court in Kimmelman v. Morrison, 477 U.S. 365,  
17 374, 91 L.Ed.2d 305, 106 S.Ct. 2574, 2582 (1986): stated  
18 that "the essence of an ineffective assistance claim is  
19 that counsel's unprofessional errors so upset the adver-  
20 sarial balance between defense and prosecution that the  
21 trial was rendered unfair and the verdict rendered suspect."

19 a). When he failed to Motion the Court for Suppress-  
20 ion of Evidence under CrR 3.5 or CrR 3.6, or  
21 Motion in Limine.

21 On September 22nd, 2005, there were stipulations to  
22 several court proceedings, but not limited to things dealing  
23 with drug testing. Defense counsel did not move the court  
24 for any suppression hearings, such as CrR. 3.5 or CrR.  
25 3.6. hearings, but stipulated to the state's evidence. (See  
26 Appendix-A; Rp.5, Vol. I).

25 Additionally, on this same day of the 22nd of September  
26 2005, the defense stipulated to not calling any state's  
27

1 forensic officers and defense agreed. (See Appendix-A;  
2 Rp.6, Vol. I). And defense agreed with the state on everyone  
3 of its witnesses. (See Appendix-A, Rp.8, Vol. I).

4 On this same hearing the State moved the Court there  
5 would be no "3.5 motions or 3.6 motions, either." Not once  
6 did defense counsel Mr. Franz object. (See Appendix-B,  
7 Rp.9, Vol. I). Defense counsels actions and inactions were  
8 very unprofessional and the petitioner now asserts that  
9 if not for counsel's errors that the outcome of the trial  
10 would have most definitely been different.

11 There can not be any strategic reason for not request-  
12 ing a motion to suppress. The way counsel conducted himself  
13 fell way below an objective standard of reasonableness,  
14 which caused irreversible damage and caused actual and  
15 substantial prejudice. (See Appendix-B, Rp.76, Vol. II).

16 See Huynh v. King, 95 F.3d 1052 (11th Cir. 1996);  
17 Trial counsel's delay in filing a meritorious suppression  
18 motion in order to later obtain a more favorable Federal  
19 Habeas review was objectively unreasonable, and, required  
20 a remand for an evidentiary hearing to determine prejudice  
21 under Strickland.

22 Petitioner now claims that his trial counsel was  
23 ineffective and that counsel's failure to adequately argue  
24 a motion to suppress evidence violated his Fourth Amend-  
25 ment rights to "Due Process" and that this error alone  
26 requires a remand for consideration on the merits.

27 See Martin v. Maxey, 98 F.3d 844 (5th Cir. 1996);  
Ineffective assistance of counsel claim based on counsel's  
failure to adequately argue motion to suppress evidence  
obtained in violation of defendant's Fourth Amendment rights  
was not procedurally barred, and, required a remand for  
consideration on merits of the claim.

A trial court must determine whether the petitioner's  
motions to suppress would have been successful if counsel  
would have pursued them.

See AD Cox v. O'Brien, 899 F.2d 735 (8th Cir. 1990);  
The trial court must determine whether defendant's motions  
to suppress would have been successful if pursued by defense  
counsel in order to resolve ineffective assistance of  
counsel claim for failure to pursue motions to suppress.

1 Counsel's failure to file any pre-trial motions and  
2 seek discovery warrants an evidentiary hearing to resolve  
3 this ineffective assistance claim.

4 See Clark v. Blackburn, 619 F.2d 431 (5th Cir. 1980);  
5 Trial counsel's failure to file any pre-trial motions on  
6 defense issues, failed to seek pre-trial discovery, failed  
7 to obtain a transcript of testimony before the grand  
8 jury, warranted an evidentiary hearing to resolve the  
9 ineffectiveness of counsel.

10 **b). When counsel failed to challenge the authenticity**  
11 **of Miranda Waiver.**

12 The petitioner asserts that the "Miranda Waiver" that  
13 the Puyallup Police department possessed was in fact a  
14 waiver that the petitioner's son Jeffrey Foster had waived  
15 at a different time and place than the proceedings that  
16 the petitioner is now charged for, but when he brought  
17 this up to his defense counsel he said that it did not  
18 matter anyway. The petitioner had said to his defense  
19 why do you not hire a hand writing expert to examine this  
20 document to prove it is not my hand writing, and his  
21 response was that he would look into it.

22 Defense counsel's lack of experience in going to trial  
23 played a heavy factor on the outcome of these proceedings.  
24 The fact that he was stretched very thin to the point of  
25 being ineffective can be demonstrated in (Appendix-C, Rp.  
26 10 and Rp.11, Vol. I).

27 The petitioner claims that he never signed any waiver  
of Miranda's and that the line of questioning that was  
performed by the police violated his rights.

See Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.2d 694,  
86 S.Ct. 1602 (1966); The accused must be advised that  
he/she has a right to counsel before a custodial police  
interrogation.

If counsel would have adequately argued to suppress  
any evidence the petitioner would have had a better record  
of transcript to further his direct appeal, but this is  
not this case, and the ineffectiveness does not stop here.

1 All of these errors that counsel made could have been  
2 remedied by challenging the Governments actions in the  
3 form of a suppression hearing these hearings are designed  
4 to weed out any evidence that was not admissible and also  
5 decide which evidence was exculpatory towards the defense  
or the states case.

6 See U.S. v. Meyers, 892 F.2d 642 (7th Cir. 1990);  
7 Trail counsel's failure to read and review documents dis-  
8 closed by the government, which contained potentially  
9 exculpatory materials, was ineffective assistance of  
counsel.

8 c). When Counsel failed to challenge the veracity  
9 of the Confidential Informant under the two  
10 prong Aguilar-Spinelli test.

10 Under Article I § 7 of the Washington State Const-  
11 itution, an informant's tip cannot provide probable cause  
12 to arrest unless it satisfies the "two-prong" Aguilar/  
13 Spinelli inquiry. To satisfy this test, the tip must  
14 provide (1) an independent and objective basis for  
15 evaluating the informant's basis of knowledge and (2)  
16 underlying circumstances supporting the informant's  
17 veracity. Probable cause must be based on facts and not  
18 mere conclusions. Aguilar v. Texas, 378 U.S. 108,112-13,  
19 12 L.Ed.2d 723, 727, 84 S.Ct. 1509, 1512-13 (1964).

18 If petitioner's trial counsel would have moved the  
19 court for suppression under the Aguilar/Spinelli test he  
20 would have more than likely prevailed, this can be demon-  
strated in the confidential informant's own testimony.

21 (See Appendix-D, Rp.101-102, Vol. II), which states:

22 Q. Now, you do have some criminal history; is that  
correct?

23 A. Well. I do, yes,, sir, a DV history, here in  
Puyallup.

24 Q. And you have previously been convicted or you  
have pled to making a false statement to law  
enforcement officer; is that right?

25 A. Well, that was -- they pulled me over. I knew  
26 I had a warrant and gave them my dad's name so  
I wouldn't go to jail. And it turned out the  
officer knew me.

1 Q. So you did plead to that; right?

2 A. Yes, sir.

3 Q. So--

4 A. I plead guilty because I was. (Rp.102).

5 This testimony from the confidential informant can  
6 show that he was not a truthful person and that he had  
7 in fact lied to law enforcement and that he cannot be  
8 trusted and that in fact he admitted to pleading to a  
9 crime of dis-honesty by giving false statements to law  
10 enforcement officer's. The confidential informants veracity  
11 should have been tested in the form of a suppression  
12 hearing and was not done by trial counsel.

13 These errors so upset the adversarial balance that  
14 the entire trial was rendered suspect and that actual  
15 prejudice had occurred on numerous times during the trial  
16 but the most critical error would be the Aguilar/Spinelli  
17 test that was not done.

18 When the two-prong test is violated, such as here  
19 the informant's whole testimony should be suppressed and  
20 a new trial should be granted excluding the informant's  
21 testimony, and without the informant's testimony we would  
22 not have enough evidence to pursue a conviction.

23 It was ineffective assistance of counsel in the  
24 purest form and as such meets or exceeds the Strickland  
25 test for ineffectiveness.

26 d). When Defense Counsel Stipulated to an out-of-  
27 State conviction that was either nonexistent  
or not equivalent to the same type of crime  
under Washington State statute.

28 Defense counsel had the petitioner sign a "**Stipulation**  
29 **On Prior Record and Offender Score**" on the day of sentencing  
30 on June 2nd, 2006, at this proceeding defense counsel should  
31 have challenged the prior conviction of Attempted Burglary  
32 in Sedgwick, Kansas, as not being the equivalent as the  
33 Washington State statute as a "**Class-B**" felony. Additionally  
34 the crime that was in question here not only should have  
35 washed-out of his criminal history under the State of

1 Kansas statute. This claim was not challenged and the  
2 petitioner now asserts that his defense counsel was  
3 not effective for failing to do so.

4 There is not one officer of the Court that brought  
5 this error to the Courts attention. This alleged crime  
6 was well over ten years old since the date of crime, and  
7 before the **1995 change** in sentencing statute and there  
8 fore should be excluded from the petitioner's criminal  
9 history.

10 The petitioner can further support the ineffective  
11 assistance claim in the following "Records of Proceedings:  
12 (See Appendix-E, Rp.233 and Rp.240), which states in part:

13 **MS. MELBY:** He stipulated to his criminal history.  
14 He signed the collateral attack form.  
15 I believe he signed them all knowingly,  
16 intelligently, and voluntarily. **(Rp.233)**

17 **The Court:** This stipulation on your prior record  
18 that you signed, is it true and accurate?

19 **The Defendant:** Yes, Your Honor. **(Rp.240)**

20 To punish a defendant for not knowing the law would  
21 be a complete miscarriage of Justice. The petitioner is  
22 not schooled in law and therefore has a Constitutional  
23 right to have effective representation.

24 At the very least there should be a evidentiary  
25 hearing to determine the ineffective assistance claim,  
26 there is more than enough "Records of Proceedings" to show  
27 that there is a **Cumulative Effect** of errors throughout  
the entire trial, so therefore, the petitioner, has shown  
in the above arguments that he meets or exceeds the  
test set forth in Strickland.

See Stoffer v. Reynolds, 168 F.3d 1155 (10th Cir.1999);  
Cumulative effect require an evidentiary hearing.

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1 The Court in Lewis v. Lane, 832 F.2d 1446 (7th Cir.  
2 1987); The Court held that: (2) defense counsel's  
3 stipulation to existence of conviction, ultimately deter-  
4 mined to be nonexistant, constituted ineffective assistance  
5 of counsel, prejudicial to petitioner and entitled him  
6 to new sentencing hearing.

7 Since it was never determined by the court or counsel  
8 in a certified copy of the conviction from Kansas there  
9 can be know way a certain proof that the crime even existed  
10 in the first place. So therefore, the petitioner requested  
11 that he be resentence under (1) less point then previously  
12 sentenced to.

13 **e). When Defense Counsel failed to provide a limiting**  
14 **instruction to the Jury pertaining to the**  
15 **Confidential Informant and Officer Gill's perjured**  
16 **testimony.**

17 During the coarse of the trial defense counsel failed  
18 to provide limiting instructions to the jury. The following  
19 "Records of Proceedings" will furthermore show the  
20 how by not giving a limiting instruction inflamed the minds  
21 of jury.

22 Let it be noted that there was never any instructions  
23 or curative instructions limiting the use of certain  
24 testimony that was proven to be incorrect.

25 **Testimony of Officer Gill:**

26 **Q.** Now, the CI that we're talking about, do you know  
what kind of drugs he had a history of using,  
if any?

**A.** His drug of choice was crack cocaine.

**Q.** Cocaine, okay.

And was it also a requirement that the  
CI remain **(Appendix-E, Rp.78)**;  
crime-free during this time period, other than  
purchasing drugs?

**A.** Yeah, I don't want them getting arrested or getting  
into trouble. It happens.

**Q.** Okay. Now, to your knowledge, did this CI have  
any criminal violations from September of last  
year forward?

**A.** Yes, he has.

**Q.** Do you know what kind of case it is? **(Rp.79)**

1           A. Domestic violence. He and his girlfriend fight.

2           This testimony was further shown to be in direct  
3 contradiction to what the CI had testified to. By not  
4 giving a limiting instruction the Jury to limit the use  
5 of Officer Gill's testimony had definitely inflamed the  
6 minds of the jury, which in turn made them believe that  
7 the CI was creditable.

8           Q. Now, September 15, am I correct in understanding  
9 that you did not see a transaction occur?

10          A. No, sir, I did not.

11          Q. And September 29th, am I also correct in under-  
12 standing that you did not see a transaction occur?

13          A. That's correct, I did not. (See Appendix-F, Rp.84).

14          Additionally, there was never a limiting instruction  
15 that the jury note that the State's witness never seen  
16 the defendant sell drugs to anyone.

17          Q. This thing says something about that you parked  
18 outside the trailer park originally?

19          A. Yeah. That was here. That would be here. (See  
20 Appendix-F, Rp.86).

21          Q. So you parked outside?

22          A. And then when I came back around, I came back  
23 around and in, this occurred here, and then back  
24 out to here.

25          Q. Where did the CI get out of your car at?

26          A. Good point. I'm going to be honest with you, I  
thought it was here. That could not have happened  
that way.

          Q. So during your testimony, earlier testimony--

          A. Yes--

          Q. -- you made a mistake?

          A. I very well could have made a mistake. (See  
Appendix-F, Rp.87).

          At this time in the trial defense should have moved  
the court for limiting instructions for the false or  
inaccurate or perjured testimony for the jury to use during  
deliberations, but there was not one. There can be no  
strategic reason or trial tactic for not requesting a  
limiting instruction of such evidence, but merely ineffect-  
ness of the trial counsel.

          See Lyons v. Mc Cotter, 770 F.2d 529 (5th Cir.1985); Defense  
counsel's failure to object at the proper time to the introduction  
of Lyon's prior convictions, or seek to limit the use by requesting

1 a limiting jury instruction of such evidence, constituted  
2 constitutionally deficient assistance of counsel.

3 Additionally, the Court in Lyon's stated the following:  
4 Trial counsel's failure to object to highly inflammatory  
5 inadmissible evidence has no strategic value, and failure  
6 to request a limiting instruction Constitutes ineffective  
7 assistance of counsel.

8 In this case at hand, the CI (Turner), testified that  
9 he became a confidential informant to make extra money.  
10 This would suggest that he was all too eager to do anything  
11 to demonstrate to the police that he was good CI and that  
12 his drug use was to be funded by his actions with the police  
13 he was not doing this for community care-taking but for  
14 an extra income. (See Appendix-G, Rp. 90).

15 Furthermore when CI Turner was being questioned he  
16 gave the description of the petitioner as follows:

17 Q. Do you recall in our interview that we had back  
18 June that I had you describe Mr. Foster?

19 A. Yes, sir.

20 Q. Do you remember how you described him?

21 A. Yes, I did. I told you that at the time he had  
22 his head shaved and his goatee was kind of white  
23 elongated mustache. (Appnedix-G, Rp. 107).

24 At know time did the defense counsel direct the jury  
25 to the fact that the description the CI gave was not  
26 accurate and that his testimony reflected that it might  
27 have inflamed the jury's minds to believe that it was the  
28 petitioner and not someone else.

29 See Vela v. Estelle, 703 F.2d 954 (5th Cir.1983);  
30 Defense counsel's failure to object to prejudicial  
31 testimony which was used to inflame minds of jury,  
32 constitutes ineffective assistance.

33 This is clearly a case that the defense counsel's  
34 conduct fell below an objective standard of reasonableness  
35 and if not for defense counsel's deficient performance  
36 that the outcome of the trial would have been different.

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40 S.A.G.

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GROUND TWO

2). WERE THE PETITIONER'S SIXTH AMENDMENT TO THE U.S. CONSTITUTION VIOLATED BY INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL?

a). When appellate counsel failed to request transcription of entire Voir Dire Proceedings.

A convicted defendant has a right to effective counsel through the appeal process. See Evitts v. Lucey, 469 U.S. 387, 83 L.Ed.2d 821, 105 S.Ct. 330 (1985); The Sixth Amendment of the U.S. Constitution guarantees the right to effective assistance of counsel.

The petitioner's appellate counsel Reed Speir WSBA No. 36270, failed to request to the court for transcription of Voir Dire, even though the defendant had asked for these "Records of Proceedings." (See Appendix-H, letters to counsel).

The petitioner need these court proceedings, because there was a possible jury mis-conduct issue that he needed to raise under his "Statement of Additional Grounds," but unfortunately the petitioner was never provided a true and accurate copy of his trial. The petitioner articulated to the best of his abilities that it was critical to his case but to no avail. The appellate counsel just wrote him back and told him not to listen to "jail house lawyer's."

In this instant case the petitioner filed a motion to the Washington State Court of Appeals Division Two requesting an extension for the above mentioned reasons. But the court clerk merely stated that the Voir Dire was not needed to file a Statement of Additional Grounds. (See Appendix-I, attached motions and return response from the Appeals clerk).

See Smith v. Wainwright, 741 F.2d 1248 (11th Cir. 1984); Appellate counsel's failure to request transcripts of entire Voir Dire proceedings was ineffective assistance of counsel.

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1           **III. CONCLUSION:**

2           All of the above issues are reversible error's. They  
3 are constitutional errors, involving the constitutional  
rights of the petitioner.

4           The trial Judge, the sole member who is designated  
5 to manage and correctly apply law lacked confidence in the  
6 way the proceedings ended. this can be shown in the  
7 following sentencing transcripts; (See Appendix-J, Rp.243-  
44);

8           Petitioner's counsel was deficient and ineffective  
9 through his own omissions, his actions, and his inactions  
10 on behalf of his client. All of which lack any bearing on  
11 trial strategy. He failed to bring the State's case to  
12 meaningful adversarial testing, by failing to Motion the  
13 court for suppression of evidence under CrR. 3.5 or 3.6  
14 or Motion in Limine, by failing to challenge the authenticity  
15 of the States Miranda Waiver, by failing to challenge and  
16 argue the veracity of the confidential informant under the  
17 two-prong Aguilar-Spinelli test, when he stipulated to the  
out-of-state conviction that was either nonexistent or not  
equivalent to the same type of crime under Washington State  
statute, and failed to provide or request a limiting  
instruction for the jury pertaining to false or inaccurate  
testimonial evidence.

18           Petitioner's appellate counsel was also ineffective  
19 for not requesting that the petitioner receive a true and  
20 accurate and complete records of proceedings of the trial  
mainly the "**Voir Dire.**"

21           Thus both trial counsel and appellate counsel were  
22 ineffective violating the petitioner's Constitutional rights  
effective representation.

23           The petitioner has shown in a number records of  
24 proceedings that his counsel did not do their job even  
25 though they have a complete knowledge of law. Because of  
this, the petitioner should not be penalized, who did not  
know the law.

1 Overburdened State Courts and their inadequate  
2 analysis of fact and law, does not extinguish the  
3 petitioner's issues and their merits, these merits lay with  
4 facts of the case, and the record, not on baseless  
5 assumptions.

6 All of aforementioned Constitution violations did  
7 affect the outcome of the trial, prejudicing the petitioner.  
8 Without them the results of the trial would have been  
9 different.

10 Whether under the Kotteakos v. United States, supra,  
11 standard or the Chapman v. California, supra, standard,  
12 the constitutional errors are still constitutional errors,  
13 they can not be quantified as harmless, and these errors  
14 still violated the petitioner's guaranteed rights to a  
15 fair trial.

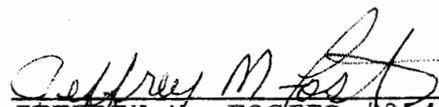
16 **IV. REQUESTED RELIEF:**

- 17 (1) Accept this Statement of Additional Grounds;  
18 (2) Require the respondent to answer to all of the  
19 allegations in this brief;  
20 (3) Hold such evidentiary hearings as the Court may  
21 deem necessary or appropriate, to resolve the  
22 unresolved facts;  
23 (4) Issue an Order reversing the petitioner's conviction  
24 and Sentence;  
25 (5) Issue an Order remanding the State of Washington,  
County of Pierce, to hold a new trial within a  
specified time; and  
(6) Issue and Order releasing the petitioner from his  
unconstitutional confinement in a timely manner  
consistent with this Courts decision.

I declare under penalty of perjury under the laws of  
State of Washington, pursuant to RCW 9A.72.085, and the  
laws of the United States, pursuant to Title 28 U.S.C. § 1746,  
that the foregoing is true and correct.

Dated this 9th day of December, 2006.

RESPECTFULLY SUBMITTED

  
JEFFREY M. FOSTER #954441  
PETITIONER, PRO-SE  
AIRWAY HEIGHTS CORR. CNTR.  
P.O. BOX 2109 RA-14L  
AIRWAY HEIGHTS, WA. 99001-2109

S.A.G.

(13)

\*\*\*\*\*  
APPENDIX-A  
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1 Nine, unlawful delivery of methamphetamine; and, Ten, bail  
2 jumping; and Eleven, bail jumping.

3 MR. NELSON: That's correct, Your Honor.

4 THE COURT: So that's the one then. All right.

5 Bryce Nelson for the State as the deputy  
6 prosecutor; correct?

7 MR. NELSON: Yes, Your Honor.

8 THE COURT: Middle initial?

9 MR. NELSON: R.

10 THE COURT: "R"?

11 MR. NELSON: Yes.

12 THE COURT: And Nicholas R. Franz.

13 The witness list I have to read to the venire  
14 includes the following people that may be called: Jeffrey  
15 Michael Foster; Michael John Smith; Louis Robert Wilson,  
16 who is the forensic scientist for Puyallup Police  
17 Department?

18 MR. NELSON: Your Honor, that's not going to be  
19 an issue. There is going to be a stipulation dealing with  
20 the drug testing.

21 THE COURT: So I won't read anybody there. I  
22 will just strike that; correct?

23 MR. NELSON: Correct.

24 THE COURT: Property room officer. Nobody there  
25 either?

1 MR. NELSON: I don't believe that's going to be  
2 necessary, Your Honor.

3 THE COURT: Okay. I will strike that.

4 THE COURT: Michael Clark?

5 MR. NELSON: State will call Officer Clark.

6 THE COURT: Not Holly Stanton?

7 MR. NELSON: Possibly, Your Honor, so I would  
8 like you to read her name.

9 THE COURT: All right. I will write that down  
10 then.

11 Michael John Smith is all ready. What's this  
12 barrel deputy, Pierce County prosecutor, attention --

13 MR. NELSON: That's going to be Michelle Hyer,  
14 Your Honor. She is a prosecutor with our office.

15 THE COURT: H what?

16 MR. NELSON: H Y E R.

17 THE COURT: And Franklin Boshears.

18 MR. NELSON: I don't think he is going to be  
19 called, either, due to the stipulation.

20 THE COURT: Okay. I will strike that one.

21 Daniel Fralick?

22 MR. NELSON: Not going to be called, Your Honor.

23 THE COURT: I will strike that one.

24 MR. NELSON: And Detective Gill from Puyallup PD  
25 will be called.

1 this issue, we had prepared our witness list prior to  
2 discovering that the State was planning to call  
3 Ms. Stanton. She is the former attorney for Mr. Foster.  
4 And if the State doesn't call her regarding that issue  
5 that they would have called her for, we do plan to call  
6 her.

7 THE COURT: I'm going to read her anyway.

8 MR. FRANZ: Right, that's fine. I just wanted to  
9 make the Court aware that we may call her after all.

10 THE COURT: Let's go through it again. Here is  
11 who I am going to read to the venire, those that may be  
12 called, and nobody else am I going to read to the venire  
13 and nobody else will be allowed to testify.

14 MR. FRANZ: That's fine.

15 THE COURT: That is: Jeffrey Michael Foster is  
16 the defendant, Michael John Smith, Louis Robert Wilson,  
17 Michael Clark, Holly Stanton, Michelle Hyer, Donald Gill,  
18 and that's it.

19 Both sides agree?

20 State agree?

21 MR. NELSON: Yes, Your Honor.

22 THE COURT: Defense agree?

23 MR. FRANZ: Yes, Your Honor.

24 THE COURT: That wasn't so hard.

25 Now, we're going to exclude witnesses. And we

\*\*\*\*\*

APPENDIX-B

\*\*\*\*\*

1 will use the struck system; right? And how long is it  
2 going to take to try this case?

3 MR. NELSON: Two or three days at the most, Your  
4 Honor.

5 THE COURT: Why don't I say three days when I  
6 talk to them.

7 We will have one alternate and seven  
8 preemptories.

9 THE COURT: Any motions?

10 MR. NELSON: I don't believe so. There's no 3.5  
11 issue because the defendant didn't make any statements  
12 after his arrest, so we don't need to do that. And there's  
13 no 3.6 motion, either.

14 THE COURT: Do you agree, Mr. Franz?

15 MR. FRANZ: Yes, Your Honor.

16 THE COURT: Okay. The instructions will be  
17 along, I assume.

18 MR. NELSON: They will, Your Honor.

19 THE COURT: And don't let me forget to read jury  
20 note-taking.

21 MR. FRANZ: I have no objection.

22 MR. NELSON: No objection.

23 THE COURT: Okay. We will do that. And then  
24 don't forget to sign the separation and exhibit orders that  
25 we usually sign.

1 THE COURT: We will take a recess, and the  
2 cautionary instructions are applicable.

3 (Recess taken.)

4 (Jury in.)

5 THE COURT: Please be seated.

6 Officer, the oath is still applicable.

7 MR. NELSON: I have handed forward a stipulation  
8 to the Court. It's been signed by all parties, dealing  
9 with the admissibility of the drugs and the accuracy of the  
10 tests. There's a portion in bold on the second page that  
11 we have agreed would just be read to the jury. I don't  
12 know if the Court wants to do that now or later.

13 THE COURT: The practice is to read the whole  
14 stipulation.

15 MR. NELSON: That's fine.

16 THE COURT: And I'm going to read to you what it  
17 means to read a stipulation before cross-examination.

18 The parties have agreed that the following  
19 evidence will be presented to you: Stipulation Regarding  
20 Accuracy of Drug Testing and Chain of Custody. On  
21 September 22nd, 2005, this matter came on for trial, the  
22 Honorable Judge Frederick W. Fleming, presiding. The  
23 parties have represented to the Court that there is no  
24 contested issue regarding the accuracy of the testing  
25 performed on State's Exhibits 12 and 13 by the Washington

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APPENDIX-C

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1 MR. NELSON: Does the Court want to take up  
2 scheduling issues?

3 THE COURT: No. We are just going to go ahead,  
4 aren't we?

5 MR. NELSON: I think there's some things the  
6 Court needs to be aware of.

7 THE COURT: What are the problems?

8 MR. FRANZ: One thing is that I still have two or  
9 three matters to finish this morning. I have been trying  
10 to get some of those matters taken care of. Unfortunately,  
11 one or two of those were issues of continuances being done  
12 in CDPJ with clients that had not been brought over from  
13 the jail.

14 THE COURT: So you have that to finish up with?

15 MR. FRANZ: Yes, Your Honor.

16 THE COURT: So why can't we get 35 to come up at  
17 1:30 then.

18 MR. FRANZ: That would be perfect for me.

19 MR. NELSON: That's fine, Your Honor.

20 MR. FRANZ: I also have a motion -- well, it may  
21 have to be 2:00, because I have a motion that is supposed  
22 to be heard this afternoon. It's a motion to put together  
23 two trials in CDPJ for a trial that's supposed to start on  
24 Wednesday of next week, which probably won't start on  
25 Wednesday of next week, but it was scheduled two weeks ago.

1 THE COURT: So you want to start at 2:00?

2 MR. FRANZ: I suspect that's probably going to be  
3 the best way for us to handle it so I'm not running back  
4 and forth trying to get that done.

5 THE COURT: Do you have any problem with starting  
6 at 2:00 instead of 1:30?

7 MR. NELSON: No, Your Honor.

8 THE COURT: Let's start at 2:00 and we will have  
9 the venire brought up at 2:00 and we will begin the  
10 process.

11 Anything else from the State?

12 MR. NELSON: No, Your Honor. My only question  
13 would be, do we plan on working tomorrow? If we finish,  
14 assuming we finish jury selection today, will we start up  
15 again on Monday, or try to do openings tomorrow?

16 MR. FRANZ: My concern with tomorrow is I have  
17 three hearings in the morning, an interview with an officer  
18 and a client late tomorrow morning, and a plea withdrawal  
19 motion that's probably going to get kicked away tomorrow  
20 afternoon. But, one of the hearings I have tomorrow  
21 morning is at Remann Hall, and it has to get done tomorrow  
22 morning or we lose out on an issue regarding an adoption.  
23 So, I am stuck with tomorrow.

24 THE COURT: But not in the afternoon.

25 MR. FRANZ: Not in the afternoon, but I also have

\*\*\*\*\*  
APPENDIX-D  
\*\*\*\*\*

1           who gave you the drugs?

2       A    No, sir.

3       Q    You're certain that it's the defendant?

4       A    Positive of it, yes, positive.

5       Q    Did you tamper with the drugs in any way at all?

6       A    No, sir.

7       Q    Buy any drugs in the meantime?

8       A    No, sir.

9       Q    From anybody else, anything like that?

10      A    No, sir.  No, sir.

11      Q    And once you're finished doing the buy, what happened then?

12      A    We go back to the station.  They re-search me.  They make  
13           me fill out a -- I write out a report.  They bring me some  
14           money, pay me, and I leave.

15      Q    Now, you do have some criminal history; is that correct?

16      A    Well, I do, yes, sir, a DV history, here in Puyallup.

17      Q    And you have previously been convicted or you have pled to  
18           making a false statement to a law enforcement officer; is  
19           that right?

20      A    Well, that was -- they pulled me over.  I knew I had a  
21           warrant and I gave them my dad's name so I wouldn't go to  
22           jail.  And it turned out the officer knew me.

23      Q    So you did plead to that; right?

24      A    Yes, sir.

25      Q    So --

1 A I pleaded guilty because I was.

2 Q How can you assure us today that you're telling the truth?  
3 Are you telling the truth?

4 A Yes, sir. And I'm under oath, sir, so I have to tell you  
5 the truth. And since I got older, I realized it is a lot  
6 easier being honest.

7 Q How so?

8 A You don't get in much trouble. You can be honest and  
9 people just, wow, cool, you know.

10 MR. NELSON: I don't have any further questions.

11 THE COURT: Mr. Franz?

12 MR. FRANZ: Thank you, Your Honor. If I may just  
13 have a moment. (Pause.)

14 CROSS-EXAMINATION

15 BY MR. FRANZ:

16 Q Mr. Turner, you indicate that you know my client. Where  
17 did you first meet Mr. Foster?

18 A I seen him walking around inside of that little trailer  
19 park, and people would point him out to me. And the first  
20 time I really even had any dealings with him was over in  
21 the Cavalier, was when I was real close to him and he gave  
22 the drugs to Mike Smith and Mike Smith gave it to me after  
23 he poured it on the scale.

24 Q Do you remember an interview that we conducted with you on  
25 September 3rd -- excuse me, June 3rd of this year?

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APPENDIX-E

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1 THE DEFENDANT: Yes, sir, Your Honor.

2 THE COURT: You ready to proceed, Ms. Melby?

3 MS. MELBY: Yes, Your Honor.

4 THE COURT: What do you want to tell me?

5 MS. MELBY: I did go over the plea paperwork  
6 with Mr. Foster. What he's charged with. The elements  
7 that the State would have to prove if this proceeded to  
8 trial. The constitutional rights he's giving up by  
9 entering into this agreement. What the State's  
10 recommendation is, and the fact that Your Honor is not  
11 bound by that recommendation. He signed that form and  
12 initialed the statement that I have written out on that  
13 form. He also signed the form telling him that he needs  
14 to get the DNA test. He stipulated to his criminal  
15 history. He signed the collateral attack form. I  
16 believe he signed them all knowingly, intelligently, and  
17 voluntarily.

18 THE COURT: Mr. Foster, you have reviewed the  
19 statement of defendant on plea of guilty with the  
20 assistance of your attorney Ms. Melby; is that correct?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: And you read, write, and understand  
23 English, and understand this document?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: You understand by changing your

1 number.

2 THE COURT: All right. Based upon your plea of  
3 guilty, Mr. Foster, it's the judgment of the Court that  
4 you are guilty.

5 And you said something that your father had  
6 said, which is, in my mind, fair and appropriate. If you  
7 make mistakes, you stand up and pay for them.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And so I'm going to sentence you --  
10 you did come back from Yakima. I don't think you came  
11 back on your own accord. But you have pled guilty and  
12 you're facing up to a poor choice when you escaped. So  
13 I'm going to sentence you to the 43 months instead of the  
14 57 months.

15 THE DEFENDANT: Thank you.

16 THE COURT: Do you waive a formal reading on  
17 the rights of appeal, Ms. Melby?

18 MS. MELBY: Yes, we do, Your Honor.

19 THE COURT: This stipulation on your prior  
20 record that you signed, is it true and accurate?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: You didn't leave anything out?

23 THE DEFENDANT: No, sir.

24 MR. NELSON: Your Honor, is the court running  
25 that concurrent or consecutive?

1 packaged and delivered to the Puyallup Police Department  
2 property room for storage in accordance with evidentiary  
3 procedures, protocols, and requirements.

4 This stipulation was entered into on this 26th  
5 day of September, 2005. Signed by Bryce Nelson, deputy  
6 prosecuting attorney; Nicholas Franz, attorney for  
7 defendant; and Jeffrey M. Foster, defendant.

8 All right. Cross-examination, Mr. Franz?

9 MR. FRANZ: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. FRANZ:

12 Q Officer Gill, with your CIs, is it a requirement that they  
13 remain drug-free during the time that they are a CI with  
14 you?

15 A I would ask that they not use drugs, excessive alcohol,  
16 along those lines, but I don't require it.

17 Q You don't require it?

18 A No. I just don't say, "You're not gonna do dope." I say,  
19 "I don't want you doing any dope. I want you running  
20 clean."

21 Q Now, the CI that we're talking about, do you know what kind  
22 of drugs he had a history of using, if any?

23 A His drug of choice was crack cocaine.

24 Q Cocaine, okay.

25 And was it also a requirement that the CI remain

1 crime-free during this time period, other than purchasing  
2 drugs?

3 A Yeah, I don't want them getting arrested or getting into  
4 trouble. It happens.

5 Q Okay. Now, to your knowledge, did this CI have any  
6 criminal violations from September of last year forward?

7 A Yes, he has.

8 Q Do you know what kind of case it was?

9 A Domestic violence. He and his girlfriend fight.

10 Q Okay. Do you know a person by the name of Robert Walker  
11 that might have been involved in this case? Does that name  
12 sound familiar to you?

13 A It sounds familiar, but I'm having trouble putting a face  
14 to it.

15 Q You don't know a Bob Walker or a Robert Walker for this  
16 case?

17 A I'd have to -- I'd have to look.

18 Q What about a person who was living in this complex -- not  
19 the apartment complex, but this trailer park complex -- by  
20 the name of Billy Smith?

21 A Again, familiar, but I'm drawing a blank as pertaining to  
22 this case.

23 Q Okay. Well, let's go back to Billy Smith, then. You say  
24 that the name is familiar. Can you tell us why he's  
25 familiar to you?

\*\*\*\*\*  
APPENDIX-F  
\*\*\*\*\*

1                   Now, September 15, am I correct in understanding  
2                   that you did not see a transaction occur?

3           A   No, sir, I did not.

4           Q   And September 29th, am I also correct in understanding that  
5                   you did not see a transaction occur?

6           A   That's correct, I did not.

7                   MR. FRANZ: No further questions.

8                   THE COURT: Redirect.

9                   MR. NELSON: Just a couple questions, Your Honor.

10                                   REDIRECT EXAMINATION

11           BY MR. NELSON:

12           Q   Is it routine for you to not personally observe drug  
13                   transactions where you are dealing with a CI?

14           A   Most of the time that's how it happens. On occasions -- if  
15                   I'm seeing drugs purchased, it is usually me doing it.  
16                   Might be a CI with me when I'm doing that, but in most  
17                   cases the CI is actually making the purchase of the  
18                   narcotic. We get as close as we can, of course, because of  
19                   safety reasons for the CI and other people involved,  
20                   including the police. We do not jeopardize safety for  
21                   dope.

22           Q   So, generally, standard procedure, when you are utilizing a  
23                   CI, you or whatever other law enforcement officer who is  
24                   running the CI, doesn't actually observe the drug  
25                   transaction?

1 And I'm going to use --

2 A It is kind of to the park -- it is kind of behind Louie's,  
3 and there's mounds back in there.

4 Q I will put an "E." Is that correct, that that's the  
5 eastern portion?

6 A That would be east, with this being north.

7 Q So you were in the area by Louie's trailer, outside of the  
8 park, to the east of the park?

9 A Yeah, at one point I was.

10 Q And then you then walked into the trailer park at some  
11 point in time?

12 A No. I drove in.

13 Q You drove in?

14 A Yeah, because right here there's a place you can park right  
15 here. Marty's is here, and the cement on Marty's comes  
16 back from Marty's a little bit, and then there's a line  
17 here and some grass. And then there's mounds -- I don't  
18 know what they are -- like dirt big mounds where stuff has  
19 been dumped and stuff is starting to grow up. And I  
20 thought by getting up on those mounds I could see better by  
21 actually being in -- without jeopardizing myself -- but I  
22 couldn't, so then I went back in.

23 Q This thing says something about that you parked outside the  
24 trailer park originally?

25 A Yeah. That was here. That would be here.

1 Q So you parked outside?

2 A And then when I came back around, I came back around and  
3 in, this occurred here, and then back out to here.

4 Q Where did the CI get out of your car at?

5 A Good point. I'm going to be honest with you, I thought it  
6 was in here. That could not have happened that way.

7 Q So during your testimony, earlier testimony --

8 A Yes --

9 Q -- you made a mistake?

10 A I very well could have made a mistake.

11 MR. FRANZ: Thank you.

12 No further questions.

13 THE COURT: Redirect?

14 MR. NELSON: No, Your Honor.

15 THE COURT: May this witness be excused?

16 MR. FRANZ: Yes, Your Honor.

17 THE COURT: Mr. Nelson?

18 MR. NELSON: Yes. Thank you, Your Honor.

19 THE COURT: You're excused.

20 (Witness excused.)

21 THE COURT: Come back to the jury room at 1:30,  
22 if you would, please. The cautionary instructions are  
23 applicable.

24 (Noon recess taken.)

25 /

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APPENDIX-G  
\*\*\*\*\*

1 Q Do you currently use drugs?

2 A No, sir.

3 Q Are you a confidential informant for the Puyallup Police  
4 Department?

5 A Yes, sir.

6 Q What does that entail exactly?

7 A Basically we do -- they have me buy drugs from known drug  
8 dealers.

9 Q Why did you become a confidential informant, or a CI, for  
10 short?

11 A To make extra money.

12 Q About how much money would you make for each drug  
13 transaction you did as a CI?

14 A It ranged anywhere from 50 to maybe 150 bucks.

15 Q About how many undercover buys -- and you don't have to be  
16 exact -- but just approximately how many buys did you  
17 perform as a confidential informant?

18 A I'd say about 10 or 15.

19 Q Okay. Were you paid for all those buys?

20 A Yes, sir.

21 Q Have you ever worked with any law enforcement agency --  
22 with any other law enforcement agencies as a confidential  
23 informant?

24 A No, sir.

25 Q Just Puyallup?

1 wanted, and I gave him cash, and I left.

2 Q Now, was it the same -- did he hand to you the same bag  
3 that Crystal had handed to him?

4 A I wouldn't know that, sir. I don't know that.

5 Q You were there at the time, weren't you?

6 A But I don't know what kind of bag she handed him, though.

7 Q How long did he have this bag in his hand before he  
8 delivered it to you?

9 A Oh, it was just like a minute or two.

10 Q So you were standing there all that time?

11 A Yeah, yeah.

12 Q Do you recall in our interview that we had back in June  
13 that I had you describe Mr. Foster?

14 A Yes, sir.

15 Q Do you remember how you described him?

16 A Yes, I did. I told you that at the time he had his head  
17 shaved and his goatee was kind of a white elongated  
18 mustache.

19 Q The white goatee that he had, was that a blonde-white or  
20 white from having white hair?

21 A I don't know, sir.

22 Q Well, you were pretty close to him at the time, weren't  
23 you?

24 A Yeah, but I wasn't paying attention to that. I was buying  
25 drugs and I wanted to get the hell out of there.

\*\*\*\*\*  
APPENDIX-H  
\*\*\*\*\*

Jeffrey Foster #954441  
Airway Heights Corrections Center  
P.O. Box 2109  
Airway Heights, WA 99001

To:

Attorney Reed Speir  
3800 Bridgeport Way West, Ste. A #23  
University Place, WA 98466

10/13/06

RE: REQUEST COPY OF COMPLETE TRIAL RECORD AND ATTORNEY FILE

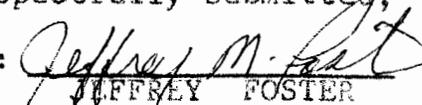
I have received your 10/6/06 letter with attached opening brief in Case No. 04-1-04724-4, and was not impressed to say the least. I find it difficult to believe that your opening brief is anything more or less than an attempt to burn up my direct appeal rights with purpose to keep me from having my underlying conviction overturned.

I intend to file a Statement of Additional Grounds which will be identifying numerous potentially reversible issues that a first year law student would not have missed, thereby I consider your opening brief as a deliberate attempt to violate my federally protected rights.

I request that you (Attorney Reid) immediately provide me with the following:

- (1) A list of all court reporters of all hearings and proceedings with dates of said hearing and proceedings.
- (2) A copy of all transcripts of all hearings/proceedings, including but not limited to, all pretrial proceedings, opening and closing arguments and transcript of complete jury selection including complete jury voir dire along with transcript of jury question or jury misconduct hearings.
- (3) A copy of the docket entry record along with a copy of all entries on the docket entry record.
- (4) A complete copy of my trial attorney file.
- (5) Inform the Court of Appeals that I (Jeffrey Foster) am not able to file my Statement of Additional Grounds until at least 30 days after I receive the above requested files, records and transcripts; thereby file a motion for extension of time within which to file a Statement of Additional grounds. If for any reason you do not intend to comply with the above five requests, please immediately respond to me so that I may take the appropriate action.

Respectfully submitted,

By:   
JEFFREY FOSTER

COPY

OCT 25<sup>th</sup>

CAUSE # 04-1-04724-4

2006

TO: NICHOLAS FRANZ (ATTORNEY)  
FROM: JEFFREY M. FOSTER

JEFFREY M. FOSTER  
D.C.C. #954441  
A.H.C.C. R-A-14-L  
P.O. BOX 2109  
AIRWAY HEIGHTS, WA  
99001-2109

DEAR SIR,

I am writing to you today to request copies of the following.

- (1) The discovery
- (2) All police reports
- (3) The MIRANDA rights WAIVER
- (4) Copy of both SEARCH WARRANTS
- (5) The C.I.'s full and complete Name, Date of Birth,
- (6) I need to know if the C.I. Michael TURNER has any crimes of Dishonesty.
- (7) I would like to know Michael TURNER'S middle initial or Middle Name.

I need this information above so I can

complete my statement of additional grounds.

As you know time is of the essence, I received my Brief for Appeal. Respectfully, Jeffrey M. Foster

Dec. 3<sup>RD</sup>  
2006

To: Nicholas FRANS  
FROM: JEFFREY M FOSTER  
RE: Documents pertaining  
to Cause # ~~04-T-04724-4~~ 04-T-04724-4

DEAR MR. FRANZ,

THANK YOU FOR RETURNING MY MOTHERS CALL I WROTE A LETTER  
TO MR. SPEIR TELLING HIM I NEED THOSE DOCUMENTS  
I HAD ASKED YOU FOR ON OCT. 25<sup>TH</sup> 2006 AND NOV. 12<sup>TH</sup>  
2006. I HAVE UNTIL DEC. 18<sup>TH</sup> 2006 TO FILE MY  
10.10. STATEMENT OF ADDITIONAL GROUNDS  
MY EXTENSION DATE GRANTED BY THE COURT OF APPEALS  
I LOST 30 DAYS ALREADY TRYING TO GET THOSE  
DOCUMENTS. IF YOU WOULD OF WROTE ME BACK  
TELLING ME I HAD TO GET THEM THROUGH MR. SPEIR  
I WOULDN'T BE PRESSED OF TIME. PLEASE AS SOON  
AS YOU RECEIVE THIS LETTER PLEASE CALL MR. SPEIR  
AND FAX THOSE DOCUMENTS TO HIM SO HE CAN  
INTERMEDIATE SEND THEM TO ME. I WROTE TO HIM ALSO  
ON DEC. 3<sup>RD</sup> 2006 AS I AM DOING TO YOU. HE WILL  
RECEIVE A LETTER FROM ME ON THE SAME DAY AS YOU  
PLEASE CALL HIM, HE HAS BEEN TOLD BY ME THAT  
I NEED THOSE DOCUMENTS I LISTED ON OCT. 25<sup>TH</sup>  
AND NOV. 12<sup>TH</sup> IN MY LETTERS TO YOU. IF ANY COSTS  
FOR COPIES ARE NEEDED PLEASE CALL SHARON FOSTER  
316-721-2101 SHE WILL HANDLE THE COST WITH CREDIT  
CARD. THANK YOU SIR, Jeffrey M. Foster 12/3/06



**LAW OFFICE OF REED SPEIR**

REED M.B. SPEIR, ATTORNEY AT LAW  
3800 BRIDGEPORT WAY WEST, STE. A #23, UNIVERSITY PLACE, WA 98466  
253.722.9767 Fax 253.564.3552

November 10, 2006

Mr. Jeffrey Foster, DOC# 954441  
Airway Heights Corrections Center  
P.O. Box 2109  
Airway Heights, WA 99001

RE: State v. Foster, COA No. 34953-1-II

**LEGAL MAIL**

Mr. Foster:

This letter is in response to your letter dated November 4, 2006. I understand your situation and accept your apology.

I do advise you to avoid listening to "jailhouse lawyers" and strongly advise you not to pay them any money for their "services." I have had many clients receive extremely bad advice and completely wrong advice on the law from "jailhouse lawyers."

The next step in this process is for the State to file its Response Brief. As soon as I receive it, I will send a copy to you.

If you have any questions, feel free to write me a letter.

Sincerely,

  
Reed Speir

Copy

NOV. 12<sup>th</sup> 2006

Page 1 of 2

CAUSE # 04-1-04724-4

Appeal CASE # 3495-1-II

TO: Nicholas FRANZ - TRIAL ATTY. FOR CAUSE # 04-1-04724-4

FROM: JEFFREY M. FOSTER # 954441

A.H.C.C. R-A-14-L

P.O. Box 2109

Airway Heights, WA

99001-2109

DEAR SIR,

I am writing to you today in regards to the letter I sent you dated Oct. 25<sup>th</sup> 2006. IN that letter AS WELL AS in this letter I AM requesting of you to provide me with the following.

- 1.) All Applicable PARTS of the discovery
- 2.) All police reports
- 3.) The MIRANDA rights WAIVER
- 4.) Copy EACH, of Both SEARCH WARRANTS
- 5.) The C.I.'s TRUE AND COMPLETE NAME, including Middle NAME AND Complete date of Birth Month day AND YEAR
- 6.) A Copy of the C.I.'s CRIMINAL History with his Middle initial AND Complete Birthday

Copy  
Cont.

Page 2 of 2

6.) month day AND YEAR.

7.) Copy of All CLOCKET ENTRIES AND All TRANSCRIBTS  
Court Reports from Oct 7<sup>th</sup> 2004 till Sept. 27<sup>th</sup> 2005

This my second request I have made to you,  
AS you know I CAN NOT complete my Appeals 10.10  
Grounds of additional statements without these  
requested documents. I have filed for AN  
EXTENSION with the Court of Appeals. If I do  
NOT receive or hear from you within 10 working  
days of this dated letter I will be forced to  
send a copy of this letter, AND a copy of the  
letter dated Oct. 25<sup>th</sup> 2006 to the court of  
Appeals AND the WASHINGTON STATE BAR ASSOCIATION  
in regards to your REFUSAL to cooperate with  
this CASE# 04-1-04724-4.

IF you have already cooperated  
with this request AND have sent such copies as  
listed on page 1 AND page 2 of this letter  
PLEASE disregard this AND thank you for your  
ASSISTANCE.

Respectfully Submitted,  
Jeffrey M. Foster  
11/12/06

December 3<sup>RD</sup>  
2006

page 1

To: Reed Spair  
From: JEFFREY M. FOSTER  
Re: CAUSE # 04-1-04724-4  
Appeal Case # 34953-I-II

DEAR SIR,

I am writing to you today in regards to some documents that my trial attorney MR. FRANZ has that I NEED in regards to my 10.10 statement of additional grounds, so I can file it by 12-18-06.

I wrote MR. FRANZ ON Oct. 25<sup>th</sup> 2006 AND AGAIN ON NOV. 12<sup>th</sup> 2006, AND got NO response. With time running out I contacted My mother SHARON FOSTER, I ASKED her to call MR. FRANZ, which she did. She ASKED MR. FRANZ to send me these documents. He stated to her that he "would love to give me these documents but said he could not, because of the court or law said he could not, he ALSO stated he contacted you (Mr. Spair) because he could only give them to you AND that you could give them to me. He SAID that he offered them to you, but ~~the~~ you

declined his offer for them because you did not need them at that time.

Sir, I really need those documents which I will list for you. I am writing Mr. Franz again to ask him to forward those documents to you, so you can forward them to me. If you need money to cover copy cost you may call my mother Sharon Foster 316-721-2101 she will cover any cost, by credit card. However Sir, I need those documents, I have until Dec. 18<sup>th</sup> 2006 is the end of the extension given to me by the Court of Appeals. To expedite matters please call Mr. Franz at (253) 272-9691 and have him fax them to you, and get them in the mail to me same day if possible please. Here is the list of said documents.

- 1.) All applicable parts of the discovery
- 2.) All police reports
- 3.) The Miranda rights waiver (My signature was forged)
- 4.) Copy of both search warrants (There were 2 of them)
- 5.) The C.I.'s True and Complete Name, including middle name and complete Birth day MO-DAY-YEAR  
During trial testimony the C.I. only gave his first and last name and age only.
- 6.) A Copy of the C.I.'s Complete Criminal History using his true Complete Name and Birth day MO-DAY-YEAR

Cont.

Page 3 of 3

6.) During trial testimony The C.I. Michael Turner testified he only had 1 criminal conviction of Domestic Violence, but yet he said he had been in Jail Before for drugs.

Mr. Spair, Sir, I give you my honest word I NEVER did either of those deliveries, I had NEVER EVEN MET MR. TURNER EVER. I BELIEVED he WAS pressured by Det. Don Gill to pin this on me because of a incident that happened 1 year prior to these charges. And if you dial 911 from my trailer Pierce Co. Sheriffs respond but yet Puyallup City did the raid on my trailer ~~where~~ where NO drugs were found. I didn't have ANY buy money NO drugs when they arrested me, that day. Why didn't they do the arrest on the 15<sup>th</sup> of Sept. or on the 28<sup>th</sup> of Sept. IN ONE police report Don Gill is saying "I was looking to make a buy so I decided to go by Jeffrey Foster's trailer a well known Meth cook and Narc. dealer in Puyallup." First of all I've NEVER been arrested for Manufacturing or Dealing in Puyallup ever. Their C.I. has me confused with someone else, and he knows it but is to afraid to go back on what he's done.

Please send them documents as soon as possible Sir Thank You Jeffrey M. Foster

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APPENDIX-I

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# Washington State Court of Appeals

## Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, Issue Summaries, and General Information at <http://www.courts.wa.gov/courts>

November 17, 2006

Kathleen Proctor  
Pierce County Prosecuting Atty Ofc  
930 Tacoma Ave S Rm 946  
Tacoma, WA 98402-2171

Reed Manley Benjamin Speir  
Attorney at Law  
3800 Bridgeport Way W Ste A23  
University Place, WA 98466-4495

Jeffrey M. Foster  
#954441  
Airway Heights Correction Ctr.  
PO Box 2109  
Airway Heights, WA 99001

CASE #: 34953-1-II

State of Washington, Respondent v. Jeffrey M. Foster, Appellant

Counsel:

The action indicated below was taken in the above-entitled case.

### **A RULING SIGNED BY THE CLERK:**

Appellant has filed a motion for a 60-day extension of time to file a statement of additional grounds for review. He claims that he needs more time due to limited access to the law library and he requires additional material to prepare the statement. While his first claim may be true, the rules for filing a pro se pleading on appeal have changed. Previously, the Rules of Appellate Procedure provided a defendant with an opportunity to file a pro se supplemental brief. However, those provisions were stricken, effective 12/24/02, and replaced by RAP 10.10, which permits the filing of a statement of additional grounds for review. The purpose of the rule change was to remove the formality of filing a brief but still provide defendant with an opportunity to identify the issues not addressed by counsel in the opening brief. An additional reason for the adoption of the rule change was to reduce the delay incumbent with the filing of a pro se supplemental brief. It should be noted that RAP 10.10 permits the court to request additional briefing or to take any other action necessary to resolve the issues raised in the statement. With respect to appellant's second claim, and consistent with the above, appellant is in receipt of the material (the court transcripts), necessary to prepare the statement.

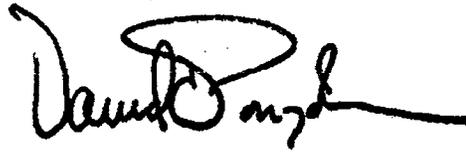
In view of the foregoing, appellant's request for a 60-day extension runs counter to the intended purpose of the statement and should be denied. Accordingly, appellant's motion for extension of time is denied in part and granted in part. Appellant is granted an extension

CASE #: 34953-1-II

State of Washington, Respondent v. Jeffrey M. Foster, Appellant

of time but only until 12/18/06 to file the statement of additional grounds for review. No further extensions will be granted. If the statement is filed after that date, it will be placed in the file without action.

Very truly yours,

A handwritten signature in black ink, appearing to read "David C. Ponzoha". The signature is stylized with a large, circular flourish at the top and a long, horizontal stroke extending to the right.

David C. Ponzoha  
Court Clerk

\*\*\*\*\*  
APPENDIX-J  
\*\*\*\*\*

1 MR. NELSON: I have a list, Your Honor, if the  
2 Court will give me a moment. It looks like it was just  
3 the drugs, Your Honor. So obviously he's not going to  
4 get that back.

5 THE COURT: All right. Mr. Franz, what do you  
6 want to tell me.

7 MR. FRANZ: Thank you, Your Honor. I guess the  
8 easy part of this is -- Nicholas Franz for Mr. Foster.

9 In regard to the items that were seized, I  
10 think the Court understands from the trial that those  
11 items were not specifically seized from Mr. Foster, but  
12 they were, in fact, given to the officers by the CI in  
13 this case.

14 The Court sat through this trial. That's the  
15 easy part of all this matter. The Court sat through this  
16 trial, and the Court heard the testimony that was out  
17 there.

18 This was a difficult verdict for Mr. Foster and  
19 for me personally because, quite frankly, I thought that  
20 the jury was going to come back differently. And part of  
21 that reason was because of the testimony of Officer Gill,  
22 and that he had testified regarding places that he was  
23 standing, and his personal knowledge of things that were  
24 going on and discovered halfway through his testimony  
25 that, in fact, he was wrong with what he had seen because

1 he couldn't have been standing in a certain location.

2 Notwithstanding that, a jury found Mr. Foster guilty of  
3 these three charges, and found him not guilty of another  
4 charge.

5 Mr. Foster has asked that I argue, and I think  
6 it's appropriate to argue this way, that the Court  
7 sentence him to a concurrent sentence on all these, and  
8 the concurrent sentence to the escape charge, but that  
9 the Court sentence him not to 60, not to 120 months, but  
10 the Court sentence him to 12 months for every month that  
11 he was gone when he escaped, which is seven months, which  
12 would give him 84 months total in this case. So that he  
13 would get 84 months on the '04 case, and have a  
14 concurrent time of 43 months going inside of that for the  
15 escape case. I think that that's appropriate.

16 I think that as Mr. Foster indicates what his  
17 father taught him which is to suggest a punishment  
18 that is appropriate for him, based upon the circumstance,  
19 I think that's an appropriate punishment for him.

20 Now, do I think that Mr. Foster would have  
21 gotten 84 months or 120 months if in fact he would not  
22 have walked out that door that day? No. My belief is  
23 that the offer from Mr. Nelson would have been 60 months,  
24 and that we all would have been arguing that 60 months  
25 was an appropriate time for Mr. Foster would have had for

FILED  
COURT OF APPEALS  
DIVISION II

06 DEC 18 AM 9:08

STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY

STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION II

~~XXXXXX Personal Restraint Petition of XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

\_\_\_\_\_  
JEFFREY M. FOSTER  
Petitioner.

No: 34953-1-II

CERTIFICATE OF SERVICE

I, JEFFREY M. FOSTER, Petitioner in the above entitled cause, under the penalty of perjury, do hereby certify that on the date noted below, I sent copies of:

- (1) CERTIFICATE OF SERVICE
- (2) STATEMENT OF ADDITIONAL GROUNDS RAP 10.10

To: WASHINGTON STATE COURT OF APPEALS  
DIVISION TWO, COURT CLERK  
950 BROADWAY, SUITE 300  
TACOMA, WA. 98402

KATHLEEN PROCTOR  
PIERCE COUNTY DEPUTY PROSECUTING  
ATTORNEY'S OFFICE  
946 COUNTY-CITY BUILDING  
TACOMA, WA. 98402-2171

By processing as *Legal Mail*, with first-class postage affixed thereto, at the Airway Heights Correction Center, P.O. Box 2109, Airway Heights, WA 99001-2109.

Dated this 13<sup>th</sup> day of DECEMBER, 2006.

Respectfully Submitted,

Jeffrey M. Foster  
Petitioner