

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

STATE OF WASHINGTON )  
RESPONDENT )  
V. )  
JOSEPH ALLEN EDINGTON, )  
DEFENDANT. )

CASE NO: 36848-0  
STATEMENT OF ADDITIONAL  
GROUND FOR REVIEW  
RAP.10.10.

09 JUN -2 AM 10:02  
STATE OF WASHINGTON  
BY [Signature]  
DEPUTY

COURT OF APPEALS  
DIVISION II

I, Joseph Allen Edington 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.

SEE: ATTACHED TO THIS STATEMENT FOR GROUNDS.

I the defendant in the above cause also state the this motion RAP 10.10 is done PRO SE. Pro Se pleadings are to construed liberally and held to a less stringent standard than formal pleadings drafted by Lawyers. If the court can reasonably read the pleadings to state valid claims on which the litigant could prevail the court should do so despite failure to cite proper authority, confusion of legal theories, poor syntax and sentence construction or litigants unfamiliarity with the requirements.

SEE: Parker v. Como 58 F.3d 814 (2nd Cir.1995); Curtis v.

(2)

Bendenek 48 F.3d 281 (7th Cir.1995):United States v.eatinger  
902 F.2d 1383 (9th Cir.1990):Boag v.MacDougail 454 U.S.364  
102 S.ct.700,70 L.Ed.551 (1982):Hainess v.Kerner,404 U.S,  
519,92 S.ct,594,30 Led.652 (1972).

I THE APPELLANT JOSEPH ALLEN EDINGTON

HEREIN ASSIGNS AS ERROR THE FOLLOWING AS VIOLATING MY RIGHTS  
UNDER THE CONSTITUTIONS OF THE UNITED STATES AND OF THIS  
STATE

(ISSUE #1)

The Court Errored and Abused its discretion violating Mr  
Edingtons rights to a fair trial when the judge improperly  
admitted,custodial statements.

(FACTS)

On June 11 2007 ,the court held a 3.5 hearing,where the  
state sought the admittance of testimony by states witness  
Officer Spencer Harris,in regards to a conversation between  
Mr Harris and Mr Edington(RP:15-40.)After Mr Edington had  
been arrested for a traffic stop he was transportted to the  
jail,Outside the jail in the sallyport Officer Harris  
approached the defendant and had a talk with him,he claimed  
that the defendant made the statement;What Cocaine.  
Durring the 3.5 Hearing both Officer Harris And Mr Edington  
testified.The main question before the court was,was the  
defendant properly mirrandarized before any statements were  
made.The court states in its ruling that .that the sequence  
of events is at question,but he choose to believe Officer  
Harris scenario,He further states that even if Officer  
Harris story were not true the statement would still be  
admissable as a spontaneous statement.He therefore would  
admit the statement.

## (ARGUMENT)

1  
2 Before a court admits custodial statements the state must  
3 prove by a preponderance of the evidence that the police  
4 advised the defendant of his miranda rights, and that he  
5 knowingly, voluntarily and intelligently waived those  
6 rights (**STATE V. BURKINS, 94 Wn App. 677, 694, 973 P.2d 15, (1999)**).

7 When determining the voluntariness of the defendant's  
8 statement, the court asks whether under the totality of the  
9 circumstances the defendant will overcome. **STATE V.**  
10 **BROADAWAY (1997)**. Such circumstances include the defendant's  
11 condition and mental abilities and police conduct.

12 Miranda warnings are required when an interview is (A)  
13 custodial (B) interrogation (C) a state agent. **STATE V. LORENZ**  
14 **(2000)**.

15 In this case the written findings of fact and the,  
16 conclusions of law do not support the admission of the  
17 statement claimed to have been made,  
18 It is further barred by hearsay, the judge failed to meet any  
19 of the required standards as stated in **BURKINS**, and under  
20 ER, 403 even if the Judge found officer Harris' statement to  
21 be more truthful and this evidence to be relevant, which is  
22 generally admissible, it may be excluded if its probative  
23 value is substantially outweighed by the danger of unfair  
24 prejudice, confusion of the issues or misleading of the jury.

25 In this case the question as to when the defendant was  
26 mirandized was not proven by an overwhelming amount of  
27 evidence, the Judge simply chose to believe the officer over  
28 the defendant because he was an officer, and the statement  
that the defendant said (**WHAT COCAINE**) is very misleading  
and was stated in an effort by this officer and the state  
to confuse the jury, therefore prejudicing the jury against  
the defendant.

Evidentiary error is grounds for reversal if it results  
in prejudice, and an error is prejudicial if within  
reasonable probabilities had the error not occurred the  
outcome of the trial would have been different. The only  
remedy in this case and an error of this magnitude is  
reversal of conviction.

## (ISSUE #2)

The court erred and abused its discretion, violating Mr  
Edington's right to due process as well as his constitutional  
right to a fair trial when it allowed impermissible  
hearsay testimony.

## (FACTS)

On both direct and cross examination of the state's witness  
officer Harris first states, that Ms Taskey the informant  
agreed to purchase a quantity of crack cocaine. (RP.93).  
He states that the informant made a phone call and when he  
asked her whose number it was **SHE SAID** That it belonged to

1 Joseph Edington(RP:97).He states that he told officer  
2 LaChapelle to search the informant,he did not do the search  
3 himself,but states the the officer **TOLD HIM** that there was  
4 no money or drugs found on her person.(RP,98,99).  
5 Durring a phone call made by the informant Harris says  
6 that he listen in on the phone call and when asked if he  
7 recognized the the voice on the phone he stated that,it  
8 seemed to be the defendant(RP:101).He states that he  
9 received a phone call from the informant,**SAYING SHE WAS**  
10 **TOLD** to go to this corner.(RP:106).He states that he  
11 heard a conversation over the radio from officer sparks  
12 and officer martin.He was asked what the subject was,and he  
13 said that they observed Joe Edington(RP:107).Harris was  
14 asked be the procecurator after the secound phone call what  
15 happen?he states that the **THE INFORMANT CALLED HIM AND**  
16 **SHE SAID**,she was told to go to(RP:119).In explaining to  
17 the jury how this informant made the deal with the state  
18 he states that **SHE SAID** she could buy crack cocaine from  
19 Joseph Edington(RP:151).Again he states that he asked the  
20 informant if the buy went through and **SHE SAID**,yes(RP:168).  
21  
22  
23

24 (ARGUEMENT)

25 These are a veiw but not limited to hearsay testimony by  
26 this state witnes.ER 801(C)defines hearsay as follows;  
27 hearsay is a statement other the one made by the declarant  
28 while testifying at trial or hearing offered in evidence to  
prove the truth of the matter asserted.

In that the informant and each of the officers in which  
officer Harris refers to in his testimony was available to  
testify,there is no hearsay exception under which this  
type of hearsay is exceptable.Further these out of court  
hearsay statements violates Mr Edingtons right to  
confrontation under the United States Constitution,under  
the sixth amendment applicable to the states through the  
due process clause of the fourteenth amendment,(**SEE:**  
**POINTER V. TARRANTAS 380 U.S 400,401 85sct.1065,13Led.2d 1965).**

**Over defense counsels many objections the state offered  
and the trial court allowed officer harris testimony.**

There is no doubt that had this error not occured the out  
of this trail would of been different,the only remedy  
is to vacate both judgement and sentence and remand for  
a new trail.

(ISSUE#3)

The court erroed and abused its discretion when it limited  
the defense ability to explore the complete criminal  
history and prior bad acts of Ms Tasky,the states informant  
and in doing so also violatted the defense right to  
confrontation on cross exaimination.

**FACTS**

1  
2 On June 11 2007 a motion hearing was held in front of  
3 Judge Lewis. The prosecutor motioned the court to prohibit  
4 the defense from introducing evidence of prior bad acts of  
5 a Kristine Taskey, including convictions, current and prior  
6 for the purpose of impeachment. (RP:#3). This evidence was  
7 important in that it supported the defense theory that  
8 Ms Taskey the informant had an extensive criminal history  
9 and because of that combined with her current offenses was  
10 facing an substantial amount of incarceration, she sought out  
11 the police after her arrest to become an informant. And had  
12 the motive to set somebody up in order to get a lighter  
13 sentence. It further was relevant to point out to the jury  
14 that she also had the knowledge of how to set some one up  
15 and deceive the police. (RP:4). In the stating of its reasons  
16 before the court the defense stated each prior bad act and  
17 its relevance. (RP:4,10). The court ruled that with the  
18 exception of the misdemeanor, the rest of the informant's  
19 extensive criminal history had little relevance, as to the  
20 truthfulness and therefore they'll be excluded (RP:10).

**(ARGUMENT)**

17 Bias is always relevant in assessing a witness credibility.  
18 (SCHLEDWITZ V. U.S 169 FORD 1003 (6th cir 1999)).

19 The Washington Supreme Court has held that preventing a  
20 defendant from fully and effectively cross examining a state  
21 witness is a violation of the defendant's constitutional  
22 right under the confrontation clause. (STATE V. GOLOY. Wn. 2d.  
23 1985). ER RULE 609.A2 states for the purpose of attacking  
24 the credibility of a witness in a criminal case evidence  
25 that the witness has been convicted of a crime shall be  
26 admitted if it involved dishonesty, or false statements  
27 regardless of the punishment. In this case as supported  
28 by the record there was clearly reason for the court to be  
concerned about the informant and the truth of her testimony  
and the agreement that she entered into with the state.

1 By limiting the defense to explore this completely in  
2 front of the jury the court aided the state in keeping  
3 the truth from the jury. The only remedy for the court error  
4 and abuse of discretion as well as the violation of the  
5 defendants constitutional right is to vacate judgement and  
6 sentence and remand for a new trial.

6 (ISSUE#4)

7 It was prosecutorial misconduct and a violation of the  
8 defendants 5th amendment right to due process, when the  
9 prosecutor IMPERMISSIBLY VOUCHERED FOR THE INFORMANTS  
10 CREDIBILITY. As a general rule a prosecutor may not express  
11 his opinion of the government witness credibility, as this  
12 is his personal belief. Vouching consist of placing the  
13 prestige of the government behind a witness through personal  
14 assurances of the witness veracity or suggesting that inform  
15 ation not presented to the jury supports the witness  
16 testimony. (UNITED STATES V. NECECHEA 9th cir 1993). statements  
17 as to the credibility of the informant by the officer  
18 testifying invades the jury exclusive function to weigh the  
19 evidence in determining credibility. (STATE V. FITZGERALD 39  
20 Wn 1985). In closing prosecutors may argue facts in evidence  
21 and draw reasonable inferences there from but may not  
22 state personal belief about a witness credibility. (STATE V.  
23 REED, 102, Wn. 2d, 140, 145, 689, P. 2d 1984).

20 FACTS

21 At the pre trial motion in limine hearing the Judge states  
22 and rules; Testimony should always be based on personal  
23 observation and should relate facts not opinion. People  
24 have names and that's what they should be referred to as. And  
25 I will especially not allow people to refer to Ms Taskey  
26 as the reliable informant, because that is a vouching of  
27 the witness credibility in the presence of the jury.  
28 (RP:62,63). On direct Of Officer McNicholas he states that  
WE WERE FOLLOWING A RELIABLE INFORMANT. At that point the  
judge cleared the court room and admonished the prosecutor

1 Again ,stating that he specifically indicated that witnesses  
 2 were not permitted to use the term (RELIABLE INFORMANT).  
 3 Because its vouching for the credibilty of another witness.  
 4 as a remedy to this clear violation of the courts ruling  
 5 the judge state that he will instruct the jury to disregard  
 6 (RP:315,316,317).

#### 4 ARGUEMENT

5 Based on the record its clear that one there was impermisable  
 6 vouching on the part of the state,TWO that the order of the  
 7 court to not use the term was indeed violated,and THREE,  
 8 that the Judge was aware of the violation,and errored  
 9 by allowing the trial to proceed,in that it is usless to  
 10 instruct the jury to not hear what they have just heard,  
 11 the cat was already out of the bag.This impropriety seriously  
 12 effected the fairness,and the integrity of the proceeding,  
 13 failure to reverse a conviction based on this would result  
 14 in a miscarriage of justice.We therefore ask the court to  
 15 reverse.

#### 11 ( ISSUE#5)

12 The court abused its discretion on every occassion where  
 13 dispite defence attorneys objections that officers  
 14 testimony about a strip search of the informant was irreliv  
 15 ant in that they personally had no knowledge of such a search  
 16 This violated Mr Edingtons 5th Amendments right to due  
 17 process and Washingtos state consitution Art.I§9,3,30,2.

#### 15 (FACTS)

16 Officer joshua Sparks at the time of this incident worked as  
 17 a probation and parole offiecr for the vancouver police  
 18 department.On direct he first states that he was contacted  
 19 by officer harris to help search the informant and that he  
 20 helped in that search.RP:237 when asked what his involment  
 21 was he stated that he observed officer harris conduct a  
 22 search of the person,he states that he saw nothing found in  
 23 that search RP:241,242.Next Officer Amy Lachapelle testified  
 24 on direct after going through the normal proceedure of a  
 25 strip search she was asked if she remembered assisting  
 26 officer harris in searching a female back in march? her  
 27 response was no she did notRP:251 She futher states that  
 28 she states that she did not recall the specific female  
 that she searched nor did did she write a report.On cross  
 she states again thatn she does not know of the informant  
 the state is talking about and that she therefore could  
 not testify to the search RP:253.Defense attorney moved to  
 strike the testimony of this witness as not relivant stating  
 it only invided speculationRP:254,255.the court improperly  
 denied this motion stating it went to weight and not  
 admissibility.RP:255.Next officer Tina Smith on direct stat  
 ed the she has experience in searching females and she  
 describes the routine extensivelyRP:294-296.when asked if  
 she rememberde searhing a female for officer harris she  
 said yes RP:296-298.on direct and cross officer smith states  
 that she can not remember the date of the search or who it

1 WAS SHE SEARCHED. Based on this defense again asked the court  
2 to strike the testimony of smith as lacking foundation and  
3 not being relevant. The court denied this motion as well  
4 stating that the weight the testimony is to be given goes  
5 to the jury RP:299-300. officer julie carpenter testified on  
6 direct that she has extensive training in conducting search  
7 and again the prosecutor asked the witness to go through  
8 the routine of a search with the jury RP:302-305 she then  
9 stated that she did not do strip searches, she did remember  
10 helping officer harris with the search of a female, but can  
11 not remember when or with who RP:309-310.

7 (ARGUMENT)

8 none of these officers had direct knowledge of a search of  
9 this informant and clearly it was the motive of the prosecu  
10 tor to prejudice the jury by using the prestige of the  
11 police testimony to vouch for the credibility of the informant  
12 The judge erred when he overruled the objections of the defense  
13 as shown by the testimony of each of these witnesses they knew nothing  
14 so there was no weight. yet because they are officers it was highly  
15 prejudicial towards the defendant based upon this error the court  
16 must reverse this conviction and remand for a new trial.

14 (ISSUE #6)

15 There was lack of evidence to enhance the defendant sentence  
16 with the sale of drugs in a school bus zone.

17 (FACT.)

18 Each of the defendants convictions were enhanced by the aggravat  
19 ing factor that Mr Edington sold drugs in a school bus zone. To  
20 establish this fact the state called Matthew Deiteneyer to testify  
21 Mr Deiteneyer is a GIS technician for Clark county. He makes  
22 maps. RP: 75, 76. on direct Mr Deiteneyer states that he was  
23 prior to his testimony asked by the prosecution to seek out certain  
24 addresses on maps. (see exhibit #12 "11 RP: 76-82

25 The state then call BARBARA Suter to testify she states that she is  
26 with the transportation Vancouver school department. and part of her  
27 duty is to place and remove school bus stops. RP: 462 on direct  
28 Ms. Suter using a map points out to the jury location where school bus  
stops are suppose to be. and the prosecutor points out where the  
drug buys to place. RP: 462-472. on cross she was asked  
if she actually drove to any of these locations she said no

1 RP: 474, next the state called CAROLINE O'NEIL, A SAFETY AND TRAINING  
 2 OFFICER OF EVERGREEN SCHOOL DISTRICT. HER DUTY IS TO OVERSEE SCHOOL BUS  
 3 STOPS. RP: 477 SHE ON DIRECT AGAIN POINTS OUT SEVERAL BUS STOPS AND  
 4 EXPLAINS TO THE JURY HOW TO VIEW THEM ON A MAP. ON DIRECT CROSS  
 5 WHEN ASKED IF ANY OF THOSE SCHOOL BUS STOPS HAS A SIGN ACTUALLY  
 6 ON IT THAT SAYS 'SCHOOL BUS STOP.' SHE SAYS NO. RP 484 SHE  
 7 INDICATES THAT UNLESS THERE ARE CHILDREN ACTUALLY STANDING THERE  
 8 THERE IS NO WAY FOR A PERSON TO KNOW THAT THIS IS A SCHOOL BUS  
 9 STOP. RP. 485

(ARGUMENT)

10 THE COURT REVIEWS A CHALLENGE TO THE SUFFICIENCY OF THE EVIDENCE  
 11 BY DETERMINING WHETHER AFTER VIEWING THE EVIDENCE IN THE LIGHT  
 12 MOST FAVORABLE TO THE STATE ANY RATIONAL TRIER OF FACT COULD HAVE  
 13 FOUND THE ESSENTIAL ELEMENTS OF THE CRIME BEYOND A REASONABLE  
 14 DOUBT. IN THIS CASE WHILE THE COURT HAS MADE CLEAR IGNORANCE IS  
 15 A LEGAL DEFENSE AND BECAUSE MR EDINGTON DID NOT KNOW IT WAS  
 16 A SCHOOL ZONE DOES NOT MATTER IT IS HOWEVER A LEGAL REQUIREMENT  
 17 OF THE COURT IN ORDER TO CONVICT A DEFENDANT OF THE SALES OF  
 18 DRUGS IN A SCHOOL BUS ZONE. THIS AREA MUST BE CLEARLY MARKED  
 19 AS A SCHOOL BUS STOP. BASED ON THE TESTIMONY OF ALL 3 OF THE  
 20 STATES EXPERTS WE KNOW THAT THIS WAS NOT THE CASE. AND  
 21 IT WAS ERROR OF THE COURT TO ENHANCE THE DEFENDANT'S SENTENCE  
 22 WITH SCHOOL ZONE VIOLATION WHEN THERE WAS SUCH AN INSUFFICIENCY OF  
 23 THE EVIDENCE. SUCH ERROR REQUIRES THE REVERSAL OF CONVICTION  
 24 OF THE SCHOOL ZONE VIOLATIONS.

(ISSUE #7)

25 THE COURT ERRORED WHEN IT LIMITED IMPEACHMENT EVIDENCE  
 26 OF THE INFORMANT VIOLATING MR EDINGTON'S 5<sup>TH</sup>, 6<sup>TH</sup>, 8<sup>TH</sup> AND 14<sup>TH</sup>  
 27 AMENDMENTS TO THE U.S. CONSTITUTION AND ART. I § 22, 30, A OOE PROCESS.

(FACTS)

28 THE INFORMANT MS TASKAY HAD FIRST PREVIOUSLY TRIED TO SMUGGLE DRUGS  
 INTO THE COUNTY JAIL. SHE ALSO WENT THRU THE TAPPING OF A

1 Bag of another persons urine on her body in order to deceive  
2 her probation officer and pass a drug urine test. she had also  
3 been observed by a witness placing drugs into body cavities  
4 to hide during the same time period as these control buys  
5 where to have taken place, RP. 378-389. The defense sought to  
6 impeach Ms. Ashley using this evidence in direct contradiction to  
7 previous statements she had made of not using any drugs  
8 and also to prove that the informant had knowledge of how  
9 to conceal and sneak drugs past law informant. The court ruled  
10 that the prejudice outweighed the probative value and therefore  
11 ruled that this evidence would not be allowed, RP. 387-389.

(Argument)

12 This case is based on the almost sole testimony of an informant.  
13 The fact that the informant had lied and smuggled drugs previously  
14 was relevant and probative and would have effected the out-  
15 come in this trial. Relevancy was for the jury to decide not  
16 the judge.

(ISSUE # 8)

17  
18 THERE WAS LACK OF PROBABLE CAUSE TO ARREST MR EDINGTON

(ISSUE # 9)

19  
20 THERE WAS INSUFFICIENCY OF EVIDENCE TO CONVICT MR EDINGTON IN THAT  
21 THERE WAS NO MARKED MONEY FOUND. THERE WAS NO TAPE OR VIDEO  
22 OF ANY EXCHANGE BETWEEN MR EDINGTON AND THE INFORMANT.  
23 UNDER STATE V. BROWN 68 W.V. APP. 480. EVIDENCE OF WAIVER THERE OF  
24 MUST BE REVIEWED FOR SUFFICIENCY.

(ISSUE # 10)

25  
26 ON MORE THAN ON OCCASION THE JUDGE IMPROPERLY LEAD THE  
27 PROSECUTOR IN HOW TO RESPOND TO OBJECTIONS AND OBTAIN A  
28 CONVICTION, SHOWING A CLEAR BIAS.

(11)

1 IT WAS INEFFECTIVE ASSISTANCE OF DEFENSE ATTORNEYS, WHEN THEY  
2 FAILED WITHOUT ANY CLEAR STRATEGIC PURPOSE TO CALL THE WITNESS  
3 AVAILABLE THAT WOULD OF HELPED THE DEFENDANT IN THIS CASE.

4 (ISSUE #11)

5 IT WAS INEFFECTIVE ASSISTANCE OF COUNSEL WHEN DEFENSE  
6 ATTORNEY FAILED TO CALL POLICE WHO WAS AVAILABLE TO TESTIFY  
7 AS TO THE INFORMANT TAsKEY SNEAKING DRUGS INTO THE JAIL  
8 THIS WAS EXCULPATORY EVIDENCE.

9 (ISSUE #12)

10 DEFENDANT WAS DENIED HIS DUE PROCESS RIGHTS WHERE THE  
11 JURY WAS NOT RACIALLY BALANCED.

12 (ISSUE #13)

13 THE POLICE LACKED PROBABLE CAUSE TO ARREST THE DEFENDANT.

14 (ISSUE #14)

15 THE PROSECUTOR COMMITTED MISCONDUCT WHEN HE KNOWINGLY  
16 ELICITED FALSE TESTIMONY FROM THE INFORMANT.  
17  
18  
19  
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28

If there are any additional grounds that I believe are necessary for this court to review, which were not adequately briefed by my attorney, a brief summary is attached to this statement.

DATED this 29 day of May, 2006.

Joe Edington  
(Appellant Signature)

Joseph Allen Edington doc. 993281  
(Appellant's Printed Name)  
Stafford Creek Corrections Center  
191 Constantine Way, Unit # HA-B-58  
Aberdeen, Washington 98520

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
FOR DIVISION II

JOSEPH ALLEN EDINGTON,  
Petitioner,

vs.

state of Washington,  
Respondent

Case No.: 36848-0-II

DECLARATION OF SERVICE  
BY MAIL

FILED  
COURT OF APPEALS  
DIVISION II  
08 JUN -2 AM 10:00  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

DECLARATION

I, JOSEPH ALLEN EDINGTON, declare that I have mailed a true and correct copy of the following document(s):

RAP 10:00 - statement of additional ground.

by depositing it in the United States mail with first-class postage attached.

Said copies were directed to:

The court of Appeals Division II  
950 Broadway Ste. 300  
Tacoma, WA  
98402-3694

Under penalty of perjury, under the laws of the State of Washington, I  
declare that the foregoing is true and correct.

Dated this 29 day of May, ~~2007~~ 2008

Signature

Printed Name

Stafford Creek Corrections Center

191 Constantine Way, Unit #

Aberdeen, Washington 98520

Joe Edington

Joe Edington

DOC#

W2-B-58