FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY _____ DEPUTY

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

Donald Leslie Hadley, Petitioner,	Case No.: 35862-0-II
vs.	STATEMENT OF ADDITIONAL GROUNDS, PURSUANT TO RAP 10.10
State of Washington, Respondent	

STATEMENT

I, Donald Hadley, 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

The Prosecutor Denied the Defendant His Right to Due process Under United States Constitution Fourteenth Amendment and Washington Constitution Article 1 § 3 when it Supressed Exculpatory and Impeachment Evidence

ADDITIONAL GROUND 2

THE PROSECUTOR Withheld Exculpatory Evidense FROM the defendant in the FORM OF Interviews BY LONGVIEW Police Detative Deisher with Complaining Witness, which violated the defendants, United States Constitution Fourteath Amendment, AND WASHINGTON State Constitution Article 1 § 3

ADDITIONAL GROUND 3

THE TRIAL COURT Denied the DEFENDANT A FAIR TRIAL Under the Code OF Judicial Conduct, CANON 3(D)(1)(d)(iii) AND Due Process Rights UNDER United States Constitution Fourteenth AND SIXTH Amendment AND WASHINGTON State Constitution Article 4 § 16, Article 1 § 3 when it addressed the Complaining witness AS the victim OF THE ASSAULT.

ADDITIONAL GROUND 4

TRIAL COUNSEL'S FAILURE to object when the State introduced untested Scientific evidence. TRIAL COUNSEL violated RPC 1.6. These denied the DEFENDANT his Right to Effective Assistance OF COUNSEL UNDER United States Constitution, SIXTH AMENDMENT AND WASHINGTON CONSTITUTION

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 10 day of JANUARY, 2008.

Donald Leslie Hadley
(AppellantSignature)

DONALD Leslie HADLEY
(Appellant's Printed Name)
Stafford Creek Corrections Center
191 Constantine Way, Unit # H4-A95
Aberdeen, Washington 98520

ADDitional Ground I. ①

The Prosecution supressed EXCULPATory. [redacted] EVIDENCE FROM the CHARGING JUDGE AND CHARGING PAPERS where FALSIFIED.

A. THE Report FROM DR. Leslie At St. JOHNS Hospital EMERGENCY ROOM stated, MS. FRISK (COMPLAINING WITNESS) EXPLAINED she had been very INTOXICATED the Night before AND had Fallen several times SUSTAINING her injuries. DR. Leslie wrote in his REPORT: (RP. 270,271) "RULE out Physical ASSAULT (RP. 263,264) Without the Prosecutor's SUPRESSION OF this REPORT, there would have been A signif-icant PROBABILITY that NO CHARGES would have been Filed.

B. THE PROSECUTOR FALSIFIED the CHARGING PAPERS BY STATING that the Complaining Witness had A SKULL FRACTURE. THE EMERGENCY ROOM SURGEON Testified, she had A LASERATION ON the back OF her head which he put staple's IN. (RP. 248)

Additional Ground I. (cont.) (2.)

U.S. v. Gil, Brady material must be dis-
-closed in time for its effective use at trial

Under "Brady", McCambridge v. Hall
(1) Brady Obligations Apply to a prosecutors con-
-duct even when the defense has not re-
-quested the discovery of exculpatory evidence
(2) A prosecutors duty to disclose exculpatory
evidence under "Brady" extends beyond his
or her personal knowledge of such evidence.

State of Washington v. Jacob Melvin
Korum at [162] State, 86 Wn. 2d 200,205
544 P. 2d 1 (1975) Governmental
Misconduct or Arbitrary Action by a Prose-
cutor warrants dismissal of charges under
CrR 8.3(B).*FN 43 Starrish 86 Wn.
2d At 206.

Additional Grouds I. Cont. ③

Under Brady v. Maryland, Supression of favorable evidence violates Due Process U.S. v. Turner, 104 F. 3d 217 (8th Cir. 1997) U.S. v. Blais, 98 F. 3d 647 (1st Cir. 1996) ① A Brady error occures when government supresses "material" information that is favorable to the defense, information is material if there is a reasonable probability that, had the evidence been disclosed to the Defense, result of the proceeding would have been different. ② The Brady Rule, which prohibits government from supressing evidence favorable to the defense applies to impeachment and exculpatory evidence

In the case at bar, without the [redacted] erroneous violations by the prosecutor there would have been a significant [redacted] probability that no charges would have been filed.

Additional Ground II. ①

Three interviews were conducted by Detective Deisher of The Longview Police Department with the Complaining Witness (Ms. Frisk.) but only one was revealed to the defense before trial. A second interview was revealed in trial and a third was never revealed, where Det. Deisher went to Ms. Frisk home to conduct another interview. (RP. 217)(RP. 208 17-18) These interviews and statements shine serious doubt on the truthfulness of Ms. Frisk, concidering each one is differant and she admits she only said these things because of what she had heard from her family. (RP. 209)(RP. 216)(RP. 424) ① AT RP. 357 She tells her mother, "she fell in the front yard. ② RP. 263 "she tells Dr. Leslie She fell "several" times ③ she tells Det. Deisher "she was struck with a bat in the front yard and [redacted] 14 months after the night in question she discovered that she hadn't walked home with the

defendant as she previously thought so in trial she Testified to something else to corispond with the fact she had walk to her ex-boyfriends home a block away from the bar, only to have to be escorted home by Longview Police due to her extreme intoxication.(4) She testified to "walking in to her home and hearing a voice behind her, alledgedly the defendants. She also testified to not knowing or remembering that she had walked to her ex-boyfriends (Art Anderson). *FN #4 (There was no electricity or lights in Ms. Frisks home) Ms. Frisk's testimony at trial should not have been allowed by the prosecutor considering the different stories and the fact that the prosecution had already addressed the court that Ms. Frisk had no memory of how she sustained her injuries. R.P 5 #25 RP 6 #-1-3, RP 3 RP. 270, 271

Additional Ground II cont. (3).

Additional memory problems by Ms. Frisk AT - RP.(143,144)(194,195)(196,197)(205,206)(423,432,413)

In the case at bar as in,

Strickler v. Green, Warden (1999)

[17] The prosecutor failed to disclose exculpatory materials in the police files consisting of notes taken by a detective during interviews with Stoltzfus and letters written by Stoltzfus to the detective that cast serious doubt on significant portions of her testimony.

The District Court later vacated the the petitioners capital murder conviction and death sentence on the grounds that the commonwealth had failed to disclose those materials and that petitioner had not, inconsequence, recieved a fair trial.

In Bracy et al. v. United States RP 1 #[11] United States v. Basurto 497 F.2d 781, 785-786 (1974)

Which held that, perjury by a witness would invalidate an indictment only when his testimony is material. At #12 applicants rely upon such cases as, Mooney v. Holohan, 294 U.S. 103 (1935) in support of their contention that the disclosure of the perjury require the court to declare a mistrial on its own motion. Pet. For Cert. 10. In that case this court first held that the knowing introduction of perjured testimony at a criminal trial rendered the resulting conviction constitutionally invalid. Later cases have held that the prosecutor has a duty to correct testimony he knows to be false, even if its introduction was not knowing and intentional. Giglio v. United States 405 U.S. 150 (1972) Napue v. Illinois, 360 U.S. 264 (1959) Applicants suggest that the prosecutor has a similar duty with regard to testimony introduced in grand jury proceedings which is later shown to be false.

Additional Ground III. ①

THE TRIAL COURT REFERED to the Complaining WITNESS AS "the victim" in the motions in LIMINE AND AGAIN INSTRUCTING the JURY BEFORE CALLING the FIRST WITNESS, REFERED to the complaining WITNESS AS "THE victim OF the ASSAULT BY the defendant."

IN Addition to these opinions by the TRIAL COURT being UNFAIR AND prejudicial to the DEFENDANT, the TRIAL COURT Violated it's own motion granted in LIMINE #7 that the Complaining WITNESS WAS NOT to be REFERED to AS the "victim", But could be REFERED to AS THE "ALLEDGED VICTIM."

Motion in LIMINE 33-34 #7 RP. 73
THE TRIAL COURT GRANTS (IN PART)
ANY REFERANCE to the COMPLAINING WITNESS AS the victim, SUCH A REFERANCE is AN IMPROPER OPINION OF THE complaining WITNESS'S CREDIBILITY, State V. Smith, 56 WN. App. 909, 786 P. 2d 320 (1990), AND AN improper opinion OF the defendants GUILT. State V. DOLAN, 118

WN. App. 323, 73 P. 3d 1011 (2003). See also Allen v. State, 644 A. 2d 982, 983 N. 1 (Del. 1994) ("When, as here, concent is the sole defense in a rape case, the use of the term "victim" by a prosecutor at Trial is improper and should be avoided.) Accord Veteto v. State, 8 S.W. 3d 805, 816-17 (Tex. App. 2000); State v. Wright, 2003 Ohio 3511, P.6 (Ohio ct. - App. 2003.) a. This is particularly True in cases where the issue is ((whether a crime was committed (as in - - the case at bar.)) as opposed to cases where it is obvious a crime was committed and the only question is whether the defend- -ant did it. If the issue is whether a crime occured, calling the witness a "victim" reinforces the governments case by expressing an opinion that the witness is telling the Truth, a crime was committed, and the Defendant [redacted] committed the crime.

Additional Ground III cont. (3)

In state v. Eggleston [85]
we reviewed alledged errors of law
in a trial courts jury instruction de novo
State v. Willis, 153 Wn. 2d 366, 370
103 P. 3d 1213 (2005) instructions are
inadaquate if they prevent a party from
arguing its theory of the case, mislead
the jury, or misstate the applicable law,
Barrett, 152 Wn. 2d at 266
(citing Bell v. state, 147 Wn. 2d 166,
176 52 P. 3d 503 (2002) see also state
v. Tili, 139 Wn. 2d 107, 126, 985 P. 2d 365
(1999) failure to permit instructions on a
party's theory of the case, where there is
evidence supporting the theory, is reversible
error.

Code of Judicial Conduct (CJC)
Canon 3(D)(1)(d)(iii) requires a judge to
disqualify himself from a proceeding if his
impartiality might reasonably be questioned.

Additional Ground III. (4) cont.

THE (CJC) recognizes that where a trial judges decisions are tainted by even a mere suspicion of partiality, the effect on the publics confidence in our judicial system can be debilitating. Additional abuse of discretion and [redacted] partiality on behalf of the trial court is addressed in the Appellant Attorney's Breif, Arguments I, II and III pg. 14-31

without these errors, [redacted] there's a significant probability that the defendant would not have been charged with this crime

Additional Ground IV cont. (1)

Article 1, § 22

Trial counsel violated RPC 1.6 as adopted in Washington, states: A lawyer shall not reveal confidences or secrets relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in sections (b) and (c). (Emphasic Added). RPC 1.6 prohibits an attorney from disclosing client confidences and secrets. A 'confidence' is defined by the RPC as information protected by the attorney-client priviledge under applicable law. RPC terminology, A 'secret' refers to other information gained in the professional relationship that the client has requested be held in violate or the disclosure of which would be embarrassing or would likely be detrimental to the client. It is a fundemental principle in the client-lawyer relationship

Additional Ground IV. Cont. (2)

... that the Lawyer maintain confidentiality of information relating to the Representation. 'ABA, model Rules of Prof"L Conduct R. 1.6 Cmt. 4 (1991). (Refer to Additional Ground II, (1) #3) Trial Counsel Failed to object to Evidence admitted by the state that was scientificly untested by a lab. or technician. This evidence was a "Backscratcher" Refered to as the weapon that was used to inflicked the injuries. Clothes and sheets, pillow case ect. All of this evidence (untested) Alledgedly had blood and or hair belonging to the complaining witness. This untested, Prejudicial evidence was unfair and denied the Defendant a fair trial. This evidence was also tampered with Before the police bagged it for evidence by the complaining witnesses Family. Refer to RP. 350 and 349 (Parkhurst)

Additional Ground IV. cont. (3)

*FN. The argument to Trial Counsel's Violation of RPC 1.6 is, The Defendant informed Trial Counsel That the complaining witness had been to her ex-boyfriends after leaving the bar and had to be escorted home by the Longview police. This was in contrast to what the Complaining witness had told Detective Deisher in an interview conducted earlier. Instead of gathering the information from the 911 transcripts or (Longview police reports) the Trial Counsel Called Art Anderson (ex-boyfriend) to enquire about the information he had recieved from the Defendant. This "spilt the beans" so to speak when the complaining witness was informed by the ex-boyfriend that she had been there and escorted home by the police. This allowed Ms. Frisk To [redacted] change her story in trial. (which Trial Counsel did not impeach.)