COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

08 OCT 22 AM 11:55

STATE OF WASHINGTON
BY _____
DEPUTY

STATE OF WASHINGTON Respondent, v. BERT LEE WIDMER (your name) Appellant.	)))))))))))	No. 37375-1 II STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

I, Bert L Widmer, 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

Additional Ground 2

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

Date: 10-20-08

Signature: Bert L Widmer

Form 23

TO: Division II Court of Appeals
David C. Ponzoha, Clerk
950 Broadway, Suite 300
Tacoma, Wa 98402-4454

FROM: Bert Lee Widmer
Court of Appeals No.
37375-1-II/Clark
County No. 06-1-01670-0
Clallam Bay Correction Center
Clallam Bay, Wa 9326

(SAG)

STATEMENT OF ADDITIONAL Grounds
FOR BERT LEE WIDMER Court
of Appeals No. 37375-1-II.
Clark County No. 06-1-01670-0

(1) IN the taped conversation between the Detectives and I, I gave the name Sharon, they wouldn't tell me if that was her so I ask if she was blind. (Page 9)

(2) The Detectives lied when asked if there were any further questions on (Page 12/3) there are parts of our conversation missing in transcripts. IN the Discovery they went to look for my witnesses but there's no mention of our conversation about that. They didn't put our whole conversation from the tape into the Discovery. They lied, I want the tape conversation.

(3) The Detective testified my story was consistent to the question given to me. (Page 23)

(4) If I take the stand my criminal History could be used, they would discuss what they could use. (Page 33) I contest the charges they can use against me, the Burg 2 which was not a felony conviction. (Page 39, 40) This also shows I wanted to take the stand.

(5) Discussion of Ms. Adams taking stand and testifying to what

(5) She Saw, and M.S. Paul will testify her medical exam will be consistent with Sexual Intercourse. (Page 41)

(6) The State Is offering to show the Jury three photographs of me, all my tattoes on my arms, chest, stomach and Face. They Claim For identification Purposes of me on Film at Mcdonalds. (1) I Clearly Identified myself on Film, (2) You Clearly Could Not See any of my tattoes on the Camera. My attorney should of Clearly objected to these Pictures of my tattoes being Showed to the jury I identified myself on Film! (Pages 42-45)

(7) Seargeant Sharpho's testimony Is totally different From his Police report. IN Police Report She was totally Calm and Sitting on a Couch. When taking the stand he Claims She was upset met him at the door, She had visible Swelling. No cuts, Black eyes, Fat lip Consistent with a beating. (Page 54-60) Now the Seargent is being Shown pictures and cash Question which he Clearly States are accurate and remembers them. Page (58) they discuss the lighting Is bad on the pictures taken of Ms. adams (Page 60-63) Pictures of Items in the apartment and Ms. adams the flash Caused them to look washed out (Page 63-69) Seargeant Sharpho was Questioned about his testimony was different From his Initial police report it was Inconsistent. Questioned also about Ms adams Said I was In the apartment when She got home. My eaten Mcdonalds Cup was there, her handbag was on

(7) the door and there was no sign of forced entry.

(8) Officer Letarte takes stand and gives a totally different testimony than Sgt. Sharpho claims Ms. adams was calm and sitting on the couch (Page 70-)

(9) Discussing evidence collected at the scene, also Ms. adams claims money was taken from her, they started collecting evidence, but then was told to stop because it would be collected by detectives. Again they found no forced entry into apartment. (Page 70-80)

(10) Testimony about my ice cream cup is different from what he said in police report. Ice cream cup was empty with spoon in it inside apartment consistent with someone eating it. (Page 80-)

(11) Officer Letarte being questioned about the apartment being locked. Testified Ms. adams specifically said she locked both locks. Claims I was in apartment when got home, hit her 10-20 times. Officer could find no sign of forced entry. (Page 80-88)

(11) Officer Geddry takes stand claims he's going on memory from four years ago and the lighting in pictures is bright (Page 88-98)

(12) MS. Paul takes stand medical examiner. (Page 100-117) The exam itself the procedure and the fact she lost her pictures she was going by memory. (Page 122) Redened area outside vagina, Sharon adams later testifies she wiped herself with a rag. (Page 122-130) Testified are normal signs of sexual activity, no tearing, bruising or sign of forced sex. (Page 130-131) Ms. Paul also Testified that Ms. Adams told her she was to meet me at her apartment which proves she knows me and she's lying

(13) District Attorney trys to convince the jury that saliva could act as a lubricant for the vagina thats why there was no injury. My attorney argued there was know proof found of saliva by exam. (Page 131-135)

(14) MR. Becerra from Mcdonalds (Page 135-149) Testified there are only two camera's facing the counter. The timeline was discussed, the description of me and the Mcdonalds sundae I purchased

(15) Hearsay Evidence Rule 806 using Detectives testimony as Hearsay to claim that my statements to them could be used as admission or self-serving (Page 153-160) Discussed the two crimes they could use against me which I challenged and still wanted to take the stand and my lawyer never let me.

(16) Ms. Adams takes Stand (PAGE 166-) 169 states she's married but seperated. (169-) Sharon Adams testifies She left work to go home at pm 7:00 got home both locks were locked. Claims opened the door I was inside and pulled her inside, knows for certain I wasn't behind her. Claims she offered purse, money, but attacker never asked for these. Claims I threatened to beat her if she went for phone, she was blind why wasn't the phone just taken or un-plugged. Now claims I was striking her and pushing her down the hall way. Was I doing all this and eating my sundae too? Now claims I took her to bedroom and told her to take off her pants. Now claims I inserted my penis and that was my only sexual act. Now the State asked if I had an erection Now she recalls I did not I was placid, so I didn't insert my penis. Now claims I entered her and she claims she told me she enjoyed it, but was only pretending. Now she is describing everything about me, my clothes, hair, jewelry, build. I wore a ring if I punched her 10-20 times she would have cuts on her face. How was she able to know so much about me in so short of time? Because she new me. Again testified she did not feel me ejaculate in her and I performed no other sexual acts. Now comes up with story I claimed I was Hispanic ask for no money and left (169-191) Claims she waited around 10 minutes to make phone call, to the police.

(16) MR. BARRAR Questions Ms. Adams (page 199-227) Again she testifies I was in the apartment. Testified would take her 5-10 minutes to walk from church to her apartment She left at 7:00pm arrives home around 7:10pm. Again questioned about locks and windows and she lives on a Second Flair apartment. Her testimony was different from what she told Detectives. She told Detectives I asked for money, then testified I didn't ask for money. Testified she had a brief case with $40 hidden in it, it would take some time for someone to find it. Now claims I am going through bag looking for money while assaulting her, again her story has changed. Now claims she told me about another bag with money on it hanging from the door knob of her bedroom. Claims I was digging through that one for money also while still assaulting her. Told Detectives I had oral sex with, but now testifies I did not, but now she remembers I did and she used that to allow more time. Tells Detectives about my Sunday cup and a few other items, how did she know about those. She testified a couple of times she couldn't recall what she did that afternoon. Now she says she would of been home around 3 or 4. Now the State question her again and now her story changes again now she claims I asked for money took money from wallet and handbag. Her statement to Detectives was I took wallet, credit cards and money, but now her story is over $40. Now MR. Fairgrieve leads her

(16) to remember she allowed the attacker to have oral sex with her. Page 230

(17) DETECTIVE SMITH TAKES STAND (Page 264-300) Detective arrives at apartment examines the whole lay-out finds no sign of forced entry. They have pictures of the lock, windows, doors the complete lay-out of apartment Evidence gathered my sundae cup, book, paper with writing on it. They go to the Mcdonalds to look at the surveillance video. (This will really prove my innocents) (Page 297) I am on video buying a sundae and food at 1909 and 34 seconds I am again shown leaving at 1910 and 39 seconds. Ms adams is already home. The call come in from Ms. adams at 19:35 she already testified she waited 5-10 minutes to call and it would of took me 3-5 minutes to get to the apartment.

(18) Detectives testified I refered to Sharon as the Blind women, I gave them Sharon's name, but they wouldn't tell me if that was her (Page 305-306) Again why wasn't our taped conversation entered as evidence

(19) Again No forced entry (Page 307)

(20) DISTRICT ATTORNEY ADMITS TESTIMONY IS INCONSISTENT From Ms. adams and Detectives, its okay for them but Not for me to remember everything perfectly fair

(20) 1 years ago (Page 379)

(21) District Attorney trying to convince Jury I was behind her outside her apartment (Page 388) Impossible had Sunche and Food In my hands.

(22) Page 300 - Timeline Discussed with Detectives along with the fact there was No Forced Entry.

(23) They, the D.A and my attorney give there version of what they think happened. Now I'll give you mine which IS the truth and No way could it be argued because the timeline prove it.

(24) Page 420-442 I bring up the Fact I had witnesses that could have put me and Sharon together and my attorney never Subponea them and I also tried to take the Stand. I've enclosed complaints to the Washington State Bar and letters I Filed In the Courts to Judge Nichols.

ON June 11th 2003 a crime was reported that was Not true and I will beable to prove that due to the inept and poor performance from my attorney I was Convicted of Crimes I did Not Commit. If MR. JEFFREY BARRAR would have done his Job I would have been Found Not Guilty. MR. BARRAR lied to me on Several occasions. He allowed me to Sit In CLARK County Jail For 10 months before Sending a Investigator to me. When the Investigator arrived I gave him Information of two people From Church who Could testify In my behalf that Sharon & I Not only New eachother, but we were In a relationship. Five days before my trial my lawyer Informed me he had located my witnesses In West Lynn Oregon he was going to Interview them. The day of my trial I had NO witnesses. When I ask where they were he claimed he couldn't find them. I brought this up to Judge Nichols along with the Fact I tryed to take the Stand and decieved me and I Never got to take the Stand. I was told at Sentencing to take these matters up In the appeals Court. Now I am going to tell you what really happened that day On June 11th 2003.

I was at Sharon Adams APARTMENT Most of the day She came home around 3 or 4 I had been drinking and we attempted to Fool around. I Could Not obtain an erection so She Fondled me and I eJaculated on her Vagina Never In her. She then Cleaned

herself with a rag changed clothes and left. Around 7:00pm that night I left the apartment to go to Mcdonalds to get something to eat while there Sharon has already arrived home. Upon returning to her apartment we get into a fight about money, She accuses me of stealing her wallet. I arrive at her apartment around 7:15pm I slapped her in the face, Never punched her because she wouldn't let me leave the apartment kept screaming give me my wallet. She latched herself onto me and I strugled to get her off me more of a pushing and shoving altercation. This latest around five minutes and I left. It is impossible for me to have done all the things she claimed. I Left Mcdonalds at 7:10pm arrived at apartment at 7:15pm had arguement, Fight over money 7:20-7:25- left apartment. She testified she waited 5 to 10 minutes to make call which was 7:35pm. They found my sundae cup completely eaten in apartment, No forced entry which proves I was let in. There is no way I was able to leave Mcdonalds, get in the apartment Beat her, go through two purses that had money hidden then rape her all in ten minutes. My lawyer failed to introduce the facts of the timeline. The Detectives made me believe her beating was so bad they wouldn't show me the pictures I denied that type of a assault. I wore a ring on my finger and she testified I punched her 10-20 times, but there was not one cut on her face, No black eyes, broken nose, Fat lip

No bleeding only some swollen cheeks. If you evaluate the time line I had only ten minutes to do every-thing she claimed. How was she able to describe every-thing about me in only 10 minutes if she didnt know me. She also testified to Ms. Paul the medical examiner she was going to meet me at her apartment which clearly proves she new me and was lying and hiding are relationship. She clearly didnt want people to know she was having an affair with me and she was angry because she thinks I stole from hear. I came back to her apartment on several occasions not knowing I was been looked for. I filed several complaints to the Bar about my lawyer which I've enclosed along with this brief. Again the time-line proves without a shadow of a doubt it was impo-ssible to have done everything she claimed. The District ATTORNEY'S theory that I sneak up behind her is impossible because I had a sundae in my hand. My conviction should be over-turned.

Sincerely,

Bert Lee Widner

Bert Lee Widner

Honorable Judge Nichols
Dept. 3 P.O. Box
5000 Vancouver, wa 98666

Bert Lee Widmer # 172888
case # PO Box 1147
Vancouver, wa 98666

RE: Request for new counsel to seek a New trial.

Your Honor,

On October 3rd 2007 I was convicted of crimes in your courtroom, crimes I did Not commit. The conviction was the result of a Miscarriage of Justice brought about by the inept and unproffessional handling of my case by my attorney. (Jeff Barrar) He failed to introduce or make known key elements of the case or call two witnesses essential to proving my innocence. By suffering from an inadequate defense I am Now facing a substantial amount of time in Prison. In order for Justice to be served in my case I feel I should be allowed the opportunity to seek a New counsel, who can attempt to obtain a New trial on my behalf. The incompetent manner in which my case was handled deprived me of a

Fair trial. Important testimonil and Not calling my two witnesses resulted In the lack of time and effort my attorney dedicated to my case. A New trial with a different attorney one who is capable of offering me a legitment chance of proving my innocence is the only way to ensure I recieve Justice. I do Not want to compromise the integrity of the case by giving specific example, but I do believe there is sufficient reason to merit consideration by this court for New counsel as the First step to seeking a New trial. I am asking that my request be given serious consideration due to the extreme Nature and severity of the consequences Iam faced with. On October 21st 2007 State vs Ford brought up the same facts to Judge Wulle, and was granted New Counsel at the day of his Sentencing. Thank you for your time.

Sincerely

Bert L Windmer
Bert lee Widmer
172888
Bert L Windmer

TIMOTHY L. SHOTWELL
COMMISSION EXPIRES
NOTARY
PUBLIC
SEPTEMBER 15, 2011
STATE OF WASHINGTON

Timothy Shotwell
NOV. 7, 2007

(1)

WSBA

OFFICE OF DISCIPLINARY COUNSEL

Felice P. Congalton
Senior Disciplinary Counsel

December 19, 2007

Jeffrey D. Barrar
Attorney at Law
500 W 8th St Ste 230
Vancouver, WA 98660-3086

Re: WSBA File: 07-01803
Grievance filed by Bert Widmer

Dear Mr. Barrar:

We received the enclosed information on December 17, 2007 from Mr. Widmer.

Under the Rules for Enforcement of Lawyer Conduct, we are providing the information to you. A Review Committee of the Disciplinary Board will consider the information.

Sincerely,

Felice P. Congalton
Senior Disciplinary Counsel

Enclosure

cc: Bert Widmer
(without enclosure)

(2)

WSBA

OFFICE OF DISCIPLINARY COUNSEL

Felice P. Congalton
Senior Disciplinary Counsel

January 25, 2008

Bert Widmer
#311073
Washington Correction Center
PO Box 900
Shelton, WA 98584

Re: WSBA File: 07-01803
Your grievance against lawyer Jeffrey D. Barrar

Dear Mr. Widmer:

We received the enclosed information dated January 17, 2008 from Mr. Barrar. We previously mailed this information to you at the Clark County Jail on January 23, 2008.

Under the Rules for Enforcement of Lawyer Conduct, we are providing the information to you because it was submitted in response to your grievance about a lawyer's professional conduct. If you have additional information to assist us in evaluating your grievance, please submit it to us within **two (2) weeks** from the date of this letter.

Sincerely,

Felice P. Congalton

Felice P. Congalton
Senior Disciplinary Counsel

Enclosure

cc: Jeffrey D. Barrar
(without enclosure)

January 17, 2008

Additionally, Mr., Widmer would not have made a very good witness. He was angry, had poor communication skills, and would not handle cross-examination well. Based on these reasons I advised him at the close of the State's case that I did not think he would benefit his case by taking the stand on his behalf. I remember clearly Mr. Widmer agreeing with me and he made the decision not to testify.

This is consistent with my practice throughout my career. I understand that the decision whether or not to take the stand is left to the defendant after advise of counsel. I am confident that I followed that practice in this case.

Sincerely,

Jeffrey D. Barrar
Attorney at Law

This IS A poor excuse why he didn't let me take the stand

(1)

WSBA

OFFICE OF DISCIPLINARY COUNSEL

Felice P. Congalton
Senior Disciplinary Counsel

January 7, 2008

Jeffrey D. Barrar
Attorney at Law
500 W 8th St Ste 230
Vancouver, WA 98660-3086

Re: WSBA File: 07-01803
Grievance filed by Bert Widmer

Dear Mr. Barrar:

Enclosed is a copy of the Review Committee's order dated January 4, 2008, requiring a written response from you concerning the allegation that you refused to allow the grievant to testify. Please provide us with your written response within **two (2) weeks** from the date of this letter.

You must personally assure that all records, files, and accounts related to the grievance are retained until you receive written authorization from us, or until this matter is concluded and all possible appeal periods have expired. Absent special circumstances, and unless you provide us with reasons to do otherwise, we will forward a copy of your response to the grievant. The grievance process is governed by the Rules for Enforcement of Lawyer Conduct (ELC). ELC 5.3(e), a copy of which is enclosed with related rules, sets out the obligations of a respondent lawyer, including the duty to promptly file a written response.

Sincerely,

Felice P. Congalton
Senior Disciplinary Counsel

Enclosure

cc: Bert Widmer
(without enclosure)

(2)

WASHINGTON STATE BAR ASSOCIATION
DISCIPLINARY BOARD
1325 Fourth Avenue, Suite 600 · Seattle, Washington 98101-2539
Telephone: (206) 727-8280 · Fax: (206) 727-8314

LARRY KUZNETZ
Chair of the Disciplinary Board

NOTICE

Attached is a copy of the Findings and Order of the Review Committee of the Disciplinary Board. Please note the appropriate section below for information on the findings, conclusions and order of your grievance:

☐ **Dismissal**

If the review committee orders the grievance be dismissed with no further actions, the grievance will be dismissed. The decision of the Review Committee is not appealable.

☐ **Advisory Letter**

When a Review Committee dismisses a grievance, it also may send the lawyer an advisory letter cautioning the lawyer about his or her conduct. An advisory letter is not a finding of misconduct, is not a disciplinary sanction, and is not public information. It is intended to warn and educate the lawyer about conduct that could result in similar grievances.

☐ **Admonition**

If the Review Committee determined that there was sufficient misconduct under the Rules for Enforcement of Lawyer Conduct (ELC) to warrant the issuance of an Admonition under Rule 13.5 of the Rules for Enforcement of Lawyer Conduct, a written Admonition will be issued shortly, and made a part of the lawyer's records with the Washington State Bar Association. An admonition is public information. ELC 3.1(b).

The respondent lawyer may file a protest of the Admonition within 30 days of service of the Admonition. Upon receipt of a timely protest, the Admonition is rescinded, and the grievance is considered to have been ordered to a public hearing by the Review Committee issuing the Admonition. The grievant will be notified if a protest is filed by the respondent lawyer. A grievant may not protest or appeal the issuance of an Admonition.

☒ **Order to Hearing or for Further Investigation**

If the Review Committee has ordered a public hearing or returned for further investigation, and you have any questions, please contact the Disciplinary Counsel in charge of the file or the Office of Disciplinary Counsel at (206) 727-8207.

☐ **Other:** _____

If you have any questions, please contact the Disciplinary Counsel in charge of the file or the Office of the Disciplinary Counsel at (206) 727-8207. The decision of the Review Committee is not appealable.

Date: 1/14/08 **File Number:** 07-01803

Mailed To: JEFFREY DAVID BARRAR, BERT WIDMER

(3)

BEFORE THE DISCIPLINARY BOARD OF THE
WASHINGTON STATE BAR ASSOCIATION.
Seth Fine (Chair), Shea C. Meehan, ~~Clementine Hollingsworth~~ Mindy Anderson
FINDING AND ORDER OF REVIEW COMMITTEE IV

Respondent Lawyer: JEFFREY DAVID BARRAR **W.S.B.A FILE NO.: 07-01803**

Respondent's Counsel: **Grievant: BERT WIDMER**

Having reviewed the materials regarding the above captioned grievance, Review Committee IV of the Disciplinary Board of the WSBA hereby makes the following findings, conclusions and order pursuant to the authority granted by Rules 2.4, 5.3, 5.6 and 8.2 of the Rules for Enforcement of Lawyer Conduct (ELC):

( ) There is sufficient evidence of unethical behavior to take further action, and IT IS ORDERED: that a hearing should be held on the allegations of the grievance.
( ) and consolidated with other grievances against this lawyer.

( ) There is no evidence or insufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and IT IS ORDERED: that the grievance should be dismissed with no further action. Should there be a judicial finding of impropriety, the grievant may request that the grievance be reopened.

( ) The allegations in the grievance do not constitute misconduct under the Rules of Professional Conduct. Hence, the WSBA does not have the authority to take further action, and IT IS ORDERED: that the grievance should be dismissed with no further action.

( ) The allegations in the grievance do not constitute a sufficient degree of misconduct which would warrant further action except IT IS ORDERED: that an admonition should be issued to the lawyer. (ELC 13.5)

( ) There is not sufficient evidence of unethical behavior to prove misconduct by a clear preponderance of the evidence, and it is ORDERED that the grievance is dismissed, but an advisory letter be sent to the lawyer pursuant to ELC 5.7 cautioning the lawyer regarding

_____

_____

(✓) There is a need for further information and IT IS ORDERED that further investigation be conducted in the area of: OBTAIN RESPONSE FROM RESPONDENT CONCERNING ALLEGATION THAT HE REFUSED TO ALLOW GRIEVANT TO TESTIFY

( ) There is pending civil or criminal action which involves substantially similar allegations and IT IS ORDERED that investigation and review of this grievance should be deferred pending resolution of the civil or criminal litigation.

( ) IT IS ORDERED under ELC 5.3(f) that respondent lawyer pay $_____ in total costs and expenses in connection with his or her failure to cooperate with the disciplinary investigation(s), as documented in the Report to Review Committee.

( ) and IT IS ORDERED_____

_____

Dated this 4TH day of JANUARY ~~2007~~ 2008

The vote was 3-0

Seth Fine

Seth Fine, Chairperson of Review Committee IV

AFFIDAVIT OF SERVICE BY MAILING

Cause of Action: (Civil) Criminal): DIVISION II COURT OF APPEALS BRIEF (SAG)

I, BERT LEE WIDMER, Plaintiff pro se, in the above cause of action, did serve the following documents upon the listed party(ies).

(1) AFFIDAVIT OF SERVICE BY MAILING
(2) STATEMENT OF ADDITIONAL GROUNDS BRIEF
(3) Letters to Court (Judge Nichols)
(4) Letters, Complaints to Washington State Bar

FILED
COURT OF APPEALS
DIVISION II
08 OCT 22 AM 11:55
STATE OF WASHINGTON
BY DEPUTY

I BERT LEE WIDMER do here by certify under penalty of perjury under the laws of the State of Washington that I have caused a copy of the above listed documents to be mailed to the party(ies) by placing same in a secured envelope properly addressed with the correct postage provided for, then surrending the same.

TO: DAVID C. PONZOHA, CLERK
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, Wa 98402-4454

AT: Clallam Bay Correction Center 1830
Eagle Crest Way, Clallam Bay, Wa 98326

DATED ON This 20th DAY OF OCTOBER, 2008

Signed By: Bert L Widmer

BERT LEE WIDMER
Clallam Bay Correction Center
1830 Eagle Crest Way
Clallam Bay, Wa 98326