

CS646-5

# 1  
CS646-5

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION 1

RECEIVED  
FEB 15 2011  
Washington Appellate Project

STATE OF WASHINGTON, )  
)  
Respondent, )  
)  
v. )  
MR ALVIN GEORGE WALKER SR )  
)  
Appellant. )

65646-5

No. 08-1-12516-1 SEA

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW  
RAP 10 10

FILED  
2011 FEB 15 PM 4:35  
CLERK OF COURT  
APPELLATE PROJECT

I, \_\_\_\_\_, 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

ABUSE OF DISCRETION: FOR JUDGE R.S. CAHAN  
KING COUNTY COURT SUPERIOR ROOM E-746  
FOR CALLING FOR A RECESS WHILE THE VICTIM  
WAS ON THE STAND, VICTIM DID NOT RETURN  
AND I THE DEFENDANT DID NOT HAVE A  
CHANGE TO FACE MY ACCUSER AS REQUIRED  
BY THE UNITED STATES CONSTITUTION

Additional Ground 2

I ALVIN GEORGE WALKER SR HAVE A WITNESS  
THAT WILL PROVE I DID IN NO WAY COMMIT  
THE CRIMES THAT THE JURY FOUND ME GUILTY OF

IN THIS CASE. ATTORNEY CHRISTOPHER SWABY HAD CORRAL NOUAGE OF WHITNESS, TALK TO WHITNESS PHILLIS BARGUETT BUT DID NOT ASK FOR A CONTINUANCE ON MY BEHALF TILL MISS BARGUETT COULD BE FOUND!

Additional Ground 3

THE FACT THAT ATTORNEY PUT ME ON THE STAND AND I DID NOT WANT TO GO HE MR SWABY TOLD ME AFTER ASKING ME TO GO ON STAND, TOLD ME THERE WILL BE NO CONTINUANCE, THE PROSCUTOR WAS READY TO GO ON WITH TRIAL.

Additional Ground 4

ALSO THERE WAS INFO MATION HANDED OVER TO MR SWABY ATTORNEY, FROM MY FIRST ATTORNEY MRS KRISTEN MURRY FROM THE SAME FURM, THAT WOULD HAVE CHANGED TO THE OUTLOOK OF TRIAL ALSO, SWABY SHOWED NO DEFENCE FOR ME,

ALSO MR. SWABY RENERED INEFFECIUE ASSISTANCE BY FATLING TO CONDUCT AN APPORPRIATE PRETRIAL INVESTIGATION FATLING TO INVESTIGATE AND DETERMINE WHAT LEGITIMATE DEFENCE WERE AVAILABBLE AND FATLING TO SUBONA AND SCURE MATERIL WENTNESS WARRANTS SHOWES

DEFICIENT PERFORMANCE.

ALSO FAILURE TO INVESTIGATE

FACTS IN MY CASE,

AND FAILED TO PROCESS MOTION

PAPERS FOR MY APPEAL. ALSO SHOW THAT COUSE

ERRORS WERE SO SERIOUS THAT THEY DEPRIVED ME OF A FAIR TRIAL

ALSO THERE IS A REASONABLE PROBABILITY THAT FOR COUNSEL ERRORS THE RESULT OF THE TRIAL WOULD HAVE BEEN DIFFERENT.

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

Date: AUGUST 14TH 2010

Signature: Mr. Allen George Walker PRO SE

Form 23

FORM STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

STATE OF WASHINGTON )  
 )  
 Respondent, )  
 )  
 v. ) No. 65646-5-i  
 )  
 ) STATEMENT OF ADDITIONAL  
ALVIN GEORGE WALKER SR. ) GROUNDS FOR REVIEW  
 (your name) )  
 )  
 Appellant. )

I, ALVIN G. WALKER SR., have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in the opening brief. I understand the Court will review this Statement of Additional Grounds for Review when my case is considered on the merits.

Additional Ground 1

THE FACT THAT THE PERSON OF RECORD A MRS. PHYLLIS BARQUET WAS UNDER SEPONA BY MY FIRST ATTONEY KRISTEN MURRY TO TESTIFY ON MY BEHALF TO WHAT TOOK PLACE ON SAID DATE AT THE APARMENT MRS. BARQUET TESTIMONY IS VERY IMPORANT TO MY OUTCOME AND THE OUTCOME OF THE TRIAL ATTONEY NEVER ASKED FOR A CONTINCE UNTIL MRS. BARQUET COULD BE FOUND.

Additional Ground 2

STATES WHITNESS MRS. MITCHELL ON THE STAND UNDER RECROSS STATED ON PAGE. 344 LINES 1, 2, 4, 5, THAT I DONT LIKE THE POLICE THAT I HAVE HAD A SHOOT OUT WITH THE POLICE THAT I DONT WANT TO BE INVOLVED WITH THE POLICE AND I AM GOING TO GET AWAY FROM THE POLICE.

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

Date: 2-6-2011

Signature: Alvin G Walker  
 PRO SE

ADDITIONAL GROUND 3  
ATTACHMENT PAGE ONE

ON DIRECT MRS. MITCHELL STATED ON PAGE 252 LINE 20, STATED THAT I PULLED HER UP AND STARTED PULLING HER PANTS DOWN AND STUCK MY FINGERS IN HER AND THREW HER ON THE BED.

HOWEVER ON CROSS EXAMINATION PAGE 304, LINES 11, 12, 13. MRS. MITCHELL SAYS THAT I TOOK HER IN THE BEDROOM PULLED HER PANTS DOWN AND STUCK MY FINGERS IN HER.

## ADDITIONAL GROUND 4.

ON CROSS EXAMINATION OF OFFICER MILNE PAGE, 203, LINES, 22-25 HE WAS ASKED TO THE EXTENT THAT A KNIFE COULD HAVE BEEN TESTED FOR FINGER PRINTS AND DID HE PUT ON GLOVES BEFORE PICKING THE KNIFE UP,

ON PAGE 204, LINES, 7-14,

Q. ATTORNEY SWABY  
AND YOU SEND IT OFF FOR PRINTS IF THEY ARE USABLE PRINTS  
AND THIS WOULD SHOW IF THIS PERSON OR THAT PERSON TOUCHED  
THE KNIFE RIGHT,

A. YES

Q. OKAY BUT IN THIS CASE THAT WAS NOT DONE,

A. NOT TO MY KNOWLEDGE NO SIR

Q. SO NOW WE HAVE A KNIFE WITH NO PRINTS IN ADVANCE THERE

A. THERE ALSO WAS ANOTHER KNIFE SAID TO HAVE BEEN USED  
BUT NEVER SEEN EITHER .

ATTACHMENT PAGE TWO.  
ADDITIONAL GROUND 5.

WHITNESSES ON MY BEHALF THAT WHOULD HAVE MADE A  
ACCEPTABLE OUTCOME IN MY TRIAL  
WERE NEVER CALLED OR SEAPONAED BY MY ATTONEY

ALSO IN THE TRANSCRIPTS THAT THERE WAS NO INTITAL  
REPORT ON RECORD.

POLICE OFFICER STATED THAT HE TALKED TO MRS BARQUET  
BUT HE WAS CALLED AWAY AT THE TIME AND DID NOT TAKE  
HER STATMENT, BUT THAY HAD TALKED.

PAGE 141

## RULE ER 609 (A) (2)

INVOLVED DISHONESTY OR FALSE STATEMENT,  
REGARDLESS OF THE PUNISHMENT

## RULE ER 613 (B)

EXTRINSIC EVIDENCE OF PRIOR INCONSISTENT  
STATEMENT OF WITNESS.

EXTRINSIC EVIDENCE OF A PRIOR INCONSISTENT STATEMENT  
BY A WITNESS IS NOT ADMISSIBLE, UNLESS THE WITNESS  
IS AFFORDED AN OPPORTUNITY TO EXPLAIN OR DENY THE  
SAME AND THE OPPOSITE PARTY IS AFFORDED AN  
OPPORTUNITY TO INTERROGATE THE WITNESS THEREON,  
OR THE INTERESTS OF JUSTICE OTHERWISE REQUIRE.

## RULE C.R. 7.8

RELIEF FROM JUDGMENT OR ORDER

(B) MISTAKES; INADVERTENCE; EXCUSABLE NEGLIGENCE; NEWLY  
DISCOVERED EVIDENCE; FRAUD; ETC. ON MOTION AND UPON  
SUCH TERMS ARE JUST, THE COURT MAY RELIEVE A PARTY  
FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING FOR  
THE FOLLOWING REASONS;

(3) FRAUD (WHETHER HERETOFORE DENOMINATED  
INTRINSIC OR EXTRINSIC), MISREPRESENTATION, OR  
OTHER MISCONDUCT OF AN ADVERSE PARTY;

## RAP RULE 16.4 GROUNDS FOR REMEDY

(3) MATERIAL FACTS EXIST WHICH HAVE NOT BEEN PREVIOUSLY  
PRESENTED AND HEARD, WHICH IN THE INTEREST OF JUSTICE  
REQUIRE VACATION OF THE CONVICTION, SENTENCE, OR OTHER  
ORDER ENTERED IN A CRIMINAL PROCEEDING OR CIVIL PROCEEDING

I, II, IV, V, VIII,

#8

UNDER IV AMENDMENTS RIGHTS STATES, AND NO WARRANTS SHALL BE ISSUED, BUT BY PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION,

STATEMENTS MADE AGAINST ME WERE FALSE HERESY; UNORTHODOX OPINION OR DOCTRINE.

IS NOT IN THE IV AMENDMENT. WHERE WAS

THE AFFIRMATION, OR PROOF FOR A WARRANT TO BE ISSUED AGAINST IN THE FIRST PLACE? REASON? JUST HER WORD.

RULE ER 609 (A)(2)

INVOLVED DISHONESTY OR FALSE STATEMENT REGARDLESS OF PUNISHMENT

PREACCLUSTORIAL DELAY STATE V. OPPELT No. 84573-5 WHETHER NEGLIGENT DELAY IN FILING CHARGES, COUPLED WITH SOME MEMORY LAPSES, MERIT DISMISSAL OF CHARGES

TRUE THREAT

IS NOT AN ESSENTIAL ELEMENT OF A FELONY HARASSMENT CHARGE THAT MUST APPEAR IN THE "TO CONVICT" JURY INSTRUCTION AND THE CHARGING DOCUMENT. AN INSTRUCTION THAT DEFINES "TRUE THREATS" ADEQUATELY PROTECTS THE DEFENDANT'S FIRST AMENDMENT RIGHTS STATE V. ATKINS COA NO 63717-7-1 AUG 2010

RAPE AND DOUBLE JEOPARDY

WHEN ARE MULTIPLE INCIDENTS IN AN IDENTICAL CHARGING PERIOD, STATE MUST ENSURE THAT THE "TO CONVICT" INSTRUCTION REQUIRES THE JURY TO FIND A SEPRATE AND DISTINCT INCIDENT IN COUNT 1 THEN WAS FOUND IN COUNTS 2, 3, THE FAILURE TO DO SO WILL RESULT IN

#9

(THE DISMISSAL IN ALL BUT ONE CHARGE ON APPEAL)  
STATE V. CARTER COA NO. 38264-4-11 JAN 29, 2010

NOT DONE IN MY CASE

(FALSE CONFESSION?)

THE CONCURRING OPINION IN THIS HABEAS CORPUS ACTION FINDS THAT TRIAL COUNSEL'S DECISION TO NOT CALL RICHARD OSHE AS A WITNESS WAS DEFICIENT PERFORMANCE. THE DECISION WAS BASED UPON TRIAL COUNSEL'S BELIEF THAT OSHE TESTIMONY WOULD NOT SATISFY. FRYE/KELLY LUNBERRY V. HOMBRAK, NO. 08-17576 (9TH CIR MAY 25, 2010). IN MY CASE IT WAS MR WILLIAMS AND.

ALSO ATTORNEY SWABY RENDERED INEFFECTIVE ASSISTANCE, BY FAILING TO CONDUCT AN APPROPRIATE PRE-TRIAL INVESTIGATION, ALSO

FAILING TO INVESTIGATE AND DETERMINE WHAT LEGITIMATE DEFENCE WERE AVAILABLE

ALSO ATTORNEY SWABY, FAILING TO SUBORN AND SECURE MATERIAL WITNESS ON MY BEHALF ALSO BY NOT ASKING COURT FOR MATERIAL WITNESS WARRANTS SHOWS, DEFICIENT PERFORMANCE, ATTORNEY SWABY DID PRESENT A FAILURE TO INVESTIGATE FACTS OF MY CASE.

## SEX ABUSE.

#11

STATE V. PEREZ - VALDEZ NO. 84003-2 WALLA WALLA COUNTY.

WHETHER THE TRIAL COURT ERRED BY DENYING THE DEFENDANT'S MOTION FOR A MISTRIAL AFTER DEFENSE COUNSEL ELICITED A COMMENT ON THE VICTIM'S CREDIBILITY DURING THE CROSS-EXAMINATION OF A STATE WITNESS. WHETHER THE TRIAL COURT IMPROPERLY PREVENTED THE DEFENDANT FROM INTRODUCING EVIDENCE THAT THE VICTIMS MADE UP THE SEX ABUSE IN ORDER TO GET OUT OF THEIR STEP-FATHERS HOME. WHETHER THE TRIAL COURT ERRONEOUSLY PROHIBITED THE DEFENSE COUNSEL FROM MENTIONING THE DEFENDANT'S GOOD MORAL CHARACTER IN CLOSING ARGUMENT, AFTER THE TRIAL COURT STUCK THE EVIDENCE PURSUANT TO A TARDY RELEVANCY OBJECTION. THE COA OPINION IS UNPUBLISHED.

THE VICTIM IN MY CASE SET HER BED A FIRE SAID THE DEVIL WAS IN BED WITH HER SHE WAS TAKEN FOR EVAL AT MENTAL HOSPITAL (HARBORVIEW), WAS NOT BROUGHT UP AT TRIAL ATTORNEY DIDN'T READ REPORT'S FROM FIRST ATTORNEY.

(LESSER INCLUDED OFFENSE INSTRUCTIONS).

ALTHOUGH DISAVOWING, ONCE THAT THE COURT HAS NOT ESTABLISHED A RULE THAT PURSUING AN ALL-OR-NOTHING STRATEGY IS PER SE DEFECTIVE PERFORMANCE OR INEFFECTIVE ASSISTANCE OF COUNSEL, THE COURT INDICATES THAT IN A THIRD MOST SERIOUS OFFENSE" TRIAL, AN ALL-OR-NOTHING APPROACH WILL NOT BE CONSIDERED REASONABLE TRIAL STRATEGY UNLESS THE LESSER INCLUDED OFFENSE WOULD RESULT IN A SIMILARLY LENGTHY SENTENCE OR THE DEFENDANT HAS REACHED AN "ADVANCED AGE" OR CONTRACTED A TERMINAL ILLNESS. IN THE INSTANT CASE, THE COURT FINDS A REASONABLE PROBABILITY THAT THE JURY MAY HAVE CONVICTED THE DEFENDANT OF THE OFFENSE OF UNLAWFUL DISPLAY OF A WEAPON INSTEAD OF ATTEMPTED (SECOND) DEGREE ASSAULT.

IN RE PERSONAL RESTRAINT OF GRACE,  
COA NO. 37806-0-II (JUL. 28, 2010)

ATTORNEY SWABY USED THIS TYPE OF APPROACH ALONG WITH NOTHING ELSE.

ATTORNEY:

FACTS HE DID'T DO AT TRIAL SHOWS DEFICIENT PERFORMANCE, ALSO INEFFECTIVE ASSISTANCE OF COUNSEL

DEFENSE COUNSEL'S TACTICAL DECISION TO PURSUE AN ALL OR NOTHING DEFENSE IN A SECOND DEGREE ASSAULT TRIAL AMOUNTED TO INEFFECTIVE ASSISTANCE OF COUNSEL STATE V. BREITUNG COA NO. 38869-3-II (APR. 20 2010) JUDGE PENOYAR DISSENTED. THIS IS THE THIRD CASE IN WHICH DIVISION TWO HAS FOUND THAT TRIAL COUNSEL WAS INEFFECTIVE FOR NOT REQUESTING JURY INSTRUCTIONS ON A LESSER INCLUDED OFFENSE.

COUNSEL'S ERRORS WERE SO SERIOUS THAT AS TO DEPRIVE ME OF A FAIR TRIAL, THERE IS A VERY REASONABLE PROBABILITY THAT FOR COUNSEL ERRORS THE RESULTS OF THE TRIAL WOULD HAVE BEEN OF A DIFFERENT OUTCOME.

DID NOT CALL OR SEVERAL WITNESS'S ON MY BEHALF, THE TWO MOST IMPORTANT WITNESS PHILLYS BARQUET AND VICTIM'S BOY FRENED MR. DONNIE WILLAMS BOTH CAN PROVE MY INNOCENT'S OF SAID CRIMES.

## ER RULE 801 (i) (ii) (iii)

WHERE STATES WITNESS TOLD AT LEAST SIX  
DIFFERENT TESTIMONIES, STATEMENTS, DEPOSITIONS,

ALSO DID NOT MAKE IDENTIFICATION OF THE PERSON  
THAT COMMITTED THE CRIME.

THE TESTIMONY WAS FROM STATES WITNESS WAS A  
FABRICATION, AND PERJURY,  
WHAT HAPPENED TO THE LAW WHERE PERJURY ON THE  
STAND WAS A CRIME.

## ER RULE 803 (3) (4)

THEN EXISTING MENTAL, EMOTIONAL, OR PHYSICAL  
CONDITION

STATES WITNESS, SET APT ON FIRE AT THE TIME  
OF MY FIRST ATTORNEY KRISTEN MURRY, WENT TO MENTAL  
HEALTH TO GET RECORDS,  
THAT WERE NOT ADMITTED INTO TRIAL BY 2ND ATTORNEY

## CONFRONTATION

STATE V. PUGH 167 Wn. 2d 825 (2009)

VICTIM CALLS 911, SAYS DEFENDANT "WAS BEATING ME UP HE'S WALKING AWAY, DESCRIBES DEFENDANT, SAYS HE'S JUST OUTSIDE AND HE'S BEATING ME UP, WHEN ASKED SAYS SHE CAN NO LONGER SEE HIM, TRIAL COURT ADMITS 911 CALL; HELD: WHILE PARSING CALL OUT OF CONTEXT SUGGESTS AT SOME POINT VICTIM WAS DESCRIBING PAST EVENTS, CALL WAS INTENDED FOR IMMEDIATE SAFETY AND MEDICAL ASSISTANCE, QUESTIONS BY OPERATOR, INCLUDING IDENTITY OF SUSPECT WERE, OBJECTIVELY VIEWED, AN EFFORT TO ESTABLISH IDENTITY SO OFFICERS MIGHT KNOW IF THEY WOULD BE ENCOUNTERING A "VIOLENT FELON," THUS STATEMENTS WERE NONTESTIMONIAL UNDER SIXTH AMENDMENT, DAVIS V. WASHINGTON, 165 L. Ed 2d 224 (2006) RES GESTAE STATEMENTS ARE NOT PER SE INADMISSIBLE UNDER CONST. ART. I, § 22; 8-1

## JURY

VOIR DIRE / CHALLENGES

STATE V. RHONE 168 Wn. 2d 645 (2010)

"A PRIMA FACIE CASE OF DISCRIMINATION IS ESTABLISHED UNDER BATSON WHEN THE SOLE REMAINING VENIRE MEMBER OF THE DEFENDANT'S CONSTITUTIONALLY COGNIZABLE RACIAL GROUP OR THE LAST REMAINING MINORITY MEMBER OF THE VENIRE IS PREMPTORILY CHALLENGED, AT 661 ¶ 27; TRIAL COURT'S DETERMINATION THAT THERE WAS NO DISCRIMINATORY MOTIVE IS UPHOLD BY FOUR JUSTICES, BUT! CONCURRING OPINION BY FIFTH JUSTICE AGREES WITH DISSENT ON THE BRIGHT LINE RULE; DEFENDANT'S ASSERTION OF DISCRIMINATORY PREMPTORY CHALLENGE OCCURED AFTER THE LAST MINORITY MEMBER WAS EXCUSED AND JURY PANEL WAS SWORN, THUS "HAD THE TRIAL COURT CONCLUDED THAT THE PROSECUTOR'S PREMPTORY CHALLENGE WAS DISCRIMINATORY --- THE TRIAL COURT WOULD BE REQUIRED TO DISMISS THE ENTIRE JURY, DECLARE A MISSTRIAL" AT 649 N. 1; 5-4.

(IMPROPER CLOSING ARGUMENT).

WHEN A DEFENDANT ASSUMES THE BURDEN OF PROVING AN AFFIRMATIVE DEFENCE, SUCH AS UNWITTING POSSESSION, A PROSECUTOR'S STATEMENT THAT THE JURY MUST BELIEVE THE DEFENDANT'S TESTIMONY REGARDING THE DEFENSE IN ORDER TO ACQUIT THE DEFENDANT, IS AN ACCURATE STATEMENT OF THE LAW WHEN THE ONLY EVIDENCE PRESENTED IN SUPPORT OF THE DEFENCE COMES FROM THE DEFENDANT, IT IS IMPROPER FOR A PROSECUTOR TO ARGUE THAT IN ORDER TO FIND THE DEFENDANT NOT GUILTY, YOU HAVE TO SAY 'I DON'T BELIEVE THE DEFENDANT IS GUILTY BECAUSE,' AND THEN HAVE TO FILL IN THE BLANK." A PROSECUTOR'S ARGUMENTS DISCUSSING THE REASONABLE DOUBT STANDARD IN THE CONTEXT ON THE DEGREE OF CERTAINTY THE JURORS NEEDED TO ACT, AND IMPROPERLY IMPLIED THAT THE JURY HAD A DUTY TO CONVICT WITHOUT REASON NOT TO DO. STATE V. JOHNSON COA NO. 39418-9-II

(NOV 24, 2010)

~~INSTITUTED BY STATE OR LOCAL GOVERNMENT; OR~~  
RAPE AND DOUBLE JEOPARDY.

WHEN THERE ARE MULTIPLE INCIDENTS IN A IDENTICAL CHARGING PERIOD, THE STATE MUST ENSURE THAT THE "TO CONVICT" INSTRUCTION REQUIRES THE JURY TO FIND "A SEPARATE AND DISTINCT INCIDENT IN COUNT 1, THEN WAS FOUND IN COUNTS 2, 3, AND 4, FAILURE TO DO SO WILL RESULT IN THE DISMISSAL OF ALL BUT ONE CHARGE ON APPEAL STATE V. CARTER COA NO. 38264-4-II (JUNE 29, 2010).

(PRESUMPTION OF CREDIBILITY).

A PROSECUTOR'S STATEMENTS SUGGESTING A PRESUMPTION OF A WITNESS'S CREDIBILITY IS NOT PER SE IMPROPER, BUT IT COULD EASILY CROSS THE LINE INTO MISCONDUCT, STATE V. THOMAS, COA NO. 37112-0-II (DEC 2, 2010)

- ① FAILED TO CHALLENGE STATES EVIDENCE.
- ② CONVICTION IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.
- ③ I STATE THAT THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE JURYS DETERMINATION TO CONVICT ME ON ALL THREE CHARGES.
- ④ ATTORNEY DID NOT BRING UP FACTS ABOUT MY MEDICAL CONDITION THAT I HAVE HAD FOR YEARS, THAT WILL SHOW I CAN NOT LIFT NOTHING OVER 50LB UP OR OVER MY HEAD
- ⑤ (PROOF!) MEDICAL RECORDS FROM MONROE CORRECTION COMPLEX (2003 - 2005) THERAPIST (CAT SCANN TORN ROTO CUPS BOTH ARMS SWEDISH / PROVANDANCE MEDICAL CENTER 2009 MRI - CAT SCANN DOCTOR REPORTS, AS WELL ATTORNEY SWABY SAID HE DIDN'T NEED INFO? TO HELP MY CASE
- ⑥ ATTORNEY SWABY DIDN'T USE INFORMATION FROM MY FIRST ATTORNEY

11-10 2010,

ER . rule 803, 4-19-20 -21-22-23-3.  
TITTLE VIII. HEARSAY

- (3) THEN EXISTING MENTAL, EMOTIONAL, OR PHYSICAL CONDITION.
- (4) STATEMENTS FOR PURPOS OF MEDICAL DIAGNOSIS OR TREATMENT
- (19) REPUTATION CONCERNING PERSONAL OR FAMILY HISTORY
- (20) REPUTATION CONCERNING BOUNDARIES OR GENERAL HISTORY
- (21) REPUTATION AS TO CHARACTER
- (22) JUDGMENT OF PREVIOUS CONVICTION
- (23) JUDGMENT AS TO PERSONAL, FAMILY, OR GENERSL HISTORY OR BOUNDARIES.

ER,. RULE 806. ATTACKING AND SUPPORTING CREDIBILITY OF DECLARANT WHEN A HEARSAY STATEMENT ,OR A STATEMENT DEFINED IN RULE801 (D)(2)(III),(IV), OR(V), HAS BEEN ADMITTED IN EVIDENCE, THE CREDIBILITY OF THE DECLARANT MAY BE ATTACKED,AND IF ATTACKED MAY BE SUPPORTED BY ANY EVIDENCE WHICH WOULD BE ADMISSIBLE FOR THOES PURPOSES IF DECLARANT HAD TESTIFIED AS A WITNESS EVIDENCE OF A STATEMENT OR CONDUCT BY THE DECLARENT AT ANY TIME INCONSISTENT WITH THE DECLARANTS HEARSAY STATEMENT IS NOT SUBJECT TO ANY REQUIREMENT THAT THE DECLARANT MAY HAVE BEEN AFFORDED AN OPPORTUNITY TO DENY OR EXPLAIN .IF THE PARTY AGAINST WHOM A HEARSAY STATEMENT HAS BEEN ADMITTED CALLS THE DECLARANT AS A WITNESS ,THE PARTY IS ENTITLED TO EXAMINE THE DECLARANT ON THE STATEMENT AS IF UNDER CROSS EXAMINATION

# COMPLAINT FORM



STATE OF WASHINGTON  
COMMISSION ON JUDICIAL CONDUCT

P.O. BOX 1817 OLYMPIA, WA 98507 (360) 753-4585 FAX  
(360) 586-2918

For Office Use Only  
Inq.# \_\_\_\_\_

**CONFIDENTIAL**

This form is designed to provide the Commission with information required to make an initial evaluation of your complaint, and to begin an investigation of your allegations. Please read the accompanying materials on the Commission's function and procedures before you complete this form.

- ▶ Materials filed in the Commission's confidential records cannot be duplicated for you.
- ▶ If you need to maintain a record, keep a copy.
- ▶ Do not send original records you wish to keep without making prior arrangements for their loan, safe delivery and return.

**PLEASE TYPE OR PRINT ALL INFORMATION**

Your Name: ALVIN GEORGE WALKER SR #276040

Address: CBCC

City: CALLAM BAY State: WA Zip: 98326

Daytime telephone: NA Evening telephone: NA

Name of Judge/Commissioner: REGINA S CAHAN

County: KING

Court level:  Municipal  District  Superior  Appeals  Supreme

Case Name and Docket Number, if applicable: # 08-1-12516-1 SEA / # 65646-5-1

Attorneys involved: CHRISTOPHER ANDREW SNABY / KRISTEN MURRY

If this complaint relates to a trial or other court proceeding, has it been or will it be appealed?

Yes  No  Not applicable

Please provide a brief summary of the unethical actions or behaviors that you believe were committed by this judge or commissioner. (If you wish, you may refer to the Code of Judicial Conduct which you can find in the Washington Court Rules or on our website at [www.cjc.state.wa.us](http://www.cjc.state.wa.us).)

CJC 3 (A) (5)

CJC 3 (A) (6)

CJC 3 (C) (2)

Please list the dates of alleged misconduct: 5-11-2010, 5-12-2010, 5-13-2010

**SUPPORTING FACTS:**

Please state specific facts to support your allegation(s) of judicial misconduct. Include all pertinent dates, and name(s) of witnesses, if known. Attach **copies** of any documents which may support your position. You may attach additional pages if needed.

CJC 3 (A) (5) ABUSE, BIAS, AND PREJUDICE AND  
ABUSE OF DISCRETION FOR JUDGE CALLING A RECESS  
WHILE VICTIM WAS ON THE STAND. VICTIM DID  
NOT RETURN AND THE DEFENDANT DID NOT HAVE  
A CHANCE TO FACE HIS ACCUSERS AS REQUIRED BY  
THE CONSTITUTION. CJC (3) (C) (2) KNOWING AT A  
SUBSTANTIAL TIME IN THE TRIAL ATTORNEY ON  
TWO SEPRATE TIMES DID NOT SHOW UP INSTEAD HAD  
PEOPLE SHOW UP THAT KNEW NOTHING ABOUT MY CASE  
ALSO LOOK ON TRANSCRIPTS THERES MORE THERE TOO

Signed: Alan H. Williams Jr Date: 9-17-2010

Send completed form to: Commission on Judicial Conduct, PO Box 1817, Olympia, WA 98507

Note: Due to confidentiality requirements complaints cannot be accepted via e-mail.

[If you have a disability which requires assistance in filing a complaint or you would like this form in an alternate format, such as Braille, large print or audio tape, contact this office at (360) 753-4585 voice or TDD. We will take reasonable steps to accommodate your needs.]

HE IS A WEOR THAT HAS NO RESPECT FOR ENY PART OF THE LEAGLE LAW OR SYSTEM

complainant was a drug user and generally a bad person and we had better evidence with which to impeach her at trial;

3) I didn't fall asleep at any point during trial. I paid close attention to all of the witnesses, made several objections that were sustained and was aggressive in cross examining all of the witnesses. I did have a relative who was ill (and has since died) during the trial but I only checked my phone for messages during some breaks and at lunch;

4) On more than one occasion I tried to speak with Mr. Walker about taking a plea offer, and shared with him the offers made by the state. He told me, as he told prior counsel, that he wasn't interested in entering any sort of guilty plea because he wasn't guilty of anything;

5) Mr. Walker did not ask for a continuance at any point during trial. In fact, he was frustrated about the continuances that had been entered prior to trial. There was a witness with whom we had spoken during the investigation who had arguably exculpatory information but we could never find her again to get her under subpoena. Mr. Walker maintained he knew where she was and could get her but she remained hidden even from him. Due to scheduling issues, this case was tried over parts of three weeks - we tried to find her every day. Without having the witness under subpoena, there was no way to get a continuance mid trial even had he asked for one;

6) I spoke with Mr. Walker at some length about the decision to testify. He indicated he understood his rights, what he would be asked and decided to testify. I didn't force him to testify nor do I think it possible to have done so, had I been so inclined;

7) The complainant's mental health records did not reveal anything that could be used at trial;

8) I cross examined the complainant extensively with the information given to me by Mr. Walker's first attorney, including statements given to the investigator assigned to the case. I asked about her inconsistent statements and highlighted those inconsistencies during my closing argument;

9) I don't recall Mr. Walker offering anyone as a character witness. I would have considered anyone who had relevant testimony to offer though the decision about who to offer as witnesses still rests with the attorney;

10) The Notice of Appeal was timely filed. The Motion and Order of Indigency are being filed because the trial judge was on leave for five weeks and I have only recently returned from a family leave.

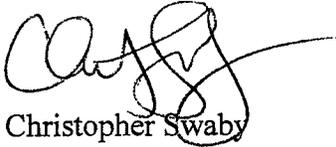
AS YOU CAN SEE BY JUST ASKING HIS SEPISODES ABOUT THINGS HE HAS PUT IN THIS STATEMENT

HE JUDGE WAS NOT GONE ON VACTION FOR 3 MONTH'S FAMILY LEAVE  
NO ONE AT OFFICE NEW ABOUT HIS LEAVE  
LEAVE 3 MONTHS

#23

I am very disappointed in the verdict in Mr. Walker's case; I can only imagine what he must be experiencing as a result. I did all I could to represent him well in court. I do not believe that the conviction was the result of ineffective representation.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Swaby", with a long horizontal flourish extending to the right.

Christopher Swaby

IT IS OFTEN, INDEED PERHAPS  
USUALLY, THE CASE THAT AN ADVERSE  
WITNESS TESTIMONY TAKEN ALONE  
WILL NOT SUFFICE TO CONVICT.

ALSO ON RECORD THE STATE'S  
WITNESS WAS GAVE A STATEMENT  
TO READ BY PROSCUTOR TO READ  
BEFORE GOING ON STAND!

MEDICAL STATMENTS BY STATE,  
THE STATE'S DOCTOR'S INTERVIEW WERE  
FOR WITNESS TO RECIVE GUI, HAD  
NOTHING TO DO WITH THE CASE.

MEDICAL TREATMENT INTERVIEW  
WAS TAKEN TWO AND A HALF MONTHS  
AFTER SO-CALLED ASSALT TOOK PLACE.

LOOKING AT MY SCENTENCING NO  
PREPRATION WAS MADE ON MY BEHALF  
BY ATTONEY SWABY I NEVER TALKED  
TO HIM FOR 30 DAYS, AFTER FOUND  
GUILTY, HE THEN CAME TO COURT  
WITH ONE PEACE OF PAPER FOR  
MY APPEAL.

## ABUSE OF DISCRETION

IT WAS ABUSE OF DISCRETION TO REFUSE TO GRANT CONTINUANCE UNTIL DEPOSITIONS COULD BE TAKEN ASKED ON ACCOUNT OF ABSENCE OF PARTY WHO WAS MATERIAL WITNESS ON ISSUE AS TO ALLEGED FALSE REPRESENTATIONS MADE BY HER WHERE SHE WAS TOO ILL TO ATTEND COURT IF PRESENT AND WAS OUT OF STATE ON ADVICE OF HER FAMILY PHYSICIAN ONLY OTHER WITNESS WAS RESIDING OUT OF STATE AND TESTIMONY OF ONE OR BOTH OF THEM WAS NECESSARY. STORM V. TOKLAS (1914) 78 WASH. 223, 138 P. 880

IT IS DISCRETIONARY TO REFUSE TO GRANT CONTINUANCE AT CLOSE OF TRIAL FOR PURPOSE OF PRESENTING FURTHER EVIDENCE. JONES V JONES (1917) 96 WASH 172, 164, P 757.

IT WAS ABUSE OF DISCRETION TO REFUSE DEFENDANT CONTINUANCE AND REASONABLE TIME TO PREPARE IT'S DEFENCE WHERE AT TRIAL PLAINTIFF WAS ALLOWED TO AMEND COMPLAINT AGAINST AVERRING NEW BASIS FOR NEGLIGENCE THROUGH COUNSEL IN MOVING FOR CONTINUANCE WAS NOT ABLE TO MAKE AFFIDAVIT TO EFFECT THAT HE WOULD BE ABLE TO PROVE BY WITNESS AND THORS ON HAND THAT DEFENDANT WAS NOT GUILTY OF CHARGE IN AMENDMENT. WRIGHT V NORTHERN PACIFIC RAILROAD CO (1905) 38 WASH 64, 80 P. 197.

THE FACT THAT THE STATES WITNESS HAS A CRIMINAL RECORD AND ONLY ONE CRIMINAL FACT OF HER RECORD WAS Brought FORTH, ALSO THE FACT SHE TAKES MENTAL MEDICATION WAS NOT TAKEING HER MED'S INSTEAD SHE WAS ON HEROIN AND CRACK COCAINE THIS IS ON RECORD AND TRANSCRIPTS

### PRESUMPTION OF CREDIBILITY

A PROSECUTOR'S STATEMENTS SUGGESTING A PRESUMPTION OF A WITNESS'S CREDIBILITY IS NOT PER SE IMPROPER, BUT IT COULD EASILY CROSS THE LINE INTO MISCONDUCT STATE V. DIXON COA NO. 39466-9-11 DEC 7, 2010

### (DOUBLE JEOPARDY)

WHEN A COURT MUST VACATE ONE OF TWO CONVICTIONS BASED ON THE SAME CRIMINAL CONDUCT IN ORDER TO AVOID VIOLATING DOUBLE JEOPARDY, THE VACATED CONVICTION MAY BE REINSTATED WHERE THE GREATER OFFENSE IS REVERSED ON GROUNDS NOT APPLYING TO THE LESSER. NONETHELESS, THE SENTENCING COURT MAY NOT ENTER A WRITTEN ORDER OR MAKE AN ORAL DECLARATION THAT DECLARES THE CONVICTION FOR THE LESSER OFFENSE CONDITIONALLY VACATED YET VALID. STATE V. TURNER NO. 81626-2 (AUG. 19, 2010)

THIS HAS HAPPEND TO ME TOO!

### (OFFENDER SCORES)

WASHOUT RULES MUST BE APPLIED TO PRIOR TO SCORING RULES, WHEN CALCULATING OFFENDER SCORE. STATE V. MOEURN NO. 82995-1 (OCT. 7, 2010)

### (PREACCUATORIAL DELAY).

STATE V. OPPELT, NO. 84573-5 SNOHOMISH COUNTY.

THE COURT OF APPEALS OPINION IS UNPUBLISHED. THE BRIEF OF RESPONDENT AND THE REPLY BRIEF ARE AVAILABLE ON LINE. WETHER NEGLIGENT DELAY IN FILING CHARGES, COUPLED WITH SOME MEMORY LAPSES, MERIT DEMISSAL OF CHARGES.

## CLOSING STATEMENT

IT WOULD APPEAR THAT IN MOST CASES A PERSON HAS ALREADY BEEN FOUND GUILTY AND TRIED BY YOUR ATTORNEY AT THAT TIME AND THE PROSECUTOR AMOSE THEM SELF BEFORE A PERSON EVEN GET'S TO TRIAL, BECOUSE IN MY CASE EACH TIME MY ATTORNEY CAME TO ME WITH A PLEA DEAL WICH WAS TWO TIMES, EACH TIME THE FIRST THING HE SAY THE PROSCUTOR WANTS 72 MONTH NO RAPE CHARGE I SAID NO OF COURSE, I HAVE NOT DONE THIS, SO THE LAST OFFER WAS NO RAPE SO THE MY ATTORNEY MR. SWABY SAID THAT IF I DONT TAKE IT THE PROSCUTOR WOULD MAKE THE RAPE CHARGE STICK! AND THAY THE TWO OF THEM DID SO! JUST LIKE THAY SAID THAY WOULD.

IT IS VERY ROUNG TO BE DONE IN THIS WAY.

I THANK GOD FOR THE WASHINGTON APPELLATE PROJECT AND ALL HOM ARE THERE, AND FOR MAUREEN M. CRY I THANK YOU.