

No. 72450-9-I

COURT OF APPEALS FOR THE STATE OF WASHINGTON  
DIVISION 1

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Thomas Joseph Feely,  
Appellant,

v.

STATE OF WASHINGTON,  
Appellee.

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2015 JUL -9 AM 11:14

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STATEMENT OF ADDITIONAL GROUNDS, RAP 10.10

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name: Thomas Joseph Feely  
DOC# 788137, Unit G  
Stafford Creek Corrections Center  
191 Constantine Way  
Aberdeen, WA 98520-9504

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
FOR DIVISION 1

Thomas J. Feely,  
Petitioner,

vs.

State of Washington  
Respondent

Case No.: 72450-9-I

STATEMENT OF ADDITIONAL  
GROUNDS, PURSUANT TO  
RAP 10.10

I, Thomas J. Feely, 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 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**

Please read attached 2 pages of hand  
written Additional ground # 1 and 2 pages  
of hand written Additional ground #2.

## Additional Ground #1

Ineffective Assistance of Counsel  
Verbatim Report pages 316-320

I recieved ineffective assistance of Counsel when my Public Defender failed to interview the State's witnesses, while knowing that one of them would testify as an Expert Witness (Dog Expert) against Feely. Failure to investigate witnesses is deficient performance. Counsel has a duty to investigate all witnesses who allegedly possessed knowledge concerning defendant's guilt or innocence. Lawrence V. Armontrout, 900 F.2d 127, 130 (8th Cir 1990).

Ineffective Assistance of Counsel: "Where a counsel's failure to investigate indicates a complete lack of trial preparation, such performance falls below the level of reasonable assistance and is Constitutionally deficient." Kimmelman V. Morrison, 477 U.S. 365, 106 S.Ct 2517 (1986) "The difference generally granted to strategic choices of counsel is not justified when lack of Adequate preparation is at issue." Young v. Riverland, 29 F.3d 638 (9th Cir. 1994). Not interviewing a key witness & the other state's witnesses is ineffective assistance of Counsel with prejudice met.

Ineffectiveness is generally clear in the context of complete failure to investigate because counsel can hardly be said to have made a strategic choice against persuing a certain line of investigation and she has not yet obtained the facts on which such a decision could be made. United States v. Gray, 878 F.2d 702 (3rd Cir. 1989.)

"Failure to investigate and interview witnesses is Ineffective assistance of counsel" State v. Sutton  
99 Wn. App. 1022 (2006)

"Lawyer failed in his duty to conduct a reasonable investigation relevant to making an informed defense theory". Brecht v. Abrahamson, 507 U.S. 619, 637 (1993).

I believe I've established a valid claim of Ineffective assistance of counsel with deficient performance and resulting prejudice.

My Public Defenders performance fell below an Objective Standard of reasonableness § because of this the outcome of the trial would have differed.

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## Additional Ground #2

Prosecutor Misconduct, during trial the video evidence was played for the Jury 3 times.

- 1<sup>st</sup> playing Pg 93 Played & paused 3 times with little commentary from prosecutor

- 2<sup>nd</sup> playing Pg. 455-460, during this showing the prosecutor did his own commentary over & over again. His comments were misstatements of facts shown. He was told by the Judge that he needs to move on and not ask the Jury to speculate about what they might see. There are over and over objections. But even after he's told to move on or stop. He continues to do what he is told not to. He is Bolstering.

He is improperly commenting on evidence by assuming facts & stating them.

- 3<sup>rd</sup> playing, Pg. 492-493 The jury asked to watch video again before verdict. And as you'll read now the Judge clearly states, NO Commentary. And he feels we'll overemphasize a piece of evidence. But allows it anyway.

As stated on pg. 62 The officer clearly states on record that "he can not tell if there was a second person. All he could see was a back of a head."

I believe because of this misconduct by the prosecutor's commentary of the video evidence. The continued comments of Feely being the driver was not a fact, and that all the improper comments on the evidence was not harmless and did contribute to the verdict.

The prosecutors misconduct may have impacted the jury's evaluation of the evidence.

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

DATED this 2 day of July, 2015.



(Appellant's Signature)

Thomas J. Feely

(Appellant's Printed Name)

Stafford Creek Correction Center  
191 Constantine Way, Unit# 6  
Aberdeen, Washington 98520

DECLARATION OF SERVICE BY MAIL  
GR 3.1

I, Thomas Joseph Feely, declare and say:

That on the 2<sup>nd</sup> day of July, 2015, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. 72450-9-I:

Statement of Additional Grounds 1 & 2;  
\_\_\_\_\_  
\_\_\_\_\_

addressed to the following:

Nielsen, Broman & Koch, P.L.L.C.  
Dana Nelson  
1908 E. Madison ST.  
Seattle, WA. 98122

Prosecutor's Office  
311 Grand Ave.  
Bellingham, WA. 98225

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

DATED THIS 2<sup>nd</sup> day of July, 2015 in the  
Aberdeen, County of Grays Harbor, State of Washington.



Signature

Thomas Joseph Feely

Print Name

DOC 788137 UNIT 6

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191 CONSTANTINE WAY  
ABERDEEN WA 98520

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