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IN THE COURT OF APPEALS

OF THE STATE OF WASHINGTON--DIVISION I

NO. 70868-6-I

GENE ALFRED PALMER II, APPELANT

vs.

ANDY LEE AND JANE DOE LEE, HUSBAND AND WIFE, AND

THEIR MARITAL COMMUNITY, RESPONDENTS

PETITION FOR DISCRETIONARY REVIEW BY SUPREME COURT

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Identity of Petitioner:

Gene Palmer, Pro Se, Appellant at Court of Appeals and Plaintiff in Superior Court.

Citation to Court of Appeals Decision

Division I No. 70868-6-I Decision on Appeal dated 11/16/15. Notation Ruling 12/18/15 denying Appellant's motion for Reconsideration. See Appendices.

Issues Presented for Review

1. Did the trial court abuse its discretion in denying jury instructions on Wanton and Willful physical assaults/battery and only instructed on negligence when Defendant intentionally beat Plaintiff per uncontested testimony of all the parties and all the witnesses.

2. Did the trial court abuse its discretion allowing discrimination in the trial against the disabled plaintiff in violation of State Law, the Constitutions of US and Washington and the ADA Act?

3. Did the court err and was biased against plaintiff and cut Plaintiff's testimony time to an hour?

4. Did the trial court abuse its discretion in denying Plaintiff significant medical records AND BILLINGS IN PROPER ER904 documents?

5. Did the trial court abuse its discretion in denying a star witness to the assault University of Washington professor testifying by Skype when earlier allowed by the court?

STATEMENT OF THE CASE

On or about May 28, 2010, plaintiff was riding his bicycle eastbound on N.E, 50th St. approaching Roosevelt Way N.E. in Seattle, WA. Defendant, going in the same direction, struck plaintiff. Defendant left the scene. Later, defendant returned, got out of his car, and expressing hate language, physically assaulted plaintiff unmercifully and repeatedly, causing injury, witnessed by at least three people at the scene. Voir dire was replete with jurors dropping out because of expressed bias against the bipolar, influencing all the other jurors. The jury found no negligence. The court of appeals affirmed and denied reconsideration. See Appendices. Citations in Argument.

SUMMARY OF ARGUMENT.

Plaintiff sued on these two injuries of car hitting him and then later physical assault ,but the court cut Plaintiff's time unreasonably, allowed voir dire poisoning the jury against Plaintiff allegedly bipolar and all that connotes and left on the jury jurors who were clearly troubled by and biased against Plaintiff whom Defendant's counsel repeatedly said was bipolar and all that connotes, jurors (though they had not heard a single word of testimony) already wanted to rule against injured Plaintiff because bipolar and juror after juror testified in court that bipolar people cannot be believed, cut his ER904 documents and especially his extensive medical treatment, would only instruct on negligence instead of instructions for the physical assault, and all this cries out for reversal and directed verdict for plaintiff. No wonder the jury found no negligence, when it was intentional beating and juror after juror said in front of the other. Citations in Argument.

Rule 13.4 (b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

The lower court's decision regarding discriminatory jury selection is contrary to the 5th and 14th Amendments upheld

by US Supreme Court and our court and contrary to Federal and State ADA law.

(2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or

Regarding ER904 documents the decision is in conflict with Division II in Hendrickson v. King County, 101 Wash.App. 258, 2 P.3d 1006 (Division II 2000)

(3) If a significant question of law under the Constitution of the State of Washington or of the United States in involved; or

The lower court's decision regarding discriminatory jury selection is contrary to the 5th and 14th Amendments upheld by US Supreme Court and our court and contrary to Federal and State ADA law.

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Disabled parties, witnesses and their attorneys are in hundreds of thousands over the years in our civil and criminal courts and clarity by this court and jury selection and consideration throughout the trial is a necessity of constitutional due process and is a matter of substantial public interest. Washington has no pattern on civil assault

and battery and this led the court to a negligence jury instruction for this intentional tort and this impacts many thousands of cases and public interest in justice. Every civil case going to trial seeks to comply with ER 904 trial disclosure of exhibits for admissibility and it is in the public interest to give clarity so as to streamline issues of admissibility for judicial efficiency and for all of the businesses providing these records for whom it is silly to have to come to testify on admissibility.

ARGUMENT

It was reversible error for the court to refuse to instruct the jury on willful misconduct

Of all the errors committed by the court during the trial of this case, perhaps the most blatant disregard for Mr. Palmer's right to have his case fairly decided by the jury was the court's refusal to instruct the jury on willful misconduct.

The trial court erred in denying jury instructions on Wanton and Willful physical assaults/battery and thereby left the second incident of injury to the jury as only negligence and it certainly was not negligent but intentional, as testified by both Plaintiff and Defendant and two witnesses and a third witness the court disallowed by Skype at the last moment.

Proposed jury instructions are reviewed de novo to determine the relevance of the omitted instructions to the proposing party's theory in the case and the testimony at trial. Cox v. Spangler, 141 Wn.2d 431, 442, 5 P.3d 1265 (Wash. 2000).

Among other things, "[d]ue process requires that jury instructions allow the parties to argue all theories of their respective cases supported by sufficient evidence." *State v. Allen*, 161 Wash.App. 727, 734, 255 P.3d 784 (2011), aff'd, No. 86119–6, 2013 WL 259383 (Wash. Jan.24, 2013). Under Washington law, a plaintiff is entitled to have his theory of the case presented by proper jury instruction if supported by the evidence. *Dabroe v. Rhodes Co.,* 64 Wash.2d 431, 392 P.2d 317 (1964). *Accord, Naranen v. Harders*, 1 Wash.App. 1014, 466 P.2d 521 (1970). Indeed, there is an "obligation of the trial court to submit specific instructions on a party's theory of the case on particular issues which are requested and which are supported by substantial evidence." *Naranen v. Harders*, 1 Wash.App. 1014, 466 P.2d 521, 526 (1970) (citing *Dabroe v. Rhodes Co.*, 64 Wash.2d 431, 392 P.2d 317 (1964); *Woods v. Goodson*, 55 Wash.2d 687, 349 P.2d 731 (1960)). When determining whether there is sufficient evidence to support a jury instruction, the court must view the evidence in the light most favorable to the party that requested the instruction. *State v. Ponce*, 166 Wash.App. 409, 416, 269 P.3d 408 (2012).

The Trial Evidence Supported A Willful and Wanton Instruction

Mr. Palmer requested such an instruction (See Appendix 1 to Appellants COA Brief) and the evidence certainly supported such a theory of Mr. Lee's liability. For instance, Ashley Sellers, who observed the assault first-hand gave more than ample testimony to support a finding that Mr. Lee committed the willful misconduct of assault and/or battery. As she testified, after observing that Mr. Lee was in his car and engaged in a verbal altercation with Mr. Palmer, who was riding a bicycle, the situation escalated when she "saw the driver get out of his car and come at the bicyclist, and then, uh, there was like a physical interaction -- aggressive, uh, physical contact from the driver to the bicyclist, and it seemed as if, um, the bicyclist was trying to defend himself." RP 8/7/13 at 11, L15- 16 L6. More succinctly, Ms. Sellers further clarified that "the motorist got out of his car, um, and that it seemed like from my point that he attacked the person on the bicycle." RP 8/7/13 at 11, L14-19. Further still, "there was definitely aggressive physical contact made with – from Mr. Lee to the, um, bicyclist... it was definitely some sort of aggressive, physical contact, and aggressive, physical movement towards the bicyclist." RP 8/7/13 at 13, L9-18.

Furthermore a second eye witness, James Canova also agreed with Mr. Lee himself that he assaulted Mr. Palmer: James Canova testimony:

RP 8/7/13 at 37 line 10 and 38 line15: Lee lunged at Palmer on his bike and knocked him to the ground:

Um, but he basically lunged at the -- at the guy on the bike and the guy on the bike fell over. Still on the bike, just now on the ground.

RP 8/7/13 at 40 line 6: Palmer made no aggressive action toward Lee

RP at 46 line 12-47 line 17: Palmer was injured from Lee's physical assault

Not only did Ms. Sellers and Mr. Canova testify that Mr. Lee physically attacked Mr. Palmer without justification, but Mr. Lee's own testimony demonstrated himself to have initiated physical combat. According to Mr. Lee, after Mr. Palmer spit in the general direction of – but not onto – Mr. Lee, Mr. Lee "pushed him, and he got off his balance, and he fell to the ground." *(RP 8/14/13 at 77)*

Accordingly, any view of the evidence leads inexorably to the conclusion that an instruction on willful misconduct was warranted here. And the court's failure to so instruct was in no way ameliorated by the giving of a negligence instruction. In fact, if the jury believed the testimony of Ms. Sellers, then the jury, presumed to faithfully follow the instructions as given by the court, would have been bound to relieve Mr. Lee of what would otherwise be obvious fault and liability because they were only instructed to determine if Mr. Lee's acts were *negligent*, but it is clear they were *intentional*, ***NOT*** negligent.

The resulting prejudice to Mr. Palmer's case is clear in light of the jury failing to find the defendant liable despite his own admission that he assaulted Mr. Palmer by pushing him to the ground. Accordingly, the jury verdict must be set aside and this case remanded for a new trial.

Plaintiff's Attorney Tried to get An Assault Instruction

The Judge erred and cut off discussion with Palmer's attorney, who wanted to tie in the second incident physical assault into the Jury instruction as a separate thing for the Jury to consider, along with negligence. This argument was made in the Court – reviewed Plaintiff's third supplemental purposed Jury instructions with and without Citations at page 3 (see Appendix 1 hereto) and The Court denied discussion of it, having already made its decision. RP 8/15/13 at 169. The Court eliminated Palmer's intended assault liability theory to go to the Jury, at least through the Wanton instruction, and he wanted to request an assault instruction along with it. There is no civil assault WPI or other clear instruction (The elements of civil assault have not been frequently addressed in Washington case. The gist of the cause of action is "the victim's apprehension of imminent physical violence caused by the perpetrator's action or threat." (In Brower v. Ackerley, 99 Wn. App. 87 (1997)) and Plaintiff wanted to argue this, but the judge was done with it and having nothing of it and did not want to do

a follow-up instruction about what the jury is to do if they find wanton or assault, but the obvious answer to that they do a consideration of damages just like the instruction the judge already approved for negligence. But the Court shut it down and would give anything but a negligence instruction. Plaintiff already made his proposed rejected instruction and hope for a Wanton and physical assault instruction, but was shut down and so when, in the next breath, the court asked for Jury instruction exceptions, he only had to add his earlier reiteration of the Cox case instruction request.

The court should have allowed Plaintiff an instruction on assault and battery because the evidence supported it and negligence alone is a confusing standard for the jury because an assault is never negligent but is intentional.

Trial Court erred in allowing discrimination in the courts against the disabled plaintiff in violation of State Law ,the Constitutions of US and Washington and the ADA Act

Plaintiff was denied Access to Justice by the trial judge allowing defense counsel to taint the jury pool during voir dire by repeatedly barraging them with rhetoric related to negative connotations from Bi-Polar Disorder and then continuing to interject such irrelevant slander and discrimination throughout the trial.

It was wrong and illegal for the opposing defense counsel and the trial judge to allow 2 days of voir dire in Plaintiff's auto accident trial slamming he and bipolar people in general and asking all the jurors about it in their family and all the symptoms and bad acts that can come from it, etc. over strenuous objections and then throughout the trial as well. At least 4 of the 34 juror pool said they wanted excused because they could not be impartial and had not even heard a word of the trial yet and already wanted to find for the defendant. Plaintiff was denied due process of the Constitution (5th and 14th Amendments) and access to the courts in a fair trial. The transcript reads like something from 100 years ago. See RP 8/ 6 /13 at 41-115 and then incredibly the voir dire goes into a second day of this unconstitutional poisoning of the jury pool with so many of them saying they cannot possibly rule for Mr. Palmer before the trial even began and the court grappling with these issues and hearing arguments from both sides, while somehow trying to make a jury out of this poisoned group when she should have just started with a new pool and set guidelines about where defendant could and could not go in ruining the jury's view of Plaintiff through this discrimination. RP 8/7/13 at 2-48. This cries out for a new trial.

Throughout trial Defendant just kept bringing it up without ever tying it to anything more than telling the jury they are to come to their own

conclusion about how bipolar people are and you cannot trust them/believe them. Defendant implied throughout: We all know he is bipolar and you know what that is like (literally hours spent on the topic in voir dire first 2 days—asking if they know bipolar people and what they are like and the jurors all saying bad things about mood swings, yelling, vulgarities, making up things, etc.).

Look at the reference in only the two days of to disability and troubled jurors voir dire: For the following word: Mental August 6, 2013 RP at 38, L3; 42, L7, 12; 43, L3; 44, L8,14, 20; 45, L7; 63, L15; 67, L18; 68, L6; 90, L22; 91, L3, 17; 92, L11, 12; 94, L5, 12, 21; 103, L12; 104, L6, 7; 117, L9;August 7, 2013 RP at 4, L25; 6, L9, 13, 15; 7, L17; 8, L7, 8, 15, 17; 9, L22; 11, L5, 8, 12; 13, L2; 14, L17, 18; 15, L5, 21; 17, L20, 21; 19, L23; 30, L1, 12, 13; 31, L11; 33, L24, 38, L5;

For the following word: Polar/ Bipolar August 7, 2013 RP at 14, L10; 15, L8; 15, L15, 19, 21; 18, L17; 32, L12, 14; 33, L8, 19; 34, L4, 25; 35, L3; 36, L14, 19; 37, L12; 38, L25; 39, L9; 40, L14, 16; 63, L25;

For the following word: Illness August 6, 2013 RP at 10, L18; 67, L18; 90, L22; 91, L17; 94, L5, 12; 117, L9;August 7, 2013 RP at 4, L25; 6, L13, 15; 7, L17; 9, L22; 11, L5, 8, 12; 13, L2; 14, L17, 19; 15, L5; 17, L20; 30, L1, 12, 13; 33, L24; 38, L6;

For the following word: BiasAugust 6, 2013 RP at 8, L18, 21; 29, L12; 46, L14; 47, L12; 48, L20; 55, L15; 56, L11; 57, L13; 65, L11; 68, L8; 93, L17, 23; 95, L10; 107, L15; 115, L7, 12, 16, 17;August 7, 2013 RP at 4, L5, 15; 10, L19; 11, L10; 12, L9, 11; 14, L15;

All of the actual subjects events of the day of injury had nothing to do with him being bipolar. The witnesses all said there was a yelling argument, but that Plaintiff did nothing physical and only used his hands defensively to try to stop the beating by Defendant.

The U.S. Supreme Court has said that "programs, services, and activities" covers everything that state and local governments do. *Penn. Dep't of Corrs. v. Yeskey*, 524 U.S. 206, 210 (1998). (Title II applies to the activities of "'any department, agency, special purpose district, or other instrumentality of a State or States or local government.'") (citing Americans With Disabilities Act, 42 U.S.C. § 12131(1)(B)).

See 28 CFR § 35 Nondiscrimination on the Basis of Disability in State and Local Government Services and particularly § 35.130 General prohibitions against discrimination(a) No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity[..on and on]

The plaintiff objected to all these lines of voir dire poisoning the jury pool attacks on bipolar people and plaintiff painted with that broad brush, the Judge overruled, the judge allowed this discrimination in public courts denying plaintiff a fair jury trial contrary to due process rights.

This trial judge erroneously and too simply ruled that a person's character and any disability they suffer from at the time of the event in question or at the time of trial in front of the jury is fair game for jury consideration of plaintiff's credibility and perception of what events occurred, so one's disability comes into the trial and is a fair topic for voir dire. A person's character is on trial for credibility, etc according to the judge, so it comes in. But it should not if it is not relevant because being judged based on one's disability is irrelevant to the true underlying facts and events under consideration and is against the Washington State and US ADA law and a unconstitutional violation of due process of the Constitution (5^{th} and 14^{th}) and right to fair trials.

The court seems to indicate that if an Appellant does not provide the entire VRP of every second of the trial then the court can't decide any issue. The RAP does not require an entire VRP of the trial and respondent can always add what it wants and the court can always ask for more VRP on particular topics if the court wants. It is not fair, just, and equitable for the court to shirk its responsibility to rule upon the actual record provided by me on the particular topics I am appealing ***and I definitely provided full actual records of those.*** It is untrue that I did not provide references to

relevant parts of the record, and I provided all of those for my topics under Appeal.

The court's decision is a sad day for disabled litigants, witnesses, attorneys, and anyone else involved with a trial. The court in its decision upholds the process of Voir Dire poisoning jurors against me in my trial to such an extent that juror after juror had not heard one sentence of testimony in the trial yet and already would never vote in my favor and without hearing a sentence from the defendant, wanted to vote in his favor because of all of the damaging things said about those suffering from bipolar disorder – defense counsel telling the jury pool that bipolar people make up things, are explosive, etc, etc, etc. over and over again and the judge in the entire Voir Dire transcript provided to the Court of Appeals here time and again released jurors for this and yet, ruled that all the rest of the jury could not be affected. This is ridiculous. Voir Dire was a circus and the judge should have started all over with another pool and very much restricted defense counsel's tactics in attacking the disabled. The bottom line is that I was denied access to justice in my due process right under the Constitution (5th and 14th Amendments) to have a fair jury and trial. This was only the start of it, and the judge continually showed her bias against me and my disability throughout the other decisions discussed below, but most importantly, restricting my testimony time to two hours

only and eliminating my star witness University of Washington professor, eye witness to the assault and beating defendant Lee inflicted upon me and admitted to, because the court also would not give an instruction on the beating and only on negligence, I was denied the jury even deciding that.

The court erred and was biased against plaintiff and cut Palmer's own testimony time to an hour because he was unable to come to court on his scheduled time because his house and the road were cut off from the world by a huge mudslide and the road inaccessible for miles and eventually he and his dog were airlifted out.

The judge severely limited Mr. Palmer's time of testimony to about an hour and grilled him repeatedly to prove that he could not testify earlier because he truly was in a natural disaster. See RP 8/12/13at 67 through 8/13/13 at 90.Still, after plenty of proof of the extent of this natural disaster and how in stranded so many people and affected daily obligation, the judge thought it was all a lie just to drag out the trial and she cut his time to only one hour of testimony [See Clerk's Minutes 8/14/13 at 9:11 and Clerk's Minutes 8/13/13 showing direct of Mr. Palmer was limited strictly to 9:25A-10:13A (48 minutes) and 10:39A-10:59A (20 minutes) for a total of only 68 minutes] to do the impossible of explaining all the facts, the injuries ,all the many doctors etc. and impacted his case because e the evidence of severity and

damages could not adequately be presented to the jury in one day. There was no reason for this cutting of plaintiff's time and ruining his presentation of a fair balanced and complete trial. This was a significate abuse of the judge's discretion and not a fair trial at all for him. See RP: 8/12/13 9:19:51-9:34:14; 8/12/13 11:26:50-11:32:35; 8/12/13 3:50:20 -3:55:25; 8/13/13 9:22:14-9:24:21; 8/13/13 10:15:13-10:17:17; 8/14/13 9:29:15-9:34:10

The trial court erred in denying Plaintiff significant medical records AND BILLINGS IN PROPER ER904 documents

Defendant filed and served a set of ER 904 documents 30 days or more before trial. It included all of the medical and billing records collected under stipulation of the parties or court orders in mid-September 2012 and in March of 2013 (upon court order). For some reason, a very small number of the hundreds and hundreds of pages of these records and bills were excluded by Defendants in their ER 904, and therefore were included in Plaintiff's timely ER 904 notice. Defendant, in his objection to Plaintiff's ER 904 argue that it should be ineffective to admit the records because the notice must include another copy of documents the party being served the notice has already actually collected by stipulation and order and so already possesses them. Furthermore, Defendants made a vague argument that all

health records and bills are not admissible under ER 904 without someone coming in and providing foundation testimony and that they might contain hearsay. All of these grounds are unsupported by any specific objection toward any particular document and are not proper grounds for objection. *Defendant already has all Plaintiff's ER 904 documents in question because Defendant had given them to Plaintiff after collecting them by stipulation and court order.*

Plaintiff's ER 904 notice was timely. Plaintiff hand delivered and mailed and submitted through the court's efiling system, an ER 904 notice regarding all of the same documents Defendants had produced and shared with Plaintiff at cost and a listing of approximately one hundred pages of medical bills and records, pictures, property damage evidence, etc. on May 2, 2013. At that time, the trial was set for June 3, 2013. This is substantial compliance with the 30 day in advance rule. In any case, the argument is moot because the trial was moved approximately three more times to eventually July 13, 2013 and the court rule only says it has to be 30 days before trial, and not 30 days before the original trial date.

The court rules and ER 904 and would never require a party to do anything redundant or wasteful or certainly unnecessary. Defendants already had all of the exhibits mentioned in Plaintiff's ER 904 notice,

because they came from Defendant and it is a silly sate to give the same document back to Defendants, as ALL the documents were identified in the Plaintiff ER 904 notice and Defendant had already included ALL of these in his ER 904 notice to Plaintiff except for a subset handful of documents.

In Hendrickson v. King County, 101 Wash.App. 258, 2 P.3d 1006 (Division II 2000), the court rejected defendant's ER904 arguments because (1) Defendants cannot object to documents they themselves put in an ER 904 and produced;(2) "lack of foundation" is not an objection to an ER 904 document because the whole purpose of ER904 is to admit documents without the necessity of having to show foundation with live testimony or other means; (3) and general objections without specifics such as an allegation that there may be hearsay in the documents is not a proper objection and stricken by the courts. This is exactly the general vague, non-specific objections defendant gave here without any reason given and the trial court here ruled that they was good enough—that so long as defendants said the word "objection" that was enough to make the documents inadmissible under ER904. See trial ER904 rulings starting at RP 8/6/13 at 109-112. That simply is contrary to the law and requires a new trial .

Trial court erred in denying a star witness to the assault testifying by Skype when all lay witnesses had been allowed if needed.

The Court allowed testimony by Skype for lay witnesses (See RP 8/7/13 at 28 line 13) and this was done for several witnesses , but just when plaintiff's star witness, UW architecture professor Stettler—an eye witness to the actual physical assault by Mr. lee in such a way that he was moved to stop his car and intervene—was to start Skype, the Judge denied him, thinking that she really meant to make her ruling to allow only doctors because the witnesses in the entire case were all from central and north Seattle and the case had been moved to Kent from Seattle, causing enormous problem for the professionals and employed witnesses. This erroneous ruling is contrary to what even defense counsel thought was being allowed for lay witnesses and certainly unfair to plaintiff and at the last minute so he could not get this witness again. See and See RP 8/7/13 at 60 and 8/8/13 at 64-67 and Clerk's minutes 8/7/13 2:55:25 and 8/8/13 2:49:49. It was error decisions like this that showed the judge's bias against Mr. Palmer and really hurt his case such that the jury did not even find negligence in Mr. Lee's beating of Mr. Palmer. A new trial will rectify these errors..Appellant requests all reasonable attorneys fees and costs under all statutes, court rules, and case law applicable to this appeal or available through the court's equitable powers or at least reserve for remand.

Conclusion

The court should grant review of all issues presented herein and award petitioner attorney's fees and costs under equity, the civil rules and civil procedure statues and remand this matter for a new trial and award petitioner attorney's fees and costs.

Dated this 19 day of January, 2016

Gene Palmer, Pro Se
Appellant

APPENDIX 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

GENE ALFRED PALMER II, Appellant, v. ANDY LEE and JANE DOE LEE, husband and wife, and their marital community, Respondents.	No. 70868-6-I DIVISION ONE UNPUBLISHED OPINION FILED: November 16, 2015

SCHINDLER, J. — Representing himself pro se, Gene Alfred Palmer II appeals from the adverse jury verdict in his personal injury action against Andy Lee. Palmer contends the trial court committed evidentiary and instructional error. But for most of the alleged errors, Palmer has failed to provide a sufficient record for review. And because Palmer's remaining contentions are without merit, we affirm.

FACTS

Gene Alfred Palmer II filed a complaint for personal injuries against Andy Lee following an altercation on May 28, 2010. Palmer alleged that he was riding his bicycle on NE 50th Street in Seattle when Lee's car struck him. Palmer claims that he was severely injured when Lee got out of his car and repeatedly punched and kicked him.

Following the trial in August 2013, the jury entered a special verdict finding that any negligence by Lee was not a proximate cause of Palmer's injuries. Palmer appeals.

ANALYSIS

Palmer was represented by an attorney during the trial. Because he is representing himself pro se on appeal, we must hold him to the same standards as an attorney. See In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).

A party seeking appellate review has the burden of providing us with all evidence in the record relevant to the issues before us. RAP 9.2(b); Story v. Shelter Bay Co., 52 Wn. App. 334, 345, 760 P.2d 368 (1988). Palmer has provided only limited record for review. The partial verbatim report of proceedings does not contain all of the trial testimony, including Palmer's own trial testimony. Nor does it contain closing arguments. Without an adequate trial record, we cannot review challenged evidence and trial court rulings in their proper context. See Silverstein v. Univ. of Wash., 42 Wn. App. 466, 473, 712 P.2d 386 (1986). An insufficient record on appeal generally precludes appellate review. Bulzomi v. Dep't of Labor & Indus., 72 Wn. App. 522, 525, 864 P.2d 996 (1994).

In addition, Palmer's briefs fail to comply with various provisions of the Rules of Appellate Procedure including RAP 10.3(a)(6). RAP 10.3(a)(6) requires a party to support arguments with "references to relevant parts of the record." This failure to comply with this requirement is not a mere technicality. An appellate court will not search through the record for evidence relevant to a litigant's arguments. State Mills v. Park, 67 Wn.2d 717, 721, 409 P.2d 646 (1966).

Proposed Willful Misconduct Jury Instruction

Palmer contends that the trial court erred in failing to give a modified version of 6 Washington Pattern Jury Instructions: Civil 14.01, at 177 (6th ed. 2012) (WPI), on willful and wanton misconduct.[1] Palmer argues that the evidence of Lee's physical assault supported the proposed instruction.

If the trial court's refusal to give an instruction is based upon an issue of law, our review is de novo; if the court's decision is based upon a factual dispute, we review for an abuse of discretion. State v. Walker, 136 Wn.2d 767, 771-72, 966 P.2d 883 (1998). But in order to preserve an instructional error for review, a party must object to the trial court's refusal to give the proposed instruction. See Trueax v. Ernst Home Ctr., 124 Wn.2d 334, 340-42, 878 P.2d 1208 (1994). CR 51(f) requires that the party "state distinctly the matter to which he objects and the grounds of his objection." A specific objection allows the trial court to rectify any error before instructing the jury, avoiding the need for a retrial. Egede-Nissen v. Crystal Mountain, Inc., 93 Wn.2d 127, 134, 606 P.2d 1214 (1980).

After distributing the latest set of jury instructions, the trial court asked counsel:

> All right. Have counsel had a chance to look through the now numbered instructions? I received the supplementals that you all submitted after court yesterday. And I've incorporated most of them in here.

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[1] WPI 14.01 provides:

> [Willful misconduct is the intentional doing of an act which one has a duty to refrain from doing or the intentional failure to do an act which one has the duty to do when he or she [has actual knowledge of the peril that will be created and intentionally fails to avert injury] [or] [actually intends to cause harm].]
>
> [Wanton misconduct is the intentional doing of an act which one has a duty to refrain from doing or the intentional failure to do an act which one has a duty to do, in reckless disregard of the consequences and under such surrounding circumstances and conditions that a reasonable person would know, or should know, that such conduct would, in a high degree of probability, result in substantial harm to another.]

> I didn't incorporate Plaintiff's new instruction on willful and wanton for a couple of reasons. One is there's no instruction submitted as to what the jury should do if they find willful wanton. So, it's kind of sitting out there without any ties to anything else and the rest of the instructions. So, I did leave that off.

The court then asked if there were any objections to the court's instructions. Palmer's attorney did not object to the court's refusal to give the willful misconduct instruction or respond to the court's rationale. Rather, he objected only to the court's refusal to give a proposed instruction on the apportionment of damages.

Contrary to Palmer's assertions on appeal, the limited record establishes that his attorney raised no objection to the trial court's refusal to give the proposed willful misconduct instruction. Nor has Palmer identified any objection in the record. We therefore decline to review the alleged instructional error.

Witness Testimony by Skype

Palmer contends the trial court erred in refusing to permit his "star" witness" to the alleged assault, apparently a University of Washington professor, to testify by Skype.[2] We review the trial court's decision to permit witnesses to testify by Skype for an abuse of discretion. In re Marriage of Swaka, 179 Wn. App. 549, 553, 319 P.3d 69 (2014); see also CR 43(a)(1) (trial court has discretion to "permit testimony in open court by contemporaneous transmission from a different location").

Palmer does not explain why the witness was unavailable and needed to testify by Skype. Palmer does not identify the arguments that he made to the trial court or the trial court's reasons for refusing to permit the testimony. Nor has Palmer identified any portion of the record supporting his claims of error. Palmer therefore fails to

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[2] Skype is a live video chat and long-distance voice calling service.

demonstrate any error or abuse of discretion in the trial court's alleged refusal to permit the witness to testify by Skype.

Limitations on the Length of Palmer's Testimony

Palmer contends that the trial court erred in limiting his direct trial testimony to 68 minutes after he failed to appear in court for his scheduled testimony on Monday, August 12, 2013. Palmer asserts that he failed to appear "because his house and the road were cut off from the world by a huge mudslide and the road [was] inaccessible for miles and eventually he and his dog were airlifted out." Palmer argues that the restriction violated his right to a fair trial and demonstrated the trial court's bias.

On the day of Palmer's scheduled testimony, Monday, August 12, 2013, his attorney informed the trial court that Palmer was unavailable because he was trapped behind "a major river of mud" in Eastern Washington. During a lengthy discussion, the court and counsel discussed how to rearrange the schedules for the remaining witnesses. On the afternoon of August 12, Palmer's attorney informed the court that Palmer had been "airlifted out" and would be in court the following morning "at 9." Counsel then informed the trial court that he would need 90 minutes for Palmer's direct testimony.

On the morning of August 13, Palmer's counsel told the court that he would use only 75 minutes for Palmer's direct testimony. Although Palmer was late, the court permitted Palmer's direct testimony to continue until 11:00 a.m., which included a lengthy break requested by Palmer's attorney.

The limited record before this court indicates that the trial court granted Palmer's counsel essentially all of the time he requested for Palmer's direct testimony. Moreover, Palmer has not provided this court with a verbatim report of his trial testimony. Nor has he identified any portion of the record supporting his allegations that the trial court was biased or that the time allotted for his direct testimony was inadequate. Palmer has therefore failed to identify any error.

ER 904 Documents

Palmer contends that the trial court erred in not admitting medical records and billings that he submitted under ER 904. We review the trial court's evidentiary ruling for an abuse of discretion. State v. Garcia, 179 Wn.2d 828, 848, 318 P.3d 266 (2014).

ER 904 provides that certain documents "shall be deemed admissible" if properly proposed as exhibits unless the opposing party objects within 14 days. ER 904(a), (c). A party need not object on the grounds of relevancy until trial. ER 904(c)(2).

Lee objected to Palmer's ER 904 designation noting, among other things, that Palmer had not attached the proposed exhibits as required by ER 904(b). The trial court informed counsel that in light of the objections, it would rule on the admissibility of the exhibits when they were introduced at trial.

Palmer has not identified what exhibits he offered at trial, whether the trial court admitted or excluded the exhibits, or the rationale for the trial court's exclusion of any proposed exhibits. Nor has he identified any portion of the record supporting his allegations of error and prejudice. Under the circumstances, we cannot review the alleged error. Hernandez v. Stender, 182 Wn. App. 52, 59, ___ P.3d ___ (2014)

(appellant's failure to provide relevant transcript or identify supporting portions of the record precluded review of alleged ER 904 error).

Admission of Prior Conviction Under ER 609(a)(2)

Palmer contends that the trial court erred in admitting his prior conviction for false information by a claimant under ER 609(a)(2). Palmer argues the prejudicial effect of the evidence far outweighed any probative value.

Crimes involving "dishonesty or false statement" are per se admissible for impeachment purposes under ER 609(a)(2). See State v. Ray, 116 Wn.2d 531, 545-46, 806 P.2d 1220 (1991). The trial court "does not engage in a balancing of probative value against prejudicial effect." State v. Brown, 113 Wn.2d 520, 533, 782 P.2d 1013, 787 P.2d 906 (1989). Crimes of dishonesty and false statement involve " 'acts of deceit, fraud, and cheating, which impinge on one's reputation for honesty.' " State v. Newton, 109 Wn.2d 69, 84, 743 P.2d 254 (1987) (quoting State v. Thompson, 95 Wn.2d 888, 891, 632 P.2d 50 (1981)). When determining whether a conviction is a crime of dishonesty or false statement, "a trial court is limited to examining 'the elements and date of the prior conviction, the type of crime, and the punishment imposed.' " Garcia, 179 Wn.2d at 847 (quoting Newton, 109 Wn.2d at 71).

In 2011, Palmer pleaded guilty to one count of felony false information by a claimant. RCW 51.48.020(2) provides:

> Any person claiming benefits under this [Industrial Insurance Act, Title 51 RCW], who knowingly gives false information required in any claim or application under this title shall be guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW.

Because false information by a claimant clearly constitutes a crime of dishonesty, the trial court did not abuse its discretion in admitting Palmer's conviction for impeachment under ER 609(a)(2). See State v. Hull, 83 Wn. App. 786, 794, 924 P.2d 375 (1996) (theft and labor and industries fraud, RCW 51.48.020(2), are the same offense for double jeopardy purposes).

Subpoena for State Farm Records

Palmer contends the trial court erred in denying his post-trial motion for a subpoena for State Farm records. Palmer claims the subpoenaed records would provide new evidence that Lee engaged in criminal conduct.

Palmer has not provided this court with any record of the trial court's alleged denial of his motion. Moreover, the motion clearly involves posttrial matters that are outside the scope of this court's review. We therefore will not consider them. See State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995) (court will not consider matters outside of the record).

Discrimination During Voir Dire and Violation of the Americans with Disabilities Act

Palmer contends the trial court discriminated against him; violated the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213; and tainted the jury pool by commenting on his bipolar disorder during voir dire and trial. But once again, Palmer has not identified the specific portions of the record that support these sweeping allegations. Nor has he identified the specific objections that he raised or the specific trial court comments or rulings that he is challenging. We therefore decline to consider his contentions. See Saunders v. Lloyd's of London, 113 Wn.2d 330, 345, 779 P.2d

249 (1989) (appellate court will decline to consider issues unsupported by cogent legal argument and citation to relevant authority).

Affirmed.

WE CONCUR:

Trickey, J

Becker, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

GENE ALFRED PALMER II, Appellant, v. ANDY LEE and JANE DOE LEE, husband and wife, and their marital community, Respondent.	)	No. 70868-6-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant Gene Alfred Palmer II filed a motion for reconsideration. A majority of the panel determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Dated this 18th day of December, 2015.

For the Court:

Judge

THE COURT OF APPEALS DIVISION I
OF THE STATE OF WASHINGTON

	)	No. 70868-6-I
GENE ALFRED PALMER II,	)	APPELLANT'S CERTIFICATE
Appellant,	)	OF SERVICE
V.	)	
	)	
ANDY LEE AND JANE DOE LEE, HUSBAND AND WIFE, AND THEIR MARITAL COMMUNITY,	)	
Respondent.	)	
	)	

CERTIFICATE OF SERVICE

I certify that on the 19th day of January, 2016 I caused a true and correct copy of Petition for Review and this document to be served on the following in the manner indicated below:

Clerk of the Court
Court of Appeals

Address:
600 University St
Seattle, WA 98101

( ) U.S. Mail
( ) Hand Delivery hard copy ck delivered
( ) E-filing by e-mail
(x) Fax to (206) 389-2613
[redacted] at opening 1/20/16 8:30 am

Counsel for Respondent
Name: David Wieck
Address:
400 112th Ave. NE #340
Bellevue, WA 98004

(x) U.S. Mail
( ) Hand Delivery
(x) Fax to (425) 454-4457

DATED this 19 day of January, 2016 at [redacted].

Gene A. Palmer II, Pro Se
Appellant

COURT OF APPEALS DIV.
STATE OF WASHINGTON
2016 JAN 20 AM 9:36

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