

FILED
SUPREME COURT
STATE OF WASHINGTON
8/24/2020 8:00 AM
BY SUSAN L. CARLSON
CLERK

No. 98809-9

SUPREME COURT
STATE OF WASHINGTON

HARLAN D. DOUGLASS and **MAXINE H. DOUGLASS**
Plaintiffs-Respondents

v.

BRYAN J. REILLY
Defendant/Appellant/Petitioner

**RESPONDENT'S ANSWER TO
PETITION FOR REVIEW**

Steven J. Hassing, WSBA No. 6690
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Attorney for Respondent, Harlan
Douglass, individually and as Personal
Representative of Maxine Douglass

Bryan Reilly seeks Discretionary Review of a final decision by Division III of the Washington State Court of Appeals which affirmed in the jury verdict and the Trial Court's rulings. Rule 13.4(b) of the Rules of Appellate Procedure limits to four the circumstances under which review might be accepted;

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court;
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals;
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Reilly's Petition is not based on any of the four possible reasons under which the Supreme Court might grant review. Rather, Reilly simply claims that he was denied the *right to a fair trial*. (Petition, p. 15). Regardless, Reilly has failed to show that he was deprived of a fair trial or that he was prejudiced by any action of Douglass or trial court ruling to the extent that it would have changed the outcome of the trial.

Reilly argues that three events during which occurred during trial rendered it unfair and that Division III introduced an issue which prevented a meaningful review. He contents;

(1) That the Trial Court had entered an Order precluding Douglass' counsel, Steven J. Hassing, from mentioning that Reilly had been charged with six felonies related to the theft of Douglass' property and that Hassing intentionally violated that order;

(2) That the trial court erred in failing to bifurcate thefts of gold, silver, jewelry and smaller amounts of cash from the Douglass' home from the larger theft from the Douglass' safe;

(3) That the trial court erred in failing to grant Reilly's motion for judgment at the close of Plaintiffs' case in chief, and

(4) That Division III raised *bad acts* as a new issue not raised or briefed by either party,

Reilly's arguments do not warrant acceptance of this case for further review. Moreover, Reilly's intentional misrepresentation of the facts regarding the existence of the pre-trial order on the motions in limine warrant sanctions.

I.

REILLY'S ARGUMENT THAT DOUGLASS' COUNSEL VIOLATED AN ORDER IN LIMINE IS A BLATENT AND INTENTIONAL FALSE REPRESENTATION

Reilly's Petition for Discretionary Review contains fifteen separate false statements of fact known to his Mr. Freebourn to be false. The false statements are shown below with reference to the page in the Petition on

which the false statement is made. In asserting facts 2 – 8, 15 and 16, Reilly refers to a *violation of a motion* rather than violation of an *order*. Douglass has simply followed suit.

1. Page 3—Reilly falsely represented that the trial court ruled that Douglass could not inform the jury of the six pending felonies with which Reilly had been charged. (The evidence showing that the statement is false is found at RP 78; 18- 85; 25).

2. Page 4—Reilly falsely represented that Douglass’ counsel intentionally violated the motion in limine. (Id).

3. Page 10—Reilly again made false reference to Douglass’ counsel violating the motion in limine. (Id).

4. Page 10—Reilly falsely represented that Division III essentially condoned Douglass’ violation of the motion in limine. (See Bottom of Page 7–top of Page 8; Unpublished Opinion, June 23, 2020, Case No 36134-9-III) (See also at Middle of Page 11 Decision).

5. Page 11—Reilly once again falsely represented that Division III essentially condoned Douglass’ violation of the motion in limine. (Id).

6, 7 & 8. Page 11—Reilly made three more false representations regarding a *violation of the motion in limine*. (RP 78; 18- 85; 25).

9 & 10. Page 15—Reilly twice again falsely represented that there was an intentional violation of a motion in limine. (Id).

11. Page 16—Reilly again refers to a violation of a motion in limine. (Id).

12. Page 17—Reilly falsely represented that there was an order in limine preventing Douglass from mentioning that Reilly had been criminally charged and that Hassing violated that Order. (Id).

13. Page 18—Reilly falsely represent that Division III used excluded evidence (referring to a non-existent Order) to justify the trial court's decision. (Id).

14. Page 19—Reilly argued that evidence of prior bad acts (referring to Reilly's theft of gold, silver, money and jewelry) violated the trial court's order in limine. (Id).

15. Page 20—Reilly again refers to Division III improperly using inadmissible evidence that was excluded by the trial court's order in limine. (Id).

Reilly Made Those Same False Representation in His Opening Brief on Appeal

Reilly made the same false representations at pages 42-47 in his Opening Brief filed in Division III. In response, Douglass referenced the relevant portions of the parties' oral argument from the hearing on the motions in limine to show that Reilly's representations were false. Yet, even after having been shown that there was no such order, those same

false representations are now made in support of the Petition for Discretionary Review.

A. Reilly Failed to Designate the Motions in Limine or the Resulting Order Precluding Mention of the Felony Charges Because There Was no Such Order

One would think that with a large part of his appeal based upon an alleged violation of a court order that Reilly would have designated the order for inclusion in the Clerk's Papers. He didn't. Although he designated 2475 pages of Clerk's Papers, Reilly failed to designate the order he relies upon. The reason for that failure is because there is no such order. Instead, he argued from the Trial Court's attempt, from the bench during trial to recall what had happened ten days earlier on the arguments in limine.

When Douglass' filed his Response Brief on August 5, 2019 he attached, as Appendix "A", the trial court's April 16, 2018 Order on Motions in Limine filed May 3, 2018. He simultaneously filed a motion seeking to supplement the record to include the order. The order is attached as Appendix "A" to this Answer.

Fortunately the transcript of the April 6, 2018 argument on the motions in limine was designated as part of the Report of Proceedings. That part of the argument relevant to this issue is found at RP 78 through 86.

At RP 78; 18 of the transcript Douglass' attorney began arguing Douglass' own motion in limine seeking to preclude Reilly's mention that he had not been charged with stealing the money from the Douglass' safe.

Reilly opposed Douglass' motion because he wanted to offer evidence that Reilly had not been criminally charged with theft from the safe. To bolster his argument, Reilly's counsel conceded that Douglass probably gets to introduce evidence of the existing criminal charges against Reilly and used that concession as a basis to oppose Douglass' motion that Reilly not mention that he had not been charged with theft of the larger amount of cash from the safe.

I think they probably do get to introduce that evidence, but I don't think they get to exclude part because it doesn't help their case. (RP 80; 11-12).

The trial court granted Douglass' motion prohibiting Reilly from mentioning that he had not been charged with stealing the money from the safe. That ruling then caused Reilly to orally move to exclude reference to his being charged with six felonies for other thefts from the Douglass' home. The trial court, however, refused to grant Reilly' untimely oral motion stating instead if Douglass' attorney mentioned Reilly's felony charges and if Reilly then objected the trial court would ***probably*** sustain the objection. (RT 85; 7- 25).

Division III even references the statement of the Trial Court at pages 7 and 8 of its Decision. Accordingly, though Douglass' attorney's one question to Reilly's mother was improper it did not violate any order.

When this Court looks at the April 16, 2018 order (filed May 2) it will notice that the trial court ruled first on Plaintiffs' 21 motions. Plaintiffs' motion number 4 sought to preclude questions concerning prior criminal charges. It was granted. Plaintiff had not moved to preclude himself from mentioning Reilly's current felony charges in this case. The motion was directed at criminal charges against Plaintiff and Third Party Defendant Tanner Haynes.

Plaintiffs' motion number 5 was to preclude Reilly from mentioning that he had not been charged with a crime involving theft from the safe. That motion was granted.

Defendant only made five motions none of which sought to preclude mention of Reilly's felony charges. Defendant made the motion orally and it was denied as shown by the transcript.

B. Reilly Misstated Division III's Comment Concerning Douglass' Attorney's Question to Reilly's Mother About Reilly's Criminal Charges

At page 10 of his Petition Reilly falsely claims that Division III *agreed there was a violation of the motion in limine*. That is another fabrication. What Division III actually stated is reprinted below;

...the court granted Mr. Douglass' motion in limine to preclude evidence that Mr. Reilly had not been criminally charged with theft. In granting the motion, the court noted it would also "probably" sustain an objection to any testimony that Mr. Reilly had been charged criminally, should such evidence be elicited at trial. (citing RP (Apr. 6, 2018) at 85-86).

(Div III Decision at p 7-8).

Douglass does not take issue with Reilly's argument to the extent it alleges that Hassing's question to Reilly's mother was improper. At page 11 of its Decision, Division III agreed that the question to Reilly's mother about the existence of criminal charges was improper. In fact Hassing acknowledged the mistake during oral argument before the Division III panel. That does not, however, give Reilly license to lie to this Court twelve times in a twenty page brief in an attempt to make such impropriety look worse than it was.

The Court of Appeals agreed with the trial court that the one mention of the charges did not prejudice Reilly sufficiently to warrant a new trial. Division III concluded that the trial court had not abused its discretion in denying Reilly's motion for mistrial because Reilly had not been prejudiced and the one improper question. The record is repeat with testimony from a plethora of witnesses from which the jury undoubtedly concluded that Reilly was not credible and stolen each of the items for which he had been sued. The single improper question during the three

week trial was harmless under the circumstances and does not warrant further review by the Supreme Court.

II

REILLY FAILED TO DESIGNATE AS ERROR THE DENIAL OF HIS MOTION TO BIFURCATE. LIKEWISE HE FAILED TO DESIGNATE ANY RELATED ISSUES FOR THE COURT TO CONSIDER

As the other basis for claiming that Reilly was denied a fair trial Reilly argues that the trial court *abused its discretion* in denying his pre-trial motion to bifurcate. Reilly, however, completely failed to identify that denial in his assignments of error on appeal, failing also even to designate any issues related to such an error, both expressly required by RAP 10.3(a)(4);

A separate concise statement of each error a party contends was made by the trial court, together with the issues pertaining to the assignments of error

RAP 10.3(a)(4).

Civil Rule 42(b) provides the trial court with authority to order separate trials of claims or issues *when necessary* to avoid prejudice or when separate trials will be conducive to expedition and economy. Bifurcation was not required to simply hide from the jury the extent and pattern of Reilly's thefts. The trial court was obligated to consider the

inconvenience that would have been imposed upon witnesses as well as the court itself if the case were to be bifurcated.

Reilly's thefts all involved contents from inside of the Douglass' home. The thefts all occurred during a time when Reilly was entrusted with the care of both the home and its contents. (RT 631; 19- 632; 2). Moreover the dates and circumstances of thefts, including the theft from the safe, demonstrated a common and continuing tort occurring over a very short two year period. Reilly's thefts began on September 23, 2013, obviously extending through September 25, 2015.

Reilly began selling Douglass' coins and jewelry on September 23, 2013. (Pl Ex. 38-1, 2. 3). Over the course of just two years Reilly stole additional coins. (Pl Ex. 39). On December 12, 2013, Reilly stole the Douglass' two Rolex watches. (P. Ex 11). Reilly stole more coins on February 11, 2014 (P Ex 40). He stole Maxine Douglass' diamond rings on March 17, 2014. (P Ex 7).

Between February 28, 2014 and September 02, 2015, just *twenty three days before* he emptied the Douglass' safe, Reilly stole \$77,450 in cash which he brazenly deposited into his bank account. (CP 2436).

Refusal to Grant Order Bifurcation Case is Reviewed For Abuse of Discretion

Where the decision of the trial court is a matter of discretion it will not be disturbed on review except on a clear showing of abuse of discretion, i.e., discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). After failing even to list failure to bifurcate as an error, Reilly failed to make the required clear showing of abuse of discretion. There was no reason for the trial court to bifurcate and no reason for the Supreme Court to review this case on that basis.

III

EVIDENCE OF REILLY’S MANY THEFTS FROM THE DOUGLASS’ HOME WAS OFFERED TO PROVE THE CLAIMS, NOT AS BAD ACTS VIOLATIVE OF ER 404(b).

In arguing that Division III’s Decision was based on inadmissible evidence of bad acts in violation of ER 404(b) Reilly is again being disingenuous. He argues that such mention violates an order in limine. However, as can be seen from the actual order in limine attached as Appendix “A”, that issue was ruled on prior to trial.

At page 5 of the trial court’s actual order Reilly’s motion to preclude evidence of the prior thefts as violative of ER 404(b) was **granted** as to normal character evidence but **denied** as to preclude evidence of Defendant’s theft of Plaintiff’s personal property in proving

those claims. Evidence of the thefts was offered to prove Douglass' claims and was not offered to establish bad character. Moreover, Reilly has failed to identify any ER 404(b) objections to that evidence.

IV

THERE WAS NO BASIS ON WHICH JUDGMENT FOR REILLY COULD HAVE BEEN GRANTED AT THE CLOSE OF PLAINTIFF'S CASE IN CHIEF

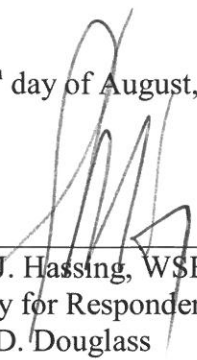
The record on appeal contains fact after fact which prevented the trial court from granting Reilly's motion for Judgment. Since Reilly's appeal was based in large part on lack of evidence Douglass' Response Brief details all of the evidence which required denial of Reilly's motion. No error can be found in the trial court's ruling.

V

CONCLUSION

Reilly's Petition fails to articulate any basis for review as allowed by RAP 13.4(b). Reilly has failed to show that he was deprived of a fair trial. On the major ground cited, violation of an in limine order, as opposed to improper question, it is clear that all facts supporting such violation are fabricated. Reilly's Petition must be denied and attorney's fees and sections should be awarded against both Reilly and his attorney, Chad Freebourn, for serious and intentional Rule 11 violations.

Respectfully submitted this 21th day of August, 2020



Steven J. Hassing, WSBA #6690
Attorney for Respondent,
Harlan D. Douglass

CERTIFICATE OF SERVICE

Case No: 98809-9

I, the undersigned, declare:

I am and at all times hereinafter mentioned was a citizen of the United States. I am over the age of eighteen years and not a party to the within action; my business address is 425 Calabria Court, Roseville, CA 95747. I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. On August 20, 2020, I served the foregoing described as:

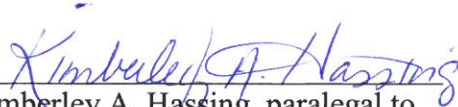
1. Respondents Answer to Petition for Review

by the method indicated below, and addressed to the following:

Chad Freebourn	<input checked="" type="checkbox"/>	via US Mail
Roberts & Freebourn, PLLC	<input type="checkbox"/>	via Hand Delivery
1325 W. 1 st Ave., Ste. 303	<input checked="" type="checkbox"/>	via Electronic Mail
Spokane, WA 99201	<input type="checkbox"/>	via Facsimile
	<input type="checkbox"/>	Overnight delivery

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

Signed at Roseville, California this 20th day of August, 2020



Kimberley A. Hassing, paralegal to
Steven J. Hassing

APPENDIX “A”

**TO DOUGLASS’ ANSWER TO REILLY’S
PETITION FOR DISCRETIONARY
REVIEW**

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HONORABLE JOHN O. COONEY

CN: 201602001968
SN: 540
PC: 5

FILED
MAY - 2 2018
Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SPOKANE COUNTY

HARLAN D. DOUGLASS & MAXINE H.
DOUGLASS, husband and wife

Plaintiffs,

vs.

BRYAN J. REILLY, an individual, and
DOES 1-10

Defendants,

Case No.: 2016-02-00196-8

ORDER ON MOTIONS IN LIMINE

The parties argued Motions in Limine to the Court on April 6. Plaintiff presented twenty-one motions, Defendant presented five. After reviewing the moving and opposition papers filed and after listing to argument of Counsel, the Court issues the following Order;

Order on Motions in Limine

Plaintiff's Motions:

1. To Preclude Mention that Steven Hassing is a California Attorney

GRANTED

2. To Preclude Witnesses From the Courtroom Prior to Testifying

GRANTED

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3. To Preclude Mention of Unsubstantiated Allegations of Prior Fraud

GRANTED:

4. To Preclude Questions Concerning Prior Criminal Charges

GRANTED

5. To Preclude Mention That Reilly Has Not Been Criminally Charged With Theft From Plaintiff's Safe

GRANTED

6. To Preclude Objections to Leading Questions Asked of an Expert

GRANTED IN PART

Expert witness may be asked a few leading questions on matters of background and to develop the witness' testimony but if the attorney begins to effectively testify to material facts in place of the expert by means of leading questions, objection is appropriate and warranted.

7. To Preclude Objection to Questions Asked of an Expert as Relying on Hearsay or Because Information on Which the Expert Relied is Not in Evidence

GRANTED

8. To View The Site Where The Bag of Money Was Found if There is Adequate Time Between the Final Witness and Closing Arguments

RESERVED

9. To Preclude Any Mention to the Jury of Video Surveillance Evidence During Opening Statement as it Likely Will Not be Admitted

Denied

10. To Preclude Mention of Ex Parte Temporary Anti-Harassment Order Obtained by Defendant Against Tanner Haynes in mid-2016

GRANTED

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2 11. For Order Determining That Equitable Claims are to be Decided by the Court,
3 Not the Jury

4 **GRANTED**

5 The Jury shall decide Plaintiff's Conversion Claims and Defendant's Malicious
6 Prosecution claim. All other claims shall be decided by the Court in the same proceeding.
7 Since the jury will not be deciding any claim brought against the Third Party Defendants
8 or Tanner Haynes, the fact that these individuals are defendants shall not be mentioned in
9 the presence of the Jury. However, Defendant shall be able to question Third Party
10 Defendants and Mr. Haynes pursuant to ER 611(c) without request.
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12

13 12. That the Court Inform the Jury During Opening Instructions That One Month After
14 This Case Was Filed Plaintiff Subpoenaed the Cell Phone Defendant Was Using on
15 the Day That Plaintiff Alleges His Safe Was Burglarized. That Four Months Later,
16 Instead of Turning it Over For Forensic Analysis Defendant Replaced That Phone
17 With a New One, Thereby Denying Plaintiff's Forensic Analyst Access to the
18 Phone.

19 **DENIED without prejudice to revisit when end of trial jury instructions are issued**

20 13. Seeking Order Prohibiting Defense Counsel From Objecting During Opening
21 Statement or Trial Questioning When Plaintiff's Counsel Refers to the Conversion
22 of Plaintiff's Money and Other Property as Having Been Stolen or the Result of
23 Theft

24 **GRANTED**

25 14. To Preclude Testimony by or on Behalf of Defendant Regarding Money Received
26 By Him in 2013-2015 Not Previously Disclosed in Discovery

27 **GRANTED IN PART**

28 Prior to offering evidence of money received by Defendant in 2013-2015 not
previously disclosed during discovery, the matter will be discussed between counsel and
the Court out of the presence of the jury.

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2 15. To Preclude Testimony by or on Behalf of Defendant Regarding Sale of Personal
3 Property During the Years 2013-2015 Not Previously Disclosed in Discovery.

4 **GRANTED IN PART**

5 Prior to offering evidence of sale of personal property by Defendant in 2013-2015
6 not previously disclosed during discovery, the matter will be discussed between counsel
7 and the Court out of the presence of the jury.
8

9 16. For Order Requiring Bryan Reilly Execute IRS Form 4506-T authorizing the IRS
10 To Provide Full and Complete Copies of Tax Returns Filed by Defendant in 2016
11 and 2017 or, in the Alternative, Abstracts of Same and That he Execute the Form
12 During Open Court on April 6, 2018 and Provide Same to Plaintiff's Counsel for
13 Mailing to the I.R.S.

14 **DENIED WITHOUT PREJUDICE TO FILE MOTION TO COMPEL**

15 17. For Order Permitting Don Vilfer to View and Report Meta Data From Five Photos
16 Believed to Have Been Taken by Defendant's Cell Phone And Which Defendant
17 Intends to Offer Into Evidence at Trial

18 **GRANTED**

19 18. To Preclude Mention That Harley Douglass, Lisa Bonnett-Douglass, Hayden
20 Douglass or Tanner Haynes was the Real Thief Unless or Until Defendant Can
21 Introduce Evidence That Would Realistically Support Such Claim.

22 **GRANTED**

23 19. To Preclude Mention That Representation of Plaintiffs, Third Party Defendants
24 and Tanner Haynes by Steven J Hassing Constitutes a Conflict of Interest or is
25 Otherwise Wrongful

26 **GRANTED**

27 20. To Preclude Mention to the Jury During Opening Statement that Lisa Bonnett-
28 Douglass' Fingerprints Were Found on the Plastic Bag Which Contained the
Buried Money

GRANTED

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21. For Order Allowing Plaintiff to Dismiss his Negligence Claim Against Defendant

GRANTED: Plaintiff's Negligence Claim is dismissed.

Defendant's Motions;

1. To preclude mention in the presence of the jury of motions in limine.

GRANTED

2. To require Plaintiff to Abide by Judge Tompkins' Order on Mr. Reilly's First Motion For Summary Judgment.

DENIED AS WORDED AND ARGUED

3. To exclude witnesses pursuant to ER 615.

GRANTED

4. To elicit testimony of prior felony convictions of Tanner Haynes.


DENIED

5. To exclude evidence under ER 404(b).

GRANTED as to normal character evidence.

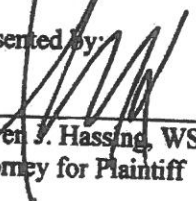
DENIED as intended to preclude evidence of Defendant' theft of Plaintiff's personal property to prove up those claims.

DATED this 16th day of April, 2018



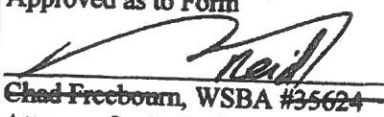
Honorable John O. Cooney
Superior Court Judge

Presented by:



Steven J. Hassing, WSBA #6690
Attorney for Plaintiff

Approved as to Form



Chad Freeborn, WSBA #35624
Attorney for Defendant
REID, WSBA #34186

LAW OFFICE OF STEVEN J HASSING

August 21, 2020 - 5:01 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98809-9
Appellate Court Case Title: Harlan D. Douglass, et ux. v. Bryan J. Reilly
Superior Court Case Number: 16-2-00196-8

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- chad@robertsfreebourn.com
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