

No. (70569-5)

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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WASHINGTON STATE, Respondent,  
v.  
AVRUM TSIMERMAN, Appellant

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*Appellant's Brief*

AMENDED BRIEF OF PETITIONER

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## **I. Introduction of case**

This is a very unique and complex criminal case. There is no other analogy in American history. It is unusual that the State ( DSHS ) is criminally prosecuting me, Avrum Tsimerman, for \$6,400, when the State ( DSHS ) owes me for underpayment from 2004 to 2008 (Ex 21, Ex 24 pg. 3 and Ex 25 pg. 1) for approximately \$20,000 (award is for \$10,524 with 12% each year from 2004 to present). This criminal case will cost over \$100,000 to prosecute me for a crime that could not have been committed.

Plaintiff is alleging that I, Avrum Tsimerman, committed theft in the first degree with deception. The act was said to have occurred in July of 2008 to October 2008 with a result of approximately \$6,400 being in question. What the plaintiff fails to address is the award of almost \$100 million (Ex 25 pg. 2), in 2010, for a class action lawsuit where I was one of the lead complainants against the State. This award was for money stolen by the State from Individual Providers, such as myself; the award was for underpayment of services between 2004 to 2008. The share from the \$100 million that is owed to me, from the State, is more than \$10,000, well above the accused amount said to be owed to the State.

The plaintiff also fails to ask the court for all the monies that DSHS is said to have lost. The Treasury claims that 6 checks had been issued, but I am only charged with 4 checks. As I will later explain, this is because the

King County Prosecutor is looking to harm me rather than find justice for DSHS.

## **II. Assignments of Error**

### **1. Errors**

No. 1 – The trial court erred in not dismissing the case due to lack of evidence, when it was shown that DSHS knew client had passed.

No. 2 – The trial court erred in not dismissing the case due to lack of evidence, when no evidence shown that defendant signed, called or deceived.

No. 3 – The trial court erred in not recognizing Leya Rehokter's contract with defendant.

No. 4 – The trial court erred in not recognizing that DSHS was in breach of contract and defendant was working and being paid by DSHS's client, Ley Rehokter.

No. 5 – The trial court erred in not changing charges.

No. 6 – The trial court erred in not consolidating charges.

No. 7 – The trial court erred in not recognizing the charges as a common scheme or plan.

No. 8 – The trial court erred in not consolidating charges and put the defendant in double jeopardy.

No. 9 – The trial court erred in not dismissing due to the statute of limitation being reached.

No. 10 – The trial court erred in not dismissing the jury pool and making a new jury pool.

No. 11 – The trial court erred in not allowing jury instructions for a good faith claim to the money, WPIC 19.08.

### **III. Statement of the Case**

No. 1 – Defendant was charged with Deception for providing work to a client of Department of Social and Human Services (“DSHS”) that had passed away (Ex 56 pg.2, “Certificate of Probable Cause”). DSHS knew their client had passed away (CP “motion with oral argument to dismiss case due to lack of evidence” and “clerk’s minutes” pg. 19 at 11:37:46) and (Ex 46 pg. 1) and updated their records less than 2 weeks after her death. Therefor DSHS knew of their client’s death and still provided payment for 4 months (Ex 3, “Packet of Warrant/Check Printouts”), knowing their client had passed, to the defendant. Does the court have authority to try the defendant of deception when Plaintiff knew their client was deceased?

No. 2 – No evidence was shown that the *Defendant* had knowledge or the invoices to deceive DSHS (RP on pg. 7 starting at line 12):

“MR. TSIMERMAN: It is supposed to be five invoices -- for this period, for this time – five invoices what is supposed to come to my house, supposed to be employee signed, supposed to be I sign, supposed to be or send back or dial by telephone. Nothing happened. No in case. I asked prosecutor how we can prosecute case when I supposed to have these invoices, like I did for 15 years... THE COURT: And there is no proof of what was sent to the residence? MS. MARYMAN: I don't have that.”

With no evidence shown that the defendant had information available to obtain funds illegally or evidence, such as finger prints, caller ID, signature, etc, did the trial court error in convicting without evidence?

No. 3 – Defendant was an employee of DSHS’s client, not DSHS. All work provided was at the discretion of client (WAC 388-71-0505(2)):

“The client or legal representative... Establishes an employer/employee relationship with the individual provider”

Is the contract (Ex 19 pg. 1 and 2) between DSHS’s client, Leya Rehkter, and defendant, me, legal?

No. 4 – Defendant did not have a legal contract with DSHS after DSHS breached the contract in “bad faith” in 2003(Ex 25 pg 1) and (RP pg. 13, starting on line 5):

“In 2010, judges and jury make a decision... It is in bad faith and not good.”

Can the court try the defendant under the agreements for hours worked and pay after DSHS was in breach of said contract?

No. 5 – The facts of the case are clearly shown to fit the specific RCW

74.09.210(1)(c)(i):

“No person... shall, on behalf of himself or herself or others, obtain or attempt to obtain benefits or payments under this chapter in a greater amount than that to which entitled by means of... other fraudulent scheme or device, including, but not limited to... *Billing for services*, drugs, supplies, or equipment that were unfurnished, of lower quality, or a substitution or misrepresentation of items billed”

Did the trial court error in convicting under the general RCW

9a.56.030, rather than the specific RCW 74.09.210(1)(c)(i)?

No. 6 – Did the trial court error in only charging 4 counts and not including all 6 checks (Ex 3, “Packet of Warrant/Check Printouts”) claimed by victim by consolidating them?

No.7 – Trial court would not recognize or charge under one common scheme or plan, but used all the same evidence for the deception (PR pg. 9 starting at line 21):

“THE COURT: Number 11. Consolidate charges and include all monies allegedly owed? MR. TSIMERMAN: This is the sixth – the prosecutor accuse me of four checks from first of July -- July, August, September, October. Every month check come to my house. Four accusations in this information. Yeah. Information. There are more checks, additional checks, and this approved by everybody include investigator – mean policeman. There is another check for \$47 -- and \$47.”

Did the trial court error in not consolidating and charging under one common scheme or plan?

No. 8 – Defendant was put in Double Jeopardy by not consolidating all counts under one common scheme or plan. Did the trial court error in not consolidating charges?

No. 9 – Did the trial court error in applying the revised statute of limitation retroactively without legislative intent?

No. 10 – Defendant asked for a new jury (CP “clerk’s minutes” pg. 9 at 09:13:45) due to jury pool not representing his peers and due to prejudice shown by jury. Did the trial court error in allowing the jury pool to continue?

No. 11 – Did the trial court error in not allowing the jury instruction for a good faith claim (RP pg 54 line 21, motion was denied on 5/21/13 at 1130am) and (Ex 19, which was used as a basis to make a good faith claim to the money)?

#### **IV. Argument**

##### **1. Background**

###### **a. Washington Administrative Code**

A client of Department of Social and Human Services (“DSHS”) is an “individual eligible for any medical assistance program, including managed care programs” (WAC 182-538-050).

The client has the primary responsibility for locating, screening, hiring, supervising, and terminating an Individual Provider (WAC 388-71-0505(1)) and “[e]stablishes an employer/employee relationship with the individual provider” (WAC 388-71-0505(2)).

When the Individual Provider is hired by the client, the “individual provider must take direction from the client, who is the IP's employer” (WAC 388-71-0515(1)).

**b. Client/employee relationship and history**

Leya Rehkter was a client of DSHS and hired, directed care and fired Individual Providers (“IP”), *See* WAC 388-71-0505(1). I was hired as an IP by Leya Rehkter to provide care to her as her employee, *See* WAC 388-71-0505(2); I was an employee of Leya Rehkter, not the State or DSHS.

Leya Rehkter hired me in 1993 and I worked for her for 15 years, before her death in May of 2008. I lived in her home and was considered a live-in-caregiver by Federal statute. Under section 8, I was a live in attendant, which means I provided services to Lea Rehkter 24/7. As my employer, Leya Rehkter would assign tasks and assign how much work I would be paid for; DSHS would give Leya Rehkter funds for work she authorized me to provide and I would be paid on her behalf. Leya Rehkter would approve hours worked by signing an invoice.

In 2004, DSHS illegally reduced the amount paid to some IP's and not others, which was a breach of contract. I was one of 22,000 IP's affected by the reduced pay. I continued to work underpaid until Leya Rehkter's death in May of 2008.

Before Leya Rehkter's, my boss of 15 years, death, she wrote a contract (Ex. 20) for me to receive 6 additional months of compensation for work provided and not paid for. I was obligated to follow my employer's terms in the contract as stipulated in WAC 388-71-0515(1). I was not only obligated by a contract to recoup the money, I was also morally and ethically obligated to fulfill the promise I made to my dying mother.

The contract Leya Rehkter made was sent into Evergreen Care Network, her case manager, after her and I signed it. After Leya Rehkter had passed, I received 4 of the 6 months promised to me, which equaled approximately \$6,400. I am still owed the other \$3,600 from DSHS (approximately 2 more months of compensation).

In 2007, a class action was filed against the DSHS (Ex 21) for underpaying IP's. Leya Rehkter and I were named as lead complainants in this action. And in 2010, DSHS was found guilty (Ex 25 pg.2) by a judge and jury for underpaying IP's and an award of \$95,776,014.35, plus fees and costs, was awarded (Superior Court of Thurston County, WA Case

No.07-2-895-8). As an IP that worked for Leya Rehkter for many years, I am personally owed more than \$10,000 from the \$100 million award. The jury's verdict and award reaffirms my employer's contract as valid for me to receive 6 months of compensation for underpayment of work provided.

When Leya Rehkter passed away, I called Evergreen Care Network ("ECN") to inform them of her death and to ensure that they knew of the contract between me and her. I then mailed a copy of the contract she had written to ECN showing that she had passed and that I was to receive the 6 months of payment. Immediately all services from DSHS stopped (Ex 46 pg. 1, food stamps stopped that month). This included SSI, Medicare and food stamps. Also after my employer's death, I returned all life supporting equipment to DSHS. This included a very large oxygen generator, wheelchair and other large equipment that sustained her life up to that point. I concealed nothing. I had mentioned this as testimony in my Trial Brief for King County Superior Court case No.12-1-01506 SEA. I use the brief as proof of this statement.

## **2. Court Process and hearing**

### **a. Contract**

In trial, the State used a contract with DSHS that had been found to be in bad faith (Ex. 25 pg.1) and I had testified to this fact saying (RP page 13, starting on line 5):

”In 2010, judges and jury make a decision so contract what is in class action and I have evidence. It is in bad faith and not bad faith and not good.”

The Individual Provider (“IP”) contract was breached and in bad faith since 2004 and I won a class action lawsuit in 2010 (Ex. 26 pg.1) that proved this. The breach of contract shows that DSHS was not paying Leya Rehkter enough for her care. I had provided Leya Rehkter with services outside of the bad faith contract and under contract with her directly. ECN, DSHS, Leya Rehkter and I all recognized this and I was still paid every month in 2006, 2007 and 2008 under Leya Rehkter’s contract, (Ex 36, 37 and 38 were contracts not signed between me and DSHS). Before her death in 2008, she wrote a contract (Ex 19 “Employee-Employer Contract”) with me to pay for 6 additional months of pay for services that had been provided in the past and not paid for.

I testified that after Leya Rehkter had passed away on May 16<sup>th</sup> 2008 I called in within 24 hours and sent a letter to them within a week. The records show in CP “motion with oral argument to dismiss case due to lack of evidence” that DSHS had updated their files to show she had passed within 2 weeks of her death (Ex. 46). Additionally, the investigator wrote in Ex 56, “Certificate of Probable Cause” pg. 2, shows that the Hospital reports the death automatically to the state saying that “Ms. Rehkter’s death is recorded on a Washington State Certificate of Death,

state file number 852725, the name of the physician certifying the death of Ms Rehker is Dr. Scott Bonvallet, Bellevue Washington.” The prosecution maintains that DSHS paid me to care for a dead client that they did not know was dead, but the facts show that this is simply not true.

After Leya Rehker’s death, I started to receive the money as I expected from the contract (Ex. 19) with Leya Rehker and stated this in court, (in RP on page 22, starting on line 7):

“But this check what has come to me, I never steal because I have contract with my employer.”

And, the court recognizes that I testified to this fact as well saying (in RP on page 53, starting on line 9):

“You testified a few minutes ago you gladly received the money; you were happy to see the money; it was exactly what you thought should happen and under your theory of the case you thought you should receive the money because you had forwarded in this contract between you and your mother, which is in Russian and not in English, but you believed you were entitled to the money.”

**b. No evidence**

The crux of this case is if there is evidence showing that I could have committed this crime. During the entire case, I kept asking for this evidence and never received it. This can be seen in my Trial Brief in King County Superior Court case No. 12-1-01506 SEA, where I asked in point number 10, “Motion to force Plaintiff to produce documents”, for the

documents that I would have used to falsify any information. These documents were never supplied. The only evidence that was supplied was evidence that I cashed 6 checks, in Ex 1, 2, 3 and 4.

Ex 1, "Payment Lookup by Invoice", shows payments by invoice number inside Social Services Payment System (SSPS). This exhibit is only an internal document and has nothing to do with what was sent to me or shows anything I did. The Prosecutor approves this in her questioning (in RP on pg.19 starting at line 11):

Q=Ms. Maryman, A=Robert Hurst

Q. Okay. And then State's Exhibit 8, what are -- the title of that document -- I realize it is multiple pages. It says: Payment lookup by invoice number?

A. Yes.

Q. Is that correct?

A. Yes.

Q. Okay. And you received these documents from the attorney general's office, correct?

A. Yes.

Q. And was it your understanding that these were the documentations of the payments that were made to Mr. Tsimerman?

A. Yes.

Thus showing these are only payments made to me and not anything I did. In Ex 2, "Invoice Inquiry", the evidence shows 16 payments that were made between May and October from DSHS/SSPS. This again is an internal document that shows DSHS issuing money and nothing that I did.

Ex 3, "Packet of Warrant/Check Printouts", shows the 6 checks I received and cashed. Again, this only shows that I accepted the money given to me and does not show where I received anyone or what the actual deception was. This information is so important that I provided my own copy, in Ex 48, "Accused 6 Checks", to show that I was only paid for 4 months out of the 6 months promised by my contract and what I expecting to receive as back payment.

Ex 4, "Bank Records", shows a total of 6 checks that I received in the time period of the accused taking. This again does not show I did any deception to receive the money, only that I received the money that I was expecting from the contract I had with Leya Rehkter.

The four Trial Exhibits used by the prosecutor only show that money was released to me and I cashed the checks. None of this evidence shows that I had access to the invoices or that I received the invoices for care of Leya Rehkter.

The invoices issued each month (example is in Ex. 39 pg.4, 5 and 6) are so important because they have a unique number assigned to each of them. The unique number can only be obtained with one of these invoices. The invoice number is used to access the telephone system. I could not have called into SSPS and requested this money if I did not have the invoices sent to me. I even provided the Prosecutor examples (Ex 39,

“Individual Provider Invoices”) of the invoices during trial and she still did not produce any invoices for the months I was accused of deception. The prosecutor has only shown the internal documents used at SSPS (interoffice and computer system) but has never shown the invoices I used or even that they were sent to me.

The court has even asked the Prosecutor if there were invoices sent to me, stating (in RP on pg. 8 starting at line 9):

THE COURT: “And there is no proof of what was sent to the residence?”

MS. MARYMAN: “I don't have that.”

There is no evidence that I had the ability to send in documentation or claim hours worked because there were no invoices sent to me. I need an invoice each month to have a unique ID number for payment. Having no invoices sent to me shows that I could only be paid through the contract with my employer and not because of any calls claiming services have been provided after death.

The other interesting fact is that I was accused of falsifying documents and sending them into DSHS. In Ex 56, “Certificate of Probable Cause” pg. 2, the Bellevue investigator claims that I “Continued to send documentation to Olympia Washington claiming that he is still caring for his mother”. Further the Ex 56 on page 5, the Bellevue investigator states:

“Avrum Tsimermon (sic) did commit the crime of Theft 1<sup>st</sup> degree – By Deception when he received and cashed/deposited \$9,003.25 from the State of Washington by deceptively and knowingly filing false documentation for multiple months”.

However, the Prosecutor states (in RP on pg. 3 starting at line 14):

“I'm certainly not going to say that he sent in a forged invoice because... there is no evidence of that”

And again, the Prosecutor states (in RP on pg. 8 starting at line 6):

MS. MARYMAN: “As I explained in response to the last motion, there are no invoices that were sent in to DSHS”

How can the prosecutor claim I committed a different offense than what the investigator charged me with? And without the document (invoices), how does the prosecutor show I was not paid for the contract between me and my employer? This entire case is pure speculation and has no evidence.

There is no evidence that anything was sent to my house for me to falsify; there is only speculation that DSHS sent invoices to my house for me to use. There is no evidence that I had seen or had possession of these invoices; there is only speculation that I had access to them. There is no evidence that I called SSPS; there is only speculation that I had access to the unique ID number on the invoices and called SSPS. There is no evidence that I claimed to have worked for my mother; there is only

speculation that I claimed to have worked for my mother and did not receive payment for any other reason.

I have said many times in court that there is no evidence and stated in court (RP pg. 4 line 22):

“I never called. There's never evidence that I called. It is very interesting. So what is she talking? It does not exist. Not factual, not theoretically, it is a pure BS. Why? First, number 1, there is approximately 400 Billion calling per year -- [UNINTELLIGIBLE] with this. Second, very important, everybody can do it. Can doing this -- Evergreen Care Network, my caseworker, can do and prosecutor -- can do in Sam -- can do in everybody. It is not evidence that I did this. I never did this and I don't have right for doing this because she's dead.”

And again I still ask “where is evidence of my fingerprint? Where is evidence of my voice?”

**c. Wrong charges**

Even if the evidence to show that I deceived the State is not available, the Prosecutor and investigator still charged the wrong statute to what had occurred. The Prosecutor claims that I obtained payments for services that were not preformed. RCW 9a.56.030 is a general theft statute but RCW 74.09.210(1)(c)(i) clearly covers the accused actions, stating:

“**No person**... shall, on behalf of himself or others, obtain or attempt to obtain benefits or **payments** under this chapter in a greater amount than that to which entitled by means by... **fraudulent scheme** or device, including, but

not limited to **[b]illing for services... that were unfurnished**” (emphasis added).

The legislator also provided an avenue for penalties and repayment for this action stating in RCW 74.09.210(2):

“Any person or entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess benefits or payments received, **plus interest** at the rate and in the manner provided in RCW 43.20B.695.” (emphasis added).

RCW 74.09.210 creates a basis to overturn the lower court’s ruling based on the doctrine that specific statutes have to be invoked rather than relying on generic theft charges. This rule was set forth quite recently in *State v. Wilson*, 158 Wash.App. 305, 313-314, 242 P.3d 19 (2010), as follows:

When a specific statute and a general statute punish the same conduct, the statutes are concurrent and the State can only charge a defendant under the specific statute. *State v. Shiner*, 101 Wash.2d 576, 580, 681 P.2d 237 (1984); *State v. Presba*, 131 Wash.App. 47, 52, 126 P.3d 1280 (2005). This rule gives effect to legislative intent and ensures charging decisions comport with that intent. *State v. Conte*, 159 Wash.2d 797, 803, 154 P.3d 194 (2007); *State v. Greco*, 57 Wash.App. 196, 204, 787 P.2d 940 (1990); *State v. Danforth*, 97 Wash.2d 255, 258, 643 P.2d 882 (1982). We review the question of whether two statutes are

concurrent de novo. State v. Chase, 134 Wash.App, 792, 800, 142 P.3d 630 (2006).

RCW 9a.56.030 provides only for generic theft by deception, while RCW 74.09.210 shows clear legislative intent for actions that I am accused of. The motion was brought forth in my brief to the trial court and was dismissed by the judge. RP pg. 56 starting on line 12:

“The other motion was a motion in limine to dismiss the charges due to the wrong charges being applied to the crime. I will deny that motion”

**d. All charges were not filed**

Even though the investigator and Prosecutor charged the wrong charges, they did not include all the monies said to have been taken with the charges they did file.

Ex 2, “Invoice Inquiry”, shows 16 payments that were made by SSPS between May and October 2008 and shows what DSHS think they have lost.

Ex 3, “Packet of Warrant/Check Printouts”, shows the 6 checks I received between May and October 2008.

Ex 4, “Bank Records”, shows 6 checks that I received and cashed from DSHS during May and October of 2008.

Ex 16, “Attorney General of Washington”, shows that the State Investigator thought that there was over \$9,000 stolen from DSHS.

Ex 56, "Certificate of Probable Cause", shows that the Bellevue Investigator claimed that over \$9,000 stolen from DSHS. And on page 4 it says this amount was "for the time period of May 1, 2008 thru and including October 31, 2008".

The Prosecutor even questions the Investigator to conclude that there are 6 checks are in question. In the RP on pg. 20 starting on line 2, it says:

Q=Ms. Maryman, A=Robert Hurst

Q. Okay, so on State's Exhibit 7, the warrant, the first warrant that was issued on June 2, 2008, what is the amount?

A. \$1600.62.

Q. The second warrant that was issued, what is that amount?

A. \$1609.67.

Q. The third warrant that was issued on August 1, 2008, what is that amount?

A. \$1650.14.

Q. The next warrant, which was issued on September 2, 2008, what is that amount?

A. \$1730.27.

Q. The warrant issued on October 1, 2008, what is that amount?

A. \$1706.31.

Q. The -- and then the final one, which is dated November 3, 2008, what is that amount?

A. \$47.20.

Q. Okay.

And the Prosecutor clarifies again a few moments later that there were 6 checks under investigation. In the RP at pg. 21 starting at line 12:

Q=Ms. Maryman, A=Robert Hurst

Q. And your understanding was that these were all, according to the cover page of this packet, copies of warrants that were issued to Mr. Tsimerman, correct?

A. Yes.

Q. And these were dealing with the time period after Ms. Rector had died?

A. Yes.

MS. MARYMAN: The State offers Exhibit 7 for pretrial purposes.

THE COURT: Any objection?

MR. TSIMERMAN: No, no, no, Your Honor, no objection. There's six checks.

THE COURT: Very well.

Then during the restitution hearing the Prosecutor's office attempted to obtain money that was accused in Ex 56, "Certificate of Probable Cause", by using invoices claimed in SSPS lookup and not checks cashed by me. This trick was so that she could ignore the smaller amounts I received and go for 4 counts of first degree theft in order to obtain a harsher punishment. The amount given by the court as restitution cannot be arrived at with the checks shown in Ex 3 or 4; the only way to reach the amount awarded is if the checks are broken up by invoice claims and ignoring the total check cashed.

The RP show that the prosecutor ignored the other checks to obtain the 4 counts of first degree theft, at pg. 58 starting at line 58:

MS. MARYMAN: I am requesting restitution in an amount slightly different than the amount noted by the restitution unit my office.

THE COURT: Yes.

MS. MARYMAN: And just to summarize, when the restitution packet was submitted to the Court, it included the four checks that were the basis for the four counts, and then also two checks for transportation, for mileage. I am subtracting that out. So I am

asking for \$6423.30, which reflects just the four checks which were the basis of the four counts for which Mr. Tsimmerman was convicted. I am not asking the Court to award restitution for the two checks that were the basis for mileage.

I objected to the abuse of using the invoice amounts claimed, in RP on pg. 60 starting at line 25:

“So we have six checks. These six checks is exactly money what is supposed to be. In total about this money, this compute, this exhibit, six checks total for \$8344 -- 20-oh-one-cent. This exactly money -- what is responsible. What is prosecutor bring inside? This checks -- what does prosecutor bring right now here? This invoices; it's nothing to do with checks. In beginning talk about word checks. This not checks. This invoices. This checks, six checks for \$8344.21 what is for six months -- is exactly what it is supposed to be”.

If the amount lost to the victim is what should be charged, then the entire check must be charged and paid back, not ones that make the prosecutor's case much harsher against me.

If the prosecutor was to include the smaller checks, then all of them would need to be consolidated into a single charge and I would not have faced almost 10 years in jail. The goal of the Prosecutor was to harm me rather than find justice.

**e. Charges**

I have been accused of hiding my mother's death and claiming work hours. The prosecutor uses the same information for each count showing that a common scheme or plan was used to obtain the money. And, in the

information filed, the accusation goes from May until October with more than 6 checks accused. I had requested many times during the trial to consolidate charges and add all monies said have been taken. In the RP at pg. 9 starting at line 21:

THE COURT: I am granting the motion. Number 11. Consolidate charges and include all monies allegedly owed?

MR. TSIMERMAN: This is the sixth – the prosecutor accuse me of four checks from first of July -- July, August, September, October. Every month check come to my house. Four accusations in this information. Yeah. Information. There are more checks, additional checks, and this approved by everybody include investigator – mean policeman. There is another check for \$47 -- and \$47.

And again I try to consolidate all monies owed, RP on page 46 starting at line 16:

THE COURT: You cite State v. Barton.

MR. TSIMERMAN: Yeah, common scheme or plan. Do you find the defendant guilty of the common scheme or plan to deprive the victim of money? That's exactly what has happened. The six checks is a common scheme of plan.

THE COURT: Okay. That was not charged and so it will not be given. Turn to the next one.

MR. TSIMERMAN: But charges –

THE COURT: It is not charged as a common scheme or plan.

MR. TSIMERMAN: I understand this, Your Honor, but the situation right now very simple

THE COURT: I understand and I don't think that you are going to be restricted, nor has the -- well, let me back up. At this point I don't know whether the State is going to object to your arguing that the counts should have been aggregated, or the values should have been aggregated to one count of theft, but that is what I understand you to be saying. Is that correct?

MR. TSIMERMAN: Excuse me, Your Honor. (The interpreter interprets)

MR. TSIMERMAN: No, because I did this under common scheme or plan in this because it is six checks included in this, so these six checks supposed to be -- be against me. Government prosecutor supposed to be compensate for this money, so when I steal six checks, include \$47, supposed to be return this money back. Don't have sense why supposed to be return --

THE COURT: But you are -- all right. Well, you will be able to argue that, whatever -- whatever that means.

If this case was about collecting all monies said to have been lost by DSHS, that the Prosecutor should have consolidated the 6 checks claimed in Ex 3 and 4 (Packet of Warrant/Checks printouts and Bank Records, respectively) and charged me appropriately. These are the same 6 checks that were discussed in the RP on pg. 20 starting on line 2, where the prosecutor talked with the detective about each of them in court. The only reason the charges were not consolidated to obtain all monies accused was to obtain a harsher punishment. The courts even gave the Prosecutor a chance to amend the charges in the beginning of the trial, in the RP at pg. 3 line 3:

THE COURT: I want to clarify at the outset, the State is not amending its charges; it is going forward with the current charges. Is that correct?

MR. TSIMERMAN: What?

MS. MARYMAN: That is correct, I am not moving to amend. I am maintaining the charges as originally charged -- unless, of course, the defendant at some point in time opts to take advantage of the plea offer that I have extended. Short of that, we are just going with the original information.

My motion was ultimately denied by the judge, in RP pg. 56 starting at line 56:

Motion in limine to consolidate charges and include all monies owed, I will deny that motion, as well.

The right to consolidate is available under RCW 9A.56.010(21)(c), it states, “whenever any series of transactions which constitute theft... and said series of transactions are a part of a criminal episode or a common scheme or plan, then the transactions may be aggregated in one count”. And even though RCW 9A.56.010, the aggregation statute, applies only to third degree theft, the taking “constituted one criminal impulse pursuant to a general larcenous scheme and therefore could be charged under the common law rule as one count of first degree theft” (citing *State v. Barton*, 28 Wn.App. 690, 626 P.2d 509 (1981)). Barton also states:

“The State was permitted to charge theft in the first degree for the five transactions under the well-established common law rule that property stolen from the same owner and from the same place by a series of acts constitutes one crime if each taking is the result of a single continuing criminal impulse or intent pursuant to a general larcenous scheme or plan. *State v. Vining*, 2 Wn.App. 802, 808, 472 P.2d 564, 53 A.L.R.3d 390 (1970); Annot., 53 A.L.R.3d 398 (1973). “

I was accused of falsifying documents to DSHS for 6 months after my employer, my mother, Leya Rehkter had passed away. The Prosecutor states in the RP (on pg. 4 starting at line 11) that her “theory of the case is that the defendant was calling and saying, I am still caring for [Leya Rehkter], and had he not made those phone calls, DSHS would not have issued the checks to pay him.” This shows that the prosecutor admits that there was a common scheme or plan to obtain the money. Therefore, the ability to consolidate and charge all monies owed was available and she abused her discretion to obtain a harsher punishment and not get go for all money alleged to be taken; aggregating the charges into a single count would have given the courts ability to punish for the entire alleged crime and not just pieces of it to obtain a harsher sentence/punishment.

If the 2 checks were stolen in the same manner, the Prosecutor is required as a quasi-judicial officer, see *State v. Huson*, 73 Wn.2d 660, 663, 440 P.2d 192 (1968), to ensure “that one accused of a crime is given a fair trial” *State v. Gibson*, 75 Wn.2d 174, 176, 449 P.2d 692 (1969).

**f. Statute of limitation**

The prosecutor did not charge the smaller counts of theft (which would be considered 3rd degree theft) because they had fallen outside of the statute of limitation. The prosecutor did not want to consolidate all monies in question so that she could abuse her discretion and obtain a harsher

punishment. However, 4 the charges that were wrongly applied against me were also outside the statute of limitation for first degree theft in 2008. 2008 RCW 9A.04.080(h) states that “No other felony may be prosecuted more than three”. I was tried in court more than 3 years after the investigation started. This means that the statute of limitation had expired. However, the Prosecutor is using a new law that was passed in 2009 by the Senate Bill 5380. This new law provided a 6 year statute limitation on first degree theft that was committed by the aide of deception. There was no expressed retroactivity in the new law and therefor it must be presumed to apply prospectively and does not apply to my case.

The Prosecutor ignored my questioning of no legislative intent for retroactivity and used *STATE v. HODGSON* 108 Wn.2d 662 (1987). Hodgson argues that the State did not have the ability to extend the statute of limitation on crimes already occurred. However this does not deal with the question I had raised and the trial court denied my motion to dismiss wrongly.

I contend that Hodgson deals only with a narrow argument; Hodges discusses if statute of limitation can be extended. This is not my question or argument. I argue that it is not clear that the legislature intended for retroactivity to past crimes; in absence of a legislative declaration, the law must be applied proactively. I have asked the court to dismiss due to no

legislative intent found for retroactivity. The Legislative body must declare its intent for any criminal statute as written in RCW 10.01.040.

RCW 10.01.040 provides that:

“No offense committed and no penalty or forfeiture incurred previous to the time when any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, unless a contrary intention is expressly declared in the repealing act, and no prosecution for any offense, or for the recovery of any penalty or forfeiture, pending at the time any statutory provision shall be repealed, whether such repeal be express or implied, shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act. Whenever any criminal or penal statute shall be amended or repealed, all offenses committed or penalties or forfeitures incurred while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act, and every such amendatory or repealing statute shall be so construed as to save all criminal and penal proceedings, and proceedings to recover forfeitures, pending at the time of its enactment, unless a contrary intention is expressly declared therein.” (emphasis added)

I shall address the 3 emphasis in the above statute separately:

### **RCW 10.01.040 APPLIES TO HOW TO PROSECUTE**

RCW 10.01.040 states that "...no prosecution for any offense... shall be affected by such repeal, but the same shall proceed in all respects, as if such provision had not been repealed, unless a contrary intention is expressly declared in the repealing act".

Prosecution, defined by Webster dictionary, means "the act or process of prosecuting; specifically: the institution and continuance of a criminal suit *involving the process of pursuing formal charges* against an offender to final judgment" (emphasis added).

Therefore, RCW 10.01.040 states that prosecution, or "process of pursuing formal charges", of any criminal act is not affected by repeal unless there is clear legislative intent. The 2009 law that was enacted showed no expressed intent to be applied retroactively to past crimes. Therefore, the 2008 RCW for statute of limitation is the controlling RCW.

### **RCW 10.01.040 APPLIES TO ENFORCEMENT**

RCW 10.01.040 also states that "whenever any criminal or penal statute shall be amended or repealed, all offenses committed... while it was in force shall be punished or enforced as if it were in force, notwithstanding such amendment or repeal, unless a contrary intention is expressly declared in the amendatory or repealing act".

RCW 9A.04.080 is unarguably a criminal statute which was amended in 2009. RCW 10.01.040 must be strictly construed and does not discern whether a statute deals with statute of limitation or not. Therefore, an amended statute, such as RCW 9A.04.080, must have a clear intention for retroactivity expressed in the amending act. The amending act, SB 5380, did not have expressed intent for retroactivity and therefore does not apply to crimes committed before enactment.

Secondly, the wording *enforced as if it were in force* shows the legislatures intent that the same rules and procedures be used that were in effect when the crime was said to have been committed. There is no expressed language to indicate that the legislature wanted the new statute of limitation, in SB 5380, to apply retroactively. Statute of limitation is covered under the enforcement of a statute and therefore is covered by this language. Therefore, with no clear intent for retroactivity made by the legislature in SB 5380, the controlling RCW is 2008 RCW 9A.04.080(1)(h) and the statute of limitation has expired.

#### **RCW 10.01.040 APPLIES TO THE CRIMINAL PROCEEDINGS**

RCW 10.01.040 states “and every such amendatory or repealing statute shall be *so construed as to save all criminal and penal proceedings*, ...unless a contrary intention is expressly declared therein”.

The phrase “save all criminal... proceedings” within the RCW shows the intent to retain the process or procedure in which the state may prosecute if an amendment is made unless there is clear intention from the legislature to make it retroactive.

Webster’s dictionary defines proceedings as procedure, which is an established way of doing things. 2008 RCW 9A.04.080(1)(h) deals with the procedure in which the state may file a claim against a defendant. Or another way to explain it, the proceedings deals with the method to which the state can bring suit. 2008 RCW 9A.04.080(1)(h) was that method of prosecution and in SB 5380 it did not state that the new method would be applied to past crimes.

Therefore, 2008 RCW 9A.04.080(1)(h) states the criminal procedure to be limited to 3 years after the alleged crime had been committed. The amending act, SB 5380, changes the limit but implied no expressed intent for retroactivity. Therefore, SB 5380 cannot be applied retroactively and 2008 RCW 9A.04.080(1)(h) is the controlling RCW and the case should have been dismissed for statute of limitation being reached.

In conclusion, RCW 10.01.040, which has existed unchanged since 1901, is in derogation of the common law, it is strictly construed and directly addresses the need for clear legislative intent for *any legislative*

*amendment* that deals with enforcement, prosecuting, and proceedings of a criminal statute. SB 5380 *amended* 2008 RCW 9A.04.080, which is a criminal statute. And because 9A.04.080 is a criminal statute, the amendment is applied prospectively unless there is clear legislative intent to apply it retroactively.

### **RETROACTIVITY FOR STATUTE OF LIMITATION IS NOT SUPPORTED**

There have been many court decisions around the country and at the Federal Level that prohibit retroactivity to the statute of limitation and it has been stated that “[u]nless statutes of limitation are clearly retrospective in their terms they do not apply to crimes previously committed”, 22 *CJS, Criminal Law*, § 252, pp 325-326.

The Virginia Court Of Appeals wrote a similar opinion in *Michael Brian Shaffer v Commonwealth of Virginia* (2000), stating “[t]here appears to be no good reason for excluding statutes of limitation, or remedial statutes, from the general rule, that retroactive or retrospective legislation is not favored, in the absence of any words expressing a contrary intention. . . . It is reasonable to conclude that the failure to express an intention to make a statute retroactive evidences a lack of such intention”.

As stated in the Nevada appellate court in *STATE v. MEROLLA* 686 P.2d 244 (1984):

“[b]efore the statute of limitations for a criminal offense expires, a legislature may amend the statute and extend the limitations period without violating the ex post facto clause. See *Falter v. United States*, 23 F.2d 420 (2nd Cir.), cert. denied, 277 U.S. 590, 48 S.Ct. 528, 72 L.Ed. 1003 (1928). The question presented by this case, however, is not whether the legislature had the power to extend the statute of limitations retroactively, but whether the legislature actually intended to do so... Generally, a statute must be construed to have only prospective effect, unless a contrary legislative intent is clearly indicated by the express terms of the statute. See *Hassett v. Welch*, 303 U.S. 303, 58 S.Ct. 559, 82 L.Ed. 858 (1938); see also *Shepley v. Warden*, 90 Nev. 93, 518 P.2d 619 (1974). Moreover, criminal statutes of limitations are to be liberally construed in favor of the accused. *Toussie v. United States*, 397 U.S. 112, 114-15, 90 S.Ct. 858, 859-60, 25 L.Ed.2d 156 (1970). In light of these considerations, it has been held that an amendment to a criminal statute of limitations, silent on the question of its retroactive application, must be construed as prospective only and cannot apply to an offense committed before its effective date. *United States v. Richardson*, 393 F.Supp. 83 (W.D.Pa. 1974), aff'd, 512 F.2d 105 (3rd Cir.1975).”

As stated in Supreme Court of Connecticut in *STATE v. PARADISE*  
189 Conn. 346 (1983):

“[t]he court went on to hold precisely that "in a *criminal case* a retrospective construction of a statute should not be adopted unless its language clearly makes such a construction necessary." Id., 685. (Emphasis added.) Having found no such expressed intent, the court held that the trial court's refusal to apply the statute retroactively was correct.

The rationale for this distinction is grounded in the principle that criminal statutes must be strictly construed. *State v. Tedesco*, 175 Conn. 279, 291, 397 A.2d 1352 (1978). Section 54-193 is penal in nature; *State v. Anonymous* (1976-6), 33 Conn.Sup. 34, 39, 358 A.2d 691 (1976); and hence, must be liberally construed in favor of the accused. *State v. Bello*, 133 Conn. 600, 604, 53 A.2d 381 (1947). In particular, statutes of limitation in criminal cases are to be construed liberally in favor of the accused. *Waters v. United States*, 328 F.2d 739, 742 (10th Cir. 1964); *United States v. Moriarty*, 327 F. Sup.”

Retroactivity for statutes of limitation should not be an automatic assumption; without an expressed legislative declaration of retroactivity, new amendments to a statute, including statute of limitations, should be

applied prospectively. Retroactively applying new laws to past crimes committed have been denied by many other State and Federal Courts and is not allowed by our own RCWs.

### **STATUTE OF LIMITATION INFRINGES ON MY RIGHT**

Federal court addressed this issue in *SAUNDERS v. H.K. PORTER CO., INC.* 643 F.Supp. 198 (1986). The prosecution argued that the change in law “does not affect substantive or vested rights, it should be considered a procedural provision. The Court disagree[d]. **The accrual provision incorporated into a statute of limitations is as much a part of a statute of limitations as the time allotted for filing a claim after a claim has accrued.** Since, as stated above, statutes of limitation and amendments to statutes of limitations are given prospective effect absent the legislature's indication of intention to do otherwise, provisions directly affecting statutes of limitation should be given equivalent treatment” (emphasis added).

While the 2008 statute of limitation time was being accrued, the Legislature introduced SB 5380. This new amendment, to RCW 9A.04.080, did not have any expressed declaration of retroactivity in the law as presented. Therefore, the state cannot assume retroactivity, as stated in the above quote. The time for filing a case was within 3 years as 2008 RCW 9A.04.080(1)(h) provided. The 4 alleged crimes was said to

have been committed in June of 2008 to September 2008, giving the state till, at most, September 2011 to file charges and convict me of any crimes. The state did not file until 2012.

The trial court erred in not dismissing the case due to the statute of limitation being reached.

**g. Double Jeopardy**

As stated previously, the charges filed against me should have been consolidated. I not only argue that this would have given the State a chance to collect all monies claimed to be owed but also that the multiple charges put me in double jeopardy for the same crime. The Prosecutor uses the same information of deception to charge each of the counts, even though she admits that it was a part of a common scheme or plan, in RP pg. 4 starting at line 11 she states:

“My theory of the case is that the defendant was calling and saying, I am still caring for her, and had he not made those phone calls, DSHS would not have issued the checks to pay him”

Since the Prosecutor recognizes that a common scheme was used, she could have charged me with one count and lowered my offender score, thus lowering the punishment. Instead, the Prosecutor put me in jeopardy 4 times for the same alleged offense of concealing my mother’s death and being paid for her care. In *STATE v. TURNER* 6 P.3d 1226 (2000), it was ruled that “the multiple convictions for violation of the same statute

subjected him to double jeopardy under the state and federal constitutions". I argue the same issue applies to my case and that the State violated the State and Federal Constitutions.

In *State v. Adel*, 136 Wash.2d at 635, 965 P.2d 1072 (1998), the courts determined that :

"[t]o determine if a defendant has been punished multiple times for the same offense, this court has traditionally applied the "same evidence" test. *Calle*, 125 Wash.2d at 777, 888 P.2d 155. Under the same evidence test, double jeopardy is violated if a defendant is convicted of offenses which are the same in law and in fact. *Calle*, 125 Wash.2d at 777-78, 888 P.2d 155. The same evidence test mirrors the federal "same elements" standard adopted in *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180, 76 L.Ed. 306 (1932). *Gocken*, 127 Wash.2d at 107, 896 P.2d 1267. A Court of Appeals commissioner dismissed Adel's double jeopardy argument by relying upon the same evidence test and *State v. McFadden*, 63 Wn.App. 441, 820 P.2d 53 (1991). The commissioner found the two marijuana convictions were not the same in fact, each being based upon separate evidence, so the commissioner held the two convictions withstood the double jeopardy attack. The commissioner's reliance upon the same evidence test in this case is misplaced.

Both the same evidence test and *Blockburger's* same elements test are inapplicable to Adel's situation because both tests apply only to a situation where a defendant has multiple convictions for violating several statutory provisions. *Blockburger*, 284 U.S. at 304, 52 S.Ct. 180 ("The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.") (emphasis added). See also *Rashad v. Burt*, 108 F.3d 677, 679-80 (6th Cir.1997) ("[T]he *Blockburger* test is insufficient where ... the concern is not multiple charges under separate statutes, but rather successive prosecutions for conduct that may constitute the same act or transaction."), cert. denied, \_\_\_ U.S. \_\_\_, 118 S.Ct. 850, 139 L.Ed.2d 751 (1998); *United States v.*

*Woods*, 568 F.2d 509, 513 n. 1 (6th Cir.1978). See generally George C. Thomas III, A Unified Theory of Multiple Punishment, 47 U. Pitt. L.Rev. 1, 23-25 & n. 115 (1985) (analyzing and criticizing cases which erroneously applied Blockburger to the unit of prosecution context).

When a defendant is convicted for violating one statute multiple times, the same evidence test will never be satisfied. As previously mentioned, the same evidence test asks whether the convicted offenses are the same in law and the same in fact. Two convictions for violating the same statute will always be the same in law, but they will never be the same in fact. In charging two violations of the same statute, the prosecutor will always attempt to distinguish the two charges by dividing the evidence supporting each charge into distinct segments. See Michelle A. Leslie, Note, *State v. Grayson*: Clouding the Already Murky Waters of Unit of Prosecution Analysis in Wisconsin, 1993 Wis. L.Rev. 811, 824 (making this same point to illustrate that the "identical in law and in fact" analysis is not useful in the unit of prosecution context). The proper inquiry in this case is what "unit of prosecution" has the Legislature intended as the punishable act under the specific criminal statute. See *Bell v. United States*, 349 U.S. 81, 83, 75 S.Ct. 620, 99 L.Ed. 905 (1955); *State v. Mason*, 31 Wn.App. 680, 685-87, 644 P.2d 710 (1982)"

I had been accused of the same crime over the same time period, deceiving DSHS to obtain funds. This constitutes just one criminal act, or one "unit of prosecution" and 3 of the 4 convictions violate the double jeopardy standards for the State and the Federal Constitution.

#### **h. Abuse of discretion**

Not only did the judge abuse her discretion by not consolidating the charges against me and creating a harsher sentence, but she also did not allow for a fair trial.

During Jury selection, almost the entire jury pool raised their hand to signify that they thought that I did not know what was going on. Some talked about the “craziness that is coming out of the defendant’s mouth” (RP pg. 34 on line 16).

Others said that “the defendant who in representing himself is speaking in an entirely different register, and I don’t mean just in terms of in the language, I mean in terms of, you know, a style of speaking that is so dissident with what I think the rest of the proceedings are all about” (RP pg. 35 on line 16).

A juror asked “is there any outside possibility of someone saying this person isn’t competent – for any reason” (RP pg. 41 on line 14).

And another juror directly told me that they are “not hear (sic) to listen to your philosophy” (RP pg 42 on line 7). While yet another jury member said that she did not like my “tone” (RP pg. 33 on line 17).

This discussion shows that the jury was already impartial and against me. Juror number 10 had already concluded that it was inappropriate for the Court to try this case because I was inadequate (RP pg. 30 line 15). The prosecutor asked who agreed with him and more than half the room raised their card saying that they agreed that with this prejudice; jurors number 1, 4, 5, 6, 11, 12, 13, 14, 15, 16, 18, 19, 22, 27, 29, 30, 32, 33, 34,

35, 36, 38, 39, 40, 41, 42, 44, and 45 all agreed with this (RP pg. 31 starting on line 3).

After the jury commented some more about my mental ability, the prosecutor then asked which jurors say they could not give me a fair trial and jurors 1, 10, 13, 15, 18, 19, 29, 33, 35, 38, 39, 40, 41, 45 all raised their cards (RP pg. 40 starting on line 21). This created an air of impartiality towards the Courts and a stigma against me, the person claimed to be “inadequate”.

Court ended that day just after 430pm. The very next day, before 930 am and before any jury members were brought in, I asked for a new jury pool. I based this on one of 2 reasons. One, the jury was not of my peers. There were no immigrants, second language English speakers, or minorities. And second, the jury was already prejudice against me. The judge denied this motion and continued on with the case. From the outset of this case, it was impossible for me to overcome the impartial jury.

The judge also did not let me use a good faith claim defense nor did she allow for this to be a part of the jury instructions. Throughout the case I had maintained that I was entitled to this money and accepted it openly due to the contract with my employer, my mother, Leya Rehker.

The judge recognized that I had made a good faith claim to the money early on in the case. In RP pg. 12 starting on line 12:

“All right. Now motion number 12, motion to dismiss due to showing claim of good faith. Now this is really the core of your defense, is it not, that all of the money you received, you received it in good faith based upon the contract you had with your mother, based upon monies that DSHS owed your mother”

I submitted a motion to dismiss the case based off a good faith claim to the money. The judge denied this motion on 5/21/13 at 1130am. The judge based her decision on the fact that I did not provide evidence (RP pg. 54 starting on line 11):

THE COURT: Your testimony was you didn't care for your mother; that she was dead; that you placed no calls; that they couldn't prove it, so that is not making a good-faith claim.

MR. TSIMERMAN: It is exactly --

THE COURT: That is a separate --

MR. TSIMERMAN: -- good faith because it is exactly what has happened with my contract with my employer -- is exactly what has government did.

THE COURT: Right. Well, I don't -- the Court doesn't agree that there's evidence to support it.

But this is misplaced. I don't need to ask for the money. In doing this, the court is asking me to admit that I hid my mother's death to obtain the money. I did not. As stated many times, I had submitted a contract I had with my employer, which I believe gives me right to the money. The money was then sent to me as I expected and I accepted it. I even told the court that I accepted another 2 checks that had not been charged. I openly asked for this money, received it and took control of it. The judge also denied WPIC 19.08, theft, a defense. This instruction reads:

“It is a defense to a charge of theft that the property or service was appropriated openly and avowedly under a good faith claim of title, even if the claim is untenable.”

I appropriated the monies openly and avowedly. As defined by Black’s law 2<sup>nd</sup> ed, appropriated means “To make a thing one’s own ; to make a thing the subject of property; to exercise dominion over an object to the extent, and for the purpose, of making it subserve one’s own proper use or pleasure”. I claimed this money as a part of the contact from my mother, my employer. I do not deny that this money came to me nor do I deny that I claimed it as mine.

What the Judge has asked is for me to say that I called DSHS to receive the money. I did not do this but rather sent a contract in to obtain the money sent to me. I provided this contract in court, I spoke about it multiple times in court and I believe this is why I was sent the money. The Prosecutor is the one who is claiming that I called in and I dispute this. It is the jury that should decide if I made a “good faith claim” with the contract I sent in or if the Prosecutor is right that I called; I was denied the right to defend my theory of the case and provide WPIC 19.08 to the jury.

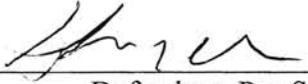
## **V. Conclusion**

I do not have all the legal skills that the State does and will need to clarify further if the court does not understand my requests. However, due

to no evidence shown of any ill act on my part, no invoices ever sent to my house, no record to show my telephone called and that DSHS knew their client had passed before the end of May 2008, I request that the court reverse the convictions of 1<sup>st</sup> degree theft. If this is not possible, I request that the courts reverse the lower court's decision based on the wrong charges being filed against. Additionally, I ask the court to reverse all convictions based on abuse of discretion for not allowing the jury to decide if I made a good faith claim to the money obtained by me.

Lastly, I was put in double jeopardy based on the information the Prosecutor provided in court. She accuses me of applying the same method of deception for several months and charged me multiple times for this deception. If the court does not find that the lower court did not error on all other complaints, then I would ask to have 3 of the 4 convictions reversed based on double jeopardy. If the courts are not persuaded by these arguments, I request that the court recognize all \$9,000 charged in indictment as money stolen and require payment of all of it and not just pieces of the accusation, which only totaled \$6,400.

Dated in SEATTLE, Washington on 6/4/14

 \_\_\_\_\_, Avram Tsimerman

Defendant, Pro Se  
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