

No. 40912-7-II

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IN THE WASHINGTON STATE COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON,

Respondent,

v.

CHRISTOPHER ROBIN BRIEJER

Appellant.

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STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION II

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APPEAL FROM THE SUPERIOR COURT

OF PIERCE COUNTY

Cause No. 09-1-04740-7

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OPENING BRIEF OF APPELLANT

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**I. ASSIGNMENTS OF ERROR**

1. The evidence was insufficient to support the jury's guilty verdicts.
2. The trial court erred when it admitted evidence contrary to ER 401, ER 403, and ER 404 (b).
3. Trial counsel was ineffective.
4. The trial court erred when it admitted evidence contrary to ER 404 (b), and when it failed to engage in the appropriate balancing required upon the objection.

## II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the evidence was insufficient to support the jury's guilty verdicts. (Assignments of Error #1)
2. Whether trial counsel was ineffective. (Assignments of Error #2)
3. Whether the trial court erred when it admitted evidence under ER 401, 403, and 404 (b). (Assignments of Error #3)
4. Whether the trial court erred when it admitted evidence contrary to what the law requires for balancing when evidence is offered under ER 404 (b). (Assignments of Error #4)

### III. STATEMENT OF THE CASE

#### A. Procedural History

On October 22, 2009, the state charged Christopher Briejer with 57 counts of Theft in the First Degree. CP 1-33. Other than motions in limine heard on the day of trial, the case proceeded to trial without pretrial motions or evidentiary hearings. CP 43-46, 48-62. Both parties filed trial briefs. Id.

The case proceeded to trial on June 3, 2010. RP(6/3/10)<sup>1</sup> 1. At that time, the state re-arraigned Mr. Briejer on a re-drafted 57-count information. RP(6/3/10) 10-22. The court heard the parties' motions in limine on that date as well. RP(6/3/10) 8.

Testimony began on June 7, 2010. RP(6/7/2010) 6. Trial was conducted within approximately one week. The defense did not put on a case in chief. RP(6/9/10) 98. On June 10, 2010, the jury returned guilty verdicts on all but count 55. RP(6/7/2010) 160-170. On July 19, 2010, the court sentenced Mr. Briejer to 43 months in prison. RP(7/19/10) 28. The Notice of Appeal was timely filed immediately following sentencing on July 19, 2010. CP 266. Mr. Briejer was also found indigent on his sentencing date. CP 267-69.

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<sup>1</sup> The Reports of Proceedings include the following: RP(6/3/10) includes testimony from June 3, 2010; RP(6/7/10) includes testimony from June 7 and June 8, 2010; RP(6/9/10) includes testimony from June 9 and June 10, 2010; RP(7/19/10) includes sentencing testimony from July 19, 2010.

## **B. Facts**

Christopher Briejer filed a claim for on-the-job injury benefits with the Department of Labor and Industries in February 2000. RP(6/7/10) 27. The claim was related to low back strain. Id. At that time, Mr. Briejer was diagnosed with a lumbar strain. Id. at 30. On January 13, 2004, documentation was executed asking the Department of Labor and Industries (L&I) to reopen the January 2000 claim. Id. at 30. This occurred during a medical consult when Mr. Briejer visited Dr. Shonnard; Dr. Shonnard executed and submitted to L&I the documentation applying to L&I to reopen the claim. Id. at 43. The documentation indicated his last day of work was October 3, 2003. Id. at 32. Within the same paperwork for reopening the 2000 claim “new injuries” were disclosed, including “...ankle and wrist problems.” Id. at 33. Also indicated, was Mr. Briejer’s 2000 claim condition had not worsened due to another injury or accident either on or off the job. Id.

Dr. Shonnard recommended magnetic resonance imaging (MRI) and an independent medical examination (IME) to determine if the 2004 symptoms were a result of the 2000 claim incident. Id. at 44, 49. Because L&I requires an IME when one applies to reopen a claim, the department scheduled an IME. Id. at 49.

Mr. Briejer's back condition required him to undergo back surgery. Id. 53. On February 25, 2004, orthopedic surgeon, Dr. Sean Ghidella, conducted the Department-ordered (L&I) IME. Id. at 50. At Dr. Ghidella's recommendation the 2000 claim was reopened. Id. at 60. Consequently, L&I paid the surgery. Id. at 61. Additionally, over the course of 5+ years, time-loss benefits (lost pay due to the injury) were paid by L&I to Mr. Briejer from the time of the surgery through mid-2009, amounting to over \$258,000.00. Id. at 65. Medical services were paid at \$76,650.91.

When the Department referred Mr. Briejer to Dr. Ghidella for an IME, it presented Dr. Ghidella with all the records it possessed related to Mr. Briejer. Id. at 54. What the department did not possess at the time of the referral to Dr. Ghidella were the records of Mr. Briejer's ankle problems noted on the forms used to reopen the claim. Id. at 80-81, cf.33.

On October 3, 2003, Mr. Briejer was a self-employed, uninsured siding installer; and on that date he fell from scaffolding and landed on his feet, crushing his subtalar joint in his ankle. Id. at 81. Because he was uninsured, no L&I record was generated from Mr. Briejer's self-transported visits to Puyallup's Good Samaritan Hospital or Harborview Medical Center for his ankle injury. Id. at 80.

Upon learning of the medical services rendered for the ankle injury, an L&I investigator presented the Good Samaritan and Harborview records to Dr. Ghidella, the IME doctor. Id. at 206. Given that

information, Dr. Ghidella offered his opinion at trial that the fall from the scaffolding likely caused the back problem, and not the simple, natural progression of what occurred in 2000. Id. at 212. With this additional information, and despite not ever being asked to re-examine or re-interview the patient (Mr. Briejer) the doctor changed his 2004 opinion while on the stand during the 2010 trial. Id. at 209, 212, 215. He said that he felt the fall from the scaffolding on October 3, 2003, more likely than not caused the back problem, and that he would have recommended the claim not be reopened, and that the injury is not causally related to the injury back in 2000. Id. at 215.

During motions in limine, Mr. Briejer sought to suppress testimony relating to the origin of the L&I investigation of him.<sup>2</sup> RP(6/3/2010) 33-38; CP 43. Specifically, under ER 401, 403 and 404 (b), Mr. Briejer sought to suppress evidence that he had climbed Mt. Rainier, was involved with “four-wheeling,” other “extreme sports,” house work, yard work or hiking while receiving disability payments. Id. Mr. Briejer’s argument was that this evidence was irrelevant and highly prejudicial because it suggested he was not really injured, but rather, was taking advantage of state L&I disability payments. Id. The trial court denied this motion in limine without any analysis and without addressing any of the ER 404(b) factors. RP (6/3/2010) 38. CP 96.

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<sup>2</sup> Mr. Briejer moved to suppress the fact that he had posted a video of himself climbing Mt. Rainier on youtube.com and that this and other evidence of his involvement in “extreme sports” was anonymously reported to L&I investigators. RP(6/3/2010) 33-38; CP 43.

During the course of trial, the state presented medical records, Mr. Briejer's drivers's license, handwriting analysis indicating Mr. Briejer negotiated all of the checks at issue, and witnesses who wrote other checks Mr. Briejer received. See, Id. at 109, 122, 130, 161, 171-72, RP(6/9/10) 4, 12, 23, 36, 37, 42, 43.

The state also called Ph.D, Dr. Allan Tencer as an expert witness. Id. at 48. Dr. Tencer, an engineer, offered the opinion that Mr. Briejer's spine was impacted with nearly the same force as his foot when he fell from the scaffolding. Id. at 59-75. He went on to say that the amount of force involved in Mr. Briejer's fall "can cause damage to the spine." Id. at 75. When asked if it can cause the disc herniation, he replied that the disc herniation would generally be a combination of this compression and excessive bending as one lands. Id. He called this "the makings of a disc injury." Id.

After the prosecution rested, the defense did not put on a case in chief. Id. at 98. The parties made their closing arguments. Id. at 108-149. After deliberations, the jury returned guilty verdicts on all but one of the 57 counts. Id. at 160-170. CP 178-234.

Mr. Briejer was ultimately sentenced to 43 months, the low end of his standard range sentence. RP(7/19/10) 28.

#### IV. ARGUMENT

##### A. INSUFFICIENT EVIDENCE EXISTS TO SUPPORT THE CONVICTIONS.

As this court is aware, due process requires the state to prove its case beyond a reasonable doubt. State v. Baeza, 100 Wn.2d 487, 488, 670 P.2d 646 (1983). When challenging the sufficiency of evidence, this court must determine:

whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

State v. Weisberg, 65 Wn.App. 721, 724, 829 P.2d 252 (1992). See also State v. Green, 94 Wn.2d 216, 616 P.2d 628 (1980).

In order to support the verdicts, sufficient evidence was required to find that Mr. Briejer committed the crimes of Theft in the First Degree. In the case against him, the jury was specifically instructed as to theft “by color or aid of deception.” See CP 110-113. Jury instruction No. 9 defines theft as follows: “Theft means by color or aid of deception to obtain control over the property or services of another, or the value thereof, with intent to deprive that person of such property or services.” CP 110. Instruction No. 10 further specifies “By color or aid of deception means that the deception operated to bring about the obtaining of the property or services. It is not necessary that deception be the sole means

of obtaining the property or services.” CP 111. Finally, Instruction No. 11 states, “Deception occurs when an actor knowingly creates or confirm another’s false impression which the actor knows to be false, or fails to correct another’s impression which the actor previously has created or confirmed.” CP 112.

Consistent with the above jury instructions, the state was required to prove Mr. Briejer wrongfully and deceptively induced the Department of Labor and Industries to make its payments. In other words, the Department needed to show it relied on Briejer’s words or acts. “The necessary reliance is established when the deception ‘in some measure operated as inducement.” State v. Casey, 81 Wn. App.524, 529, 915 P.2d 587 (1996). While it is not required that the deception be the sole means of inducing the victim to part with his property, the Casey rule requires the state actually produce such evidence. See, State v. Zorich, 72 Wn.2d 31, 34, 431 P.2d 584 (1967).”

In State v. George, 132 Wn.App 654, 660, 661, 133 P.3d 487 (2006), the court found as follows: “...the legislature clearly contemplated that something in addition to pure deception will be involved. Indeed, in many acts of theft by deception, something falsely described is given in exchange to induce the transaction.” Id.<sup>3</sup>

Given the above holdings, it was incumbent upon the state to prove Mr. Briejer did something affirmative to deceive the state. The evidence

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<sup>3</sup> State v. George, 132 Wn.App 654, affirmed by State v. George, 161 Wn.2d 203, 164 P.3d 506 (2007). See 161 Wn.2d at 207-213 for discussion on theft by color or aid of deception.

only showed that government investigator, not a medical doctor, personally concluded all benefits should be stopped on the claim and notified all providers that L&I would no longer be paying for medical services. RP(6/7/10) 84. The record is void of any statements, admissions or acts of trickery made by Mr. Briejer inducing the department to anything. Rather, the investigator and the state took a passive-aggressive approach to prosecuting Mr. Briejer and offered the investigator's opinion testimony of things Mr. Briejer *could have* done, as opposed to affirmative fraudulent acts inducing the state to pay. The investigator's testimony offered belief that Mr. Briejer should have filed an L&I new injury claim at a time when the Department believed he was uninsured by L&I. Id. at 88. And, the investigator opined Briejer *could have* called a claims manager to make sure they had "all the information." Id. at 89-90 (emphasis added). While it seems ridiculous to think that Mr. Briejer had some responsibility to make sure the department noted the reference to his ankle problem from the form reopening his claim, that seems to be what Investigator Gruse expected of Mr. Briejer.

Investigator Gruse appears to have chosen not to contact Mr. Briejer, but to rely on a reverse and speculative investigation inviting a doctor who approved a claim 5+ years earlier to change his recommendation based on records of injury to an entirely different part of Mr. Briejer's body – such injury having been referenced to that doctor at the time of his IME approving the reopening of the claim.

The state's entire case against Mr. Briejer alleged despite disclosing problems with his ankle, (See, RP(6/7/10) 33), Mr. Briejer deceived the Department of L&I by not furnishing it with substantially more information than what was asked on the form used by Dr. Shonnard to reopen his claim.

As indicted in instruction No. 11, above, the state was required to prove any deception by Mr. Briejer was "knowingly." CP 112. The state's case failed to prove that Mr. Briejer was "aware of a fact, circumstance or result which is described by law as being a crime,..." CP 115 (Jury Instruction No. 13).

The state failed to meet its burden of proving that Mr. Briejer knowingly (or intentionally, as intentional acts are included in knowing acts – (See, CP 115)) deceived the Department in the way he reopened the claim. All the state showed regarding this issue was the following:

- Mr. Briejer went to the doctor and participated in completing an application to reopen the claim on January 13, 2004. RP(6/7/10) 30.
- He disclosed new injuries to include his ankle problem. Id. at 33, and 202.
- He indicated his lay opinion was that his condition (his back condition) had not worsened due to another injury or accident either on or off the job. Id., and at 202.
- The L&I fraud investigator's personal feeling was that Mr. Briejer should have filled out a new injury form or called a claims manager when he injured his ankle many weeks before his doctors visit to reopen the back claim. Id. at 88, 89-90.

- The IME doctor, Dr. Ghidella, testified that upon seeing the ankle injury hospital records approximately 5 years after the IME, he felt that reopening the claim was inappropriate. Id. at 212.
- Allan Tencer, an engineer who is not a medical doctor, thinks the force of a fall that requires subtalar repair can cause disc problems. RP(6/9/10) 75.

There was a complete failure on behalf of any of the state's witness to include evidence that Mr. Briejer affirmatively and knowingly did anything to deceive the Department of Labor and Industries. It is the state's burden to produce evidence as to every element of the offense, and it did not. As such, the court must now reverse all of the jury's theft convictions because no rational trier of fact could convict Mr. Briejer of each and every element that the state was required to prove under the theft statute and instructions given to the jury.

**B. MR. BRIEJER'S CONVICTION MUST BE REVERSED  
BECAUSE THE TRIAL COURT ALLOWED EVIDENCE IN  
VIOLATION OF ER'S 401, 403, AND 404 (b).**

When the trial court denied Mr. Briejer's motion in limine to suppress evidence of his mountain climbing and other "extreme sports," it committed reversible error because the evidence violated ER's 401, 403, and 404 (b). Additionally, because the trial court did not address any of the 403 and 404(b) factors on the record, respectfully, Mr. Briejer's conviction must be reversed.

C. BECAUSE EVIDENCE OF MR. BRIEJER’S PARTICIPATION IN MOUNTAIN CLIMBING AND OTHER “EXTREME SPORTS WAS IRRELEVANT TO WHETHER HE HAD COMMITTED ANY ONE OF THE 57 COUNTS OF THEFT IN THE FIRST DEGREE, THE TRIAL COURT ERRED IN ALLOWING THE EVIDENCE.

Evidence Rule 401 states:

“Relevant evidence” means evidence having any tendency to make the existence of *any fact that is of consequence* to the determination of the action more probable or less probable than it would be without the evidence.

ER 401.

In State v. Devries, 149 Wn.2d 842, 72 P.3d 748 (2003), a case where the defendant was charged with delivery of a controlled substance, the Court held that the defendant’s alleged delivery of an “energy pill” on an earlier occasion was simply irrelevant and should have been excluded because the State had not offered any foundation evidence to show that the “energy pill” was a controlled substance. Id. Because the evidence had no logical tendency to prove the crime charged, it should have been excluded under ER 401. Id.

Here, it is unclear exactly why evidence of Mr. Briejer’s participation in mountain climbing or “four-wheeling,” etc., is relevant to any fact of consequence to whether he committed theft by not informing doctors that he had fallen off a ladder in 2004 and injured his foot. Without any logical tendency for this evidence to prove the crime charged, it was as irrelevant as the “energy pill” evidence in Devries and should

have been excluded. Because it was not, respectfully, Mr. Briejer's conviction should be reversed.

D. BECAUSE THE TRIAL COURT FAILED TO EXCLUDE EVIDENCE THAT WAS BARRED BY ER 403, THIS COURT SHOULD REVERSE MR. BRIEJER'S CONVICTION.

ER 403 states:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Here, even if the State can make a prima facie case that the evidence of mountain climbing or "four wheeling" was somehow relevant – most likely under the *res gestae* theory (to provide the jury "with a more complete picture of events") – because the probative value of that evidence was substantially outweighed by its unfair prejudice, it should have been excluded.

In State v. Trickler, 106 Wn.App. 727, 25 P.3d 445 (2001), the defendant was on trial for unlawful possession of a credit card and a firearm. Id. The prosecution – under the theory of *res gestae* - introduced evidence that when the defendant was arrested he had several other items of stolen property in his possession. Id. In reversing the conviction, Division III of the Court of Appeals emphasized its view that the evidence was of only minimal relevance because the defendant was not charged

with possession of these other items of property, and that the evidence was highly prejudicial. Id.

Trickler is analogous to this case because evidence that Mr. Briejer climbed Mt. Rainier and was involved in other “extreme sports” while receiving L&I benefits had little, if any, relevance to his case, but was nonetheless highly prejudicial because it made Mr. Briejer appear to be a person taking advantage of the system. Surely the jury in this case was predisposed to view a person who supposedly could not work because of an injury – but who could climb mountains and participate in other “extreme sports” – in a negative way. That Mr. Briejer was charged with stealing L&I benefits; he was not charged with engaging in physical activity that his injury should have prohibited. It was unfairly prejudicial to present this evidence, just like it was unfairly prejudicial for the State to present evidence in the Trickler case that the defendant was in possession of other stolen goods in his trial for unlawful possession of a credit card.

Because that case was reversed, respectfully, Mr. Briejer’s case should be also.

E. BECAUSE THE TRIAL COURT FAILED TO EXCLUDE EVIDENCE THAT WAS BARRED BY ER 404, THIS COURT MUST REVERSE MR. BRIEJER’S CONVICTION.

ER 404 (b) states:

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent,

preparation, plan, knowledge, identity, or absence of mistake or accident.

ER 404 (b).

Moreover, acts offered to demonstrate a person's general propensities must be excluded – even if the acts themselves are relatively benign and would not, by themselves, cause the jury to be prejudiced against the person in question. State v. Everybodytalksabout, 145 Wn.2d 456, 39 P.3d 294 (2002). This rule bars more than acts that are illegal, unpopular, or disgraceful – it also forbids evidence of any other acts offered to show a person acted in conformity therewith. Id.

While ER 404 (b) may allow certain evidence of prior acts to show motive, opportunity, intent, etc., the evidence may still be excluded if, under ER 403, it is unfairly prejudicial. See State v. Acosta, 123 Wn.App. 424, 98 P.3d 503 (2004); Trickler, 106 Wn.App. at 727.

Here, there are no facts to suggest that evidence of Mr. Briejer's involvement in mountain climbing or other "extreme sports" was for the purpose of showing proof of motive, opportunity, intent, etc. As discussed above, the State may argue that it was necessary under the theory of *res gestae*, however, as already noted, when analyzed under ER 403, the probative value of the evidence is severely outweighed by its unfairly prejudicial effect.

F. BECAUSE THE TRIAL COURT DID NOT ENGAGE IN A BALANCING TEST TO WEIGH THE PROBATIVE VALUE OF THE EVIDENCE AGAINST THE PREJUDICE TO MR. BRIEJER, THIS COURT SHOULD REVERSE HIS CONVICTION.

Even if this Court concludes that the evidence of Mountain Climbing, etc. was admissible under ER's 401, 403 and 404 (b), the Court must still reverse Mr. Briejer's conviction because the trial court did not engage in any sort of analysis weighing the probative value of the evidence against its prejudicial effect.

Evidence Rules 403 and 404 (b) should be read in conjunction with each other. State v. Saltarelli, 98 Wn.2d 358, 361, 655 P.2d 697 (1982). Before exercising its discretion to admit evidence of prior acts, "the trial court should weigh the necessity for its admission against the prejudice that it may engender in the minds of the jury." State v. Tharp, 96 Wn.2d 591, 597, 637 P.2d 961 (1981). The process of properly weighing the evidence and stating specific reasons for either deciding to suppress or admit the evidence "ensures thoughtful consideration of the issue and facilitates effective appellate review." State v. Jackson, 102 Wn.2d 689, 693-94, 689 P.2d 76 (1984). "Without such balancing and a conscious determination made by the court on the record, the evidence is not properly admitted." Tharp, 96 Wn.2d at 597. However, "[a] trial court's failure to perform the balancing test on the record is harmless error if the record allows the appellate court to effectively review the trial court's

decision to admit the evidence.” State v. Gogolin, 45 Wn.App. 640, 645, 727 P.2d 683 (1986).

Here, Mr. Briejer moved in limine to suppress any evidence relating to “Mountain Climbing, Four-wheeling, House Work, Yard Work or Hiking.” See Exhibit A. During the motions hearing, defense counsel explained why this evidence was prejudicial and why it should be excluded. RP (6/3/2010) 33-37. At no point did the trial court weigh the probative value of the evidence against the prejudice it could cause. Id. Rather, the judge simply stated, “I’m going to allow it.” RP 37. Surely this is insufficient and based on the above sections addressing the ER 401, 403 and 404 (b) issues, surely no argument can be made that the error was harmless. Effective review requires the appellate courts to be able to determine what factors the trial court relied upon.

Because the trial court failed to properly weigh the prejudicial effect this evidence could have on Mr. Briejer, consistent with the Supreme Court’s analysis in Tharp, this Court should, respectfully, reverse Mr. Briejer’s conviction.

G. COUNSEL WAS INEFFECTIVE FOR FAILING TO  
MAKE A HALF-TIME MOTION TO DISMISS.

Both the Sixth Amendment to the United States Constitution and Art. I § 22 (amendment 10) of the Washington State Constitution guarantee the right to effective assistance of counsel in criminal proceedings. Strickland v. Washington, 466 U.S. 668, 684-86, 104 S. Ct.

2052, 80 L.ED.2d 674 (1984); State v. Hendrickson, 129 Wn. 2d 61, 77, 917 P.2d 563 (1996). Counsel is ineffective when his or her performance falls below an objective standard of reasonableness and the defendant thereby suffers prejudice. Strickland, 466 U.S. at 687-88. Prejudice is established when “there is a reasonable probability that, but for counsel’s errors, the result of the trial would have been different.” Hendrickson, 129 Wn.2d at 78 (*citing* State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987)). A “reasonable probability” is a probability “sufficient to undermine confidence in the outcome.” State v. Leavitt, 49 Wn. App. 348, 359, 743 P.2d 270 (1987).

In Mr. Briejer’s case, defense counsel called no witnesses nor put up any type of defense case. Counsel seemed content to simply let the jury decide whether the State had met its burden of proving guilt beyond a reasonable doubt. However, in addition to letting the jury decide, counsel also had the option to make a half-time motion to dismiss and allow the trial court to determine whether sufficient evidence existed for the case to go forward. By not making this motion, counsel limited the possibility that Mr. Briejer would be acquitted by 50 percent.

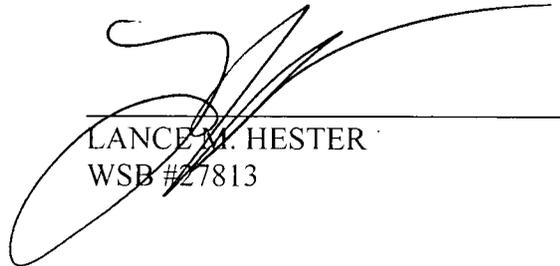
Respectfully, this Court should conclude that (a) defense counsel was deficient for failing to attempt a half-time motion when the defense had no case to present, and (b) because counsel’s failure denied Mr. Briejer the possibility that the case would be dismissed, he was prejudiced.

Moreover, as has been pointed out above as it relates to the sufficiency of the evidence, there were numerous factual and legal issues suggesting that Mr. Briejer should have been acquitted. Had the trial court had the opportunity to make a half-time determination, respectfully, the charges against Mr. Briejer may have been dismissed and thus, he faced prejudice when his attorney's conduct fell below the objective standard of reasonableness.

V. CONCLUSION

For the reasons cited above and the authority referenced herein, the court should grant the relief requested.

Respectfully submitted this 21 day of April, 2011.



LANCE M. HESTER  
WSB #27813

CERTIFICATE OF SERVICE

FILE  
COURT OF APPEALS  
DIVISION II

11 APR 22 PM 1:14

STATE OF WASHINGTON  
*LM*  
DEPUTY

Lee Ann Mathews, hereby certifies under penalty of perjury under  
the laws of the State of Washington, that on the day set out below, I  
delivered true and correct copies of the opening brief of appellant to which  
this certificate is attached, by United States Mail or ABC-Legal  
Messengers, Inc., to the following:

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P.O. Box 37  
Little Rock WA 98556

Signed at Tacoma, Washington, this 21<sup>st</sup> day of April, 2011.

*Lee Ann Mathews*  
LEE ANN MATHEWS