

N^o. 48822-1-II

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

STATE OF WASHINGTON
Plaintiff/Respondent,

v.

MILLISSA KELLOGG-BEAUPRE,
Defendant/Appellant.

REPLY BRIEF OF APPELLANT

Appeal from the Superior Court of Kitsap County,
Cause No. 15-1-01114-4
The Honorable Sally Olsen, Presiding Judge

Reed Speir, WSBA No. 36270
Attorney for Appellant
3800 Bridgeport Way W., Ste. A #23
University Place, WA 98466
(253) 722-9767

TABLE OF CONTENTS

	<u>Page</u>
I. REPLY	
1. The testimony at trial established that when Ms. McCall fell her face landed in a hard dirt area next to the paved road on which she had been walking. ...	1
2. The jury’s verdict required guess and speculation to find that Ms. Kellogg-Beaupre’s actions broke Ms. McCall’s jaw.....	2
II. CONCLUSION	3

I. REPLY

1. **The testimony at trial established that when Ms. McCall fell her face landed in a hard dirt area next to the paved road on which she had been walking.**

The State alleges that Ms. Kellogg-Beaupre's appeal is without merit and "proceeds from a mischaracterization of the evidence" regarding the area where Ms. McCall fell.¹ However, it is the State that mischaracterizes and ignores the evidence.

Megan Shane testified that she saw Ms. McCall fall on her side on "the ground"² but offered no further details about the area where Ms. McCall fell.

Zachary Peterson's testimony gave the most detail about the area where Ms. McCall fell. Mr. Peterson testified that, "where we were walking, there was like a dirt hill that goes up to a little walkway."³ Mr. Peterson further described the dirt hill as, "a hard dirt hill that just goes up to a sidewalk" and that the pavement went right up to the dirt and there were lots of rocks and dirt clods there.⁴ Mr. Peterson testified that he and Ms. McCall fell forward and that Ms.

¹ Brief of Respondent p. 7

² RP 159.

³ RP 210.

⁴ RP 211.

McCall fell directly next to him on the pavement but rolled into the dirt.⁵

Christopher Burke testified that he saw Ms. McCall fall and that her face hit the solid surface of the hill next to the pavement.⁶

The testimony introduced at trial clearly established that the alleyway where Ms. McCall fell was bounded on one side by a hard dirt hill and that when Ms. McCall fell she was close enough to roll onto the hard dirt and that her face hit the hard dirt hill when she fell. Even if her body fell on the cement her face still fell on the hard dirt.

The State ignores the evidence that clearly indicates that Ms. McCall's face struck a hard dirt area when she fell.

2. The jury's verdict required guess and speculation to find that Ms. Kellogg-Beaupre's actions broke Ms. McCall's jaw.

As pointed out in Ms. Kellogg-Beaupre's Opening Brief, the State had to present "substantial evidence" not based on guess speculation or conjecture that a kick from Ms. Kellogg-Beaupre broke Ms. McCall's jaw. The jury may draw inferences from proven facts, but the proven facts also cannot be based on guess, speculation, or conjecture.

⁵ RP 211-210.

⁶ RP 229, 235.

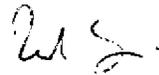
The State may have presented sufficient evidence to support an inference that Ms. Kellogg-Beaupre kicked Ms. McCall, but the State failed to meet its burden of providing substantial evidence that a kick from Ms. Kellogg-Beaupre was the cause of Ms. McCall's broken jaw. Any inference drawn from the evidence introduced at trial that Ms. McCall's broken jaw was caused by Ms. Kellogg-Beaupre rather than by Ms. McCall's fall would be based on guess, speculation, and conjecture and would be improper and unsupported by the facts established at trial.

II. CONCLUSION

For the reasons stated above, this Court should vacate Ms. Kellogg-Beaupre's conviction and remand this case for dismissal of the assault charge with prejudice.

DATED this 17th day of October, 2016.

Respectfully submitted,



Reed Speir, WSBA No. 36270
Attorney for Appellant Kellogg-Beaupre

CERTIFICATE OF SERVICE

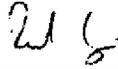
Reed Speir hereby certifies under penalty of perjury under the laws of the State of Washington that on the 17th day of October, 2017, I delivered a true and correct copy of the Reply Brief to which this certificate is attached by United States Mail, to the following:

Ms. Millissa Kellogg-Beaupre
3340 S.E. Carmae Drive
Port Orchard, WA 98366

And I e-mailed a true and correct copy of the Reply Brief to which this certificate is attached, to

Kitsap County Prosecuting Attorney's Office
614 Division Street MS-35
Port Orchard, WA 98366
kcpa@co.kitsap.wa.us

Signed at Tacoma, Washington this 17th day of October, 2016.



Reed Speir, WSBA No. 36270

LAW OFFICE OF REED SPEIR

October 17, 2016 - 9:02 AM

Transmittal Letter

Document Uploaded: 5-488221-Reply Brief.pdf

Case Name: State v. Kellogg-Beaupre

Court of Appeals Case Number: 48822-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Reed M Speir - Email: reedspeirlaw@seanet.com

A copy of this document has been emailed to the following addresses:

kcpa@co.kitsap.wa.us