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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BY \_\_\_\_\_  
DEPUTY  
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ANDREW FORREST,

Appellant.

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Court of Appeals Cause No. 50474-0-II

STATEMENT OF ADDITIONAL

GROUND FOR REVIEW

I, ANDREW FORREST, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

**Additional Ground I.**

I. Ineffective Assistant of Counsel

A. My trial attorney only called one witness. Witnesses not called include:

Mr. Probst. My attorney was going to call him and was trying to schedule him in and then, with no explanation, decided not to call him. This witness would have been helpful to attack the prosecution's reconstruction done by Trooper Green. I do not know why he wasn't called.

Trooper Bartlett. Cadet Schob's report was different from his and it would have been helpful to call him in order to point out the inconsistencies. The State subpoenaed and then released him. My attorney subpoenaed him also but did not call him to testify, again with no explanation.

Ms. Billings and a friend who was a fellow sailor who arrived shortly after the collision did not testify. Ms. Billings' interview was different than Mr. Billings' testimony at trial. My attorney referred to these individuals in closing but gave no reason to me for why they did not testify.

My counsel did not call me as a witness and he did not explain why. I have no criminal history and in fact, my attorney had done a focus group where I did testify before the trial and the consensus was that I was not guilty. However, during the trial, when it was time to put on my defense, my attorney advised me we did not need my testimony.

I believe my counsel was rushing because he had scheduled to fly out Wednesday to Wyoming and the trial had been pushed out unexpectedly. RP 815. Right after the state rested, my trial counsel asked to close quickly before our defense had even started, stating, "Can we get the closing today if--- if I rest." RP 646. The judge responded that he did not think so, at which point my counsel agreed that he would put one defense witness "on for few questions." RP 646. Although I do appreciate the work that my trial counsel did, I think the record shows that his schedule to fly out of state caused him to drop the strategy of calling certain witnesses, including me. This prevented me from having a full and fair defense.

B. Failing to object

The prosecution broke the motion in limine by allowing an early witness, Officer Guszewski, to use the word "racing." RP 350. My attorney then did not object to that testimony (he basically asked the court to remind the prosecution not to use that term). He also did not object to the witness's statement that I was "jockeying for position," which also goes to state of mind and should have been objected to.

The prejudice of this was increased when the prosecutor was allowed to use the term "racing" in closing and began and ended the trial with a prejudicial and improper characterization.

My counsel did not object to Exhibit 47, which was a picture of my sideview mirror. This picture was a misrepresentation of how I would have perceived the motorcycle at the time of the accident. There was no testimony that the person sitting in the seat was my height or that the seat and mirrors were positioned the same as at the time of the accident. Also, the picture was taken during the day but the accident was at night.

Trooper Green testified as to the truthfulness of other witnesses, which is not proper as stated in the Appellant's Opening Brief. *Appellant Brief* p. 23. In addition, his testimony was inaccurate itself, because the witnesses did not all state the same thing regarding my speed. For instance, Linda Liebold, who was the last witness who observed me before the accident, testified that I was going about 70 and she did not think anything of it. RP 199-201.

My attorney did not object to testimony that I was a member of a "Fast and Furious" online club- which I am not. The prosecutor would likely agree this was prejudicial because the state made sure it was able to keep out any reference at the trial of Mr. Knight being in a motorcycle gang.

#### **Additional Ground II.**

##### Prosecutorial Misconduct

I believe the prosecutor committed misconduct by comparing me to a dog at the beginning of the trial during voir dire. The voir dire was not transcribed as far as I am aware but the prosecutor references her comparison in her closing argument. "Do you remember Oakley and the toothpaste," she said. RP 756. During voir dire, she actually asked one of the jurors their dog's name and then named the dog that name -"Oakley." She then inferred that I was the dog, dehumanizing me from the beginning of the trial to the end.

#### **Additional Ground III.**

## Double Jeopardy

This is addressed in my opening brief, pages 32-34, but I want to also point out that if both convictions stand, I will face double the penalty through the Department of Licensing in addition to any other double penalties I may have. Regarding driver license suspensions, RCW 46.20.285(1) states, "For vehicular homicide the period of revocation shall be two years. "

## IV. Conclusion

If the trial was focused on weighing the factual and admissible evidence, I do not believe I would have been convicted. Instead, it turned into something else, and I agree strongly that the cumulative effect of the mistakes resulted in my conviction. Instead of weighing evidence from witnesses who had differing testimony and looking at mathematical calculations, the jury was encouraged to believe a police officer who testified at length about recklessness and the credibility of other witnesses. The jury was encouraged to believe that I was less than human and a member of some kind of "Fast and Furious" club and that they should "hold me accountable." The jury was shown a picture of a reflection in my driver sideview mirror, taken during the day for an accident that was at night. My trial counsel in his haste to leave out of state right after the trial, failed to put on key witnesses. I am asking the court to grant the relief requested by my appellate attorney in the opening brief.

Respectfully,

Andrew Forrest