

**FILED**

**AUG 03 2011**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 29597-4-III

---

**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

---

**STATE OF WASHINGTON,**

**RESPONDENT,**

**v.**

**CHRISTOPHER PEREZ,**

**APPELLANT.**

---

**RESPONDENT'S BRIEF**

---

**D. ANGUS LEE  
PROSECUTING ATTORNEY**

**By: Douglas R. Mitchell, WSBA #22877  
Deputy Prosecuting Attorney  
Attorney for Respondent**

**PO BOX 37  
EPHRATA WA 98823  
(509)754-2011**

**FILED**

**AUG 03 2011**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 29597-4-III

---

**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

---

**STATE OF WASHINGTON,**

**RESPONDENT,**

**v.**

**CHRISTOPHER PEREZ,**

**APPELLANT.**

---

**RESPONDENT'S BRIEF**

---

**D. ANGUS LEE  
PROSECUTING ATTORNEY**

**By: Douglas R. Mitchell, WSBA #22877  
Deputy Prosecuting Attorney  
Attorney for Respondent**

**PO BOX 37  
EPHRATA WA 98823  
(509)754-2011**

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES.....	ii-iii
A. IDENTITY OF RESPONDENT .....	1
B. RELIEF SOUGHT .....	1
C. STATEMENT OF FACTS .....	1-6
D. ARGUMENT .....	7-18
1. The evidence at trial was sufficient to sustain the charge of Attempting to Elude a Police Vehicle.....	7-11
2. It was not ineffective for Appellant’s trial counsel to choose to not seek a jury instruction on the statutory affirmative defense.....	11-14
3. The trial court did not abuse its discretion in denying the motion for new trial after learning of the contact decades prior between Appellant and the juror.....	14-18
E. CONCLUSION .....	18

TABLE OF AUTHORITIES

Page

STATE CASES

<i>O'Brien v. City of Seattle</i> , 52 Wn.2d 543, 327 P.2d 433 (1958).....	16-17
<i>State v. Camarillo</i> , 115 Wn.2d 60, 794 P.2d 850 (1990).....	8
<i>State v. DeVries</i> , 149 Wn.2d 842, 72 P.3d 748 (2003).....	8
<i>State v. Drum</i> , 168 Wn.2d 23, 225 P.3d 237 (2010).....	8
<i>State v. Engel</i> , 166 Wn.2d 572, 210 P.3d 1007 (2009).....	8
<i>State v. Green</i> , 94 Wn.2d 216, 616 P.2d 628 (1980).....	8
<i>State v. Grier</i> , 171 Wn.2d 17, 246 P.3d 1260 (2011).....	12
<i>State v. McFarland</i> , 127 Wn.2d 322, 899 P.2d 1251 (1995).....	12
<i>State v. Mitchell</i> , 169 Wn.2d 437, 237 P.3d 282 (2010).....	8
<i>State v. Salinas</i> , 119 Wn.2d 192, 829 P.2d 1068 (1992) .....	10
<i>State v. Thomas</i> , 109 Wn.2d 222, 743 P.2d 816 (1987) .....	12
<i>State v. Townsend</i> , 147 Wn.2d 666, 57 P.3d 255 (2002).....	10
<i>State v. Walton</i> , 64 Wn. App. 410, 824 P.2d 533 (1992).....	10
<i>State v. Welty</i> , 65 Wash. 244, 118 P.9 (1911).....	17
<i>State v. Wentz</i> , 149 Wn.2d 342, 68 P.3d 282 (2003) .....	8

TABLE OF AUTHORITIES (continued):

Page

FEDERAL CASES

*McDonough Power Equipment, Inc. v. Greenwood, et al*,  
464 U.S. 548, 104 S. Ct. 845, 78 L. Ed. 2d 663 (1984)..... 16-17

*Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052,  
80 L. Ed. 2d 674 (1984) ..... 11, 12

STATUTES

CrR 6..... 14

CrR6.4(c)(2)..... 14

RCW 4.44.150..... 14

RCW 4.44.160..... 14

RCW 4.44.170..... 14, 15,

RCW 4.44.180..... 14, 15

RCW 4.44.190..... 14, 15

RCW 4.44.200..... 14

RCW 4.44.230..... 15-16

RCW 4.44.240..... 16

RCW 10.46.070..... 14

RCW 46.61.024..... 7, 11,  
13

A. IDENTITY OF RESPONDENT

The State of Washington was the Plaintiff in the Superior Court, and is Respondent herein. The State is represented by the Grant County Prosecutor's Office.

B. RELIEF SOUGHT

The State is asking this Court to affirm the decisions of the Superior Court and uphold the conviction of the Appellant.

C. STATEMENT OF FACTS

On June 8, 2010, at about 4:24 PM, Sergeant Brian Jones was on duty as the shift supervisor of the Moses Lake Police Department. He was driving east on Beacon Road in the City of Moses Lake. Beacon Road is a two lane, paved residential street with a 25 mile per hour speed limit. The day was clear, with "normal" sunlight. RP trial, 45 – 47.<sup>1</sup>

Sergeant Jones saw a silver Honda going west. He saw the driver, and recognized him as Christopher Perez (Appellant). Sergeant Jones believed that Appellant's driver's license was suspended. As a result, Sergeant Jones turned around at an intersection just ahead of him, and attempted to catch

---

<sup>1</sup> Appellant has cited to the RP by referring to each day as a distinct volume. The State will cite to the trial (10/20-22/2010, pp 1-300) as "RP trial"; the RP of hearings on 10/25/2010, 11/1-2/2010, and

Appellant's vehicle. Another vehicle had been behind Appellant's, and it ended up between Sergeant Jones' and Appellant's vehicles. After Sergeant Jones turned around, he observed that the uninvolved vehicle between he and Appellant appeared to be at the same speed, but that Appellant had sped up and was quickly opening a large gap between his vehicle and the uninvolved vehicle. Sergeant Jones estimated the Appellant's speed at that time to be about 50 miles per hour and increasing. RP trial, 47 – 54.

Sergeant Jones activated his emergency lights, then overtook and passed the uninvolved vehicle. He then passed a pedestrian who had been walking a dog. When Appellant had passed him, the pedestrian threw up his arms and turned to watch; his dog bolted. Sergeant Jones described his patrol car as a gray, unmarked Ford Crown Victoria with exempt license plates, and a spot light, and gave a very detailed description of the full set of emergency lights mounted in a variety of positions inside and out of the car, and a siren. Sergeant Jones was wearing a full uniform. Sergeant Jones used his siren to warn the pedestrian that he too was going to pass him. RP trial, 55 – 60.

Sergeant Jones continued chasing Appellant westbound on Beacon Road toward the intersection with Grape Drive. That intersection is in the shape of a "T", and controlled with a stop sign for the westbound traffic on

---

12/6/2010 as "RP hearings" and the juror's testimony on 11/9/2010 as "RP juror".

Beacon. Sergeant Jones saw the Appellant slow, but not stop for the stop sign before turning left (south) on Grape Drive. Appellant then went a short distance on Grape Drive before turning into an apartment complex known as the College Apartments. Sergeant Jones' view was not blocked at any point in this pursuit. Appellant got out of his car and began running on foot. After a short period of chasing and blocking Appellant with the patrol car, Sergeant Jones pursued him on foot and took him into custody. RP trial, 60 – 66. A video of the events of the pursuit, taken from Sergeant Jones' patrol car camera, was introduced into evidence without objection. RP trial, 66 – 71, P Ex 1.

The video was shown to the jury, with accompanying description by Sergeant Jones of the events depicted. Included in the video was a short display of the Appellant running from Sergeant Jones, and the Honda, with the driver's side door left open after the driver abandoned the vehicle. RP trial, 72 – 78. Sergeant Jones was cross examined for a substantial period, which included more information about the events of the pursuit including the video recording. RP trial, 81 – 130.

At the close of the State's case, Appellant moved to dismiss the charge of Attempting to Elude a Police Vehicle. RP trial, 164 – 166. The Court denied the motion. The Court noted in its oral ruling that there were unusual aspects to the case, in that the evidence would support an inference that the

Appellant's flight began before Sergeant Jones had even begun to pursue him, and that the Appellant and Sergeant Jones knew each other and were aware of the others' presence at the time their cars passed at a low rate of speed. Under those circumstances, the Court ruled that there was sufficient evidence that would allow the jury to find that the Appellant knew he was being pursued; that a visual signal to stop was given; that he willfully failed to stop, and that he operated his vehicle in a reckless manner. The court stated, "It's, as always in cases of this sort, circumstantial in regard to the state of mind of the defendant. But sufficient evidence of a circumstantial nature for a reasonable person to so conclude." RP trial, 166 – 167.

Appellant testified in a manner consistent with the description provided in his brief. The jury found him guilty as charged of both counts. Br. of Appellant, 3; CP 1 – 3, 24-25.

On the date set for sentencing, Appellant's trial counsel informed the court and parties that over the weekend, she had received a telephone message from Appellant informing her that one of the jurors was acquainted with the Appellant and his family. At that point, the court informed the parties that after the jury was selected, he had received a message through the bailiff that one of the jurors thought he *might* be acquainted with Appellant's father, *and was not yet sure* if it was the same family. The bailiff was instructed to

inform the court if the juror said anything else about the matter. RP hearings, 3 – 4 (emphasis added). It appears that neither counsel nor the court knew what the controlling legal standard was. RP hearing, 4 -5. The State at that time made a record of its concern that Appellant had the relevant knowledge and had not provided it in a timely manner, resulting in prejudice to the State. RP hearing, 5. The court was also concerned that the Appellant had such knowledge and whether the law would tolerate him permitting the juror to remain on the jury and then subsequently complain of that juror's presence. RP hearing, 5 – 6. The court summoned the juror to a hearing about the matter. RP hearing, 11.

On November 9, 2010, the juror in question was placed under oath and questioned, primarily by the court. In response to the court's inquiries, it was learned that the juror had already been selected and sworn before becoming aware of the possibility that he knew the Appellant. RP juror, 6. During the process of jury selection, the juror had not recognized the Appellant, who was referred to only as "Mr. Perez". He testified that he knew a lot of Perezes, and did not recognize the Appellant even after learning his first name. RP juror, 6 – 7. The juror did not even recall if he had taught Appellant at school or in a church class, and did not recall any specific activity with the Appellant. RP juror, 7. His closest relationship with anyone in

Appellant's family is with his father, Cliff Perez. He also recognized Appellant's mother, again, after he had been selected and sworn as a juror. RP juror, 8 – 9. There was not a close social relationship with the Perez family, but an acquaintance through church. RP juror, 9 – 11. The juror had not been aware of or discussed the allegations against Appellant on the last occasion on which he had encountered his parents some months prior, and had no knowledge of the charges when he arrived for jury duty. RP juror, 12. The court inquired as to whether any part of the process or his service as a juror might have been affected, or would have been different if the Appellant had been someone with whom he had no acquaintance. The juror replied that "I do not think it affected my thinking at all". RP juror, 14 – 15. The juror testified that he did not even recall with certainty the circumstances under which he had interacted with the Appellant, but thought it had been at church, more than twenty years prior. RP juror, 15 – 16. After the testimony was completed, the court stated he would assume that had the issue come up at the time, the testimony would have been identical to or similar to the testimony at that time; Appellant concurred through trial counsel. RP juror, 23.

D. ARGUMENT

1. The evidence at trial was sufficient to sustain the charge of Attempting to Elude a Police Vehicle.

Appellant challenges his conviction for Attempting to Elude a Police Vehicle arguing the evidence was insufficient to prove beyond a reasonable doubt that he committed the crime. Br. of Appellant, 5.

As stated in Instruction #4, in order to convict the Appellant of that crime, the State had to prove beyond a reasonable doubt that on or about June 8, 2010, the Appellant drove a motor vehicle; that he was signaled to stop by a uniformed officer by hand, voice, emergency light, or siren; that the signaling officer's vehicle was equipped with lights and siren; that Appellant willfully failed or refused to immediately bring the vehicle to a stop after being signaled to stop; that while attempting to elude a pursuing police vehicle, he drove his vehicle in a reckless manner, and that the acts occurred in the State of Washington. CP, at 18; RCW 46.61.024.

In order to determine whether there was sufficient evidence to support Appellant's conviction, this Court will "view the evidence in the light most favorable to the prosecution and determine whether any rational fact finder could have found the essential elements of the crime beyond a reasonable

doubt. *State v. Mitchell*, 169 Wn.2d 437, 443-44, 237 P.3d 282 (2010) (citing *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009) (citing *State v. Wentz*, 149 Wn.2d 342, 347, 68 P.3d 282 (2003))). A claim of insufficiency of the evidence not only requires that the Appellant admit the truth of the State's evidence, but also grants the State the benefit of all inferences that can reasonably be drawn from it. *State v. DeVries*, 149 Wn.2d 842, 849, 72 P.3d 748 (2003) (citing *State v. Green*, 94 Wn.2d 216, 222, 616 P.2d 628 (1980)). Additionally, appellate courts defer to the finder of fact (in this case, the jury) on issues of witness credibility. *State v. Drum*, 168 Wn.2d 23, 35, 225 P.3d 237 (2010) (citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990)).

This Court should do the same. Considering all evidence, including all reasonable inferences drawn from it, is reviewed in the light most favorable to the state, there is more than sufficient evidence to support a conviction for Attempting to Elude a Police Vehicle. Sergeant Jones testified as summarized above, and the video recording of the events was shown and described to the jury in substantial detail by both the State and Appellant's trial counsel. Sergeant Jones was subjected to vigorous cross examination. RP trial, 81 – 94; 101 – 130.

Sergeant Jones' testimony established the following: that he was on duty in Grant County Washington as a Moses Lake Police Sergeant; in uniform and driving an unmarked police car with a complete set of emergency lights and a siren; that he saw Appellant driving a Honda in the other direction on Beacon Road; that he knew the Appellant; that he believed Appellant to not have a valid driver's license, causing Sergeant Jones to turn and attempt to stop the Appellant; that Appellant appeared to have sped up to at least 50 miles per hour; that he activated the lights and siren in an effort to catch and stop the Appellant; that the Appellant passed a pedestrian on Beacon Road, and that the pedestrian had thrown his hands up in the air and turned to watch Appellant's driving and that his dog had bolted; and that Appellant failed to stop at a stop sign as required before turning on Grape Drive. After turning on Grape Drive, Appellant turned into an apartment parking lot, abandoned his vehicle with the driver door still open, and ran from Sergeant Jones.

The jury was properly instructed as to its obligations in considering the evidence. The jury was to consider what had been proven based on the testimony and admitted exhibits, and to consider all evidence without regard to which party introduced it. CP, 14. It was also instructed as to witnesses and their testimony, including direct and circumstantial evidence, and the jury's

role in considering the veracity and accuracy of any witness. CP, 16. While the jury received testimony from Appellant that differed from that of Sergeant Jones, it was the role of the jury to determine what had been proven and to consider the credibility, biases, and opportunity to observe of all of the witnesses. Appellant's dissatisfaction with the conclusion to which the jury came does not have any legal meaning. What Appellant is essentially attempting to do is attack the jury's decision by focusing on irrelevant tangents. This is not proper. The standard for determining whether a conviction rests on insufficient evidence is "whether, after viewing 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. Townsend*, 147 Wn.2d 666, 679, 57 P.3d 255 (2002). A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. A challenge to the sufficiency of the evidence admits the truth of the evidence. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). Further, "all reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant." *Id.*, at 201. This standard is a deferential one, and questions of credibility, persuasiveness, and conflicting testimony must be left to the jury. *State v. Walton*, 64 Wn. App. 410, 415-416, 824 P.2d 533 (1992).

Applying the law to the facts of this case, the jury could have, and did, believe Sergeant Jones' testimony. That testimony, and the inferences from it, support the jury's verdict.

Appellant quotes from the Court's comments at sentencing as if they are relevant to the issue of the sufficiency of the evidence. Br. of Appellant, 5. They are not. These comments are directed at the Court's view of the seriousness of the offense within the range of such offenses, but Appellant left out the following sentences. "For that reason I'm satisfied that a sentence at the low end of the standard range is appropriate. And I want to make it clear that if the standard range were -- three months to nine months because Mr. Perez had less criminal history, the sentence would be three months." RP hearings, 24. The Court was not at all saying that the offense was not committed or proven. The Attempt to Elude was short, less than a minute. RP trial, 138 – 139. That does not mean it did not occur; the driver signaled to stop must do so "immediately". RCW 46.61.024(1).

2. It was not ineffective for Appellant's trial counsel to choose to not seek a jury instruction on the statutory affirmative defense.

Defendants are, as the Appellant states, entitled to effective counsel. See, generally *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80

L. Ed. 2d 674 (1984). There is a “strong presumption counsel’s representation was effective”, and the burden is on the defendant to show deficient representation. *State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995). To prove ineffective assistance of counsel, Petitioner must prove both that that the representation provided was deficient, “ ... i.e., it fell below an objective standard of reasonableness based on consideration of *all* the circumstances ...” and that prejudice resulted, “ ... i.e., there is a reasonable probability that, except for counsel’s unprofessional errors, the result of the proceeding would have been different.” *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987) (emphasis added).

When an ineffective assistance claim is raised on appeal, the reviewing court may consider only facts within the record. *State v. Grier*, 171 Wn.2d 17, 29, 246 P.3d 1260 (2011)(citation omitted). Here, the only facts in the record as to Appellant’s knowledge or belief about a patrol car are a denial of being aware that a police car was in the area, behind him, or trying to stop him. Br. of Appellant, 3; RP trial, 207-208, 210. These facts would not justify giving an instruction about the affirmative defense. Appellant is simply wrong on the law.

The affirmative defense requires that a reasonable person would not believe that the signal to stop *was not being given by a police officer*, and that

driving after the signal to stop was reasonable under the circumstances. The defense must be established by the preponderance of the evidence. RCW 46.61.024(2) (emphasis added). The language of this defense implicitly requires that the person attempting to make use of the defense acknowledge that there was in fact a signal to stop, but that they reasonably believed that the signal was being given by a person who is not a police officer, to wit, an imposter. (The State has found no Washington authority on point, but this appears to be the proper interpretation of the statute.) This is a reasonable legislative response to the rare but not unknown cases in which police impersonators have made vehicle stops for various purposes, including violent assaults. Such is not the situation here. Appellant claims he was not aware of the police vehicle driven by Sergeant Jones, or any such signal given. As such, there was no evidence that justified giving the instruction, in spite of Appellant's vigorous argument to the contrary. Br. of Appellant, 10-14. Appellant would have to have admitted that there was such a signal to stop, which would have been completely inconsistent with the defense strategy as demonstrated. "So when we look at the instruction that talks about willfully failed or refused to immediately bring the vehicle to a stop after being signaled to stop, what the State has failed to prove to you is that Officer (sic) Jones actually signaled clearly in a way that a reasonable person would understand

that they were being signaled to stop, and also that Mr. Perez failed to stop.”  
RP trial, 268. Appellant was not entitled to the instruction, and it could not be  
ineffective to have not requested it.

3. The Court did not abuse its discretion in denying the motion  
for new trial after learning of the contact decades prior between Appellant and  
the juror.

Criminal trials are conducted generally in the same manner as in civil  
actions. RCW 10.46.070. Although portions of that statute are superseded by  
the provisions of CrR 6, none of those are relevant here. Challenges for cause  
are governed by RCW 4.44.150 – 4.44.200. CrR 6.4 (c)(2). Two basic types  
of challenge for cause exist: general, such that the juror cannot serve in any  
trial, or particular, that the juror is disqualified from the specific action. RCW  
4.44.150. There are three specific types of challenge which may be asserted,  
of which only one might apply in this case: ... (2) for the existence of a state  
of mind on the part of the juror in reference to the action, or to either party,  
which satisfies the court that the challenged person cannot try the issue  
impartially and without prejudice to the substantial rights of the party  
challenging, and which is known in this code as actual bias; the third is organic  
defect and not relevant here. RCW 4.44.170.

Implied bias as a basis for challenge may only occur under one of the following circumstances: consanguinity or affinity within the fourth degree to either party; standing in the relation of guardian and ward, attorney and client, master and servant or landlord and tenant, to a party; or being a member of the family of, or a partner in business with, or in the employment for wages, of a party, or being surety or bail in the action called for trial, or otherwise, for a party; having served as a juror on a previous trial in the same action, or in another action between the same parties for the same cause of action, or in a criminal action by the state against either party, upon substantially the same facts or transaction; interest on the part of the juror in the event of the action, or the principal question involved therein, excepting always, the interest of the juror as a member or citizen of the county or municipal corporation. RCW 4.44.180. There is no indication that an implied bias disqualification would apply here.

The determination of whether or not a bias might exist requires consideration of whether a juror has both formed an opinion based on extrinsic knowledge, and the Court must also be satisfied that the juror cannot disregard such an opinion and try the case impartially. RCW 4.44.170(2), RCW 4.44.190. In the event of a challenge, the Court is the trier of fact. RCW

4.44.230. If the challenge is sustained, the juror is to be dismissed, but otherwise shall be retained. RCW 4.44.240.

Appellant has put forth a hyper-technical and strained reading of both the law and the facts in asserting that the conviction should be reversed. The standard expressed in the case relied upon by Appellant in the motion for new trial does not support Appellant's position. "To invalidate the result of a three week trial because of a juror's mistaken, though honest, response to a question, is to insist on something closer to perfection that our judicial system can be expected to give." *McDonough Power Equipment, Inc. v. Greenwood et al.*, 464 U.S. 548, 555, 104 S. Ct. 845, 78 L. Ed. 2d 663 (1984). "... (A) litigant is entitled to a fair trial, but not a perfect one, for there are no perfect trials." *Id.*, at 553 (citations omitted). In the instant case, the juror did not recall knowing the Appellant until after being selected and sworn, which is not surprising after twenty or more years. RP juror, 6 – 11.

Similarly, Appellant's reliance on *O'Brien v. City of Seattle*, 52 Wn.2d 543, 327 P.2d 433 (1958) is misplaced. The facts are distinguishable there, in that it was clear that there had been some impermissible communication between the bailiff and the jury foreman about at least one of the jury instructions. *Id.*, at 546 – 547. It should, however, be noted that our Supreme Court did remark favorably on the efforts of the trial judge to determine what

had happened, which with the exception of the number of jurors summoned back to court, is essentially what the trial judge in the instant case did. *Id.*, at 546, CP 28, RP juror, 1 – 24.

It has been established for almost 100 years in Washington that a reviewing court will not disturb the decision of the trial court with regard to challenges made to a juror after trial and the motion for new trial based on those challenges absent an abuse of discretion. *State v. Welty*, 65 Wash. 244, 256 – 257, 118 P.9 (1911). Appellant makes the claim that the court's inadvertent oversight with regard to the juror's prompt disclosure of recalling the Appellant violates Appellant's due process rights, but provides no support for the position. Appellant also ignores the long history of case law on the issue of juror bias and related questions. The court's inadvertent oversight with regard to the message relayed by the bailiff when the juror recalled possibly knowing Appellant and his family is unfortunate. RP juror, 23, RP hearings, 16 – 17. However, the Court correctly concluded that had this matter been promptly addressed, the testimony and result would have been the same. *Id.* The trial judge was very concerned about the Appellant having had the same knowledge, at or near the same time as the juror recalled knowing him many years ago as a student, and rightfully so. The Court was concerned about whether the law would countenance the Appellant permitting the juror

to remain without disclosing the fact of their acquaintance. RP hearings, 5 – 6.

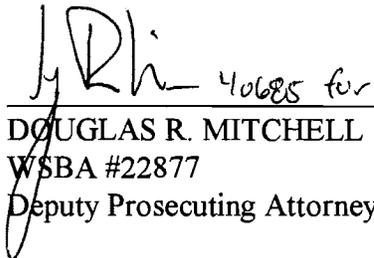
This is a valid concern, one that should be shared by a reviewing court.

E. CONCLUSION

The Appellant has not raised any supportable claims of error. The evidence was sufficient to convict the Appellant; he did not receive ineffective assistance of counsel when an instruction not justified by the evidence was not requested, and the trial court did not err when it denied the motion for new trial.

Accordingly, this Court should uphold the decisions of the trial court and the conviction of the Appellant. The trial may not have been perfect, as there are no perfect trials. It was, however, fair, and that is what the Appellant was entitled to receive – a fair trial.

Respectfully submitted this 1<sup>st</sup> day of August, 2011.

  
40685 for  
\_\_\_\_\_  
DOUGLAS R. MITCHELL  
WSBA #22877  
Deputy Prosecuting Attorney

**FILED**

**AUG 03 2011**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent.	)	No. 295974
	)	
v.	)	
	)	
CHRISTOPHER PERERZ,	)	DECLARATION OF MAILING
	)	
Appellant.	)	
<hr/>		

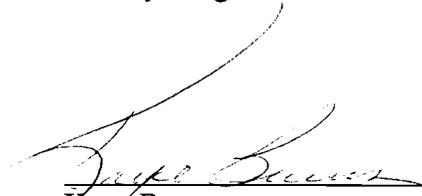
Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant and to Marie Trombley, Attorney for Appellant, containing a copy of the *Respondent's Brief* in the above-entitled matter.

Ms. Marie J. Trombley  
Attorney at Law  
PO Box 28459  
Spokane WA 99228

Mr. Christopher Perez - #925468  
Airway Heights Correction Center  
MSU C5 C12-3  
PO Box 2049  
Airway Heights WA 99001

Dated: August 1, 2011

  
\_\_\_\_\_  
Kaye Burns

Declaration of Mailing.