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

HARLAN DOUGLASS and MAXINE H. DOUGLASS,
Plaintiffs/Respondents
vs.
BRYAN J. REILLY
Defendant/Appellant

BRYAN J. REILLY
Third Party Plaintiff/Appellant
vs.
HARLEY DOUGLASS and LISA BONNETT a/k/a MISSY
DOUGLASS and HAYDEN DOUGLASS
Third Party Defendants

APPEALED FROM SPOKANE COUNTY SUPERIOR COURT
CAUSE NO. 16-2-00196-8
THE HONORABLE JOHN O. COONEY

BRYAN J. REILLY'S REPLY BRIEF

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I. INTRODUCTION

Respondents' brief does nothing to show that Appellant Bryan Reilly ("Reilly") actually or constructively possessed the money alleged to have been taken from Respondents' safe. Instead, Respondents set forth all of the circumstantial evidence, which if taken as true and all reasonable inferences are taken therefrom, could possibly support a conclusion that Reilly was a possible person who could have taken the money at issue. The type of evidence presented by Respondents is not the type of evidence that supports a jury verdict, but rather calls for conjecture and speculation. All of Respondents' evidence, if taken as true, does not show Reilly ever possessed the money, either actually or constructively, at any time, not even for a moment. Thus, Respondents' evidence, if taken as true, fails to show the essential element of conversion, which is that Reilly possessed the money at issue.

Respondents spend significant time discussing direct and circumstantial evidence, how the jury is instructed, and how they are to treat the different types of evidence the same. However, the Respondents fail to address that in the complete absence of direct evidence, circumstantial evidence relied upon to establish a theory must relate in such a way that only one reasonable conclusion can be made. It is not enough to show that all the circumstantial evidence added together could

possibly show Reilly had the ability to possess the money at some point in time. The jury instruction on direct and circumstantial evidence is irrelevant, as this claim never should have made it to the jury because a jury is not permitted to speculate or conjecture as to how an event occurred.

In addition to the evidence presented by Respondents, there was substantial direct evidence presented by Reilly showing he could not have been the person who converted the money. Reilly's direct evidence included, but was not limited to, video, eye witnesses, cell phone records, and testimony of police following a full investigation that the person who took the money would have to have possessed the combination to the safe, and there was no evidence Reilly ever possessed the combination. Most compelling was Reilly's direct evidence showing there were at least nine (9) other people at Respondents' home on the day the money was alleged to have been taken, none of which were Reilly. Finally, not one single person testified or presented any evidence that Reilly was actually on Respondents' property at any time when the money was alleged to have been taken. Regardless of Respondents' circumstantial evidence, it was not enough to show that the only reasonable conclusion was that Reilly converted the money.

The conversion claim should have never made it to the jury, especially when the jury was already prejudiced by Respondents' counsel intentionally violating the motion in limine order preventing him from telling the jury Reilly had been criminally charged for other crimes against Respondents. Reilly suffered further prejudice when the trial court refused to bifurcate the unrelated conversion claims. Not granting a mistrial and allowing the jury to hear unrelated evidence certainly affected their decision on the conversion claim related to the money in the safe because there was a complete absence of evidence Reilly converted the money in the safe.

Throughout the entire litigation process the trial court allowed the Respondents to proceed with their claims despite the absence of supporting facts, evidence, and law. The jury's decision to award damages for conversion of money alleged to have been in the safe is based on pure speculation and conjecture.

II. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED

1. In a claim for conversion of money, is it necessary to prove actual or constructive possession of property?
2. Is circumstantial evidence alone sufficient to find conversion of money?

3. In a claim for conversion of money, is it necessary to prove what money was converted with certainty?
4. Does an award of damages have to be supported by evidence presented at trial?
5. Whether a mistrial should have been granted as a result of Plaintiffs' violation of motion in limine.

III. ARGUMENT

A. The Trial Court Committed Error by Allowing the Jury to Speculate based on Respondents' Circumstantial Evidence.

Respondents devote a large portion of their brief to the circumstantial evidence they rely upon to justify the jury's award against Reilly for converting money from Respondents safe. Respondents' Brief, pp. 7-35. Reilly addresses all of the evidence arguments asserted by Respondents in this section, as none of the circumstantial evidence by itself is conclusive and all of the circumstantial evidence must be examined as a whole and so related as to produce one reasonable result. Arnold v. Sanstol, 43 Wash. 2d 94, 99, citing, Gardner v. Seymour, 1947, 27 Wash.2d 802, 808, 180 P.2d 564 (1947); Carley v. Allen, 1948, 31 Wash.2d 730, 737, 198 P.2d 827; Stevens v. King County, 1950, 36 Wash.2d 738, 747, 220 P.2d 318.

Respondent set forth the following circumstantial evidence to justify the jury's verdict that Reilly converted the money alleged to be in the safe:

1. Reilly found the money on Respondents' property.
2. Reilly did not arm Respondents' security alarm the day before the money was alleged to have been taken¹;
3. Reilly's cell phone records showed he was somewhere in the area of the Respondents' home between 2:00 PM and 3:25 PM;
4. Video recorder at Hill's Resort was off by an hour for daylight savings time;
5. Reilly had access to the home;
6. Reilly knew the combination to the safe;
7. Reilly used light timers at the house; and
8. Gloves were found in Reilly's work truck.

Assuming all of the above evidence is true, and taking all reasonable inferences therefrom, this circumstantial evidence does not support the conclusion that Reilly ever possessed the money alleged to have been in Respondents' safe, and certainty does not show that Reilly was the only person who could have converted money.

After Respondents had presented their case-in-chief, and the above was all the evidence that suggested Reilly was the one who converted the money, Reilly moved the trial court for a direct verdict. When the trial court considered circumstantial evidence to prove a fact, it failed to recognize the distinction between mere conjecture and what is a reasonable inference. Stevens v. King County, 36 Wash.2d 738, 747, 220 P.2d 318 (1950). "*An inference is a logical conclusion or deduction*

¹ This is a red herring, direct evidence from Lisa Douglass showed there were at least 9-people on Respondents' property, both inside and out, the day they alleged the conversion occurred, so not setting an alarm the day before is evidence of nothing. RP 1663; 1667; Ex. D-230.

from, an established fact.” Lamphiear v. Skagit Corp., 6 Wash. App. 350, 356, 493 P.2d 1018 (1972). “The rule is well established that the existence of a fact or facts cannot rest in guess, speculation, or conjecture.” Id. The same principle is stated as:

We have frequently said that, if there is nothing more tangible to proceed upon than two or more conjectural theories under one or more of which the defendant would be liable and under one or more of which the plaintiff would not be entitled to recover, a jury will not be permitted to conjecture how the accident occurred.

Stevens, 36 Wash.2d at 747, quoting, Gardner v. Seymour, 27 Wash.2d 802, 180 P.2d 564, 569 (2013). “This rule equally applies whether the trier of fact be a jury or a court sitting without a jury.” Id.

To prove their claim for conversion by theft at trial, Respondents had the burden to prove all of the following elements of conversion: (1) an act of willful interference with any chattel; (2) without lawful justification; (3) entitled property; and that Plaintiffs have been (4) deprived of the possession of property. Westview Inv., LTD v. U.S. Bank Nat’l Ass’n., 133 Wn. App. 835, 852, 138 P.3d 638 (2006) (citing PUD of Lewis Cnty. v. WPPSS, 104 Wn.2d 353, 378, 705 P.2d 1195 (1985)). “An essential element of conversion is the taking of possession, actual or constructive, of the chattel.” Repin v. State, 198 Wash. App. 243, 270, 392 P.3d 1174 (Div. III 2017) (citing Martin v. Sikes, 38

Wash.2d 274, 287, 229 P.2d 546 (1951)). “*In an ordinary sense, conversion means to take and keep another’s property.*” Id.

None of the above evidence proves any of the elements necessary to sustain a verdict for conversion of money alleged to have been in the safe. More specifically, none of the circumstantial evidence upon which the Respondents rely shows Reilly ever possessed the money, either actually or constructively. When you look at Respondents’ argument more closely, they are not arguing the circumstantial evidence did in fact show that Reilly converted their money, but instead, Respondents argue that the circumstantial evidence, if taken as true, and considering all reasonable inferences, shows Reilly could have been the person who converted the money. This is the exact type of theory based upon circumstantial evidence that is forbidden, because it requires a jury to speculate as to how the conversion actually occurred and to speculate as to whether Reilly was the one who possessed Respondents’ money depriving them of the right to their property. Arnold v. Sanstol, 43 Wash. 2d 94, 99, citing, Gardner v. Seymour, 1947, 27 Wash.2d 802, 808, 180 P.2d 564 (1947); Carley v. Allen, 31 Wash.2d 730, 737, 198 P.2d 827 (1948); Stevens v. King County, 136 Wash.2d 738, 747, 220 P.2d 318 (1950).

When the trial court denied Reilly's direct verdict, it acknowledged there was no direct evidence supporting Respondents' conversion claim. RP 2021. The trial court denied the motion for directed verdict because the circumstantial evidence taken as a whole supports the possibility that Reilly was in the home. RP 2020-2021. The trial court did not find that the circumstantial evidence when taken as a whole was so related that the jury could come to only one reasonable conclusion that Reilly was the one who converted the money. The trial court was required to make this finding prior to denying Reilly's motion for directed verdict. Stevens, 36 Wash.2d at 747.

In denying Reilly's motion for directed verdict, and allowing the jury to speculate whether Reilly converted Respondents' money based solely on the circumstantial evidence presented above, the trial court ignored all of the following evidence:

1. Lisa Douglass compiled a list of people who were actually at Respondents' home on the day of the alleged conversion, at least nine individuals, none of which were Reilly. RP 1661-1664;1667; Ex. D-230.
2. There was no evidence presented that Reilly ever possessed the money alleged to have been converted from the safe. RP 1717; 1799.
3. Respondents' belief Reilly converted the money was that he had access to the house. RP 1799.

4. Harlan Douglass testified he was home when the theft occurred, heard people in his home, and knew Reilly was in his home because he heard his voice; when he was in Paris, France at the time of the alleged conversion. RP 1390-1393.
5. Detective Newton testified after completing his full investigation there was no evidence Reilly converted the money, and specifically no evidence Reilly was in the home at the time the conversion was alleged to have occurred. RP 389; 399-401.
6. Respondents' expert Donald Vilfer, who attempted to use Reilly's cell phone records to show Reilly was in Respondents' home at the time of the conversion, testified he was not able to place Reilly or his cell phone in Respondents' home at the time the conversion was alleged to have occurred. RP 1087.
7. Tanner Haynes, an unlicensed investigator with no training or experience, who Respondents paid approximately \$85,000 to investigate who took the money from the safe had no evidence that Reilly ever possessed the money taken from the safe. RP 1435-36; 1463.
8. Respondents presented no witnesses that Reilly ever possessed the money alleged to have been converted.
9. Video evidence showed Reilly was at Hill's Resort making it impossible for him to have been in Respondents' home at the time they allege the money was converted. D 207-210.
10. Eye witnesses supported Reilly being at Hills' Resort at all times Respondents claim their money was converted. RP 1836-1838; 1863-1865; 1214-1222.
11. Detective Newton testified that his investigation concluded that the person who took the money from Respondents' safe had to have the combination to the safe

or the safe had to have been left open because there was no damage to the safe whatsoever. RP 379.

12. The only evidence presented at trial showed the safe was locked on September 25, 2015. RP 1285.
13. There was no evidence presented that Reilly had the combination to the safe.
14. At trial evidence was presented that only four people had the combination to the safe in Respondents' home: (1) Harlan Douglass, (2) Jeri Via, (3) Harley Douglass, and (4) Missy Douglass. RP 1282.

Based on the evidence above, including substantial direct evidence and evidence from witnesses not hired by Respondents, it is just as likely anyone other than Reilly converted the money from Respondents' safe. There is direct evidence that shows Lisa Douglass or Harley Douglass could have taken the money from the safe, they both had access to the home and they both possessed the combination to the safe, which according to Detective Newton was the only way the money could have been removed. RP 379; 1282. What is important from this illustration of what the evidence could show, is that there was ***"nothing more tangible to proceed upon than two or more conjectural theories under one or more of which the defendant (Reilly) would be liable and under one or more of which the plaintiff would not be entitled to recover..."*** Stevens, 36 Wash.2d at 747. Because the facts and evidence showed multiple people could have converted the money, or simply that

the money could have been converted a different way than the theory presented by Respondents, a jury is not permitted to conjecture and speculate based solely upon circumstantial evidence that Reilly was the only one who converted the money. *Id.* In this case, the circumstantial evidence was not so related as to make Reilly the only possible person who could have converted the money. *Id.*

The trial court committed error in allowing the jury to speculate based solely on circumstantial evidence that Reilly could have converted the money, especially when Respondents failed to produce or provide evidence of the essential element of conversion, possession. “*In matters of proof the existence of facts may not be inferred from mere possibilities.*” *Nejin v. City of Seattle*, 40 Wash. App. 414, 421, 698 P.2d 615 (1985). “*When the circumstances lend equal support to inconsistent conclusions or are equally consistent with contradictory hypotheses, the evidence will not be held sufficient to establish the asserted facts.*” *Id.*, quoting, *Lamphiear*, 6 Wash. App. at 357. The evidence presented as a whole shows the conversion alleged to have occurred could have happened multiple ways, and certainly that Reilly was not the only person who could have converted the money. As a matter of law, the jury’s verdict is based on speculation and conjecture and cannot stand.

Reilly's motion for directed verdict should have been granted, and Respondents' claim of conversion of the money from their safe should have been dismissed. Reilly asks this Court to apply the law, evidence and facts and dismiss Respondents' conversion of money from their safe claim.

B. The Circumstantial Evidence Relied on by Respondents to Support the Jury's Verdict is not so Related as to Establish the Elements of Conversion.

Looking again at the circumstantial evidence the Respondents rely upon to justify the jury's verdict that Reilly converted the money alleged to have been in the safe, none of the evidence supports the elements of conversion. Westview Inv., LTD v. U.S. Bank Nat'l Ass'n., 133 Wn. App. 835, 852, 138 P.3d 638 (2006) (citing PUD of Lewis Cnty. v. WPPSS, 104 Wn.2d 353, 378, 705 P.2d 1195 (1985)). Once again, the circumstantial evidence relied upon by Respondents is as follows

1. Reilly found the money on Respondents' property.
2. Reilly did not arm Respondents' security alarm the day before the money was alleged to have been taken²;
3. Reilly's cell phone records showed he was somewhere in the area of the Respondents' home between 2:00 PM and 3:25 PM;
4. Video recorder at Hill's Resort was off by an hour for daylight savings time;
5. Reilly had access to the home;

² This is a red herring, direct evidence from Lisa Douglass showed there were at least 9-people on Respondents' property, both inside and out, the day they alleged the conversion occurred, so not setting an alarm the day before is evidence of nothing. RP 1663; 1667.

6. Reilly knew the combination to the safe;
7. Reilly used light timers at the house; and
8. Gloves were found in Reilly's work truck.

Respondents' Response Brief, pp. 7-35.

First, the fact that Reilly was the person who found the money does not establish Reilly ever possessed or interfered with Respondents' money. After Reilly located the money on Respondents' property, the bag the money was contained in was finger printed by police, and Reilly's finger prints did not appear on the bag. RP 400-401; 1673. The only finger prints on the bag were from Lisa Douglass. RP 400-401; 1673. The evidence showed Lisa Douglass had the combination to the safe, and Reilly did not have the combination to the safe. RP 1282. The lack of Reilly's finger prints on the bag actually shows he never possessed or interfered with Respondents' money, which is the essential element of conversion. Repin v. State, 198 Wash. App. 243, 270, 392 P.3d 1174 (Div. III 2017).

Second, the fact that Reilly did not arm the Respondents home alarm the day before Respondents allege the money was converted from their safe does not prove Reilly ever possessed or interfered with their money. Lisa Douglass compiled a list of all the people who were on Respondents' property or in Respondents' home on the day the alleged conversion occurred. RP 1663; 1667; Ex. D-230. There were at least

nine people on the property the day the conversion was alleged to have occurred, and none of the nine people were Reilly. RP 1663; 1667; Ex. D-230. Whether the alarm was set or not made no difference, and is an insignificant fact. Respondents were required to show that Reilly converted the money between 2:00 PM and 3:25 PM, and the nine people would have been at the Respondents' home prior to this time, so whether the alarm was set the day before is meaningless.

Third, whatever Respondents think Reilly's cell phone records show in relation to conversion, we know as an undisputed fact the cell phone records do not show Reilly was ever on Respondents' property or in their home on the day the conversion was alleged to have occurred. RP 1087. Therefore, Reilly's cell phone cannot establish possession or interference with Respondents' money as required by the elements of conversion.

Fourth, giving Respondents' all reasonable inferences from the circumstantial evidence, if the video at Hill's Resort showing Reilly arriving is off by an hour, it does not show he ever possessed or interfered with Respondents' money. This evidence shows where Reilly was at a certain time, but it does not show Reilly was ever on or in Respondents home converting their money. This evidence does not prove any element of conversion.

Fifth, Reilly had access to Respondents' home, but so did several people. Apparently nine people had access to the home on the day the conversion was alleged to have occurred, and none of these nine people were Reilly. RP 1663; 1667; Ex. D-230. Further, this fact does not show Reilly ever possessed or interfered with Respondents' money.

Sixth, Respondents are incorrect in asserting that Reilly has the combination to the safe. Respondents assert this fact, based upon the theory Reilly could have seen the combination to the safe at some point when he was in Respondents' home, however, there is no evidence to support this fact. The evidence at trial actually showed only Harlan Douglass, Jeri Via, Lisa Douglass, and Harley Douglass had the combination to the safe. RP 1282.

Seventh, it is circumstantial evidence that Reilly sometimes used timers at the house when Harlan Douglass was out of town. Once again, this is an irrelevant fact. Respondents had to prove Reilly converted the money on September 25, 2015, between 2:00 PM and 3:25 PM, so whether a timer went on at night is irrelevant as to whether Reilly converted the money in the afternoon.

Finally, Reilly had gloves in his truck. This is truly a confusing fact that Respondents rely upon to justify the jury's verdict. The undisputed facts show Reilly found the money when he was on a four-

wheel motorcycle. RP 908-916. There is no evidence regarding Reilly's truck being used in the conversion, and what the fact he had gloves in his truck established.

Looking at all of the circumstantial evidence relied upon by the Respondents, none of it, even when considered as a whole, establishes that Reilly ever possessed or interfered with Respondents money. Even when Reilly found the money, he did not touch it, so Respondents cannot argue that for that brief second Reilly interfered with their money. RP 400-401; 1673.

For all the reasons set forth in the above section, and as further illustrated in this section, Respondents' conversion claims should never have been allowed to go to the jury. Allowing the jury to consider this conversion claim was an error by the trial court. Stevens, 36 Wash.2d at 747. Reilly's directed verdict should have been granted, and Respondents' conversion claim related to their safe should have been dismissed. Reilly seeks to have this Court remedy the trial court's error.

C. When Money is the Subject of Conversion, the Amount of Money Converted Must be Proven.

Respondents failed to identify the amount of money (chattel) alleged to have been converted by Reilly, therefore the damages award by the jury was based on speculation. *"The burden is on the plaintiff to*

establish ownership and a right to possession of the converted property.”

Meyers Way Development Limited Partnership v. University Savings Bank, 80 Wash. App. 655, 675, 910 P.2d 1308 (1996). In order to maintain a conversion action in Washington, the plaintiff must establish a property interest in the goods allegedly converted. Id. at 675. The evidence at trial showed that the Respondents did not know how much money was in the safe at the time it was alleged to have been converted. Respondents argue in their response the failure to identify the exact amount of money taken is not necessary because they were not required to prove damages with certainty. In support of this argument, Respondents cite breach of contract cases. e.g., V.C. Edwards Contracting Co., Inc. v. Port of Tacoma, 7 Wash. app. 883, 888, 503 P.2d 1133 (1972). However, when money is the subject of conversion the exact amount must be identified, delivered at one time, and in one mass amount. Davin v. Dowling, 146 Wash. 137, 140, 262 P. 123 (1927).

Conversion claims are specific as to the property that is alleged to have been converted. A claim of conversion requires the plaintiff to prove a possessory interest in the property alleged to have been converted. Bloedel Timberlands Development, Inc. v. Timber Industries, Inc., 28 Wash. App. 669, 679, 626 P.2d 30 (1981). In Washington, *“there can be no conversion of money unless it was wrongfully received by the party*

charged with conversion, or unless such party was under obligation to return the specific money to the party claiming it.” Westview

Investments, Ltd. v. U.S. Bank Nat. Ass’n, 133 Wash. App. 835, 852, 138

P.3d 638 (2006). As the Washington Supreme Court stated:

There is nothing in the nature of money making it an improper subject of conversion so long as it is capable of being identified, as when delivered at one time, by one act and in one mass, or when the deposit is special and the identical money is to be kept for the party making the deposit, or when possession of such property is obtained.

Id. at 852-853, quoting, Davin v. Dowling, 146 Wash. at 140-141

(emphasis added). Unlike in a breach of contract action, in a conversion action the specific property alleged to have been converted must be proven.

There is no evidence of how much money was in the safe at the time Respondents allege it was converted. Lisa Douglass testified at trial she intentionally increased the amount of money alleged to have been taken from the safe from \$250,000, to \$400,000, to \$750,000, to \$1,000,000 in order to get the attention of police. RP 1632-1634. Ultimately Lisa Douglass admitted the total amount of money taken was “*left for speculation.*” RP 1635.

Other evidence presented showed the Respondents could only estimate how much money was in the safe more than a year before the

conversion was alleged to have occurred, and throughout the year Harlan Douglass took money out of the safe without recounting the total amount of money remaining in the safe. RP 1267-1284, Ex. P-72. There was no evidence presented at to the specific amount of money converted by Reilly. Therefore, Respondents failed to meet their burden to identify a property interest in the specific property alleged to have been converted. Bloedel Timberlands Development, Inc., 28 Wash. App. at 679; Westview Investments, Ltd., 133 Wash. App. at 852-853.

The jury's award of damages for conversion of money from the safe is based on speculation, and not based on a proven amount of money converted. Respondents' claim for conversion should never have been presented to the jury and the directed verdict should have been granted because Respondents failed to meet their burden of proof. Therefore, the jury's award of damages related to the conversion of money from the safe should be overturned.

D. Mr. Hassing Intentionally Violated the Court's Order in Limine Preventing any Mention of Criminal Charges.

When Respondents' counsel's intentionally violated the order in limine preventing any mention of criminal charges, Reilly's counsel objected and informed the trial court of its order preventing Mr. Hassing from discussing this before the jury. RP 238. The following transpired:

Mr. Hasing: *Well, I've got the order right here, Your Honor, that was signed by the Court and signed off on by Mr. Freebourn just yesterday, and it says to preclude mention that Reilly has not been criminally charged with a theft from plaintiff's safe, and that motion is granted.*

They didn't bring a motion that I'm aware of that says I can't bring up the fact through a witness that he's been charged criminally, and I don't see any order preventing me from doing that.

THE COURT: *There was a corresponding order when this motion was brought up. It was over a week ago when we did the motion in limines. The defense didn't have an objection, as I recall, to the State's [sic] motion to preclude any information that Mr. Reilly hasn't been criminally charged with the theft from the safe. At that time, the defense brought the corresponding motion that the plaintiff be precluded from mentioning that Mr. Reilly has been charged to bolster credibility of the items that were taken previously. So although it is not in the written order, as I recall, the Court granted that corresponding motion.*

Mr. Hasing: *Was that in a written motion or did they bring it up in argument somewhere along the line?*

THE COURT: *They brought it up in argument.*

Mr. Hasing: *All right.*

THE COURT: *They had no objection to your motion provided you did the same and didn't use the fact he has been charged to bolster the previous alleged theft.*

RP 239-240.

Respondents' argument that Mr. Hasing did not intentionally violate the motion in limine precluding any comment regarding the fact Reilly had been charged in relation to previous theft/conversion claims is

without merit. The transcript is clear, and so was the argument reading what evidence would be allowed. Reilly was precluded from telling the jury that he was never charged criminally with taking the money from Respondents' safe. From the very outset of the trial, Respondents' violation of the motion in limine created unfair prejudice to Reilly that could not be overcome.

The trial court should have granted Reilly's motion for a mistrial.

E. The Trial Court Errored by Not Bifurcating the Unrelated Issues at Trial.

Respondents argue that Reilly's argument regarding bifurcation should not be considered by this Court because the assignment of error related to this issue was omitted and is technically not in compliance with RAP 10.3(a)(4). Respondents also argue Reilly's brief is improper because it omitted issues presented, which was obviously a clerical error because the issues presented appear directly below under the "Argument." There is no prejudice to Respondents, as the error and issues were clearly identified, while not being in technical compliance with the requirements set forth in RAP 10.3(a)(4).

When a party submits a brief that is not in compliance with RAP 10.3(a)(4), the Court may at on its own initiative or by motion of the party may: *"(1) order the brief returned for correction or replacement within a*

specified time, (2) order the brief stricken from the files with leave to file a new brief within a specified time, or (3) accept the brief.” RAP 10.7. If the Court or Respondents feel it is appropriate for Reilly to correct the omissions, Reilly would ask for leave of Court to be allowed to make the corrections necessary.

With regard to the argument pertaining to the trial court’s failure to bifurcate the unrelated claims, Reilly stands on his argument presented in his opening brief.

IV. CONCLUSION

Based on the evidence and argument set forth above, Reilly asks that Respondents’ first cause of action, conversion by theft of the money alleged to be in Respondents’ safe, be dismissed and the award of \$605,000 be vacated. There is no evidence supporting this claim and the jury’s verdict is not supported by substantial evidence. Alternatively, Reilly seeks remand for a new trial with the unrelated conversion claims bifurcated into separate actions.

DATED this 4th day of September, 2019.

ROBERTS | FREEBOURN, PLLC

s/ Chad Freebourn

CHAD FREEBOURN, WSBA #35624

Attorney for Bryan Reilly

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of September, 2019,
I caused to be served via the Court of Appeal filing system a true
and correct copy of the foregoing document to the following:

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