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A. ALLEN JACK FROST RECEIVED INEFFECTIVE ASSISTANCE, VIOLATING HIS RIGHTS UNDER THE U.S. AND WASHINGTON CONSTITUTIONS, BECAUSE HIS DEFENSE COUNSEL NEITHER USED NOR CONSULTED PSYCHOLOGICAL EXPERTS OR EVIDENCE THAT WOULD HAVE IMPEACHED HIS ACCUSER'S CREDIBILITY.

Issues under Assignment of Error:

The credibility of Brandii Cantrell was central. Ms. Cantrell was mentally ill. She may have suffered from a condition that made it virtually impossible for an observer to discern whether or not she was telling the truth. Was Allen Jack Frost denied effective assistance because his counsel did not call Dr. Kevin Connolly or any other psychological or psychiatric expert as a witness or introduce any psychological or psychiatric evidence about his accuser's mental condition or behavior?

Defense counsel has a duty to base tactical decisions on reasonable investigation. Was Allen Jack Frost denied effective assistance because his counsel did not interview Dr. Kevin Connolly or any other psychological or psychiatric expert before trial and did not review Dr. Connolly's

declarations?

B. STATEMENT OF THE CASE

Allen Jack Frost was convicted in King County Superior Court under RCW 9A.44.060 of Third Degree Rape for an alleged assault on Brandii Cantrell. Court's Oral Opinion.

At the conclusion of a long bench trial, the court explained that "Ms. Cantrell was able to recount the rape in great detail. I believe that her report remained consistent, in spite of many inquiries and many rounds of examination. . . . There is no doubt that Ms. Cantrell has given inconsistent stories about a number of things in the past, including the theft, inconsistent stories to the judge hearing the child custody case [in which the Frosts sought third-party custody of Cantrell's daughter, Kendle], inconsistent stories to the authorities who were investigating various allegations of drug possession. Nevertheless, I was convinced in watching her in this courtroom that she was telling the truth. Her reaction to the questions, her body language, the way she conducted herself and the way she answered to me was indicative of someone who was profoundly and permanently affected, in a negative way, consistent with an event of this nature." *Id.* at

4.

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Except for the alleged rape, the first unofficial reporting of the alleged rape and the payments allegedly made by Mr. Frost to Ms. Cantrell to cover up the rape, the facts are largely undisputed.

In 2006, Brandii Cantrell started dating the Frosts' son, Logan Corey, CR January 13, 2010 13 She soon found that Mr. Corey was abusing the opiate Oxycontin. CR January 13, 2010 14-15 Ms. Cantrell soon started abusing Oxycontin CR January 13, 2010 14-15 The couple conceived a child, which Ms. Cantrell miscarried. CR January 13, 2010 18 After conceiving another child the couple moved into the Frosts' three-story house in Ravensdale, Washington, where they lived on the bottom floor. CR January 13, 2010 24-25

Ms. Cantrell gave birth to a daughter named Kendle on July 19, 2007. CR January 13, 2010 28

Mr. Corey subsequently started using heroin. CR January 13, 2010 29 He progressed from snorting it to shooting it up intravenously. CR January 13, 2010 34 Ms. Cantrell then started using heroin intravenously, too CR January 13, 2010 34 The Frosts did not know about the heroin.

At the beginning of 2008, police found heroin paraphernalia in a car with Ms. Cantrell and Mr. Corey. CR January 25, 2010 43-44 Mr. Corey claimed it was his, and the Frosts, who were called to the scene, got

the police to release Mr. Corey on the condition that he go immediately to a bed at Schick Shadel. CR January 25, 2010 43-44 He did. CR January 25, 2010 43-44 That left Ms. Cantrell without a source of heroin. On January 6, a Sunday, she was going through heroin withdrawal. Ms. Frost went to church. She testified that she must have returned home around 10:30 or 11 a.m. There is no disagreement that at some point, in Ms. Frost's absence, Mr. Frost went downstairs, where he found Ms. Cantrell very sick on her bed. There is no disagreement that he told her to show him his arms, or that he saw needle tracks and realized at that time that she was a heroin addict;. CR January 27, 2010 94-102 She alleges he raped her. CR January 19, 2010 19-26 There is no dispute that later that day, Ms. Frost discovered her addiction, too, and the Frosts helped her through the withdrawal symptoms. CR January 25, 2010 51-54

Ms. Cantrell alleged that after the rape, Mr. Frost gave her money frequently in order to buy her silence. CR January 14, 2010 56-60 A great deal of time at trial was taken up with the details of ATM withdrawals, the work Ms. Cantrell did or did not perform in return for money, and whether or not Ms. Cantrell' stole the Frosts' checks. CR January 19, 2010 3-8

Ms. Cantrell remained in the Frost home, and in September 2008, when she and Mr. Corey were reported to CPS for possible child neglect,

they both agreed to a safety plan in which they named the Frosts as the safe, responsible adults with whom Kendle should live if they relapsed.

Declarations of CPS case worker Jessica Chaney,, Trial Exhibits 54/55

That same month, the couple signed a handwritten statement that if they were unable to care properly for their daughter, Mr. Frost should have custody of her. Custody Agreement, Trial Exhibit 51.

Two months later, the couple signed another statement granting custody to the Frosts, with the stipulation that Ms. Cantrell and Mr. Corey would regain custody when they completed a substance abuse rehabilitation program. Stipulated Joinder, Trial Exhibit 52

The Frosts subsequently brought this document to CPS social worker Jessica Chaney, who told them it did not seem legal, and advised them to contact a lawyer about legal custody. Declarations of CPS case worker Jessica Chaney, Trial Exhibits 54/55

A year after the alleged rape, in January, 2009, when Ms. Cantrell filled out an Alcohol and Drug Addiction Treatment and Support Assessment before entering drug treatment, she said she had been sexually abused by her significant other's father. She also said she, her mother and her grandmother had all been diagnosed as bipolar. ADATSA Adult Assessment, Trial Exhibit 41

After she left rehabilitation, she reported the alleged rape to the Maple Valley police. On March 17, she gave a statement to King County detective Belinda Ferguson. Victim Statement Trial Exhibit 5/6

Ms. Cantrell's parents petitioned for third-party custody of Kendle, but did not get a judge to sign the order. The Frosts subsequently petitioned for third-party custody of Kendle and did get a judge to sign. . CR January 12, 2010, 79-83 \

On July 24, 2009, Ms. Cantrell stipulated that all limits on contact between Mr. Frost and Kendle should be removed. Stipulation and Order Allowing Contact Between Jack Frost and Kendle Corey

Between that date and February 8, 2010, the date of the verdict in the criminal trial, Ms. Cantrell left Kendle overnight with the Frosts on six occasions. The last occasion fell less than a week before the start of the criminal trial. Declaration of Carol Frost. (supporting motion for new trial)

After the verdict, Mr. Frost moved the court to order a mental health examination of Ms. Cantrell and to order a new trial. Both motions were denied. Order Denying Remand.

The court imposed a sentence of six months, five to be served as work-release and one to be served as community service. Felony Judgment

and Sentence

C. ARGUMENT

(1) Introduction

"Both the Sixth Amendment to the United States Constitution and article I, section 22 (amendment 10) of the Washington State Constitution guarantee the right to effective assistance of counsel in criminal proceedings." Personal Restraint of Brett, 142 Wn.2d 868, 873 (Jan. 2001)

In Strickland v. Washington (466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)), the Supreme Court decided that the Sixth Amendment required effective assistance of counsel. It found: "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.

Washington courts took notice of Strickland in State v. Jeffries, 105 Wn.2d 398, 717 P.2d 722. They have since expanded on the idea:

"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))." Personal Restraint of Brett, 142 Wn.2d at 873.

Given the court's stated reasons for finding Mr. Frost guilty, there is "a reasonable probability" that if counsel had introduced evidence casting doubt on the credibility of the accuser, the result would have been different.

(2) Counsel was ineffective because he did not call Dr. Kevin Connolly or any comparable expert as a witness.

The case turned on Ms. Cantrell's credibility. The court found that Ms. Cantrell was believable not only because of her detailed description, but also because of her "reaction to questions and her body language, the way she conducted herself and the way she answered questions in the courtroom." Findings of Fact and Conclusions of Law

And yet, Dr. Kevin Connolly, a clinical psychologist with more than 25 years' experience, who had met with both the Frosts and Ms. Cantrell, had another explanation. Dr. Connolly suggested that Ms. Cantrell's early diagnosis of bi-polar disorder "can go hand in hand with a personality disorder, such as borderline personality disorder or psychopathic personality disorder. The latter diagnoses struck me as something that should be explored in Brandii's case. It would also be crucial for the evaluator to be not only expert in psychopathy and borderline phenomena, but also to have all treatment records available." Declaration of Kevin

Connolly (supporting motion for new trial)

That diagnosis would have had a direct bearing on the behavior that the court found compelling: "Borderline personality is sometimes described as an 'as if' personality. Such a person can be whatever others want her to be. She can mimic emotional states that do not truly pertain to anything she has experienced. People with borderline personalities can be pathological liars. They actually convince themselves that what they are seeing is true. . . . Persons with borderline personality can be quite convincing in their lies because they give every outward indication that they are relating something real. They will also cling to the story under pressure, and in some cases have almost perfect memory for the details of the lie, making it very difficult to determine the truth without external verification" *Id.*

While Ms. Cantrell's courtroom demeanor may have been consistent with her narrative, Dr. Connolly believed her actions were inconsistent with it: "I have been informed that Brandii willingly left Kendle in the care of Jack and Carol at many points after she alleges that she was raped. In fact, it appears that she did so even during the course of the rape trial. Such behavior would be consistent with what is called a 'psychopathic slip,' in this case a slippage in her story that Jack truly was a rapist. No one leaves

their child with someone who raped them, or even in their household, when they have other options." *Id.*

Dr. Connolly had also observed Ms. Cantrell directly. He found that "Brandii was not uncomfortable with Jack in my presence; she also had the opportunity to speak to me privately several times without the slightest intimation of a problem with Jack's behavior." *Id.*

Dr. Connolly recommended a psychiatric evaluation. The court could have ordered one. "The granting or denying of a motion for a psychiatric examination of a complaining witness is within the sound discretion of the trial court." State v. Weisberg, 65 Wn. App. 721, 829 P.2d 252 (1992).

The Weisberg court suggested that this discretion might be limited. "A psychiatric exam may be ordered upon a showing of a 'compelling reason' for doing so. State v. Demos, 94 Wn.2d, 733, 619 P.2d 968 (1980). Absent this showing, other, more traditional means of assessing witness credibility and perceptual ability are sufficient. State v. Demos, supra." *Id.* However, in Weisberg, the trial court had conducted an in camera review of the witness' mental history and concluded that psychiatric testimony would be of little value to the jury. Here, no one reviewed the

witness' mental history. And there was no jury. Besides, compelling reasons existed: In the opinion of an expert, the key witness may have suffered from a mental disorder that enabled her to lie while showing all the outward signs of a normal person telling the truth. Also, there was no other way to assess the validity or significance of the self-reported diagnosis of mental illness.

"Evidence offered to impeach is relevant only if (1) it tends to cast doubt on the credibility of the person being impeached, and (2) the credibility of the person being impeached is a fact of consequence to the action. . . . If a person's credibility is a fact of consequence to the action, the jury needs to assess it, and impeaching evidence may be helpful" . State v. Allen S. 98 Wn. App. 452, 460 (Dec. 1999)

Some courts have tended to exclude expert testimony that they fear will confuse a lay jury. These "courts, with the support of most commentators, . . . adhered to the Federal Rules' 'helpfulness' analysis, supplemented by the balancing test applicable to any proffered evidence; under this regime, any helpful specialized knowledge from a qualified expert is admissible unless its potential for confusing the jury, prejudicing one of the parties, or wasting time substantially outweighs its probative

value." Christopher Slobogin, *Psychiatric Evidence in Criminal Trials: To Junk or Not To Junk?*, 40 Wm. & Mary L. Rev. 1 (1998)

Because this was a bench trial, there would have been no danger of confusing a lay jury.

While courts have been reluctant to let experts testify about the credibility of an individual witness, they have been less reluctant to let experts testify about a witness' mental condition or in general about the way in which people with certain conditions or in certain situations may behave. Arguably, the Federal Rules of Evidence, and the Washington Rules of Evidence patterned on them, provide wide latitude for expert testimony.

What most people "know" about human behavior isn't necessarily true. Expert testimony can clarify the pitfalls involved in assessing a witness' credibility. In United States v. Brownlee, 454 F.3d 131 (3d Cir. 2006), when the appellant sought to overturn a conviction for carjacking, the court found that the trial court had improperly excluded expert testimony about the unreliability of witness identification at a show-up. The court observed that "[t]his case was primarily about the accuracy and reliability of the identifications" -- just as the Frost case is primarily about the accuracy and reliability of the accuser's testimony. The court went on

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to note that “jurors seldom enter a courtroom with the knowledge that eyewitness identifications are unreliable.’ Rudolph Koch, Note, *Process v. Outcome: The Proper Role of Corroborative Evidence in Due Process Analysis of Eyewitness Identification Testimony*, 88 Cornell L.Rev. 1097, 1099 n.7 (2003). Thus, while science has firmly established the ‘inherent unreliability of human perception and memory,’ *id.* at 1102 (internal quotations omitted), this reality is outside ‘the jury’s common knowledge,’ and often contradicts jurors’ ‘commonsense’ understandings.’ *id.* at 1105 n.48 (internal quotations omitted). To a jury, ‘there is almost *nothing more convincing* than a live human being who takes the stand, points a finger at the defendant, and says[,] “That’s the one!”’ Watkins v. Sowders, 449 U.S. 341.”

“Because the jury may believe that actions speak louder than words, it is critical that the jury understand the message sent by the witness’s actions.” Anne Poulin, *Credibility: A Fair Subject for Expert Testimony?* Villanova University School of Law Working Paper Series Year 2007 Paper 77 at 36.

In Brownlee, the appellant “sought to present expert scientific evidence to establish the inherent unreliability of human perception and

memory by demonstrating that the correlation between confidence and accuracy is weak. Federal Rule of Evidence 702 'authorizes the admission of expert testimony so long as it is rendered by a qualified expert and is helpful to the trier of fact.'" Brownlee, 454 F.3d 131.

The Washington Rules of Evidence would have allowed Dr. Connolly or another psychologist or psychiatrist to testify. "The 2-part test to be applied under ER 702 is whether: (1) the witness qualifies as an expert and (2) the expert testimony would be helpful to the trier of fact." State v. Cauthron, 120 Wn.2d 879, P.2d 502 (Feb. 1993)

Testimony could have been based either on personal examination or general knowledge applied to the facts of the case. "The reliance test of ER 703 differs somewhat from the helpfulness test of ER 702 See 5A Teglund § 296, at 138 (Supp. 1995). ER 703 relates to the factual basis for the expert's opinion and the rule permits an opinion based on the expert's first-hand knowledge or on information generally relied on in the field of expertise." Reese v. Stroh, 128 Wn.2d 300, 309 907 P.2d 282 (Dec. 1995)

Unlike the situation in Brownlee, the naiveté of lay jurors was not at issue here. But there was no indication that the court had any insight into the possible ramifications of Ms. Cantrell's mental condition. Instead, the judge noted that he had experience in drug court, implying that he was

familiar with -- and presumably equipped to understand -- Ms. Cantrell's behavior. Dr. Connolly's declarations suggest he may have been mistaken. Expert opinion that raised questions about the accuser's credibility and pointed out that her accusation did not match her behavior would have been useful to the trier of fact.

Expert opinion need not be based on a detailed examination. In United States v. Young, the court ruled that a defendant charged with interstate domestic abuse was not entitled to the exclusion of testimony by an experience psychiatric mental health nurse, who told the jury that the victim's recantation of her original accusation was consistent with victim behavior in such cases. The witness had not interviewed the defendant. The court said there was no need for her to do so. "The government did not offer Dr. Burgess as an expert on whether or not Young abused Patrick, but rather, as an expert on how victims such as Patrick typically respond to such abuse. Furthermore, there is no legal authority supporting the proposition that Dr. Burgess must interview Patrick before forming her expert opinion." The testimony based on generalities could provide a context for the trier of fact. "Finally," the court said, "given Patrick's recantation at trial, we find that Dr. Burgess' expert opinion was helpful to the jury in determining how to credit that testimony.." United States v.

Young, 316 F.3d 649 (7th Cir. 2002)

That determination can be crucial. Accordingly, "[t]he Supreme Court has recognized that where the government's case in a criminal prosecution may stand or fall on the jury's belief or disbelief of one witness, that witness's credibility is subject to close scrutiny," United States v. Partin, 493 F.2d 750, 762 (5th Cir. 1974).

In a complex RICO trial, the Fifth Circuit suggested that "the jury should, within reason, be informed of all the matters affecting a witness's credibility to aid in their determination of the truth It is just as reasonable that a jury be informed of a witness's mental incapacity at a time about which he proposes to testify as it would be for the jury to know that he then suffered an impairment of sight or hearing. It all goes to the ability to comprehend, know, and correctly relate the truth." United States v. Martino, 648 F.2d 367, 396 (5th Cir. 1981), *cert. denied*, 456 U.S. 943 (1982)

In Washington, Israel can be cited for the proposition that psychiatric examination and expert testimony are rarely appropriate. Ruling against the admission of expert testimony on antisocial personality disorder, the court said that "expert testimony regarding the effect of a witness' mental disability on his or her credibility is only proper when that

disability is clearly apparent and the witness' competency is a central issue in the case." State v. Israel, 91 Wn. App. 846, 856. (1998).

Israel is one of many state cases based in part on the 9th Circuit's decision in United States v. Barnard 490 F.2d 907, which pre-dates the federal Rules of Evidence and the many state rules, including Washington's, patterned on them. "Persuasive authority that such expert testimony is not admissible is found in United States v. Barnard. There, the trial court excluded expert testimony that the State's witness, a co-conspirator testifying pursuant to a plea agreement with the State, was a 'sociopath.' The Ninth Circuit affirmed, expressing 'grave doubt' that the expert testimony would be helpful to the jury. The court further expressed its concern that such testimony may 'cause juries to surrender their own common sense in weighing testimony' and produce a 'trial within a trial' on a collateral matter. The court emphasized that such testimony should be admitted only in 'unusual cases.'" *Id.* at 857.

Arguably, this reliance on Barnard is out of date. The case law has not acknowledged the changes that the rules were intended to make. "Even after the adoption of the Federal Rules of Evidence, courts continue to cite restrictive pre-rule authority to support rulings excluding expert testimony related to credibility." Poulin at 44. One such pre-rule authority

cited frequently is Barnard. *Id.*

Other state courts have opened the door to expert testimony that bears directly on credibility. In State v. Remme, 23 P.3d 374, 382-83 (Or. 2001) the court held that expert testimony related to the behavior of an abuse victim was properly admitted. In State v. Keller, 844 P.2d 195, 198 (Or. 1993), the court ruled that an expert could testify about what kinds of behavior might indicate leading and coaching young children,.

Even without questioning Israel's precedents, one can both distinguish this case from Israel and Barnard, and argue that Israel's restrictive standards have been met. The Barnard court's concern about juries surrendering their common sense does not apply to a bench trial. Israel itself does not require that a mental disability be physically "apparent." Ms. Cantrell's possible mental infirmity was apparent because a written document presented by the prosecution, entered into evidence and discussed in open court stated that she, her mother -- a key prosecution witness -- and her grandmother represented three generations of mental illness. The trier of fact knew about it.

The situation was also, in the Barnard court's word, "unusual:" A woman entrusts her infant daughter to the man she has accused of raping her, and continues to do so until the eve of his trial. This behavior falls

outside most people's experience or imagination. Expert testimony would have helped the trier of fact to understand it.

Counsel's failure to introduce such testimony fell below an objective standard of reasonableness and Mr. Frost suffered prejudice as a result..

(3) Counsel was ineffective because he did not speak to Dr. Kevin Connolly, read his declarations, or otherwise investigate psychological insights and arguments before trial.

The seminal Supreme Court rulings on ineffective assistance focus not on the tactical choices made but the inquiry that informed those choices.

By that yardstick, the assistance rendered Mr. Frost falls short.

Courts have acknowledged that an attorney has wide latitude to make tactical decisions. A decision not to call a witness or introduce evidence may lie within an attorney's sound tactical judgment. But an attorney's judgment receives deference only if it is informed judgment, based on adequate investigation.

In Wiggins v. Smith, the Court amplified its Strickland ruling.

Wiggins had been convicted of murder. He was sentenced to death. In the

sentencing part of the trial, counsel did not present mitigating evidence of Wiggins' extensive childhood history of physical and sexual abuse, or of his limited mental capacity. The Court explained that a tactical decision to focus on whether or not Wiggins actually committed the crime, rather than presenting such evidence did not constitute ineffective representation. But it reasoned that a tactical decision should have been informed by thorough investigation of Wiggins' background. And counsel had not investigated. Therefore, "counsel were not in a position to make a reasonable strategic choice as to whether to focus on Wiggins' direct responsibility, the sordid details of his life history, or both, because the investigation supporting their choice was unreasonable." Wiggins v. Smith, (539 U.S. 510, 125 S. Ct. 2527, 156 L. Ed. 2d 471 (2003))

"Here, as in *Strickland*, counsel attempt to justify their limited investigation as reflecting a tactical judgment not to present mitigating evidence at sentencing and to pursue an alternative strategy instead. In rejecting the respondent's claim, we defined the deference owed such strategic judgments in terms of the adequacy of the investigations supporting those judgments: "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete

investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.'" *Id.* at 521.

'We have declined to articulate specific guidelines for appropriate attorney conduct and instead have emphasized that '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.' *Id.*

An attorney must be willing to see what lies up the evidentiary trail. "In assessing the reasonableness of an attorney's investigation . . . a court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." *Id.* at 527

Washington courts have followed the same line of reasoning. In ruling that Brett, who had been convicted of murder and sentenced to death, had received ineffective assistance, the court explained: "The inquiry in determining whether counsel's performance was constitutionally deficient is whether counsel's assistance was reasonable considering all of the circumstances. Strickland, 466 U.S. at 689-90. To provide constitutionally

adequate assistance, "counsel must, at a minimum, conduct a reasonable investigation enabling [counsel] to make informed decisions about how best to represent [the] client." Sanders v. Ratelle, 21 F.3d 1446, 1456 (9th Cir. 1994) (citing Strickland, 466 U.S. at 691)." Personal Restraint of Brett, 142 Wn.2d at 873.

Mr. Frost's defense counsel did not conduct an adequate investigation. He was aware of Dr. Connolly and the declarations. Indeed, Mr. Frost urged him to speak with Connolly. He did not. In fact, he "refused to read the declarations and would not speak with Dr. Connolly." Declaration of Allen Jack Frost (supporting motion for new trial)

Nor did he independently consult other psychological experts or try to gain access to Ms. Cantrell's mental health records.

As in Strickland and Wiggins, the issue is whether or not counsel should have looked at what was available before he decided not to use it. Calling Dr. Connolly as a witness or introducing his declarations into evidence weren't the only options. Dr. Connolly's insights -- or those of another expert with similar expertise -- might have informed defense counsel's cross-examination. "Cross-examination as to a mental state or condition, to impeach a witness, is permissible. Annot., CROSS-EXAMINATION OF WITNESS AS TO HIS MENTAL STATE OR

CONDITION, TO IMPEACH COMPETENCY OR CREDIBILITY, 44 A.L.R.3d 1203, 1210 (1972) and cases cited therein. Cross-examination is one of several recognized means of attempting to demonstrate that a witness has erred because of his mental state or condition. In addition, in a proper case counsel may produce experimental evidence to indicate a mental infirmity, or he may call an expert witness to testify as to the witness' mental infirmity. Annot., 44 A.L.R.3d at 1208. In each of these methods the purpose is the same, I.E., to impeach the witness and put his credibility in issue by showing his mental condition and how it affects his testimony." State v. Froehlich, 96 Wn.2d 301, 635 P.2d 127 (1981).

Dr. Connolly's or another qualified psychologist or psychiatrist's insights would have enabled counsel to ask pertinent questions about Ms. Cantrell's history of mental illness. Counsel might have decided not to follow that line of questioning. But he should not have rejected Dr. Connolly, Dr. Connolly's works, or Dr. Connolly's insights without a reasonable inquiry.

Counsel's failure to make that inquiry fell below an objective standard of reasonableness and Mr. Frost suffered prejudice as a result..

D. CONCLUSION

Because Allen Jack Frost received ineffective assistance of counsel, the court should reverse his conviction and remand the case to Superior Court for a new trial.

Respectfully submitted this 20th day of April, 2011.



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**THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 1**

**ALLEN JACK FROST,
Appellant,**

v.

**STATE OF WASHINGTON
Respondent**

NO. 66039-0-1

CERTIFICATE OF SERVICE

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