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<p>Custer County District County Honorable Julie Marshall, Judge Case No. 03CR24</p>	
<p>THE PEOPLE OF THE STATE OF COLORADO,</p> <p>Plaintiff-Appellee,</p> <p>v.</p> <p>LINDA Z. CARY,</p> <p>Defendant-Appellant.</p>	<p>Case No.: 04CA2235</p>
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<p><b>PEOPLE'S ANSWER BRIEF</b></p>	

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## **STATEMENT OF THE CASE AND FACTS**

The defendant, Linda Z. Cary, appeals her judgment of conviction upon jury verdicts of guilty to theft and forgery.

In August of 2004, a jury convicted the defendant on multiple counts of theft and forgery (v. 2, pp. 264-299). The court placed the defendant on probation for a term of ten years, and ordered the defendant to serve 450 days in the county jail as a condition of probation (v. 3, pp. 470-481). The court also ordered the defendant to pay restitution in the amount of \$99,313 (v. 3, p. 548).

It is from this judgment of conviction that the defendant has brought this appeal.

## **STATEMENT OF THE FACTS<sup>1</sup>**

In 2003, Robert Saint-Amour, an employee of Nequette Drilling and Excavating, reported to the Colorado Bureau of Investigation that the defendant had taken, without authorization, about \$100,000 from the business. The defendant had been employed by Nequette Drilling as a bookkeeper from April 2000 to May 2003.

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<sup>1</sup> Unless otherwise designated, the statement of the facts is based on the affidavit for arrest warrant (v. 1, pp. 11-14).

The defendant obtained, without authorization, a credit card in the name of her and the company. The defendant made over \$26,000 in personal charges and used company funds to pay the bills. The defendant used over \$11,000 in Nequette Drilling funds to pay her personal credit card bills. The defendant used a combination of company checks and unauthorized fund transfers to make the payments.

The defendant provided her daughter, Jennie Moore, a.k.a. Jennie Marron, with health insurance through Nequette Drilling. The company had employed Moore on a part-time basis that did not make her eligible for company health benefits. The defendant used \$9,000 of company funds to pay health insurance on Moore. The defendant also paid Moore more than \$19,000 in wages above what she was authorized to receive. Payroll checks to the defendant's daughter were made out after she had left the company.

Company checks signed by the defendant required a second signature to be negotiable, and it was discovered that the second signature on a number of checks was the forged signature of Debra K. Williams, another employee of the company. The defendant had made checks out to herself above her salary. Checks were made out to other employees, but only part of those funds reached the intended parties.

Interviewed by authorities, Debra K. Williams said she had never given the defendant permission to sign her name. She also stated that the defendant was the only one with access to the Nequette Drilling Quick Books program, and that when she asked the defendant for the password to the program, the defendant “always made excuses.” When the defendant finally gave Williams the password, it did not open the program.

Dave Nequette told authorities that he had not given the defendant permission to obtain a credit card in the company name and had not given her permission to sign Debra K. Williams’ name. Nequette denied to authorities that he had authorized the defendant to give herself or her daughter pay advances, loans, bonuses, or extra payroll checks. He denied that the defendant’s daughter was covered under the company’s health benefits.

At trial, the defendant theory of defense was that: (1) Nequette authorized the defendant’s use of the company credit card; (2) Nequette and Williams knew that the defendant’s daughter was covered under company health insurance benefits; (3) Nequette and Williams authorized the defendant to co-sign Williams’ name to company checks; and (4) all the “extra checks” were legitimate (v. 4, p. 605).

## **SUMMARY OF THE ARGUMENT**

The trial court did not abuse its discretion in refusing to allow the defense to elicit testimony of alleged threats to a prosecution witness. Evidence of threats on direct examination, where the witness shows no indication of intimidation, is not only of extremely weak probative value, but could also constitute a prejudicial attack on the opposing party.

The trial court did not abuse its discretion and unfairly prejudice the defendant's ability to impeach the prosecution witnesses when it excluded the testimony of Jennie Moore that, based on her knowledge and opinion, Dave Nequette was not a truthful person. The testimony was not properly offered under the applicable rule. Even if the testimony was properly offered, any error was harmless.

The trial court did not abuse its discretion by allowing the prosecution to present evidence under CRE 404(b) that defendant was sued for defrauding a former employer. The evidence was admissible under CRE 404(b) to show the defendant's intent, method of operation, and common plan. The probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, especially given the trial court's limiting instruction to the jury.

## ARGUMENTS

### **I. The trial court did not abuse its discretion in refusing to allow the defense to elicit what it claimed was proper impeachment evidence.**

The defendant argues that her rights to present a defense, due process, and confront the witnesses against her were violated when the trial court refused to allow defense witness Robert Saint-Amour to testify regarding threats and offers of rewards from Dave Nequette. The defendant also argues that he was unfairly prejudiced by the exclusion of opinion evidence from the defendant's daughter about Nequette's character for truthfulness (Opening Brief, pp. 17-21). The claim fails.

#### **A. Robert Saint-Amour**

During its case in chief, the prosecution took testimony from Robert Saint-Amour. Saint-Amour had worked for Nequette Drilling as a driller's assistant (v. 9, p. 191). In May of 2003, Nequette told Saint-Amour that he had a "big problem" that was "very complicated" (v. 9, p. 193). Nequette invited Saint-Amour to his office to discuss the matter after Saint-Amour offered to help and said that he had worked as a private investigator (*id.*).

Saint-Amour began examining company records based on Nequette's belief that the defendant was stealing money from the company and worked on the project full-time for two to three months (v. 9, pp. 193-194). Saint-Amour testified that he did not receive any direction from Nequette on what the outcome of the investigation should be (v. 9, p. 196). Saint-Amour found that the defendant had been using the Nequette Drilling company credit card (v. 9, pp. 197-200) and that unauthorized insurance benefits had been paid to Jennie Moore, the defendant's daughter (v. 9, pp. 200-203). Saint-Amour also came across documentation showing that the defendant transferred \$1,055.50 from the Nequette Drilling checking account to her personal checking account in October of 2002 (v. 9, pp. 203-204).

Evidence showed that the defendant used Nequette Drilling checks to pay her personal credit card accounts (v. 9, pp. 204-206). The defendant also arranged to receive additional unauthorized payroll checks (v. 9, pp. 208-209). Saint-Amour testified that if he had a doubt whether a particular check was legitimate, he did not include it in his report (v. 9, p. 209). In the course of the investigation, Saint-Amour discovered additional unauthorized checks payable to the defendant's daughter, Jennie Moore (v. 9, pp. 212-213).

Saint-Amour testified that Dave Nequette had “very little” input into his final report and that Debra K. Williams did not direct his investigation nor tell him “what to come up with” (v. 9, p. 213).

Saint-Amour completed his report in July/August of 2003 (v. 9, p. 214). Saint-Amour testified his employment at Nequette Drilling ended in February of 2004 after he had “falling out” with Dave Nequette (v. 9, p. 214). Saint-Amour denied that his conflict with Nequette had any impact on his investigation and final report (v. 9, pp. 214-215).

At trial, the defense made an offer of proof in regard to testimony it wanted to elicit from Robert Saint-Amour (v. 12, p. 8). Outside the hearing of the jury, Saint-Amour made the following statements:

I believe that we have all been led down a trail by Dave Nequette and Debra Williams on this matter. And that my position has been used to perpetuate a personal vendetta and acts of revenge against Linda Cary. My investigation has revealed some of that information.

There is evidence in that office to contradict Dave Nequette’s position of not knowing anything that’s going on in that office.

After I was asked to, after I was done with this, I was asked to use my investigative skills to further acts of revenge against other past employees and clients of Dave Nequette. When I refused, my pay was immediately cut by 20 percent. I have been intimidated. I have been shot at. I am almost sick to my stomach right now.

I feel like I placed myself in great personal jeopardy by even saying this. I have been offered compensation by Dave Nequette that if I made this case go in a direction that was favorable to him, I would have a reward at the end of it.

I have had land that I live on threatened to be taken away by Dave Nequette.

....

Q. [DEFENSE COUNSEL] Because of these acts of intimidation, are you in fear for your life?

A. I have to say I am.

THE COURT: ..., this issue here is whether or not Mr. Saint-Amour has told the truth in this courtroom. I understand you to say yesterday that you [Saint-Amour] had. Is that correct?

THE WITNESS: Yes, ma'am.

THE COURT: Have you said anything in this courtroom that has not been completely accurate, to the best of your knowledge and belief?

THE WITNESS: No, ma'am.

THE COURT: Then the rest of it..., relates to a charge that may or may not be filed against Mr. Nequette. It doesn't relate to whether or not Ms. Cary is guilty. As far as the threats, whether they've occurred, whether they haven't occurred, that simply doesn't relate. It's not relevant to whether Ms. Cary is guilty or not guilty.

If you have some evidence that Ms. Cary is not guilty that you want to elicit from Mr. Saint-Amour, I'd be happy to hear about that. But this relates to a case that may or may not be filed against Mr. Nequette, not to whether or not Ms. Cary is guilty.

....

THE COURT: It has to be relevant. It can't just be trying to trash the victim unless that somehow or other relates to whether or not your client is guilty or innocent....

....

Q. (BY DEFENSE COUNSEL) Mr. Saint-Amour, I believe you just testified that you are aware of items, documents, whatever it is, back in the office or somewhere. Do you have any evidence that you're aware of that shows that either Dave Nequette is lying or that my client is innocent? Do you have something like that, are you aware of it?

A. I believe I do.

Q. Can you explain to the judge what you're talking about.

A. Yes. In the course of my investigation, I was told by Dave Nequette that he had no knowledge of anything that was going on in that office and that the procedures that I was witnessing at the time that I was in the office was a new procedure that was implemented after Linda Cary left.

I came to find evidence in that office that directly contradicts that position.

....

I have talked to two employees that were working there before Linda Cary was working there that told me that this is exactly the way it has always been there. I found documents that were date stamped as received and dated in the office that shows that has been a normal course of action in that office for years before Linda Cary ever worked in that office.

....

THE COURT: He is not going to be allowed to testify as to what other people told him. That's clearly hearsay. As far as whether items are date stamped or not, that hasn't been a fact in controversy. In fact, the testimony was that was the process that was used. Things were date stamped. I'm not seeing how any of that is relevant.

(v. 12, pp. 9-13).

The Colorado Rules of Evidence set forth the standards governing the admissibility of evidence and provide for considerable deference to the trial court's determinations. CRE 401 defines logically relevant evidence as that evidence which has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Such logically relevant evidence is generally admissible. CRE 402. Nevertheless CRE 403 allows a trial court broad discretion to exclude otherwise logically relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice."

A reviewing court may not reverse a trial court's decision to admit or exclude evidence absent a showing that the trial court abused its discretion. People v. Gibbens, 905 P.2d 604, 607 (Colo. 1995); People v. District Court, 869 P.2d 1281, 1285 (Colo. 1994). When reviewing a trial court's admission of evidence in

light of the balancing test of CRE 403, an appellate court must assign to the evidence the maximum probative value and the minimum unfair prejudice which a reasonable fact finder might attribute to it. Gibbens, 905 P.2d at 607; People v. Lowe, 660 P.2d 1261, 1264 (Colo. 1983). To overcome this presumption in favor of the trial court's ruling, the appellant must demonstrate that the decision was "manifestly arbitrary, unreasonable, or unfair." People v. Ibarra, 849 P.2d 33, 38 (Colo. 1993); see also People v. Czemerynski, 786 P.2d 1100, 1108 (Colo. 1990).

Despite this policy of deference to the trial court's evidentiary determinations, a reviewing may not simply accept the lower court's rulings in all circumstances. The trial court must address any appropriate objection and articulate the reasoning for its decision. Specifically, the trial court should explain whether and how the evidence at issue is relevant to the case and, if so, to what extent that probative value might be outweighed by any unfair prejudice to the defendant. People v. Honey, 198 Colo. 64, 596 P.2d 751 (1979); People v. Fernandez, 687 P.2d 502, 504-05 (Colo. App. 1984); see also 2 Jack B. Weinstein & Margaret A. Berger, Weinstein's Federal Evidence, § 401.03 (Joseph M. McLaughlin ed., 1997). Where a trial court fails to adequately perform this gate-keeping task, a reviewing court may overturn its decision as an abuse of discretion. People v. Snyder, 874 P.2d 1076, 1080 (Colo. 1994).

Here, the conflict that Saint-Amour described that he was having with Nequette did not make it more or less likely that the defendant had engaged in the illegal activities with which she was charged. Saint-Amour confirmed that the inculpatory testimony he had given at the trial was correct, and he did not articulate exactly and specifically what else he could have said that would have impeached the testimony of other prosecution witness. Saint-Amour did not state that his truthful, inculpatory testimony was the result of threats by Saint-Amour. Evidence of threats on direct examination, admitted even though the witness shows no indication of intimidation, is not only of extremely weak probative value, but it also could constitute a prejudicial attack on the opposing party. Such evidence can be highly prejudicial. See Dudley v. Duckworth, 854 F.2d 967, 971 (7<sup>th</sup> Cir. 1988) (suggesting that the prosecutor introduced the threat to prejudice the defendants rather than to explain away credibility problems of the witness).

Moreover, it should be noted that the defendant had a full opportunity to cross-examine the prosecution witness on the central issues in the case and had an opportunity to impeach their testimony through other testimony or other types of evidence.

In summary, the record does not show that the trial court abused its discretion in excluding this proffered evidence.

## **B. Jennie Moore**

The defendant argues on appeal that his right to impeach the credibility of prosecution witnesses was unfairly prejudiced when the trial court excluded the testimony of Jennie Moore that, based on her knowledge and opinion, Dave Nequette was not a truthful person (Opening Brief, p. 21). The record does not support the claim.

CRE 608(a) provides, in pertinent part:

Opinion and reputation evidence of character. The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

CRE 608(a)(1) thus permits a witness to express his opinion regarding another witness' character for truthfulness or untruthfulness under certain circumstances. CRE 608(a)(1), however, does not allow a witness to testify that another witness is testifying truthfully on a particular occasion. People v. Gaffney, 769 P.2d 1081 (Colo. 1989); People v. Oliver, 745 P.2d 222 (Colo. 1987) (testimony that social worker and investigator personally believed victims' statements was improperly admitted because it concerned their truthfulness on a

specific occasions); see also People v. Eppens, 979 P.2d 14 (Colo. 1999); cf. CRE 404(a) (“Evidence of a person’s character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion.”).

Here, the prosecution called Jennie Moore, the defendant’s twenty-seven year old daughter, who testified that she had worked on a part-time basis at Nequette Drilling. Moore, who had been interviewed by agents of the Colorado Bureau of Investigation, stated that she could not recall telling the agents that her mother told her that: (1) she had taken a lot of money from Dave Nequette; (2) she had written checks on the name of Jennie Moore; (3) she would not let her (Moore) get into any legal difficulty; and (4) she could not remember why she took the money from Nequette (v. 11, p. 17).

The defense recalled Moore during its case in chief. For the defense, she testified that she initially been hired as a part-time employee by Nequette Drilling, but that she moved to being a full-time employee (v. 11, p. 164). She stated that Dave Nequette was computer literate, that the defendant, Nequette, and Williams had experience with the Quick Books program, and that the Quick Books password was not protected (v. 11, pp. 165-166, 173). Moore stated that she was authorized to receive and that Dave Nequette knew she was receiving company health benefits

(v. 11, pp. 167-171). Moore testified that Debi Williams authorized the defendant to sign her (Williams') name (v. 11, pp. 178-179).

Later in the direct exam, the following occurred:

Q. You worked for Dave Nequette all those months and you said you were in five days a week a least, right?

A. Yes.

Q. Would you see him every day?

A. Yes.

Q. In your opinion, do you believe you got to know him well?

A. Yes.

Q. Did you get to see him in social situations outside of the office.

A. Yes.

Q. Tell us about that.

A. We had lunch. We would go out.

Q. Would he buy you lunch?

A. Yes.

Q. How often would that occur?

A. Maybe twice a week.

Q. And every day at the shop for months?

A. Yes.

Q. Do you believe you got to know him very well?

A. Yes.

Q. Have you formed an opinion as to his truthfulness?

A. Yes.

Q. What is that opinion.

[District Attorney]. Objection.

THE COURT: I'll sustain the objection. You're not allowed to answer.

(v. 11, pp. 187-188).

The trial court was correct in sustaining the objection because, although the witness was asked her opinion about Nequette's truthfulness, the question actually appeared to be an improper attempt to bolster Moore's testimony and indicate to the jurors that Nequette had not been truthful on the specific points of this testimony when he appeared as a witness.

Even assuming that the testimony could have been admitted under the CRE 608(a)(1), any error in this case would have been harmless.

Error may not be predicated upon a ruling which excludes evidence unless a substantial right of the party is affected. CRE 103(a). The harmless error test requires an inquiry into whether the contested evidence substantially influenced the verdict or affected the fairness of the trial proceedings. People v. Quintana, 665 P.2d 605, 612 (Colo. 1983). The harmless error test requires an inquiry into whether the contested evidence substantially influenced the verdict or affected the fairness of the trial proceedings. Id. The proper inquiry is not whether there was

sufficient evidence to support the guilty verdict without the improperly admitted evidence but, rather, whether the contested evidence substantially influenced the verdict or affected the fairness of the trial proceedings. Masters v. People, 58 P.3d 979, 1003 (Colo. 2002). Only error that affected the “substantial rights of the parties” warrants reversal. C.A.R. 35(e); People v. Welsh, 80 P.3d 296, 310 (Colo. 2003).

The record shows that the defendant had a full opportunity to cross-examine the prosecution’s witnesses and was able to impeach that testimony through Moore’s direct testimony when she was called as a defense witness. Given Moore’s overall testimony and the fact that she was the defendant’s daughter, excluding her opinion regarding Nequette’s character trait for truthfulness did not have a substantial influence on the verdict or affect the fairness of the trial proceedings. Therefore, any error in the trial court’s ruling was harmless and does not warrant reversal of the judgment of conviction. See C.A.R. 35(e); People v. Welsh, 80 P.3d 296, 310 (Colo. 2003)

**II. The trial court did not abuse its discretion when it allowed the admission of other act evidence regarding an Arizona civil case where the defendant was accused of fraud.**

The defendant argues that the trial court abused its discretion by allowing the prosecution to present evidence under CRE 404(b) that she was sued for defrauding a former employer (Opening Brief, pp. 21-25). The claim fails.

Before trial, the prosecution made a motion for the introduction of other act evidence at the defendant's trial and an evidentiary hearing was held.

Evidence at the hearing reflected that in 1995 and 1996, attorney Jeffrey Winslow Smith employed the defendant as a paralegal and bookkeeper in his Phoenix, Arizona law office (v. 8, 5/28/04, pp. 5-6). A civil judgment from Maricopa County reflected that the defendant had wrongfully taken funds from her employer and his law office (v. 8, 5/28/04, p. 5). The defendant's actions involved about 55 checks totaling approximately \$55,000 (v. 8, 5/28/04, p. 6). The defendant wrote checks over the amount due to her. She used her personal credit card, made purchases for Jeffrey Smith, and then reimbursed herself (v. 8, 5/28/04, pp. 6-7). The defendant also wrote checks to family members using business funds (v. 8, 5/28/04, p. 12). The defendant defrauded her employer in part by forging signatures on checks and improperly using credit cards.

The court found that the two cases were similar and the evidence was relevant to show the defendant's intent, particularly given that the defendant's defense was that she was authorized to take the money (v. 8, 5/28/04, p. 27). The trial court found that the evidence is logically relevant, and, therefore, independent of the inference of bad character (v. 8, 5/28/04, p. 27). The trial judge observed that the similarity of the other act evidence to the charged offense supported a conclusion that the danger of unfair prejudice did not substantially outweigh the probative value of the evidence (v. 8, 5/58/04, p. 28). The trial court said the judgment showed that the fact had been shown by a preponderance of the evidence (v. 8, 5/58/04, p. 29). The trial court also found that the evidence did not pose a significant danger of jury confusion (v. 8, 5/28/04, pp. 28-28).

As an added protection against unfair prejudice, the trial court said the jury would be advised that the evidence was being introduced for the limited purpose of showing intent, method of operation, and common plan (v. 8, 5/58/04, p. 28).

At trial, the prosecution called Mary Morton-Smith (v. 11, p. 18). Smith testified that the defendant worked for her and her attorney husband, Jeffrey W. Smith, at his law firm in Phoenix, Arizona 1995-1996 (v. 11, p. 19-20). Mary Morton-Smith worked as a telephone receptionist for the firm (v. 11, p. 20). The defendant worked for the firm as a paralegal and had duties that included

bookkeeping, banking, billings, and medical payments (v. 11, p. 20). After Jeffrey Smith died in 1996, the locks were changed and Mary Morton-Smith no longer had access to the firm's office (v. 11, p. 20).

Subsequent investigation revealed that the defendant had been forging checks under the signature of Jeffrey W. Smith, both before and after Smith's death with herself or family members as the recipient of the funds (v. 11, pp. 21, 22, 23). One of the recipients was the defendant's daughter, Tami Marron, who worked at the firm on a part-time basis (v. 11, p. 21). After Smith's death, the defendant forged checks to herself totaling \$18,000 (v. 11, p. 22). The defendant also obtained Smith's credit card number, obtained \$5,000 with it, and deposited the money into her bank account (v. 11, p. 23).

A civil trial resulted in a judgment against the defendant in the amount of \$88,000 (v. 11, pp. 26-27).

After Morton-Smith testimony, the court gave the following limiting instruction to the jury:

THE COURT: Members of the jury, sometimes certain evidence may be admitted for a particular purpose and for no other. The testimony that you have just heard is such evidence. It may be used for purposes of showing common plan, scheme or design. You should consider it as evidence for no other purpose.

(v. 11, p. 28). A similar limiting advisement was given to the jury in the written instructions (v. 4, p. 613).

Evidence of other crimes, wrongs, or acts is generally inadmissible to prove a defendant's character or show her propensity for such conduct. However, such evidence may be admissible under CRE 404(b) for other purposes, such as "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." The listed uses for which evidence of criminal acts may be admissible are "neither mutually exclusive nor collectively exhaustive." People v. Rath, 44 P.3d 1033, 1038 (Colo. 2002) (quoting 1 Charles T. McCormick, McCormick on Evidence § 190, at 659 (John W. Strong ed., 5<sup>th</sup> ed. 1999)).

Read together, CRE 403 and 404(b) allow admission of evidence of prior acts when (1) the evidence relates to a material fact; (2) the evidence has logical relevance in that it increases the probability that the material fact is true; (3) the logical relevance of the evidence is independent of an intermediate inference that the defendant has a bad character, which would be employed to support a further inference that the defendant acted in conformity with his or her bad character; and (4) the probative value of the evidence is not substantially outweighed by the prejudicial effect of the evidence. People v. Spoto, 795 P.2d 1314 (Colo. 1990).

Under CRE 403, relevant evidence is admissible unless its probative value is substantially outweighed by the danger of unfair prejudice. Unfair prejudice, within the meaning of CRE 403, is an "undue tendency on the part of admissible evidence to suggest a decision made on an improper basis." People v. Rath, *supra*, 44 P.3d at 1043 (quoting People v. Gibbens, 905 P.2d 604, 608 (Colo. 1995)). The balance required by CRE 403 favors admission, and, therefore, a reviewing court must afford the evidence the maximum probative value attributable by a reasonable fact finder and the minimum unfair prejudice reasonably to be expected. People v. Fry, 74 P.3d 360, 370 (Colo. App. 2002), *aff'd*, 92 P.3d 970 (Colo. 2004).

However, there is an inherent danger that even properly admitted evidence of other crimes will influence a jury to convict a defendant on an improper basis. This danger "always serves as a strong counterweight to any probative value" the evidence might have. People v. Rath, *supra*, 44 P.3d at 1039.

Trial courts are accorded considerable discretion in deciding questions concerning admissibility of evidence, and a trial court's decision to admit other acts evidence will not be reversed absent a showing that the ruling was manifestly arbitrary, unreasonable, or unfair. People v. Rath, *supra*. Thus, absent an abuse of discretion, a trial court's evidentiary ruling on the probative value and prejudicial

effect of the evidence will not be overturned on appeal. People v. Dist. Court, 869 P.2d 1281 (Colo. 1994).

In this case, the evidence showed the defendant's method of operation and common plan. She would gain employment in a position of trust involving access and authority to the business' finances. Then she would use this position to write unauthorized checks and make unauthorized use of credit cards.

The defendant gained access to company books in the course of her employment. In both cases the defendant forged checks. The defendant negotiated properly signed checks with the recipients being herself or her family members. She made checks payable to various entities, but in fact she received the funds. The defendant paid her own credit card from company funds claiming they were purchases for the employer. She paid herself unauthorized wage bonuses. Both cases involved unauthorized medical reimbursements or health benefits.

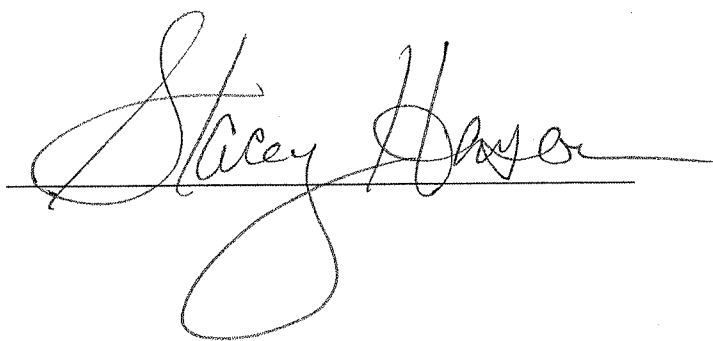
The other act evidence also showed her intent to permanently deprive or defraud the employers and that the transactions were not authorized. Therefore, the evidence countered the defendant's claim that she was authorized to write the checks.

Based on this record, it must be concluded that the evidence was admissible under CRE 404(b) to show the defendant's intent, method of operation, and

## CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **PEOPLE'S ANSWER BRIEF** upon all parties herein by depositing copies of same in the United States mail, first-class postage prepaid, at Denver, Colorado, this 12 day of April 2006 addressed as follows:

Paul Grant  
6053 South Quebec Street, # 101  
Centennial, CO. 80111

A handwritten signature in cursive script, reading "Stacy Hays", written over a horizontal line.