

<p>COURT OF APPEALS, STATE OF COLORADO</p> <p>Colorado State Judicial Building Two East 14th Avenue Denver, Colorado 80203</p>	
<p>Adams District Court Honorable Edward Moss Case Number 06CR3423</p>	
<p>THE PEOPLE OF THE STATE OF COLORADO</p> <p>Plaintiff-Appellee</p> <p>v.</p> <p>BRADLEY SCOTT HURTT</p> <p>Defendant-Appellant</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Douglas K. Wilson, Colorado State Public Defender ARI KRICHIVER, #37780 1290 Broadway, Suite 900 Denver, CO 80203</p> <p><u>Appellate.pubdef@coloradodefenders.us</u> (303) 764-1400 (Telephone)</p>	<p>Case Number: 08CA1883</p>
<p style="text-align: center;">REPLY BRIEF OF DEFENDANT-APPELLANT</p>	

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<p style="text-align: center;">CERTIFICATE OF COMPLIANCE</p>	


I hereby certify that this reply brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The reply brief complies with C.A.R. 28(g).

Choose one:

It contains 339 words.

It does not exceed 18 pages.

A handwritten signature in black ink, appearing to be 'A. J. E.', written over a horizontal line.

Signature of attorney or party

In response to matters raised in the Attorney General's Answer Brief, and in addition to the arguments and authorities presented in the Opening Brief, Defendant-Appellant submits the following Reply Brief.

ARGUMENT

I. The District Court Committed Reversible Error by Allowing the State to Present Evidence of Mr. Hurtt's Prior DUI Arrests.

The state, in its Answer Brief, attempts to cast doubt on Mr. Hurtt's testimony that he was not asked to perform roadside maneuvers in a number of his prior DUI arrests. (Answer Br.,p8) The state asserts in conclusory fashion that "it is highly unlikely that he was not offered them on three separate occasions." (*Id.*) However, the state offers no support for that assertion. The state does not present any statistic, study, or other evidence to suggest how often roadside maneuvers are, or are not, offered. Furthermore, there was no evidence presented at trial to rebut Mr. Hurtt's testimony. The state is now attempting for the first time on appeal to call into question Mr. Hurtt's credibility on this point.

The state further asserts that evidence of Mr. Hurtt's prior DUI arrests was admissible pursuant to C.R.E. 404(b) as proof of identity. (Answer Br.,p11) The state overlooks the fact that this conclusion hinges on an impermissible character inference. The state does not explain in its Answer Brief how the evidence is logically relevant independent of the intermediate inference that the defendant has a bad character,

merely stating in conclusory fashion that “[t]he evidence was admissible pursuant to C.R.E. 404(b) for the purpose of establishing the defendant’s identity” (Answer Br.,p11); *see People v. Spoto*, 795 P.2d 1314, 1318 (Colo.1990) (setting out the four-part test for determining the admissibility of evidence pursuant to C.R.E. 404(b)). The state’s argument appears to rely on the inference that, because Mr. Hurtt was previously arrested for DUI, he also committed a DUI on this occasion. This is precisely what C.R.E. 404(b) prohibits.

CONCLUSION

For the reasons and authorities presented above and in the Opening Brief, Mr. Hurtt requests this Court reverse his convictions.

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CERTIFICATE OF SERVICE

I certify that, on October 9, 2009, a copy of this Reply Brief of Defendant-Appellant was served on Katherine A. Aidala of the Attorney General's Office by emailing a copy to AGAppellate@state.co.us:

