71027-3

71027-3

No. 71027-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

RAMON CARRILLO-ALEJO,

Appellant.

---

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LORI K. SMITH

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# APPELLANT'S STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW

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RAMON CARRILLO-ALEJO
Appellant

Airway Heights Corrections Center
P.O. Box N-B-60
Airway Heights, WA 99001

I, Ramon Carrillo-Alejo, have received and reviewed the opening brief by my attorney, summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

## A. ISSUES PRESENTED FOR REVIEW

1. Did multiple instances of prosecutorial misconduct violate Carrillo-Alejo's right to a fair trial?

2. Did the trial court abuse its discretion and deny Carrillo-Alejo a fair trial by not limiting the introduction of ER 404(b) evidence?

3. Where the State withheld evidence in violation of Brady v. Maryland,[1] should the Court remand Carrillo-Alejo's case to the superior court to determine whether the evidence is favorable and material to Carrillo-Alejo's defense?

## B. ARGUMENT

### 1. MULTIPLE INSTANCES OF PROSECUTORIAL MISCONDUCT VIOLATED CARRILLO-ALEJO'S RIGHT TO A FAIR TRIAL

At trial the prosecutor improperly asked questions and made comments that placed inadmissible and prejudicial information before the jury. A new trial is required because the multiple instances of the prosecutor's misconduct, combined, materially affected the verdict and violated

1. 373 U.S. 83, 83 S.CT. 1194, 10 L.Ed.2d 215 (1963)

Carrillo-Alejo's right to a fair trial.

The right to a fair trial is a fundamental liberty secured by the Sixth and Fourteenth Amendments to the United States Constitution and article I, section 22 of the Washington Constitution. **Estelle v. Williams**, 425 U.S. 501, 503, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976); **State v. Finch**, 137 Wn.2d 792, 843, 975 P.2d 967 (1999). Prosecutorial misconduct may deprive a defendant of his constitutional right to a fair trial. **State v. Davenport**, 100 Wn.2d 757, 762, 675 P.2d 1213 (1984).

To prevail on an allegation of prosecutorial misconduct, a defendant must show both improper conduct and prejudicial effect. **State v. Thorgerson**, 172 Wn.2d 438, 442, 258 P.3d 43 (2011). To show prejudice requires that the defendant show a substantial likelihood that the misconduct affected the jury verdict. Id. If the defendant fails to object, the misconduct is only reversible if the conduct was "so flagrant and ill-intentioned that no curative instructions could have obviated the prejudice engendered by the misconduct." **State v. Belgarde**, 110 Wn.2d 504, 507, 755 P.2d 174 (1988). The defendant "bears the burden of establishing both the impropriety of the prosecutor's conduct and its prejudicial effect." **State v. Furman**, 122 Wn.2d 440, 455, 858 P.2d 1092 (1993). It is possible that the cumulative effect of multiple instances

of misconduct may be so flagrant that no instruction can erase the error. **State v. Henderson**, 100 Wn.App. 794, 804-805, 998 P.2d 907 (2000).

a. The Prosecutor Placed Inadmissible And Prejudicial Evidence Before The Jury By Eliciting Testimony Relating To Other Acts.

Our Supreme Court has held that because of its unreliability, evidence of uncharged crimes is not permitted in the State's case in chief. **State v. Bartholomew**, 101 Wn.2d 631, 641, 683 P.2d 1079 (1984). Exclusion is grounded on the principle that the accused must be tried for the crimes charged, not for uncharged crimes. **State v. Emmanuel**, 42 Wn.2d 1, 13 (1953).

In the State's direct examination, F.H. testified that Carrillo-Alejo had abused her another time when her friend Anna was present. 7RP38. After F.H.'s testimony that Carrillo-Alejo had grabbed her and Anna and taken them to his room, the prosecutor asked F.H. "what happened in his bed?" Id. F.H. stated that Carrillo-Alejo took Anna's pants off. Id. The prosecutor then proceeded to ask F.H. other questions about Anna's presence and involvement during the alleged abuse of F.H. 7RP41-43.

The prosecutor's questions in this case have been held to be improper. Cf. **State v. Montague**, 31 Wn.App. 688, 690-92,

644 P.2d 715 (1982)(asking defendant on trial for rape whether he had been a suspect in another rape held to be an improper reference to inadmissible evidence); **State v. Torres**, 16 Wn.App. 254, 256, 554 P.2d 1069 (1976)(prosecutor's reference to uncharged burglary in rape case improper).

Carrillo-Alejo was not charged with any crimes against Anna, and therefore any evidence of alleged acts against Anna was inadmissible. Further, the evidence of acts against Anna was highly prejudicial because it suggested that Carrillo-Alejo may have not only committed crimes against F.H., but may have also committed crimes against Anna that he was not charged with. Thus, by eliciting testimony of acts that Carrillo-Alejo was not charged with, the prosecutor placed inadmissible and prejudicial evidence before the jury. The prosecutor's conduct was improper and prejudiced Carrillo-Alejo's trial.

b. The Prosecutor Placed Inadmissible And Prejudicial Information Before The Jury By Referencing That Carrillo-Alejo Was Not From This Country.

It is well-established that appeals to nationality or other prejudices are highly improper in a court of justice, and evidence as to the race, color, or nationality of a person whose act is in question is generally irrelevant and inadmissible if introduced for such purpose. See, e.g.,

**Belgarde** at 507-10.

During direct examination, the prosecutor asked F.H. if Carrillo-Alejo ever told told her any other information about "what he had done before." 7RP59. F.H. stated, "he told me he killed people in his place." Id. The prosecutor asked F.H. "what place," and F.H. said "In Ondoda." Id. Then, elsewhere in the State's closing argument the prosecutor called attention to the fact that Carrillo-Alejo was not from this country. The prosecutor referenced that Carrillo-Alejo was "telling [F.H.] that he had killed people in this[sic] country." 8RP51.

In **State v. Suarez-Bravo**, The Court of Appeals held improper the prosecutor's line of questioning concerning Suarez-Bravo's neighborhood, his Hispanic co-workers, his fears of deportation, and his status as a Hispanic noncitizen. 72 Wn.App. 359, 864 P.2d 426 (1994). This irrelevant line of questioning improperly implied that Suarez-Bravo was unreliable and probably possessed cocaine simply because he was a Hispanic living in a high-crime neighborhood and working as a farm laborer. The Court found this and other prosecutorial misconduct rose to a level of "flagrant misconduct." Id. at 367.

In **Torres,** the Court of Appeals disapproved of a prosecutor's reference to defendants as Mexicans or Mexican

Americans:

> We do not condone any reference to a person's race which is intended to slur or disparage either the person or the race....[the reference's] effect may have been to impugn the standing of the defendants before the jury and intimate that the defendants would be more likely than those of other races to commit the crime charged. Such an inference is improper and prejudicial.

**Torres**, 16 Wn.App. at 257.

Additionally, a prosecutor may not make statements that are unsupported by the record and prejudice the defendant. **State v. Ray**, 116 Wn.2d 531, 550, 806 P.2d 1220 (1991).

Here, the prosecutor's statement that Carrillo-Alejo had killed people in his country was unsupported by the record, inadmissible, and improper. Further, the statement was highly prejudicial because it impugned any standing Carrillo-Alejo had before the jury and it allowed the jury to infer that because he was of another nationality he was more likely to have committed the crimes against F.H. Thus, by stating that Carrillo-Alejo "had killed people in his country," the prosecutor placed inadmissible and prejudicial information before the jury. The prosecutor's conduct was inproper and prejudiced Carrillo-Alejo's trial.

c. The Prosecutor Improperly Expressed Her Personal Opinion As To Carrillo-Alejo's Guilt.

A prosecutor may never assert his or her personal opinion as to the "guilt or innocence of an accused." **State**

**v. Reed**, 102 Wn.2d 140, 145, 684 P.2d 699 (1984). See also RPC 3.4(e). An expression of "personal belief in the defendant's guilt" is "not only unethical but extremely prejudicial." **State v. Case**, 49 Wn.2d 66, 68, 298 P.2d 500 (1956).

During closing argument, the prosecutor argued that the worry was too much for F.H., she was having nightmares and crying, and was not wanting to tell. But she did, and she did that scary thing to come in and tell the jury of all that and say what Carrillo-Alejo had done to her. 8RP51. The prosecutor then summarized this argument by stating that Carrillo-Alejo had molested F.H. and exposed her to those things no child should know, and "that is why [Carrillo-Alejo] is guilty." 8RP52.

Many cases warn of the need for a prosecutor to avoid expressing a personal opinion of guilt. E.g., **State v. McKenzie**, 157 Wn.2d 44, 53, 134 P.3d 221 (2006)(finding it improper for a prosecuting attorney to express his individual opinion that the accused is guilty, independent of the testimony in the case)(citing **State v. Armstrong**, 37 Wash. 51, 79 P. 490 (1905)); **State v. Dhaliwal**, 150 Wn.2d 559, 577, 79 P.3d 432 (2003)(permitting latitude to attorneys to argue the facts in evidence and reasonable inferences therefrom, but prohibiting statements of personal belief of a defendant's

guilt or innocence); **State v. Stith**, 71Wn.App. 14, 21-22, 856 P.2d 415 (1993)(deeming a prosecutor's comment in closing argument that the appelant "was just coming back and he was dealing [drugs] again" impermissible opinion "testimony"); **State v. Traweek**, 43 Wn.App. 99, 107, 715 P.2d 1148 (1986) (concluding it was error for a prosecutor to tell the jury he "knew" the defendant committed the crime).

Here, the assertion of guilt that concluded the prosecutor's argument followed not a summary of the evidence but the prosecutor's inflammatory comments about F.H.'s emotional state and fear and of "what no child should know." The prosecutor did not couch her assertion of guilt in terms of the evidence in the case -- it was couched in terms of her own personal opinion. Thus, the prosecutor impermissibly expressed her opinion to the jury of why Carrillo-Alejo was guilty. The prosecutor's conduct was "not only unethical but extremely prejudicial." **Case** at 68.

d. The Prosecutor Disparaged Defense Counsel By Making A Statement That Implied Defense Counsel Was Characterizing F.H. As A Diabolical Child.

It is improper for the prosecutor to disparagingly comment on defense counsel's role or impugn the defense counsel's integrity. **State v. Thorgerson**, 172 Wn.2d at 451.

During closing argument, defense counsel attempted to argue her theory of the case that F.H.'s testimony was inconsistent and therefore F.H.'s credibility was questionable. In rebuttal, the prosecutor responded:

> Now, sure, people can make things up. Ms. Wilson has pointed to a couple of differences **and said -- here is essentially this diabolical child,** this 11 year old who sees a man she doesn't really like and makes up, what, nightmares, crying, not wanting to tell, telling her school counselor, explaining to interview specialists, explaining and meeting with these strangers, these adults, lawyers, and not changing a lot when you look at the entire context of it.

8RP 68. Further in her rebuttal, the prosecutor stated:

> If [F.H.] is some kind of diabolical child, wouldn't that be the first thing she would say?

8RP 71.

The prosecutor's comment in this case has been held as improper. In **Thorgerson**, it was held improper for the prosecutor to refer to defense counsel's presentation of the case as "bogus" and "sleight of hand." 172 Wn.2d at 451-52. In **State v. Warren**, the court found it was improper for the prosecutor to tell the jury that the "number of mischaracterizations" in defense counsel's argument was "an example of what people go through in a criminal justice system when they deal with defense attorneys." 165 Wn.2d 17, 29, 195 P.3d 940 (2008). And in **State v. Negrete**, it was held improper for the prosecutor to tell the jury that he had "never heard so much

speculation" in his life, and that defense counsel "is being paid to twist the words of the witnesses." 72Wn.App. 62, 66, 863 P.2d 137 (1993).

Here, just as in **Thorgerson, Warren,** and **Negrete,** it was improper for the prosecutor to tell the jury that "Ms. Wilson has pointed to a couple of differences and said -- here is essentially this diabolical child" who makes things up. 8RP68. Defense counsel was attempting to establish her theory of the case, and the prosecutor ill-intentionally not only discredited defense counsel's theory but disparaged defense counsel by implying that F.H. was an evil child who was not to be believed. The prosecutor's conduct was improper and highly prejudicial.

e. The Multiple Instances Of Prosecutorial Misconduct Materially Affected The Outcome Of Carrillo-Alejo's Trial And Denied Him A Fair Trial.

The cumulative effect of repetitive error may be so flagrant that no instruction can erase the error. **Case** at 73; **Torres** at263.

Here, the prosecutor's elicitation of testimony relating to uncharged crimes, reference that Carrillo-Alejo was not from this country, expression of her personal opinion of Carrillo-Alejo's guilt, and disparagement of defense counsel materially affected the outcome of Carrillo-Alejo's trial.

The evidence was far from overwhelming that Carrillo-Alejo committed the crimes. The State's only evidence that he committed the crimes consisted of F.H.'s testimony, which was highly inconsistent. When viewed against the evidence, the cumulative effect of the prosecutor's misconduct was so ill-intentioned and flagrant as to have materially affected the outcome of the trial. No curative instructions could have obviated the prejudice engendered by the prosecutor's misconduct. **Belgarde** at 507. Thus, Carrillo-Alejo did not receive a fair trial, and this Court should reverse his convictions and remand for a new trial.

### 2. THE TRIAL COURT ABUSED ITS DISCRETION AND DENIED CARRILLO-ALEJO A FAIR TRIAL BY NOT LIMITING THE INTRODUCTION OF ER 404(b) EVIDENCE

The trial court abused its discretion by not limiting the introduction of ER 404(b) evidence. A new trial is required because the evidence materially affected the outcome of the trial and denied Carrillo-Alejo a fair trial.

Interpretation of an evidentiary rule is a question of law, which is reviewed de novo. **State v. DeVincentis**, 150 Wn.2d 11, 17, 74 P.3d 119 (2003). When the trial court has correctly interpreted the rule, the trial court's decision to admit evidence under ER 404(b) is reviewed for an abuse of discretion. Id.; **State v. Thang**, 145 Wn.2d 630, 642, 41 P.3d

1159 (2002). "Discretion is abused if it is exercised on untenable grounds or for untenable reasons." **Thang** at 642 (citing **State ex. rel. Carroll v. Junker**, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

For evidence of prior bad acts to be admissible, a trial court must "(1) find by a preponderance of the evidence that the misconduct occurred , (2) indentify the purpose for which the evidence is sought to be introduced, (3) determine whether the evidence is relevant to prove an element of the crime charged, and (4) weigh the probative value against the prejudicial effect." **Thang** at 642. This analysis must be conducted on the record. **State v. Foxhoven**, 161 Wn.2d 168, 175, 163 P.3d 786 (2007)(citing **State v. Smith**, 106 Wn.2d 772, 776, 725 P.2d 951 (1986)). The trial court must also give a limiting instruction to the jury if the evidence is admitted. Id.

ER 404(b) must be read in conjunction with ER 402 and 403. **Smith**, at 775. ER 403 requires exclusion of evidence, even if relevant, if its probative value is substantially outweighed by the danger of unfair prejudice. **Smith** at 776. As stated in **State v. Coe**, "[c]areful consideration and weighing of both relevance and prejudice is particularly important in sex cases, where the potential for prejudice is at its highest." 101 Wn.2d 772, 780-81, 684 P.2d 668 (1984).

The record must demonstrate that the trial court made a "conscious determination" that the evidence's probative value outweighed its prejudicial impact. **State v. Tharp**, 96 Wn.2d 591, 597, 637 P.2d 961 (1981). "In doubtful cases the scale should be tipped in favor of the defendant and exclusion of the evidence." **State v. Bennett**, 36 Wn.App. 176, 180, 672 P.2d (1983).

In this case, prior to trial the prosecutor moved to admit ER 404(b) evidence. Supp CP___(sub no. 33, State's Trial Memorandum, at 9-15); 2RP 67-69, 73, 109-11, 113-14. The evidence consisted of other uncharged incidents. Id. First, the prosecutor offered Carrillo-Alejo's threats to F.H. to explain F.H.'s delay in reporting the alleged crimes and to rebut defense counsel's argument that F.H. fabricated the alleged crimes. Supp CP___(sub no. 33, State's Trial Memorandum, at 9-10, 12-14); 2RP 109-10. Second, the prosecutor offered uncharged sexual contact between Carrillo-Alejo and F.H as evidence of Carrillo-Alejo's lustful disposition toward F.H. Supp CP___(sub no. 33, State's Trial Memorandum, at 14-15); 2RP 110-11. Further, the prosecutor argued that the uncharged acts were relevant to show the res gestae of the charged crimes. Supp CP___(sub no. 33, State's Trial Memorandum, at 15); 2RP 109-10, 2RP 111.

The trial court allowed the ER 404(b) evidence. The court explained the evidence was relevant to show Carrillo-Alejo's lustful disposition, res gestae, and to explain F.H's delay in reporting the alleged crimes. 2RP 115-18. In analyzing the probative value and prejudicial impact of the evidence, the court simply stated that the uncharged acts "were more probative than prejudicial." 2RP 115.

a. The Trial Court's Failure To Limit The ER 404(b) Evidence Was Error.

The trial court did not make a "conscious determination" of the evidence's probative value and prejudicial impact. **Tharp** at 597. Had the Court done so, the court would have found the evidence relevant, and that its prejudicial impact did not outweigh the probative value, only if defense counsel argued that F.H. "fabricated" the alleged crimes and if Carrillo-Alejo's identity became an issue. See e.g., **State v. Fisher**, 165 Wn.2d 727, 202 P.3d 937 (2009)(the trial court excluded ER 404(b) propensity evidence unless the defense counsel raised a certain argument); **State v. Darwin**, 71 Wn. App. 902, 863 P.2d 124 (1993)(probative value of evidence was questionable or slight because there was no issue as to defendant's identity).

Here, defense counsel's arguments focused on F.H's

credibility. Defense counsel never made any issue of Carrillo-Alejo's threats to F.H. Too, there was no issue as to Carrillo-Alejo's identity. Therefore, the trial court abused its discretion by not limiting the introduction of the evidence only to rebut defense counsel's argument on those issues. Further, the trial court abused its discretion in admitting the evidence to show res gestae because without any argument by defense counsel on the threats and lustful disposition evidence the evidence's probative value was "questionable or slight." Thus, the trial court's failure to limit the introduction of the evidence was error.

b. The trial Court's Error In Not Limiting The ER 404(b) Evidence Was Prejudicial.

An accused cannot avail himself of error as a ground for reversal unless it has been prejudicial. **State v. Cunningham**, 93 Wn.2d 823, 831, 613 P.2d 1139 (1980). In **State v. Jackson**, 102 Wn.2d 689, 695, 689 P.2d 76 (1984), the Supreme Court held that "[e]videntiary errors under ER 404 are not of constitutional magnitude." Where the error is not of constitutional magnitude, courts apply the rule that "error is not prejudicial unless, within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected." **Cunningham**, at 831. Accord

State v. Robtoy, 98 Wn.2d 30, 44, 653 P.2d 284 (1982); Smith at 776.

Here, again, the evidence was far from overwhelming that Carrillo-Alejo committed the alleged crimes. The State's case rested on F.H.'s credibility, and the State's only evidence consisted of F.H.'s testimony. The only inference the jury could draw from the evidence was that because Carrillo-Alejo committed the other acts he more likely committed the crimes charged. The evidence was highly prejudicial, and without its introduction there is a reasonable possibility that the outcome of the trial would have been affected. Thus, the trial court's error in not limiting the introduction of the evidence denied Carrillo-Alejo a fair trial, and therefore this Court should reverse his convictions and remand for a new trial.

### 3. THE COURT SHOULD REMAND THIS CASE TO THE SUPERIOR COURT TO DETERMINE WHETHER EVIDENCE THE STATE WITHHELD IN VIOLATION OF BRADY V. MARYLAND IS FAVORABLE AND MATERIAL TO CARRILLO-ALEJO'S DEFENSE

The State withheld reports relating to F.H.'s initial disclosure of the alleged abuse. Because the withholding of the reports may have violated Carrillo-Alejo's right to a fair trial, the Court should remand this case to the superior court to determine whether the reports are favorable and material to Carrillo-Alejo's defense.

The State violates **Brady v. Maryland**, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), when it fails to disclose evidence favorable to the defendant. Before there is a constitutional violation under Brady, three elements must be satisfied: (1) the State failed to disclose evidence that is favorable to the accused, either because it is exculpatory or impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) the undisclosed evidence was prejudicial. **State v. Mullen**, 171 Wn.2d 881, 895, 259 P.3d 158 (2011)(quoting **Strickler v. Greene**, 527 U.S. 263, 281-82, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999)). In analyzing these factors, courts are mindful that the fundamental purpose of Brady is the preservation of a fair trial. Id.

At trial, Amy Cameron testified that she wrote reports relating to F.H.'s disclosure of the abuse:

> Well, I -- I write up a report that goes to our district office, and the CPS report that goes in.

6RP 24. Detective Galetti testified that her office received a referral from Child Protective Services. 6RP 111. Galetti stated that the report "basically just outlined [F.H.'s] statement to the school counselor that she made. Who then reported it to CPS." 6RP 113; CP 113, Appendix A. The reports were never provided either to defense counsel or Carrillo-

Alejo.

a. Evidence Favorable To Carrillo-Alejo.

The prosecution has an affirmative duty to disclose evidence favorable to a defendant. **Brady** at 87; **Kyles v. Whitley**, 514 U.S. 419, 432, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). "Favorable evidence includes not only evidence that tends to exculpate the accused, but also evidence that is useful to impeach the credibility of a government witness." **United States v. Jackson**, 345 F.3d 59, 70 (2d Cir. 2003). In this case, it is yet to be determined whether the reports the State withheld are favorable evidence, because the State has not provided the reports.

b. Evidence Was suppressed.

Under Brady, due process requires the State to disclose to the defendant any evidence that is favorable to the defendant, regardless of the good or bad faith of the State. **Brady**, at 87. "[A] inadvertent nondiclosure has the same impact on the fairness of the proceedings as deliberate concealment." **Strickler** at 288. Brady requires disclosure of information in the governments possession or knowledge, whether actual or constructive. **In re Pers. Restraint of Brennan**, 117 Wn.App. 797, 804, 72 P.3d 182 (2003). "The disclosure obligation exists...not to police the good faith

of the prosecutors, but to ensure the accuracy and fairness of trial by requiring the adversarial testing of all available evidence bearing on guilt or innocence. **Carriger v. Stewart**, 132 F.3d 463, 480 (9th Cir. 1997). Here, it cannot be said that the prosecutor did not suppress the reports. The prosecutor was well aware of the reports and the information they contained, yet she disregarded her duty to provide them to defense counsel or Carrillo-Alejo.

c. Materiality.

Prejudice, also referred to as "materiality," is established when there is a reasonable probability that had the prosecution disclosed the evidence to the defense, the proceeding would have had a different result. **State v. Thomas**, 150 Wn.2d 821, 850, 83 P.3d 970 (2004)(quoting **United States v. Bagley**, 473 U.S. 667, 682, 105 S.Ct. 3375, 87 L.Ed. 2d 481 (1985); **Kyles** at 433. The **Kyles** court elaborated:

> [A] showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's aquittal....The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A "reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial.

**Kyles** at 434.

Here, again, because the prosecutor suppressed the reports, it remains to be determined whether the reports were material. However, Carrillo-Alejo submits that because the prosecutor was aware of the reports and the information they contained and she did not disclose this to defense counsel, there is a reasonable probability that the reports are material to Carrillo-Alejo's defense and their suppression could "undermine[] confidence in the outcome of [his] trial." **Kyles** at 434.

d. Remand.

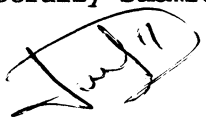
This Court has the authority "to perform all acts necessary to secure the fair and orderly review of a case. RAP 7.3. Therefore, the Court should remand this case to the superior court to determine whether the suppressed reports are favorable and material to Carrillo-Alejo's defense.

**C. CONCLUSION**

Carrillo-Alejo did not receive the constitutionally fair trial he is guaranteed. Therefore, this Court should grant the relief requested above.

Dated this 19 day of May, 2015.

Respectfully submitted,



RAMON CARRILLO-ALEJO, APPELLANT

## DECLARATION OF FILING AND SERVICE BY MAIL

I, Ramon Carrillo-Alejo, declare that, in accordance with GR 3.1, on May 19, 2015, I deposited the foregoing **Appellant's Statement of Additional Grounds for Review** and **Declaration of Filing and Service by Mail**, or copies thereof, in the internal mail system of Airway Heights Corrections Center and made arrangements for postage addressed to:

Richard D. Johnson, Clerk
Court of Appeals
Division One
One Unionsquare
600 University Street
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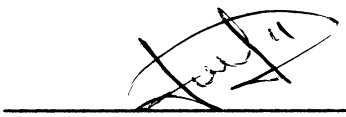
I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 19 day of May, 2015 at Airway Heights, Washington.



Ramon Carrillo-Alejo



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May 19, 2015

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Re: State v. Ramon Carrillo-Alejo,
Court of Appeals Cause No. 71027-3-I

Dear Mr. Johnson:

Enclosed please find originals of Appellant's Statement of Additional Grounds for Review and Declaration of Filing and Service by Mail, for filing in the above referenced cause.

If at all possible, please return to me conformed copies of the first page of the statement of additional grounds and the declaration of filin and service.

Thank you for your time and assistance with this matter.

Respectfully,

Ramon Carrillo-Alejo



cc: Stephanie D. Knightlinger
Jared B. Steed
File