COURT OF APPEALS NO. 47477-8-II

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON,
DIVISION TWO

DARREL HARRIS,

Appellant,

v.

STATE OF WASHINGTON,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Vicki Hogan, Judge

Reply BRIEF OF APPELLANT

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I. ARGUMENT IN REPLY

1. PERVASIVE PROSECUTORAL MISCONDUCT DEPRIVED APPELLANT OF A FAIR TRIAL.

a. **The prosecutor aroused the passions of the jury by arguing social policy and protection of children instead of evidence in the present case.**

In closing and rebuttal closing argument, the prosecutor asked the jury to imagine a world in which only one percent of the crimes against children were prosecuted, where no one would believe a child without corroboration, and where rapists would go free because there was no physical evidence. CP 53, 91, 96-97. While the prosecutor did not specifically ask the jury to protect other children, "the implication is clear enough: were the jury to agree with defense counsel, they would put other children in danger." *State v. Thierry*, 190 Wn. App. 68, 692, 360 P.3d 940 (2015).

In his opening brief, appellant presented a body Washington case law that prohibits emotional appeals to the jury on broader social issues. *Brief of App. at 21-23.* The State did not respond to this argument in its brief, other than to argue that the lack of an objection waived the issue on appeal. The waiver argument will be addressed more fully below, but it is telling that the State fails to mention *State v. Powell*, 362 Wn. App. 914, 816 P.2d 86 (1981). In that case, defense counsel did not object when the prosecutor told the jury that an acquittal would send a message to all

children that they would not be believed. In reversing the conviction, the appellate court found that it was mere speculation to assume that these "protect the children" statements could be cured by the court's instruction. *Id.* at 919.

b. The prosecutor expressed her personal opinion in closing argument by introducing outside evidence and telling the jury should look past the lack of corroboration because "he did it."

A "'[f]air trial' certainly implies a trial in which the attorney representing the state does not throw the prestige of his public office, information from its records, and the expression of his own belief of guilt into the scales against the accused." *State v. Case*, 49 Wn.2d 66, 71, 298 P.2d 500 (1956). Mr. Harris' trial was anything but fair. The prosecutor talked about "typical" child rape cases that are prosecuted, told the jury that the evidence in Mr. Harris' case was comparable to those other cases, and then expressed her personal belief that the lack of corroboration in the current case was nothing to worry about because Mr. Harris "did it."

The prosecutor told the jury that the state would not be able to prosecute rape cases if jurors required corroboration of a rape victim's testimony. This is because "maybe one percent of the crimes" had additional proof beyond a child's word. CRP 91. The prosecutor further explained, "There almost never is other proof. This is not unusual. Yet,

these cases are prosecutable." CRP 97. The prosecutor's emotional appeal continued: "don't let the defendant get away with this because it is like so many others where there is no corroborating evidence. It doesn't matter. He did it. Find him guilty." CRP 98.

On appeal the State now argues that the prosecutor was merely arguing inferences from the medical providers' testimony. *Resp. Brief at 15.* This is unpersuasive. What the doctor testified to was that "it is not unusual to see no visual evidence of trauma." Similarly, a nurse testified that a normal examination does not in any way mean that the child was not sexually abused, and that it is common that the only evidence she has as a nurse is what people have told her. RP 600, 610.

Neither of these two witnesses stated that there was rarely any corroboration of a rape victim's testimony. Their testimony was limited to whether it was unusual to have no physical signs of trauma. They did not testify that only one percent of child rape cases have other evidence, or that there is almost never other proof in cases typically filed by the prosecutor's office. The prosecutor's statements were not reasonable inferences from the medical testimony. They were based on the prosecutor's personal knowledge of the court system, which she freely shared with the jury: "What I'm telling you is that there almost never is other proof." CRP 97.

Jurors are likely to believe that a prosecutor has inside information about a case that is not admissible. This is one of the reasons it is particularly prejudicial when a prosecutor expresses a personal opinion not based entirely on the evidence. *See State v. Susan*, 152 Wash. 365, 380, 278 P. 149 (1929) (statements may suggest to jury that the prosecutor has information and knowledge that has not been disclosed to the jury by the testimony); *In re Glassman*, 175 Wn.2d 696, 706, 286 P.3d 673 (2012) (a jury may give special weight to the prosecutor's argument "because of the fact-finding facilities presumably available to the office.") Here, after talking about the type of evidence available in a typical case, the prosecutor shared her personal belief that the lack of corroborating evidence was immaterial because the defendant did it. CRP 98.

The State contends this is not a personal opinion as to guilt. But it is not necessary for a prosecutor to specifically state, "I believe the defendant is guilty" for the prosecutor's statements to be viewed as a personal opinion. The question of whether a prosecutor is expressing a personal opinion or arguing inferences from the evidence turns upon the context in which the statement is made. *See e.g. State v. Reed*, 102 Wn.2d 140, 144-45, 864 P.2d 699 (1984) (prosecutor expressed his personal opinion when he stated that the defendant was "a cold murder two. It's cold. There is no question about murder two."); *State v. Lindsay*, 180

Wn.2d 423, 438, 326 P.3d 125 (2014) ("The prosecutor's argument that Holmes lied on the stand and the statement that Holmes's testimony was 'the most ridiculous thing I've ever heard' are even more direct statements of the prosecutor's personal opinion as to Holmes's veracity); *In re Glassman*, 175 Wn.2d 696, 286 P.3d 673 (2012) (Superimposing the word "guilty" over photographs conveyed the prosecutor's personal opinion as to defendant's guilt.)

On the other hand, merely summarizing the evidence and stating that the defendant is guilty does not necessarily constitute a personal opinion. *See State v. McKenzie*, 157 Wn.2d 44, 134 P.3d 221 (2006). In the present case, the prosecutor did the opposite. She pointed out the lack of corroborating evidence but asked the jury to find Mr. Harris guilty anyway because there never is corroboration: "Don't let the defendant get away with this because it is like so many others where there is no corroborating evidence. It doesn't matter. He did it. Find him guilty." CRP 98. In light of the prosecutor having just shared her knowledge about the amount of evidence available in other cases, the jury would have perceived this statement for what it was—the prosecutor's personal opinion of Mr. Harris' guilt

c. In her closing argument, the prosecutor misrepresented the law and the jury's function.

The prosecutor told the jurors they would be violating their oath if they required more than a child's word before finding the defendant guilty. CRP 52. In his opening brief, appellant argued this was a misstatement of the law.

The State claims the prosecutor correctly stated the law, citing RCW 9A.44.020(1), which provides: "in order to convict a person of any crime defined in this chapter it shall not be necessary that the testimony of the alleged victim be corroborated." *Id.* But this statute simply addresses the sufficiency of the evidence and is not designed to give jurors guidance in applying the law.

As an initial matter, it is the trial court's job to set forth the law to jurors, not the prosecutor's. The prosecutor's role is to argue how the facts apply to that law. There is no jury instruction incorporating the language of RCW 9A.44.020(1). Nor should there be. Each juror must decide, based on the individual facts of the case, whether the prosecutor has presented the requisite evidence for proof beyond a reasonable doubt of a defendant's guilt. Some jurors may listen to the testimony, consider the surrounding facts, and decide that some additional corroboration is required. Under the prosecutor's misstatement of the law, however, a juror

would reasonably believe that if he finds the child believable, the law does not permit him to insist upon further corroboration of the child's words.

The prosecutor told the jury:

> It came up that some people might require more, might not just think it would be nice to have more, but actually would require more. As a juror on this case, all of you as jurors on this case, you have taken an oath to follow that law in your instructions. That law does not require more.

CRP 52. This was a subtle, yet significant misstatement of the law. A reasonable juror acting on this misstatement would believe it wrong to require additional corroboration if he found JJ and KM believable. But finding a witness believable is not always the same as finding proof beyond a reasonable doubt. The prosecutor's misstatement of the law eliminated that distinction for the jurors.

d. Reversal is required as a curative instruction would not have obviated the prejudice, and there is a substantial likelihood the multiple instances of misconduct affected the jury's verdict.

The prosecutor asked the jurors if they could imagine a system where children "would have to be told, sorry, we can't go forward, we can't prosecute your case because there is nothing to corroborate what you are saying. No one is going to believe a kid with nothing beside your word to prove it." CRP 53-54. On appeal, the State acknowledges that this argument "may" have been improper under the recent *Thierry* decision, but that "this argument was in no way a flagrant, ill-intentioned attempt to

persuade the jury to convict for inappropriate reasons." *Resp. Brief at 19.* The *State* is mistaken in treating *Thierry* as a change in the law. To the contrary, *Thierry* itself recognized that the prosecutor's argument in that case was similar to the improper arguments in *Powell* and *State v. Bautista-Caldera,* 56 Wn. App. 186, 783 P.2d 116 (1989), two cases decided more than 20 years ago. *See Thierry,* at 691.

In her rebuttal, the trial prosecutor again described a world where victims were turned away because corroboration was required. In such a world, the State "could prosecute maybe one percent of the crimes. Everyone else, even through they are coming forward and they are saying, this happened to me, we would have to tell them: Too bad. Your words are not enough. Your sworn testimony is not enough." CRP 91. On appeal, the State argues that this was not flagrant misconduct because the comments were in response to the defense's closing argument. *Resp. Brief at 20.* This argument might make sense if not for the fact that the prosecutor's discussion was a continuation of the theme begun during her initial closing. *See e.g. Thierry*, at 692 (The prosecutor "made similar statements in her initial closing remarks . . . suggesting that this argument was not merely a response to Thierry's challenge to JT's credibility.")

In any event, the prosecutor's intent is not the focus of the reviewing court's inquiry. As the Supreme Court recently explained, "We

do not focus on the prosecutor's subjective intent in committing misconduct, but instead on whether the defendant received a fair trial in light of the prejudice caused by the violation of existing prosecutorial standards and whether that prejudice could have been cured with a timely objection." *State v. Walker*, 182 Wn.2d 463, 341 P.3d 976 (2015) (finding reversible misconduct despite the lack of objection).

In determining whether a curative instruction would have counteracted the prejudice, courts look to the nature of the misconduct. For instance, in *State v. Emery*, 174 Wn.2d 741, 763, 278 P.3d 653 (2012), the Supreme Court found that prosecutor's misstatements regarding burden of proof and reasonable doubt were not of the type usually considered inflammatory. Consequently, the defendant in *Emery* could not establish a curative instruction would have been ineffective. *Id. at 764.*

In contrast are cases in which the prosecutor invites the jury to decide the case on "an emotional basis, relying on a threatened impact on other cases, or society in general, rather than on the merits of the State's case." *Thierry*, at 691. In these cases, particularly those involving the need to protect children, a curative instruction is unlikely to obviate the prejudicial impact on the jury. *Id.* In such cases, the bell cannot be un-rung. *Powell*, 62 Wn. App. at 919. Such is the case with the misconduct in Mr. Harris' case.

Significantly, the State offers no examples of curative instructions that could have eliminated the prejudice in this case. After the prosecutor told the jury to imagine the terrible fate awaiting children in a court system where corroboration was required, and where only one percent of the cases would be prosecuted, the court could hardly have convinced the jury to erase those images from their minds. Nor would the jury so easily ignore the references to the prosecutor's inside knowledge on these types of cases and that she knew the defendant "did it." This simply is not the type of misconduct the court can cure with an instruction.

In *State v. Thorgerson*, 172 Wn.2d 438, 258 P.3d 43 (2011), the misconduct encouraged the jury to disregard evidence that had at best marginal relevance in the case. As such, the misconduct was less likely to have affected the case. *Id.* at 452. By contrast, the misconduct here went to the very heart of the State's case, the strength of a victim's uncorroborated testimony.

The State argues that any misconduct would have had little or no impact on the jury because the "evidence in the form of testimony that the State did present was credible." *Resp. Brief at 20.* That is incorrect. KM's account of the incident made little sense, and was rife with inconsistencies. KM told the officer that she awoke the morning of November 6, 2013, to find Mr. Harris on her bed, rubbing her pajamas

over her vagina. RP 257. By the time of trial, this had changed to a claim that Mr. Harris had his hand under her pajamas. RP 411. KM claims she found a note from him that morning and went into his bedroom, where he was laying on the bed, to confront him. Apparently forgetting her story, she later testified that when she received the note she went to the outside porch to confront him. RP 463, 465.

KM testified that the reason she waited three days to call the police was that "I didn't know what to do. I was in such shock." RP 422. She had told the officer the delay in reporting was due to fear of her uncle. RP 273. These claims were undercut by her actions that same day, when Mr. Harris took both KM and JJ to the doctor for one of KM's appointments. Later that afternoon, when Mr. Harris had brought them home and was preparing to leave for work, KM called him back to give him a hug. RP 385.

When KM called the police three days later to report that Mr. Harris had sexually assaulted her, she was crying and distraught. RP 480. She said she been this way since the time of the assault. *Id.* The officer described her as crying and hysterical the whole time she was there. RP 271. While the officer was at the house, KM told JJ that "something bad had happened to mommy. Did Darrel do something to you?" RP 428. At

that point JJ said yes. *Id.* It was on this day that KM says she learned that JJ was molested.

JJ told interviewers that she had watched her uncle grab her mom and take her mom's clothes off. RP 568. This had not happened. JJ said that Mr. Harris had abused her 33 times. RP 547. She described how Mr. Harris picked her up, carried her into his own room and shut the door. RP 354-55, 364. She also described how he would shut the door when he entered her room. RP 392-93. Mr. Harris responded by pointing out that neither his room nor KM's room had a door, and JJ's bedroom door would not close. RP 666-69.

This is just a sampling of the inconsistencies in KM and JJ's stories. While the testimony may pass a sufficiency of the evidence test, "our analysis of 'prejudicial impact' does not rely on a review of sufficiency of the evidence." *Walker*, 182 Wn.2d at 479. Certainly the State's case, which hung on the credibility of KM and, to a lesser degree JJ, was far from overwhelming. KM's story was also undercut by Janet Satre's description of KM on the day of the incident. RP 644-650. Additionally, Mr. Harris' own testimony provided a reasonable alternative explanation for KM's actions and motivations.

Much of the misconduct occurred during the prosecutor's rebuttal argument. As this Court in *Powell* recognized, misconduct is particularly

damaging when the jury hears it immediately prior to beginning its deliberations. *Powell*, 62 Wn. App. at 919. In this case, rampant misconduct deprived Mr. Harris of a fair trial and reversal is required.

2. DEFENSE COUNSEL'S FAILURE TO OBJECT TO REPEATED INSTANCES OF PREJUDICAL MISCONDUCT CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL.

As discussed above, the prosecutor's flagrant and ill-intended misconduct could not have been cured and can therefore be raised for the first time on appeal. If, however, this Court finds that a curative instruction could have obviated some of the prejudice, then defense counsel was ineffective in failing to raise an objection. While the State might theorize about some conceivable strategy for not objecting, that is not the proper inquiry. "The relevant question is not whether counsel's choices were strategic, but whether they were reasonable." *Roe v. Flores-Ortega*, 528 U.S. 470, 481, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000). For the reasons described above and in the opening brief, the failure to object this highly prejudicial was not reasonable and misconduct constitutes ineffective assistance of counsel.

3. THE COURT'S EXCLUSION OF SURVEILLANCE VIDEO AND THE DEFENSE INVESTIGATOR'S TESTIMONY DEPRIVED APELLANT OF A FAIR TRIAL.

a. The exclusion of the home surveillance video denied appellant a fair trial.

The jury was presented with two different versions of what occurred on November 6, 2013. Mr. Harris testified that on November 6, 2013, he took KM to a doctor appointment and then they had all picked up lunch. Although there had been previous household disagreements between Harris and KM, on this day they were getting along fine. As Mr. Harris prepared to leave for work in his car after bringing her and JJ back home, LM had called him back to give him a hug.

KM provided a very different account. She claimed that Mr. Harris had sexually assaulted her that morning and, by her own account, was shocked, terrified for her life, and near hysterical. In fact, three days later she was still sobbing and near hysterical as she spoke to a police officer about the incident. Although she admitted to hugging Mr. Harris that day, she claims to have done so because she was afraid of him. She first denied calling him back to the house to hug him, but then stated that she didn't remember. RP 429.

The jury was called upon to decide whether KM's actions and demeanor that afternoon were consistent with someone who had just been

sexually abused and was in fear for her life. The video surveillance taken that same day showing the interactions between KM and Mr. Harris would have provided the jurors with a means of independently assessing KM's demeanor at the time. See Ex. 19. When the court excluded this evidence, the court deprived Mr. Harris of his right to effectively challenge the State's case.

The State first argues that because Mr. Harris did not specifically mention the confrontation clause when objecting to the exclusion of this evidence, the constitutional challenge is waived. *Resp. Brief* at 33, 35. While the State is correct that defense counsel did not use the words "confrontation clause," defense counsel did inform the court that the evidence was "integral to our defense" (RP *222*) and "absolutely essential for the jury to see." RP *633*. Defense counsel further explained how the video evidence was "critical in terms of evidence that we are presenting on behalf of Mr. Harris." RP *214*.

The State has not cited any authority for the proposition that a defendant must utter the words "confrontation clause" in order preserve the issue on appeal. Nor is appellant aware of any such requirement. Instead, defense counsel must simply ensure that the trial court is advised that the defendant is objecting to the exclusion of the evidence, and that this excluded evidence is important to the defense. For example, in *State v.*

Darden, 145 Wn.2d 612, 41 P.3d 1189 (2002), the trial court excluded evidence identifying the officer's vantage point in observing a purported drug transaction. Defense counsel objected, "I have a right to establish his vantage point for observation." *Id. 618.* The objection did not include the words "confrontation clause" or "Sixth Amendment", and yet the Washington Supreme Court examined the excluded evidence under the Sixth Amendment, and found that the trial court had committed constitutional error. *Id.* at 620. In the present case, defense counsel adequately conveyed the essential role the video surveillance evidence played in the defense case. The issue is preserved.

The State next suggests that the video was properly excluded because it was only supplied two weeks prior to trial, and its reliability could not be ascertained. *Resp. Brief at 34-35.* But the trial prosecutor did not point to any specific discovery or disclosure violations, nor did the trial court make that finding. Moreover, an argument as to the unreliability of the evidence was eliminated when the State moved to introduce the videos as impeachment against Mr. Harris. RP 705-710.

The State asserts that the evidence had little or no probative value because KM admitted to "acting normal" and hugging Mr. Harris that day. *Resp. Brief at 34.* According to KM she hugged him because she was scared he would hurt her. RP 468. But the purpose of the defense evidence

was not to establish that KM consented to being hugged, but rather, she called him back as he was leaving so that she could hug him. This was inconsistent with her claims of being afraid and recently assaulted. On the witness stand, KM would not admit that she had initiated the hug with Mr. Harris, thereby prolonging contact with him:

> [Defense Counsel] Isn't it true that he was leaving and you called him back to you and then gave him the hug.
>
> [Witness] I don't believe so. I don't know.
>
> [Defense Counsel] Are you saying it didn't happen, or you just don't remember?
>
> [Witness] I don't remember.

RP 492. There was great need for the video to establish the defendant's version of events.

Moreover, as defense counsel explained, the footage contradicted KM's claim that she was terrified. It was highly relevant evidence of KM's demeanor and should have gone to the jury.

Although the court told the parties that it "struggles" with the relevance of the video evidence, the court acknowledged that testimony as to what happened later that afternoon was relevant and admissible. RP 222. It logically follows that if testimony regarding these events is admissible, then the video record of these events is equally relevant and admissible.

Once the defense established the relevancy of the surveillance video, the burden should have shifted to the prosecution "to show the evidence is so prejudicial as to disrupt the fairness of the fact-finding process at trial." *State v. Jones*, 168 Wn.2d 713, 720, 230 P.3d 576 (2010). This is not an easy task, for the State's need to exclude the evidence must be "compelling in nature" for the trial court exclude even minimally relevant evidence. *Id.* at 723. The State cannot come close to satisfying that standard. First, the video was short in length, thus there would have been a minimal expenditure of time. Second, while a party can always claim that a photo or video has been manipulated, that goes to weight. In this case, the State never did allege that the video was in anyway manipulated or purported to show something that did not occur. There was no compelling need to exclude this evidence.

The State claims that because the defense was able to argue the hug in closing, any error was harmless. Not so. First, because KM would not admit she called Mr. Harris back to hug him as he was leaving, it remained a contested issue. Of equal importance, the defense was deprived of the opportunity to give the jury objective evidence of KM's appearance and demeanor that afternoon, which would have undercut her claim that she was terrified of Mr. Harris.

From the start, this case has turned on KM's credibility. The defense theory had always been that KM was lying, and she improperly influenced her young daughter to say or believe things that just didn't happen. Had the jury been allowed to view the surveillance video, it would have undermined both KM and JJ's credibility, and eroded the State's case. The State cannot prove the exclusion of this evidence was harmless beyond a reasonable doubt. Even under a non-constitutional standard, there is more than a reasonable probability that the exclusion of this evidence impacted the jury's verdict.

b. The exclusion of the defense investigator's testimony also deprived appellant of a fair trial.

A similar argument applies to the court's exclusion of all testimony from the defense investigator. JJ had described how Mr. Harris had closed the door to his room and to her bedroom when he abused her. RP 392. Mr. Harris pointed out that there was neither a door nor door-frame on his room, and that the door to JJ's room would not close because of the length of the mattress. RP 668-69. Knowing that the prosecutor would attack his credibility, Mr. Harris hired an investigator to examine the house and testify as to the absence of doors. As defense counsel explained, "We are not going to spend a lot of time on it, but I think the independence of his

investigation, and he may be more specific in terms of measurements and things." RP 620. The court excluded this testimony under ER 403.

Whether Mr. Harris' bedroom had a door was an issue of considerable debate and consequence. KM had testified there was a door and that it was sometimes shut when she came home. RP 409-10, 456. The prosecutor vigorously cross-examined Mr. Harris on this issue, challenging his credibility, including the choice of pictures he presented of the house. RP 696-99. The door issue was significant enough that the prosecutor began her discussion of the defendant's testimony by talking about the door. CRP 63-64. Before doing so, however, the prosecutor reminded the jury that they should consider Mr. Harris's motive in weighing his credibility, and that as the defendant, "he does have something to lose or gain by testifying." CRP 63.

Appellant challenged the suppression of the investigator's testimony on appeal. In response, the State first argues the evidence was of limited probative value because the defense investigator would still suffer "hired gun" bias, making his testimony unhelpful. *Resp. Brief at 36.* This is not a persuasive argument. While an investigator *may* be perceived as having a financial bias, a jury would not equate this motive with someone who is facing years in prison. The financial bias would be akin to that of a

police officer who is paid by the State. Police officers and investigators are not subject to the same credibility attacks as defendants.

The State next argues that the investigator was properly excluded because he could not testify whether there were doors on the room at the time of the purported sexual assault. *Id.* But the offer of proof was that the investigator had conducted a physical examination of the house. RP 620. The investigator's testimony would have supported Mr. Harris' testimony that there was neither a door nor doorframe to his room, and cast doubt on KM's and JJ's credibility. If the prosecutor believed the doorways had been altered, she could have cross-examined the investigator on his inspection of the door. *See* RP 669.

The State was allowed to call multiple witnesses to repeat what JJ had told them about the purported abuse. But when the defense sought to introduce one witness to support the contested door issue, the court found the evidence cumulative. This is similar to excluding a witness to a collision in a disputed liability case, because the driver is already able to talk about what happened. *See* e.g., *See Mogelberg v. Calhoun*, 94 Wn. 662, 677, 163 P. 29 (1917) (Error occurred when witness to collision was excluded because of the ruling of the court limiting the number of eyewitnesses to the accident.) Regardless of whether this is treated under

the constitutional or evidentiary standard, the exclusion of this defense witness on a heavily contested issue requires reversal of the convictions.

4. CUMULATIVE ERROR DENIED MR HARRIS A FAIR TRIAL.

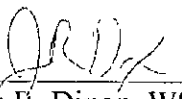
Most of the State's five-page argument relating to cumulative error does not address the facts or legal issues presented in Mr. Harris' case, but focuses on the nature of cumulative error. The State argues that there are no hard and fast rules for what constitutes cumulative error. In one case three errors might constitute cumulative error, while in another case it might take more. Appellant principally agrees. However, the specifics of Mr. Harris' clearly demonstrate cumulative error.

Although there were numerous errors throughout the trial, including multiple objections that should have been sustained or denied, many of these were not raised in this appeal because they were unlikely to have had an impact on the jury verdict. By contrast, the issues appellant raised did most likely influence the jury's verdict. Each one of these errors, standing alone, would justify reversal of the conviction. Taken together, the case for a new trial is obvious. *State v. Alexander*, 64 Wn. App. 147, 150-51, 822 P.2d 1250 (1992). Reversal of the convictions is appropriate.

II. CONCLUSION

The excluded evidence and the pervasive misconduct combined to deprive Mr. Harris of a fair trial. For all the reasons set forth here and in the opening brief, appellant respectfully requests the court to vacate his conviction and remand the case for a new trial.

Respectfully submitted, this 13th day of June, 2016.



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CERTIFICATE OF SERVICE

I, James R. Dixon, certify that on June 13, 2016, I caused a true and correct copy of this Reply Brief of Appellant to be served on the following in the manner indicated below:

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Dated this June 13, 2016, in Seattle, WA

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