72467-3

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Court of Appeals
Division I
State of Washington

No. 72467-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

D'ANGELO SALOY,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

1. The trial court's imposition of a de facto life sentence against Saloy violated *Miller* and the Eighth Amendment.

a. This Court's decision in *State v. Ronquillo* controls.

In *State v. Ronquillo*, under facts similar to those presented here, this Court reversed the defendant's sentence after finding the trial court failed to "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *State v. Ronquillo*, 190 Wn. App. 765, 784, 361 P.3d 779 (2015) (quoting *Miller v. Alabama*, __ U.S. __, 132 S.Ct. 2455, 2469, 183 L.Ed.2d 407 (2012)). *Ronquillo* controls in this case and requires reversal of Saloy's sentence. Op. Br. at 48-54.

The State fails to address the Court's prior holding in *Ronquillo* in its response. Instead, it makes the untenable arguments that *Miller* does not apply to Saloy's sentence because: (1) he did not receive a sentence of life without the possibility of parole, and (2) he was sentenced to two separate sentences for two different convictions. Resp. Br. at 61. Both of these arguments were considered, and soundly rejected, by this Court in *Ronquillo*. 190 Wn. App. at 775-76.

As discussed in Saloy's opening brief, in *Ronquillo* this Court held that *Miller* applies to de facto life sentences, not simply life without the

possibility of parole, and found that a period of confinement that would not allow for a young person's release until age 68 qualified as a de facto life sentence. Op. Br. at 50; *Ronquillo*, 190 Wn. App. at 775. Saloy received a sentence of 712 months, which will result in his release somewhere around his eightieth birthday. 1 RP 242; CP 689. Thus, the State's argument is baseless in light of this Court's holding in *Ronquillo*.

In addition, the State's claim that *Miller* does not apply to aggregate sentences is unsupported by the cases it cites. With the exception of *State v. Ramos*, 189 Wn. App. 431, 357 P.3d 680 (2015), *review granted* 367 P.3d 1083 (2016), which was decided after *Ronquillo*, the cases upon which the State relies for this claim were explicitly rejected by this Court in *Ronquillo*. 190 Wn. App. at 776 (explaining why *State v. Kasic*, 228 Ariz. 228, 265 P.3d 410 (2011), *Walle v. State*, 99 So.3d 967 (Fla. Dist. Ct. App. 2012), and *Bunch v. Smith*, 685 F.3d 546 (6th Cir. 2012) "do not persuasively show that Eighth Amendment analysis does not apply to aggregate or consecutive sentencing of juveniles"); Resp. Br. at 62-63. This Court also noted that one of the petitioners in *Miller* was convicted of two separate crimes, and the United States Supreme Court did not indicate that sentence should be treated differently than one imposed for a single crime. *Ronquillo*, 190 Wn. App. at 776-77.

In *State v. Soliz-Diaz*, Division II recently reached the same conclusion when it found the *Miller* criteria controlled resentencing for a teenager who received a life equivalent term for six consecutive offenses. __ Wn. App. __, 2016 WL 2866398 at *5-6 (2016). Only Division III has suggested that there are no Eighth Amendment implications where a defendant's de facto life sentence is comprised of consecutive sentences. *Ramos*, 189 Wn. App. at 452. But as this Court found, such an artificial approach is contrary to "the teachings of *Miller* and its predecessors." *Ronquillo*, 190 Wn. App. at 775-76. The State's arguments were considered and rejected by this Court in *Ronquillo*, and should be rejected here.

b. In violation of *Miller*, the trial court failed to consider how Saloy's young age counseled against sentencing him to a lifetime in prison.

The trial court never considered imposing anything other than a de facto life sentence upon Saloy. This violated *Miller*. *Ronquillo*, 190 Wn. App. at 775; *Miller*, __ U.S. __, 132 S.Ct. at 2469.

The State relies on the defense's presentence report, in which the defense discussed Saloy's young age and difficult childhood, to claim the trial court fulfilled its obligations under *Miller*. Resp. Br. at 63; CP 751-53. However, demonstrating that the trial court was made aware of this information is not enough. *Miller* requires the court actually use this

information to consider the ways in which children are different from adults, and how those differences warn against sentencing a child to a life in prison. *Ronquillo*, 190 Wn. App. at 775; *Miller*, __ U.S. __, 132 S.Ct. at 2469. The trial court did not do this. It briefly noted Saloy's age, but only used this information to decide against imposing a sentence at the high end of the standard range. 1 RP 242. The trial court never considered anything except a sentence within the standard range, and therefore never considered anything but a de facto life sentence. CP 687 (showing the bottom of the standard range would still be 612 months, or 51 years). Indeed, the trial court noted it only had "so much discretion in this case," indicating it did not recognize that it was required to consider whether the mitigating factors related to Saloy's young age warranted an exceptional sentence. 1 RP 242.

The penalty imposed against Saloy is reserved for those who are irreparably corrupt, beyond redemption, and unfit to reenter society notwithstanding the diminished capacity and greater prospects for reform that ordinarily distinguishes juveniles from adults. *Miller*, __ U.S. __, 132 S.Ct. at 2469. The de facto life sentence imposed against Saloy dictates that he spend the rest of his life in prison without any determination by a court that he meets this criteria. This is a violation of the Eighth Amendment, and Saloy is entitled to a new sentencing hearing.

2. Intentional prosecutorial delay violated Saloy's right to Due Process.

a. Because the automatic decline statute is unconstitutional, Saloy suffered actual prejudice.

Saloy was 20 years old when the State filed charges against him, but only 16 years old when the shooting occurred. Pretrial Ex. 1 at 1; CP 1. Where a defendant is denied juvenile court jurisdiction because of the State's delay, the Court applies a three-prong test to determine whether the delay violated "the fundamental conceptions of justice." *State v. Salavea*, 151 Wn.2d 133, 139, 86 P.3d 125 (2004); *State v. Oppelt*, 172 Wn.2d 285, 295, 257 P.3d 654 (2011); U.S. Const. amends. V, XIV; Const. art. I, § 3. The application of this test to the facts of this case demonstrates Saloy's right to Due Process was violated.

The State argues Saloy cannot meet the first prong of the test, that the charging delay caused prejudice, because the automatic decline statute is constitutional. *Salavea*, 151 Wn.2d at 139; Resp. Br. at 29. In order to reach this conclusion, it asks this Court to adopt the majority's reasoning in *State v. Houston-Sconiers*, 191 Wn. App. 436, 365 P.3d 177 (2015), *review granted* __ P.3d __, 2016 WL 3909828, which framed the automatic decline statute as the exercise of jurisdiction, rather than the imposition of punishment, and declined to depart from *In re Boot*, 130 Wn.2d 553, 570-71, 925 P.2d 964 (1996).

Contrary to the State's claim, this Court is not bound by *Boot*, 130 Wn.2d at 570-71. Resp. Br. at 30. As articulated by the dissent in *Houston-Sconiers*, the reasoning in *Boot*, which found no analogy between the death penalty and life imprisonment, has been undone by a series of United States Supreme Court decisions, including *Miller*, __ U.S. __, 132 S.Ct. at 2469. *Houston Sconiers*, 191 Wn. App. at 447 (Bjorgen, J. dissenting); *see also* Op. Br. at 21-22. Given that punishment is the only factor that distinguishes the juvenile system from the adult system, the analysis in *Boot* is invalid in light of the foundational principle articulated in *Miller*, that a court may not impose the most severe penalties on juvenile offenders without regard for the fact that they are children. *Miller*, __ U.S. at __, 132 S.Ct. at 2466.

Our supreme court has accepted review of *Houston-Sconiers*, and this Court should adopt the reasoning espoused in *Houston-Sconiers* well-reasoned dissent and hold that the automatic decline statute violates the Eighth Amendment and article I, section 14. *Id*. at 452; Op. Br. at 26-28.

b. <u>The State's delay, when balanced against the extraordinary prejudice to Saloy, violates our fundamental conceptions of justice.</u>

An examination of the second prong of the test, or the reasons for the State's delay, reveals the injustice in this case. *Salavea*, 151 Wn.2d at 138. In 2009, prior to Saloy's eighteenth birthday in April 2010, two

witnesses came forward and informed Detective Dana Duffy that Saloy had taken responsibility for the shooting. Pretrial Ex. 1 at 23, 26; CP 752 (stating Saloy's birthday as April 15, 1992). The second witness, later identified as Wendall Downs, provided detailed information, and Detective Duffy kept his identify confidential because he was able to provide a lot of information and was willing to assist police. Pretrial 1 at 26; CP 87.

In October 2009, Detective Duffy completed her certification of facts and forwarded it to two prosecuting attorneys. Pretrial Ex 1. at 26. Two months later, Downs showed her where Saloy had indicated he discarded the weapons. Pretrial Ex. 1 at 27.

The State dismisses this evidence in its response, arguing the delay was justified because the eyewitnesses were uncooperative and the only evidence linking Saloy to the shooting was the information provided by Downs and the first witness to come forward, Dewaun Miller. Resp. Br. at 32. But no eyewitnesses ever provided information in the case and, as Detective Duffy explained in her application for the intercept order, the State never expected that any of them would. CP 94. Similarly, although the State emphasizes it could not proceed with the case at that point because no physical evidence linked Saloy to the crime, the State did not expect that to change. Resp. Br. at 34; CP 94.

The only reason to delay charging Saloy was to obtain a recorded statement. As discussed in Saloy's opening brief, the State did not expect to obtain information in this recording different from what it had already received form Downs. Pretrial Ex. 1 at 26. According to Downs, Saloy had described how and why he committed the shooting, and Saloy later showed Downs where he discarded the guns used in the shooting. Pretrial Ex. 1 at 26-27.

The State's conclusion that it could not have charged Saloy solely based on his unrecorded statements, or proven the case to a jury, is unsupported by the record. Resp. Br. at 34. Saloy's statements were admissible as substantive evidence at trial through Downs. ER 801(d)(2). In addition, regardless of the recording, the State had to overcome the same hurdle at trial: proving that Saloy's statements had not been merely an attempt to take responsibility for another's crime in order to gain status within his gang. 7/17/14 RP 107 (Detective Benjamin Hughey's testimony on this issue).

The delay in charging was therefore a tactical decision by the State to gain an advantage at trial rather than to gather the evidence it needed to prosecute the case. The State had the evidence it needed prior to Saloy's eighteenth birthday, it simply delayed charging Saloy because it was advantageous to the prosecution. *See United State v. Marion*, 404 U.S.

307, 324, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971) (where the Government delays indicting a defendant in order to gain a tactical advantage over the accused, Due Process is violated).

Balancing the State's reason for the delay against Saloy's loss of the possibility of juvenile court jurisdiction demonstrates that "the fundamental conceptions of justice" were violated. *Oppelt*, 172 Wn.2d at 292. This Court should reverse.

3. The State's affidavit for the intercept order was legally insufficient under the Washington Privacy Act.

a. De novo review is appropriate.

This Court should conduct a de novo review of whether the intercept order was legally sufficient under the Washington Privacy Act. In *State v. Kipp*, our supreme court examined "what standard of review applies to a trial court's ruling on a motion to suppress evidence under the privacy act," and determined that de novo review is appropriate where the facts are undisputed. 179 Wn.2d 718, 726-29, 317 P.3d 1029 (2014). The court reiterated,

> where… the trial court has not seen or heard testimony requiring it to assess the credibility or competency of witnesses, and to weigh the evidence, nor reconcile conflicting evidence, then on appeal a court of review stands in the same position as the trial court in looking the facts of the case and should review the record de novo.

179 Wn.2d 718, 727, 317 P.3d 1029 (2014) (quoting *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994)).

The State claims *Kipp* only requires this Court conduct a de novo review of whether a conversation is "private." Resp. Br. at 15. But *Kipp* is not so limited. 179 Wn.2d at 728-29. The court held that de novo review is appropriate "whether as here, the facts are undisputed, or whether review of the facts as found by the trial court are the focus." *Id.*; *see also Goodeill v. Madison Real Estate*, 191 Wn. App. 88, 362 P.3d 202 (2015) (relying on *Kipp* to find that because the documentary evidence reviewed by the trial court did not require the trial court to reconcile conflicting facts, de novo review was appropriate). Here, the question before the court is whether the State failed to present the required particularized showing in its application to intercept and record Saloy's conversation with his close friend, Juan Sanchez. Op. Br. at 14. What information the application contained is undisputed, and this Court should engage in de novo review. *Kipp*, 179 Wn.2d at 728.

b. <u>The State's application did not provide the particularized showing required by the statute.</u>

A review of Detective Duffy's application reveals the State failed to present the particularized showing required by RCW 9.73.130(3)(f).

This requirement "reflects the Legislature's desire to allow electronic surveillance under certain circumstances but not to endorse it as routine procedure." *State v. Manning*, 81 Wn. App. 714, 720, 915 P.2d 1162 (1996). In order to ensure that the involuntary interception and recording of private conversation remains the exception, this Court has rejected justifications that "merely support the truism that having a recording to play at trial is advantageous to the State in obtaining a conviction." *State v. Porter*, 98 Wn. App. 631, 636, 990 P.2d 460 (1999).

Detective Duffy's application asserted that at least three witnesses had informed the police that Saloy had confessed to committing the crime. CP 84-85, 90. Thus, normal investigative procedures had succeeded in obtaining incriminating evidence against Saloy. The State argues that simply because these individuals spoke to the police did not demonstrate that they were willing to testify, and points out that Sanchez testified only after he was arrested on a material witness warrant. Resp. Br. at 20. However, in making this argument the State concedes that not only did Sanchez in fact testify against Saloy, but that the State had the means to coerce him to do so even after he initially refused.

Thus, recording Saloy's private conversation was not necessary, as the State claims, but instead was the State's preferred method of prosecuting the case. Resp. Br. at 21. The State argues that without the

recording it would have been "all too easy for Saloy to later claim that he was only 'fantasizing' or 'kidding' when make the remarks," but this does not justify allowing the police to circumvent the Washington Privacy Act. Resp. Br. at 21. As this Court has held, "[t]he desirability of avoiding a 'one-on-one' swearing contest" is not sufficient to justify the involuntary interception and recording of a private conversation under RCW 9.73.130(3)(f). *Manning*, 81 Wn. App. at 721. Reversal is required. *Porter*, 98 Wn. App. at 636.

c. In the alternative, the trial court should have granted Saloy's request for a *Franks* hearing.

The State argues the *Franks*[1] standard is inapplicable to applications for intercept orders, but concedes our supreme court has applied a constitutional probable cause standard in the past. Resp. Br. at 24; *see State v. Salinas*, 119 Wn.2d 192, 199, 829 P.2d 1068 (1992). The State also conceded the issue was properly analyzed under *Franks* in the trial court. CP 288-290. The State's cursory argument on appeal, which simply suggests this Court is "free" to reject a *Franks* analysis in this context, should be rejected.

[1] 438 U.S. 154, 164, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

For the reasons expressed in his opening brief, the trial court erred when it denied Saloy's request for a *Franks* hearing, and this Court should reverse. Op. Br. at 18-20.

4. The trial court erroneously admitted gang evidence and evidence that Saloy had urinated on Coleman's "memorial."

a. <u>The gang evidence admitted against Saloy was unfairly prejudicial.</u>

In *State v. DeLeon*, our supreme court recently "urge[d] courts to use caution when considering generalized gang evidence," as this "evidence is often highly prejudicial, and must be tightly constrained to comply with the rules of evidence." __ 185 Wn.2d 478, 2016 WL 2586679 at *6 (No. 91185-1, May 5, 2016). As in *DeLeon*, extensive gang evidence was introduced by the State against Saloy at trial, including 59 photographs that suggested Saloy was affiliated with a gang and a video recording of Saloy in which he referenced a rival gang and one of the victims. *Id.*; 5/27/14 RP 113.

The State argues the evidence was highly probative of Saloy's motive and the gang aggravator, but largely ignores the fact that probative evidence should be excluded where its value is outweighed by a danger of unfair prejudice. Resp. Br. at 52; *State v. Beadle*, 173 Wn.2d 97, 120, 265 P.3d 863 (2011). Its response to Saloy's argument that the trial court must consider the availability of other means of proof when determining

whether the probative value outweighs the risk of unfair prejudice, the State argues that the photos and taped monologue were critical to establishing Saloy's motive. Resp. Br. at 53-54; *State v. McCreven*, 170 Wn. App. 444, 457, 284 P.3d 793 (2012). This is incorrect.

The photos, images, and monologue provided nothing more regarding Saloy's motive than the other evidence offered by Detective Hughey that Saloy was a member of a gang that was antagonistic to the gang in which Coleman and Clark were members. 7/17/14 RP 118, 129; 7/31/14 RP 118. As Saloy explained when objecting to the photos in the trial court, almost every witness testified to the animosity between the two gangs and Saloy did not dispute his gang membership. 7/31/14 RP 100, 106. The photos and monologue offered nothing beyond that. Instead, they offered emotionally charged images that were designed to elicit an emotional reaction from jurors rather than prove the existence of any fact. *State v. Weaville*, 162 Wn. App. 801, 818, 256 P.3d 426 (2011). This evidence should have been excluded.

b. Evidence of Saloy urinating on Coleman's "memorial" was irrelevant and unfairly prejudicial.

Evidence that Saloy urinated on Coleman's "memorial" was irrelevant and designed to stimulate an emotional response form the jurors. CP 525; 1 RP 150. The State criticizes Saloy's analogy to United State

Marines urinating on the bodies of dead Afghani citizens, claiming that Saloy's alleged act was only described in testimony, it was not clear where he urinated, and "there was no evidence that a memorial had been 'erected' in honor of Coleman or that Saloy urinated near or on one." Resp. Br. at 56.

The State's second two arguments are incorrect. Sanchez testified that Saloy "urinated on his memorial where he – Quincy died at" and the defense accurately anticipated this testimony when it moved to exclude evidence of Saloy "urinating on a memorial, or an area of a memorial, for Mr. Coleman." 7/28/14 RP 62; 1 RP 150. That no structure was erected in Coleman's honor only offers further support for the defense's argument that this was, indeed, unfairly prejudicial, as the term "memorial" was a misnomer and incorrectly gave jurors the impression that such a structure had been dedicated to one of the victims.

Further, regardless of whether the jurors were provided with a precise geographical location of where Saloy allegedly urinated, Sanchez was clear that Saloy urinated at or adjacent to the spot where Coleman had died. 7/31/14 RP 62, 81. While it is true there was no photograph of Saloy urinating, the recording, combined with Sanchez's commentary, allowed the jurors to visualize the act. 7/31/14 RP 62, 81.

The evidence was irrelevant and extraordinarily prejudicial given the association the public has with this type of image. *See Weaville*, 162 Wn. App. at 818; *State v. Smith*, 106 Wn.2d 772, 774, 725 P.2d 951 (1986). The fact that in Detective Duffy's lengthy report she used boldface only once, when describing this act, offers more than a speculative analysis, as the State suggests. Resp. Br. at 56. It demonstrates that this type of act stimulates a strong emotional response in people. The trial court erred in admitting the evidence over Saloy's objection. For the reasons stated in Saloy's opening brief, this error was not harmless and the Court should reverse. Op. Br. at 47-48.

5. The deputy prosecutors suggested defense counsel acted unethically and commented on Saloy's exercise of his constitutional right not to testify, denying him a fair trial.

a. <u>The prosecuting attorneys improperly suggested that defense counsel had acted unethically.</u>

Three gang members testified for the State. 7/21/14 RP 125, 155; 7/22/14 RP 14. Two of them were uncooperative on the stand. 7/21/14 RP 128, 136; 7/21/14 RP 155-57, 159-60, 163, 166. In both instances where the witness refused to cooperate, the prosecuting attorney asked whether the witness recalled receiving a visit from defense counsel. Ex. 103 (Graves at 1, Jimerson at 3). The State did not ask this question of the cooperative gang member. 7/22/14 RP 14.

When a prosecuting attorney suggests to the jury that defense counsel has acted with deception or dishonesty, reversal is warranted. *State v. Lindsay*, 180 Wn.2d 423, 431-32, 326 P.3d 125 (2014). The State argues that reversal was not required here because Saloy did not raise a timely objection and therefore must demonstrate the questioning was so "flagrant and ill-intentioned" that an instruction could not have cured the resulting prejudice. Resp. Br. at 40-41 (relying on *State v. Fisher*, 156 Wn.2d 727, 747, 202 P.3d 937 (2009)). This standard is appropriate where improper conduct during closing argument is raised for the first time on appeal. *Fisher*, 156 Wn.2d at 747 (applying the "flagrant and ill-intentioned" standard where the issue was not raised in the trial court). That is not the case here, where the issue was raised in a timely manner before the trial court.

The State argues that a party is required to make an objection at the earliest possible opportunity, pointing out that defense counsel took several days after the witnesses testified to raise the issue. Resp. Br. at 39-40. However, defense counsel raised the issue immediately after the State rested and explained her reason for doing so. 8/4/14 RP 14. After describing how she waited to see where the State was going with the questions, she told the court:

> So we waited through their entire case. They have rested. We have looked back at this. The credibility of defense counsel, and the credibility of the witnesses, now has been made an issue in this case by asking a single question of those two witnesses. It makes it – makes our position in representing a defendant difficult because the implication is that defense counsel has done something wrong or even criminal.

8/4/14 RP 14-15.

Given the nature of the issue and that it required defense counsel to look at the case from "ten thousand feet," Saloy's objection was timely. 8/4/14 RP 10. It certainly was not, as the State implies, raised for the first time on appeal. Resp. Br. at 41.

The State also asserts the questioning was proper and "in no way implied that defense counsel was to blame for his lack of cooperation," but the record does not support this claim. Resp. Br. at 41. Instead, the record reveals that the more uncooperative the witness, the more times the prosecuting attorney chose to ask whether the witness had met with defense counsel. The question was not asked at all of the gang member who cooperated. 7/22/14 RP 14. The State asked the question once of the witness who conceded he was with the victims the night of the shooting but claimed to remember nothing else. 7/21/14 RP 128, 136; Ex. 103 (Jimerson at 3). It asked the question twice of the witness who refused to be sworn in or answer even the most basic of questions.

7/21/14 RP 155-57, 159-60, 163, 166; Ex. 103 (Graves at 1, 4). Thus, the implication was clear: uncooperative witnesses had been influenced by defense counsel. Labeling defense counsel's actions unethical struck at the "jugular" of Saloy's defense and denied him a fair trial. *Bruno v. Rushen*, 721 F.2d 1193, 1194 (9th Cir. 1983).

b. The prosecuting attorney improperly commented on Saloy's exercise of his constitutional right not to testify.

In her closing argument, the deputy prosecuting attorney told the jury that no one except for Saloy "can conclusively say or has conclusively said how many people were in the car" the night of the shooting. 8/6/14 RP 64. This did not merely touch on a constitutional right, as the State suggests, but was a direct comment on Saloy's failure to testify. *See* Resp. Br. at 47.

This Court should reverse. The cases upon which the State primarily relies, *State v. Emery*, 174 Wn.2d 741, 278 P.3d 653 (2012) and *State v. French*, 101 Wn. App. 380, 4 P.3d 857 (2000), do not preclude a constitutional harmless error standard here. In both *Emery* and *French*, the courts reiterated that the constitutional harmless error standard applies to direct constitutional claims involving a deputy prosecutor's improper comments. *Emery*, 174 Wn.2d at 757; *see also French*, 101 Wn. App. at 386. In *Emery*, the State undermined the presumption of innocence. 174

Wn.2d at 759. In *French*, the prosecutors improperly attempted to shift the burden of proof to the defendant. 101 Wn. App. at 385. In neither case did the prosecutor directly comment on the defendant's failure to testify, as the State did here.

In addition, defense counsel properly preserved the issue for appeal. Similar to *Lindsay*, defense counsel noted that she had repeatedly objected during the State's closing argument and declined to immediately object after this comment because she did not wish to highlight the improper statement. 180 Wn.2d at 431-32; 8/6/14 RP 74. Defense counsel did, however, object and move for a mistrial immediately following the State's closing argument. 8/6/14 RP 74. This was sufficient under *Lindsay*. 180 Wn.2d at 441; *see also United States v. Prantil*, 764 F.2d 548, 555, n.4 (9th Cir. 1985). This Court should apply a constitutional harmless error standard and reverse. *Chapman v. California*, 386 U.S. 18, 22, 87 S.Ct. 824, 827, 17 L.Ed.2d 705 (1967).

6. This Court should strike the legal financial obligations imposed at sentencing because Saloy lacks the ability to pay.

For the reasons expressed in his opening brief, this Court should strike the $600 in legal financial obligations imposed at sentencing because the trial court made no determination as to whether Saloy could afford these fees. Op. Br. at 55-63.

B. CONCLUSION

This Court should reverse Saloy's convictions for all of the reasons stated above and in his opening brief. In the alternative, this Court must remand Saloy's case for a new sentencing hearing in order to consider whether, given the mitigating factors associated with Saloy's youth, a downward departure from the guidelines is appropriate.

DATED this 2nd day of August, 2016.

Respectfully submitted,

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Attorneys for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	NO. 72467-3-I
v.	)	
	)	
D'ANGELO SALOY,	)	
	)	
Appellant.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 2ND DAY OF AUGUST, 2016, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 2ND DAY OF AUGUST, 2016.

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