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No. 97549-3
COA No. 36638-3-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM SAMUEL SCHMIDT,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

William Schmidt asks this Court to accept review of the Court of Appeals decision terminating review designated in part B of this petition.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4(b), petitioner seeks review of the unpublished Court of Appeals decision in *State v. William Samuel Schmidt*, No. 36638-3-III (July 30, 2019). A copy of the decision is in the Appendix.

C. ISSUES PRESENTED FOR REVIEW

1. Prosecutorial misconduct deprives an accused person of his fundamental right to a fair trial under both the federal and Washington state constitutions. Arguments made in opening statements by the prosecutor claiming serious allegations of misconduct, with no evidence presented on the issue, denies an accused person a fair trial. Where the prosecutor in a child molestation case in opening statement claimed the defendant placed his penis on the child and never presented any evidence to substantiate this claim, does this present a significant question of law under the United States and Washington Constitutions,

which required the court to order a mistrial or a new trial when requested by the defense?

2. Prosecutorial misconduct in closing argument, which prejudices the defendant, violates the right to a fair trial and requires reversal of a conviction. Here, over Mr. Schmidt's repeated objections, the prosecutor appealed to the jury's passion and prejudice and rendered his personal opinion regarding Mr. Schmidt's guilt. Is a significant question of law under the United States and Washington Constitutions involved where the prosecutor's argument constituted misconduct which requires reversal of Mr. Schmidt's convictions?

D. STATEMENT OF THE CASE

J.M.F. and her mother move in with William Schmidt.

William Schmidt and Crystal Fitzgerald met while in the Army, became romantically involved, and a few months later decided to move in together. RP 1116-17. Ms. Fitzgerald had previously been married and had a daughter, J.M.F. RP 1103. Shortly after becoming involved with Mr. Schmidt, Ms. Fitzgerald introduced him to J.M.F. RP 1117. Five year old J.M.F. and Mr. Schmidt immediately hit it off, with no hint of tension or awkwardness. RP 1118. The two would go bowling,

play miniature golf, and wrestle. RP 1321-22. Ms. Fitzgerald described her daughter at this time as happy, silly, and goofy. RP 1129.

The same year Mr. Schmidt and Ms. Fitzgerald moved in together, the couple welcomed a son and a year later a daughter. RP 1120-22.¹ After the daughter's birth, Ms. Fitzgerald noticed a change in J.M.F.'s behavior. RP 1130. J.M.F. became more resistant, refusing to eat her food, take a shower, or clean her room. RP 1130. Ms. Fitzgerald also claimed there was a growing tension between Mr. Schmidt and J.M.F. RP 1134.

Mr. Schmidt noted that after the birth of his son, he did not connect to J.M.F. like he did his son. RP 1862-63. As a result, Mr. Schmidt admittedly grew more distant from J.M.F. RP 1863. Apparently in response, he noticed J.M.F. became more defiant. RP 1863.

On one afternoon, according to Ms. Fitzgerald, Mr. Schmidt and J.M.F. were wrestling. J.M.F. told her mother that Mr. Schmidt touched her "private area." RP 1135-36. Mr. Schmidt immediately denied the touching and Ms. Fitzgerald told the two to stop wrestling. RP 1137.

¹ Both children were Mr. Schmidt's. RP 1120-22. Mr. Schmidt and Ms. Fitzgerald never married. RP 1123.

J.M.F.'s allegations.

In 2015, Mr. Schmidt was working as a truck driver. RP 1165. On October 28, 2015, Mr. Schmidt was away driving his truck and would not be returning until October 30, 2015. While Mr. Schmidt was away, Ms. Fitzgerald claimed J.M.F. looked sad, and Ms. Fitzgerald began questioning her. RP 1171-72. J.M.F. told her mother that nothing was wrong, but in response to continued questioning by Ms. Fitzgerald, J.M.F. claimed Mr. Schmidt had touched her inappropriately. RP 1173.

Ms. Fitzgerald pressed on, seeking details from J.M.F. RP 1174. At one point, Ms. Fitzgerald retrieved a stuffed animal and wanted J.M.F. to show her what had happened. RP 1174. According to Ms. Fitzgerald, J.M.F. flipped the animal over and placed her hand on the animal's rear. RP 1174.

The following day, Ms. Fitzgerald took J.M.F. to a sexual assault clinic for a physical examination, then met with the police. RP 1186-87.

Mr. Schmidt was subsequently charged with four counts of first degree child molestation. CP 123-24. At trial, J.M.F. testified, and the video of her forensic interview was admitted into evidence. CP __; RP 1438, 1538.

The State's opening statement.

On the opening day of trial, the prosecutor began his opening statement with inflammatory claims of a questionable nature:

Sexual acts can be embarrassing for anyone to talk about, but especially for an eight-year-old child who may not know precisely what's happened to them, who may be ashamed or afraid about what will happen when they come forward, who may not even have the words to express the fact that her stepfather had been *digitally penetrating her vagina over the course of the last two years and digitally -- meaning with his finger -- penetrating her anus numerous times and had taken his penis out and rubbed it outside of the clothed area of her vaginal area.*

...

Within a few months, he had moved in. He quickly moved in with the family. *Within two to three months, he had removed the door from the bedroom that belonged to [J.M.F.].*

RP 1005 (emphasis added).

As time and again he would wrestle and use this as an opportunity to touch her private parts, when he would choose to insert his finger into her vagina in her bedroom or in his bedroom, *when he took his penis out and put it on her clothed vaginal area, or he would penetrate her anus with his finger, [J.M.F.], who's a pretty happy, talkative kid, started to get really, really upset.*

RP 1006-07 (emphasis added).

At the conclusion of the prosecutor's opening, Mr. Schmidt moved for a mistrial, on among other grounds, that there was no good

faith basis for the prosecutor's claims. RP 1020. The court denied Mr. Schmidt's motion. RP 1023.

The State's closing argument.

At the conclusion of the trial, and as part of his closing argument, the prosecutor used Powerpoint slides as part of his presentation:

And remember what she drew. This -- this first picture is from the substantive portion of her interview where she's talking about the abuse. Right?

MS. MOUNT-PENNER: Your Honor, I just make [sic] an objection to the alteration of the exhibit on the slide.

THE COURT: And I will overrule your objection.

MR. CUMMINGS: She says, "Two hands where boy goes pee pee. Two hands to do it. William." Indicating he used two hands, that it involved where a boy goes pee pee -- or someone's penis -- and also "Where I go pee pee," that it involved -- that it happened more than once --

MS. MOUNT-PENNER: Your Honor, again, I would object to the alteration of that exhibit that's adding --

MR. CUMMINGS: I would note that the "more than once," Your Honor, is a combination of both what's displayed here as well as what's from the forensic interview as well as testimony.

THE COURT: All right. I'll overrule. Go ahead.

RP 1978-79 (emphasis added). While making his claims, the prosecutor was displaying a Powerpoint slide. (A copy of the slide is included as Attachment 1 to the Court's opinion).

The prosecutor closed his argument with the following plea:

For the last four years, she's been molested by the defendant who is supposed to care for her and who had a position of trust. And for those reasons, the defendant is guilty of four counts of child molestation in the first degree, and I urge you to answer yes to each of the aggravators.

RP 2011. Again, while making this argument, the prosecutor was displaying another Powerpoint slide. (A copy the slide is included as Attachment 2 to the Court's opinion).

Mr. Schmidt objected to the slide which was overruled by the court. RP 2011 ("And, Your Honor, I would object to this slide, which is apparently the last slide in the presentation, which has the words "justice" in capital letters and "guilty" at the center).

Mr. Schmidt's motion for a new trial.

Following the jury verdict, Mr. Schmidt timely moved for a new trial on the basis of the prosecutor's inflammatory and improper opening statement. CP 161-69; RP 2064-77. In response, the State relied on the forensic interview of J.M.F. done by Ms. Adams. CP 176-77.

At the conclusion of the hearing, the trial court denied the motion, finding the prosecutor did not commit misconduct, and even if he did, the misconduct was not prejudicial. CP 351-55; RP 2092.

Court of Appeals Decision.

The Court of Appeals agreed with the trial court and found no misconduct occurred. Decision at 4-7. The Court was concerned about the Powerpoint slide used during closing argument but ultimately concluded it was not misconduct, and to the extent it was, it was not prejudicial. Decision at 6-7.

E. ARGUMENT ON WHY REVIEW SHOULD BE GRANTED

The prosecutor misconduct during Mr. Schmidt's trial violated his right to a fair trial.

1. *Prosecutorial misconduct violates a defendant's constitutionally protected right to a fair trial.*

The Sixth and Fourteenth Amendments to the United States Constitution and article I, §§ 3 and 22 of the Washington Constitution guarantee the right to a fair trial. *State v. Finch*, 137 Wn.2d 792, 843, 975 P.2d 967, *cert. denied*, 528 U.S. 922 (1999). Prosecutors represent the State as quasi-judicial officers and they have a “duty to subdue their courtroom zeal for the sake of fairness to a criminal defendant.” *State v. Fisher*, 165 Wn.2d 727, 746, 202 P.3d 937 (2009). “A ‘[f]air trial’

certainly implies a trial in which the attorney representing the state does not throw the prestige of his public office . . . and the expression of his own belief of guilt into the scales against the accused.” *State v.*

Monday, 171 Wn.2d 667, 677, 257 P.3d 551 (2011), *citing State v.*

Case, 49 Wn.2d 66, 71, 298 P.2d 500 (1956). 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).

The prosecuting attorney is the representative of the sovereign and the community; therefore it is the prosecutor’s duty to see that justice is done. *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1934). This duty includes an obligation to prosecute a defendant impartially and to seek a verdict free from prejudice and based upon reason. *State v. Charlton*, 90 Wn.2d 657, 664, 585 P.2d 142 (1978). “[T]he prosecutor may strike hard blows, but not foul ones.” *Berger*, 295 U.S. at 88.

2. *The prosecutor’s opening statement was used to “poison the jury’s mind against the defendant” and misstate the evidence to be presented.*

A prosecutor’s opening statement should be confined to a brief statement of the issues of the case, an outline of the anticipated admissible material evidence, and reasonable inferences to be drawn

therefrom. *State v. Campbell*, 103 Wn.2d 1, 15-16, 691 P.2d 929 (1984). A prosecutor must confine his argument to facts and inferences that he, in good faith, believes will be admitted and established at trial. *Campbell*, 103 Wn.2d at 16. “Argument and inflammatory remarks have no place in the opening statement.” *State v. Kroll*, 87 Wn.2d 829, 835, 558 P.2d 173 (1976). Appeals to the jury’s passion and prejudice are improper. *State v. Clafin*, 38 Wn.App. 847, 850, 690 P.2d 1186 (1984), *review denied*, 103 Wn.2d 1014 (1985).

“The prosecutor’s opening statement should be an objective summary of the evidence reasonably expected to be produced, and the prosecutor should not use the opening statement as an opportunity to poison the jury’s mind against the defendant or to recite items of highly questionable evidence.” *United States v. Thomas*, 114 F.3d 228, 247 (D.C.Cir.1997). Prejudicial misconduct occurs when unfair statements are injected into opening remarks by a prosecutor with knowledge that they cannot be proven. *United States v. Lavallie*, 666 F.2d 1217, 1221 (8th Cir. 1981).

An opening statement should not misstate what will be contained in the evidence. *State v. Haga*, 13 Wn.App. 630, 536 P.2d 648 (1975). It is misconduct to make arguments unsupported by the

admitted evidence. *In re Pers. Restraint of Yates*, 177 Wn.2d 1, 58, 296 P.3d 872 (2013). And a prosecutor may not mislead the jury by misstating the evidence. *State v. Guizzotti*, 60 Wn.App. 289, 296, 803 P.2d 808, *review denied*, 116 Wn.2d 1026 (1991).

The prosecutor opened his statement with an inflammatory claim that Mr. Schmidt placed his penis on J.M.F. CP 1004-05. The prosecutor never presented evidence to support this allegation at trial. Mr. Schmidt is entitled to reversal of his convictions due to this incurable misconduct.

[W]here the prosecutor informs the jury that the government will produce certain evidence to show a defendant's guilt and then, without good cause, fails to do so, the prosecutor fails to give a proper opening statement to the jury. Otherwise, the risk to the defendant is that the jury's mindset will be tainted, resulting in an unfair trial. [citation omitted] The risk to the government is that it may have to retry the case.

Thomas, 114 F.3d at 248.

Here, the prosecutor's claim that Mr. Schmidt touched J.M.F. with his penis is nowhere in the pretrial discovery provided by the parties at the hearing, nor in the forensic interview, or in J.M.F.'s testimony at trial. The prosecutor made claims about what the evidence would demonstrate but never delivered on his promise. J.M.F. did not testify about this allegation, nor did she tell this to the pediatric nurse

examiner at Mary Bridge who examined her. RP 1711. No evidence was presented at trial regarding this inflammatory claim. This amounted to misconduct.

The Court of Appeals concluded there were tenable grounds for denying Mr. Schmidt's motion for a mistrial, concluding: "But merely overstating the meaning of evidence admitted at trial only harms the prosecutor, not the defendant." Decision at 4-5. But given the inflammatory claim made by the prosecutor here in a trial, the prosecutor did not "merely overstate the meaning of evidence," but actively sought to prejudice Mr. Schmidt. Contrary to the Court of Appeals, the prosecutor's actions in opening statements constituted misconduct.

This Court should accept the review and take the opportunity to reinforce the importance of opening statements and reinforce that prosecutorial misconduct during opening will not be tolerated.

3. *The prosecutor's closing argument used altered and inflammatory Powerpoint slides.*

Closing argument provides an opportunity to draw the jury's attention to the evidence presented. *State v. Walker*, 182 Wn.2d 463, 476-77, 341 P.3d 976, *cert. denied* ___ U.S. ___, 135 S.Ct. 2844, 192 L.Ed.2d 876 (2015). To establish that a new trial is required for

prosecutorial misconduct during closing argument, there must be a showing that the prosecutor's remarks were both improper and prejudicial. *State v. Allen*, 182 Wn.2d 364, 373, 341 P.3d 268 (2015); *State v. Thorgerson*, 172 Wn.2d 438, 443, 258 P.3d 43 (2011).

Prosecutors may use multimedia resources in closing arguments to summarize and highlight relevant evidence. *Walker*, 182 Wn.2d at 476. “[B]ut it does not give a prosecutor the right to present altered versions of admitted evidence to support the State’s theory of the case, to present derogatory depictions of the defendant, or to express personal opinions on the defendant’s guilt.” *Id.* at 478 (footnote omitted).

Here, the prosecutor’s disputed slides expressed his personal opinion regarding Mr. Schmidt’s guilt and presented an altered version of an exhibit. The slide listing “Justice” and “Guilty” was a clear expression of the prosecutor’s personal opinion regarding Mr. Schmidt’s guilt. While the prosecutor did not display Mr. Schmidt’s picture with the words “Guilty” superimposed across it as in *Glasmann*, the slide he did use effectively did the same thing; it urged the jury to find Mr. Schmidt guilty based on the prosecutor’s personal opinion that “justice” will only occur with a guilty verdict. *In re Glasmann*, 175 Wn.2d 696, 701-02, 286 P.3d 673 (2012).

This misconduct was further exacerbated by the alteration of the illustration by J.M.F.

[T]he potential prejudice of a slide presentation does not arise solely from the alteration of the exhibits. The broader proposition is that slide shows may not be used to inflame the passion and prejudice [of the jury].

State v. Salas, 1 Wn.App.2d 931, 944-45, 408 P.3d 383, *review denied*, 190 Wn.2d 1016 (2018). That is precisely what the Powerpoint slide here did and was designed to do; inflamed the passion and prejudice of the jury. Again, contrary to the Court of Appeals conclusion, this constituted misconduct.

This Court should grant review and find the prosecutor's argument misconduct.

F. CONCLUSION

For the reasons stated, Mr. Schmidt asks this Court to grant, review, reverse his convictions, and remand for a new and fair trial.

DATED this 14th day of August 2019.

Respectfully submitted,

s/Thomas M. Kummerow

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Washington Appellate Project – 91052

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

STATE OF WASHINGTON,)	
)	No. 36638-3-III
Respondent,)	
)	
v.)	
)	
WILLIAM SAMUEL SCHMIDT,)	UNPUBLISHED OPINION
)	
Appellant.)	

KORSMO, J. — William Schmidt appeals from his convictions for four counts of first degree child molestation, arguing that the prosecutor engaged in misconduct. Concluding that the trial court did not abuse its discretion in its rulings on misconduct related claims, we affirm.

FACTS

Mr. Schmidt was charged with molesting his stepdaughter over a three year period. The case proceeded to jury trial in the Pierce County Superior Court. In opening statement, the prosecutor advised jurors that the victim would testify that the defendant had once rubbed his bare penis on the victim’s clothed vagina. The defense moved for a mistrial, arguing that there was no evidence to support the statement. The trial court denied the motion.

Exhibit 6 was a drawing by the child depicting what had happened to her. In closing, the prosecutor relied on a PowerPoint slide show in support of his argument. Slide 4 displayed exhibit 6 with an insert depicting an enlarged view of one portion of the slide. The PowerPoint concluded with Slide 36, a slide with the word “JUSTICE” on the top and the word “Guilty” in the middle.¹ Defense counsel objected to slide 36.

After the jury returned its verdicts, the defense moved for a new trial, reprising its objections to the opening statement and the closing argument. The trial court denied the motion for a new trial, concluding that the prosecutor had acted in good faith during opening statement and there was no misconduct in closing argument. The court also concluded that any error would have been cured by the court’s first instruction to the jury. Clerk’s Papers (CP) at 316; Report of Proceedings (RP) at 2092-2093.

The court imposed an exceptional minimum term sentence of 199 months in accordance with the jury’s special verdicts finding aggravating circumstances as well as the mandatory maximum life sentence required for the crime. Findings in support of the exceptional sentence also were entered.

Mr. Schmidt timely appealed. Division Two administratively transferred the appeal to Division Three. This court considered the appeal without hearing argument.

¹ Color copies of Slides 4 and 36 are attached to this opinion.

ANALYSIS

The sole issue presented is whether the trial court erred in its rulings on the misconduct allegations.² We conclude that the trial court did not abuse its discretion in determining that there was no prejudicial misconduct.

A trial court's decision to grant a new trial is reviewed for abuse of discretion. *State v. Hawkins*, 181 Wn.2d 170, 179, 332 P.3d 408 (2014); *State v. Williams*, 96 Wn.2d 215, 221, 634 P.2d 868 (1981); *State v. Marks*, 71 Wn.2d 295, 302, 427 P.2d 1008 (1967). The same standard applies to review of motions for a mistrial. *State v. Weber*, 99 Wn.2d 158, 166, 659 P.2d 1102 (1983). Discretion is abused when it is exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Discretion also is abused when a court uses an incorrect legal standard in making a discretionary decision. *State v. Tobin*, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007); *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995). "The question is not whether this court would have decided otherwise in the first instance, but whether the trial judge was justified in reaching his conclusion." *State v. Taylor*, 60 Wn.2d 32, 42, 371 P.2d 617 (1962).

² Mr. Schmidt also claims that the cumulative error doctrine entitles him to a new trial, but the alleged errors were both before the trial court in the new trial ruling and it is unnecessary to reconsider the cumulative nature of the alleged errors.

The first issue is whether the court erred in denying the mistrial over the opening statement. A mistrial should be declared when a trial irregularity so tainted the proceedings that the defendant was deprived of a fair trial. *Weber*, 99 Wn.2d at 164. The problem presented here involves an interview of the child. The written interview statement indicated that the defendant rubbed his penis on the child while both were clothed. The deputy prosecutor interpreted the child's interview remarks as indicating that the defendant rubbed his uncovered penis on the child while both were wearing clothing. The trial court concluded that the prosecutor acted in good faith and it was up to the jury to determine what the child's statement meant.

These were tenable reasons for denying the mistrial. It was plausible that the defendant merely uncovered his penis while keeping his clothing on. Given the limited vocabulary of most young children, we cannot fault the trial court's conclusion that the prosecutor acted in good faith. More importantly, an error of this variety is seldom going to deprive a defendant of a fair trial because the evidence in question was put before the jury for its consideration. If the prosecutor adopted an implausible interpretation of the statement, then the jury has a reason to doubt the prosecutor's case rather than rely on an extra-record reason to convict the defendant. If the prosecutor had promised something he did not deliver—an eyewitness to the crime or other significant evidence that was never introduced—then the trial court would have faced a different problem that

significantly impacted the probability of having a fair trial. But merely overstating the meaning of evidence admitted at trial only harms the prosecutor, not the defendant.

Having tenable grounds for denying the mistrial motion, the court did not abuse its discretion.

As with the mistrial motion, a motion for a new trial should be granted when the defendant's right to a fair trial has been prejudiced. *State v. Lord*, 117 Wn.2d 829, 887, 822 P.2d 177 (1991). While the defendant's motion included the mistrial allegation within its argument, the primary focus was on slides 4 and 36. The trial court found that there was no misconduct and that any misconduct was not prejudicial in light of jury instruction 1, the standard instruction telling jurors that the remarks of the attorneys are not evidence and that those remarks should be disregarded if they conflict with the evidence or the law contained in the court's instructions. CP at 132; RP at 2092-2093.

We agree with the trial court that Slide 4 did not constitute error. Exhibit 6 had been admitted and Slide 4 simply consisted of that exhibit along with an added enlargement of the portion of the child's drawing showing how the touching occurred. *See* Slide 4. Unlike Mr. Schmidt, we do not consider this slide an "alteration" of the exhibit. The meaning of the drawing was not changed merely because a portion of it was enlarged to aid viewing. The State was free to focus the jury's attention on the salient portion of the exhibit.

Slide 36, however, is a different story. Although it should not be surprising to the jury when a prosecutor argues the defendant is guilty of the charged crime, the presentation of that conclusion on a slide can constitute prejudicial misconduct. *See State v. Walker*, 182 Wn.2d 463, 341 P.3d 976 (2015); *In re Glasmann*, 175 Wn.2d 696, 286 P.3d 673 (2012); *State v. Hecht*, 179 Wn. App. 497, 319 P.3d 836 (2014). In those cases, it largely was the sensational nature of the slides that was particularly problematic. *E.g.*, *Walker*, 182 Wn.2d at 468 (100 slides captioned with “Defendant Walker Guilty of Premeditated Murder”). By superimposing the “guilty” theme on a large number of slides, the prosecutor conveyed a personal opinion of the defendant’s guilt. *Id.* Superimposing the caption also served to alter the pictures and exhibits to which the caption was added. *Id.*

We cannot equate a single slide presented at the conclusion of the argument with the 100 slides used in *Walker*. But the pairing of the word “guilty” with the word “justice” is particularly inappropriate and can easily be interpreted as the prosecutor’s own personal opinion rather than as the conclusion the prosecutor is urging the jury to draw from evidence and the law. And while every prosecutor in this state should be wary of using a slide such as this one, we think that a Pierce County Deputy Prosecutor should be particularly sensitive to this issue in light of the noted authorities.

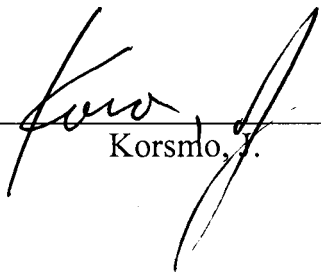
Nonetheless, under the facts of this case, the trial court had tenable grounds for concluding as it did that any misconduct was not prejudicial in light of the court’s

instruction. The “guilty” conclusion did not permeate the slide show and came at the natural point of the argument—the conclusion the prosecutor sought for the jury to reach. To the extent that it conveyed the prosecutor’s personal, rather than professional, view of the outcome, it was not so egregious that the defendant’s right to a fair trial was impugned.

The trial court had tenable grounds for denying the motion for a new trial. There was no abuse of the court’s discretion.

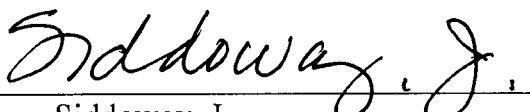
Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

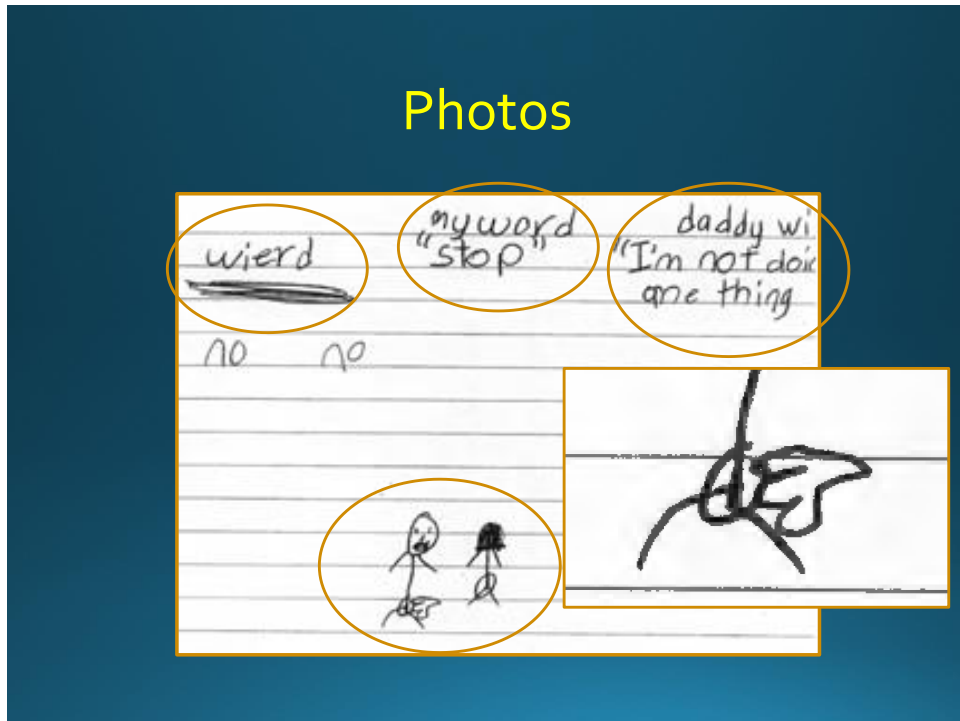

Korsmo, J.

WE CONCUR:

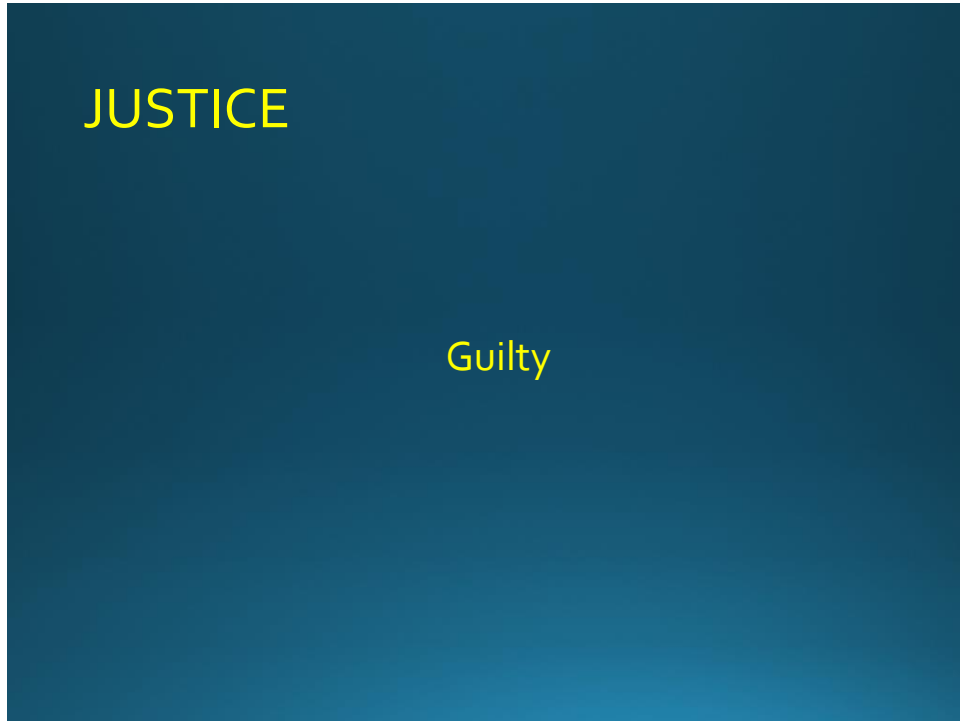

Pennell, A.C.J.


Siddoway, J.

ATTACHMENT 1



ATTACHMENT 2



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Clerk/Administrator

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The Court of Appeals
of the
State of Washington
Division III



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July 30, 2019

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CASE # 366383
State of Washington, Respondent v. William Schmidt, Appellant
PIERCE COUNTY SUPERIOR COURT No. 151050577

Dear Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,


Renee S. Townsley
Clerk/Administrator

RST:ko

Attach.

c: E-mail Hon. Gretchen M. Leanderson

c: William Samuel Schmidt

#403925

Coyote Ridge Corrections Center

PO Box 769

Connell WA 99326

DO NOT CITE. SEE GR 14.1(a).

Court of Appeals Division III
State of Washington

Opinion Information Sheet

Docket Number: 36638-3

Title of Case: State of Washington v. William Samuel Schmidt

File Date: 07/30/2019

SOURCE OF APPEAL

Appeal from Pierce County Superior Court

Docket No: 15-1-05057-7

Judgment or order under review

Date filed: 01/26/2018

Judge signing: Honorable Gretchen M. Leanderson

JUDGES

Authored by Kevin Korsmo

Concurring: Laurel Siddoway

Rebecca Pennell

COUNSEL OF RECORD

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OPINION FACT SHEET

Case Name: State v. William S. Schmidt
Case Number: 36638-3-III

1. TRIAL COURT INFORMATION:

A. SUPERIOR COURT: Pierce County; 15-1-05057-7
Judgment/Order being reviewed: Judgment & Sentence
Judge Signing: Gretchen M. Leanderson
Judgment Date: 1/26/2018

2. COURT OF APPEALS INFORMATION:

Disposition: Check only 1

- Affirmed
- Affirmed as Modified
- Affirmed in Part/Remanded**
- Affirmed/Reversed-in part and Remanded**
- Affirmed/Vacated in part
- Affirmed in part/Reversed in part
- Denied (PRP, Motions, Petitions)
- Dismissed (PRP)
- Granted/Denied in part
- Granted (PRP, Motions, Petitions)
- OTHER
- Reversed and Dismissed
- Remanded**
- Reversed
- Reversed in part
- Remanded with Instructions**
- Reversed and Remanded**
- Reversed, Vacated and Remanded**
- Vacated and Remanded**

* These categories are established by the Supreme Court

** If remanded, is jurisdiction being retained by the Court of Appeals?

- YES
- NO

3. SUPERIOR COURT INFORMATION (IF THIS IS A CRIMINAL CASE, CHECK ONE)

Is further action required by the superior court?

- YES
- NO

Judge's Initials: 

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

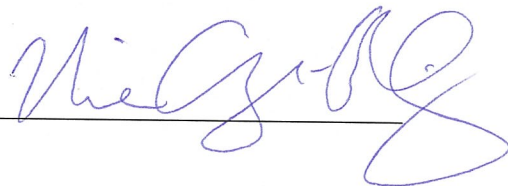
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 36638-3-III
v.)	
)	
WILLIAM SCHMIDT,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, NINA ARRANZA RILEY, STATE THAT ON THE 14TH DAY OF AUGUST, 2019, I CAUSED THE ORIGINAL **PETITION FOR REVIEW** TO BE FILED IN THE COURT OF APPEALS – DIVISION THREE AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KRISTIE BARHAM, DPA [PCpatcecf@co.pierce.wa.us] [kristie.barham@piercecountywa.gov] PIERCE COUNTY PROSECUTOR'S OFFICE 930 TACOMA AVENUE S, ROOM 946 TACOMA, WA 98402-2171	() () (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
<input checked="" type="checkbox"/> WILLIAM SCHMIDT 403925 COYOTE RIDGE CORRECTIONS CENTER PO BOX 7699 CONNELL, WA 99326	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 14TH DAY OF AUGUST, 2019.

X 

Washington Appellate Project
1511 Third Avenue, Suite 610
Seattle, WA 98101
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WASHINGTON APPELLATE PROJECT

August 14, 2019 - 4:41 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36638-3
Appellate Court Case Title: State of Washington, Respondent v. William Schmidt, Appellant
Superior Court Case Number: 15-1-05057-7

The following documents have been uploaded:

- 366383_Petition_for_Review_20190814164101D3854929_9722.pdf
This File Contains:
Petition for Review
The Original File Name was washapp.081419-11.pdf

A copy of the uploaded files will be sent to:

- PCpatcecf@piercecountywa.gov
- kristie.barham@piercecountywa.gov

Comments:

Sender Name: MARIA RILEY - Email: maria@washapp.org

Filing on Behalf of: Thomas Michael Kummerow - Email: tom@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:
1511 3RD AVE STE 610
SEATTLE, WA, 98101
Phone: (206) 587-2711

Note: The Filing Id is 20190814164101D3854929