No. 102817-2
COA No. 57320-2-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CURTIS SWORD,

Appellant.

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

The Honorable Mary Sue Wilson, Judge
Cause No. 21-1-00712-34

CORRECTED

ANSWER TO PETITION FOR REVIEW AND CROSS PETITION FOR REVIEW

Joseph J.A. Jackson
Attorney for Respondent
2000 Lakeridge Drive S.W.
Olympia, Washington 98502
(360) 786-5540

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1. Whether there is a basis under RAP 13.4(b) upon which this Court should review the Court of Appeals' determination that comments made by the prosecutor during closing argument did not affect the verdict, and if so, whether this Court should also review whether the comments were improper based on RAP 13.4(b)(1) and 13.4(b)(2).

2. Whether there is a basis under RAP 13.4(b)(3) upon which this Court should review the Court of Appeals' determination that Juror 1 did not express actual bias, where there is sufficient guidance in existing caselaw for that determination.

3. Whether there is a basis under RAP 13.4(b) upon which this Court should review the Court of Appeals' finding that the trial court did not abuse its discretion by admitting evidence of more than one conviction, where the

case law is clear that the State has a right to present its case in the absence of an Old Chief stipulation.

B. STATEMENT OF THE CASE

The petitioner, Curtis M. Sword, was charged with two counts of assault in the second degree while armed with a firearm and unlawful possession of a firearm. CP 4-7. Following a jury trial, he was found guilty as charged. CP 84-88. The trial court imposed a total sentence of 159 months. CP 164-165. This appeal follows.

6. Jury Selection

The trial court conducted jury selection with panels of jurors. RP 3.[1] At the start of voir dire for the first panel of jurors, the trial court introduced the case. RP 11. The trial

[1] The report of proceedings consists of several volumes. The volume beginning on February 28, 2022, labeled Jury Trial Day 2 starts sequential numbering which continues through the sentencing hearing on April 20, 2022. The trial and sentencing volumes are collectively referred to as RP herein. Other transcripts will be referenced by date.

court informed the jury that the charging document was only an accusation and indicated that the jury must follow the law as the court instructed. RP 16-17. The trial court also gave preliminary instructions on the presumption of innocence and the burden of proof. RP 17. Prior to administering the juror oath, the trial court instructed the jurors that "bias and prejudice can play no part in any decisions you make as a juror." RP 18.

At the start of individual questions, the prosecutor asked Juror 1 for their opinion on why the trial court asked if anyone had any personal or philosophical views about jury service and Juror 1 responded, "some people may have either religious or cultural views or ideas of how proceedings should go and do not agree with how it's done here." RP 42. Defense counsel discussed cultural bias and asked Juror 1 for the first word they associated with the word "sharks," with Juror 1 responding "Ocean." RP 56-57. Defense counsel asked, "somebody else could

have said scary and you said ocean ….” and then, “would that be any less valid,” and Juror 1 responded by shaking their head. RP 57.

Both sides were provided an opportunity for a second round of questioning of the first panel of jurors with the prosecutor going first. RP 83-84. During his second round of questioning, defense counsel asked Juror 8 about law enforcement and whether they make mistakes and Juror 8 responded “even trained observers make mistakes.” RP 107. Defense counsel then asked,

> Does anyone else feel the same about whether you would consider the testimony of a law enforcement officer sort of in a higher regard than a regular person …. Is that how everyone feels about law enforcement, that they make mistakes sometimes?

RP 107. Defense counsel noted that “everyone’s raising their hand.” RP 108. Defense counsel then asked Juror 19 if “there is anyone who feels that officers are more likely

to tell the truth than other people when they are on the stand?" RP 108.

Defense counsel modified the question asking, "are police officers more likely to tell the truth than other people? Do you believe that?" RP 108. Juror 1 responded, "yes." RP 108. Juror 6 responded the same. RP 108-109. Defense counsel asked no follow up questions to Juror 1, and moved on, asking the panel "are police officers more likely or less likely to make mistakes when they're carrying out their duties and then testify about that … than other people." RP 109. Juror 19 responded that the question was vague and indicated "Police are human." RP 109. Defense counsel did not ask any further questions of Juror 1. At the conclusion of questions, defense counsel renewed motions to strike Jurors 8 and 21 but made no motions with regard to Jurors 1 or 6. RP 120.

The trial court and parties then conducted similar rounds of voir dire with the second panel of jurors. RP 127-

235. The trial court then brought the remaining jurors from panels 1 and 2 together for follow-up questions from the trial court. RP 278-285. The State and defense each exercised six peremptory challenges. CP 237. Prospective Juror 1 was seated on the jury as Juror 1. RP 286.

7. Motion in Limine Regarding Prior Offenses

During a break in jury selection, the trial court considered a motion filed by the defense to require the State to choose one of two prior alleged serious offenses as the predicate offense for the charge of unlawful possession of a controlled sentence. RP 255-256. The trial court noted that the State had argued that the decision in State v. Blake, 197 Wn.2d 170, 481 P.3d 521 (2021), provided uncertainty regarding whether prior convictions may be eliminated by subsequent court decisions and argued that the State should have the opportunity to

charge and rely on more than one underlying serious offense. RP 256-257.

The trial court noted that the "State's plan to rely on two prior convictions [had] been in the record for several months before trial started," and that the reliance on "the *Blake* possibility is a reasonable justification for relying on two offenses." RP 258. The trial court ruled,

> There is always going to be some prejudice to the defendant in a charge where the charge includes a prior offense as an element and the issue for the Court is whether the probative value of the proffered evidence is substantially outweighed by the risk of unfair prejudice. And the Court finds that the probative value is directly as to an element, that *Blake* tells all parties and courts that there's a possibility that there could be future changes, and it seems reasonable for the State to rely on a second prior conviction.

RP 258-259. The trial court noted that the prejudice could be reduced by a stipulation pursuant to Old Chief v. United States, 519 U.S. 172, 117 S. Ct. 644, 136 L.Ed 574 (1997). RP 259.

During trial, evidence of two prior cases with convictions for Sword were admitted. RP 714-716; 724-726; Ex 28A, 29A.

8. Substantive History

City of Lacey Police Department Officer Patrick Jo was dispatched to the Capitol Club Apartments at approximately 9:45 pm on July 28, 2021. RP 320. The reporting party, Melissa Miller, showed Officer Jo a video of an argument that had occurred. RP 323. Miller testified that she was familiar with a Harley-Davidson motorcycle that is regularly parked at her apartment complex and owned by one of her neighbors. RP 387. Miller's brother, Nickolas Ketchum, was her roommate. RP 389. On July 28, 2021, Miller, Ketchum, Ketchum's girlfriend and their five-year-old child, and Miller's four-year-old godson were in their apartment. RP 391.

Miller indicated that they had just put the kids to bed, and she was in her room and heard "clinking of metal"

outside her bedroom window. RP 391-392. She looked and saw "a man standing there uncovering the motorcycle and messing with the chains that keep it locked." RP 392. The motorcycle was 15 to 20 feet from her window. RP 392. The man was wearing dark blue jeans, "maroonish shoes," a black jacket, and a black hat. He was white with a "little bit of facial hair" and had a backpack or duffle bag in his hand. RP 393.

Miller "hollered out" her window indicating that the bike was not his and that he needed to leave it alone. RP 393. She indicated the man "got a little angry" and told her that he had just purchased the motorcycle and that it was his, and she responded that she knew who owned it and that it was not his and he needed to leave. RP 393. Miller testified the man then got verbally aggressive and started making threats and spewing profanities. RP 393. The man then "made a threat with a gun." RP 394. Miller testified

that he “pretty much said that he was going to pull his gun and shoot.” RP 394.

Miller told him that she was going to call the cops if he didn’t leave. RP 394. She testified that the man “started spewing something about a Colt something,” and she distinctly remembered him saying, “Don’t make me pull my gun and shoot you.” RP 394. She indicated that she started recording him once he made the threat. RP 394. When she started filming, he picked his bag up, yelled profanities, and walked closer to the apartment towards the front of her home. RP 395.

She testified that her brother opened the front door and the man was standing there with his gun pointed at them. RP 396. She said that she grabbed her bother and pulled him back into the house and she stood there. RP 396. She testified that the man was standing “in the grass right on the side of my planters.” RP 396-397. She testified

that he eventually started to back away with the gun still pointed at her. RP 399.

Miller testified that her brother became involved "right after the threat had been made and right at the end of her video recording." RP 402-403. She indicated that she did not let her brother go past the planters. RP 408. Miller identified Sword as the man with the gun. RP 403.

Ketchum testified that he was playing a video game when his sister came into his room and told him that there was a strange man messing with the "neighbor's bike." RP 492. He indicated he proceeded to go outside and confront the person and asked the man if he owned the bike. RP 493. He indicated the man said "yes," but he knew that was not true. RP 493. Ketchum testified that he told the man that he needed to leave and the man told him that he needed to back up. RP 493.

Ketchum testified that when he exited the apartment, he started walking around the corner and saw the man take

the cover off of the motorcycle. RP 495. He indicated that the man got aggressive when he challenged him about the bike. RP 495. Ketchum testified that the man quietly mumbled under his breath and reached around his waistband and Ketchum told him he was going to call the cops, when the man made a threat about a gun. RP 495. Ketchum indicated, “he had told me that he had a gun and that he essentially wasn’t afraid.” RP 495. Ketchum said the man was reaching in his waistband acting like he was going to “pull it out.” RP 496. Ketchum identified the man as Sword in open court. RP 497.

Ketchum testified that the man was “sitting or kneeled down” next to the motorcycle trying to mess with the cover while reaching around his waistband telling Ketchum to leave. RP 497-498. Ketchum testified that he was not making any threats toward the man and was not armed with a weapon. RP 498. Ketchum indicated that he maintained a 5-foot distance during the conversation. RP

501. Ketchum said he slowly backed towards his house and went back inside. RP 502. When he was inside the house, he noticed the man was walking towards the house with “constant threats” and Ketchum found his hammer. RP 503.

When Ketchum went back outside, Sword was standing by the front area. RP 504-505. Ketchum indicated he had the hammer, but it was down, and he did not raise it and the guy pulled his gun. RP 505-506. Ketchum indicated that he did not come running out of the house at Sword. RP 506. Ketchum testified that Sword had made threats about the gun prior to him getting the hammer. RP 506-507.

Ketchum testified that after he had gone back out and Sword pointed the gun at him, his sister ran out and pushed him out of the way and stood in front of him and told him to go back inside. RP 510. Ketchum said that Sword slowly started walking away as he was then pointing the firearm

at his sister. RP 510. Ketchum testified that Sword never indicated in any way that he was afraid of him or that he was going to call the police. RP 513. When Sword left, he walked in the direction of the Cedar Park Apartments. RP 514. Later, law enforcement took Ketchum and Miller to do an identification at the Cedar Park Apartments and they identified Sword as the individual who they had encountered. RP 515-516.

Jacob Schau testified that the motorcycle in question belonged to him. RP 436-437. He indicated that he did not give anyone permission to "use, borrow, or touch it." RP 437, 439. He further testified that he does not know Sword and never gave Sword permission to "use, touch, or borrow," his motorcycle. RP 439.

Miller and Ketchum's neighbor Olivia Peery said that she heard a shuffling out front of her apartment and looked up and noticed somebody lifting up and moving around the cover of the motorcycle. RP 579. She then heard Ketchum

come out and confront the person "about how it wasn't his bike and he knew the owner and that he needed to leave and leave the bike alone." RP 579-580. She indicated that the person appeared frustrated. RP 581. She said "I seen Nick say he's going to go in and the call the police. And then from there Melissa I believe was in the window recording him." RP 581. Peery said that the man did some type of gesture toward Melissa in the window. RP 581-582.

Peery said that she was recording in the doorway but stopped when the man pulled a gun because she was more concerned about her daughter's safety. RP 582. Peery recounted that when Ketchum went back into the house, the man gestured toward the window and walked off to the side "almost in front of their porch." RP 583. She saw the man stop and said it seemed like he "was arguing with Nick" and then he pulled the gun from his bag and pointed it. RP 583.

Lacey Police Sergeant Adam Seig responded to the area and located Sword in the Cedar Park Apartments just to the east of the location. RP 690, 694. Sword was carrying a dark colored backpack. RP 692. Sword was initially noncompliant as Seig gave him verbal commands but began listening when other officers arrived. RP 693-694. Seig testified that Sword was wearing the exact clothing that was described and matched a photo he had been provided of the person involved. RP 695.

Lacey Police Officer Joshua Bartz conducted a pat down of Sword and noticed bulges, and Officer Aaron McBride recovered a firearm from Sword's person, inside the left jacket pocket. RP 737, 753, 769. The firearm was a Sig Sauer P220 .45 caliber semiautomatic handgun with a removable magazine and hammer. RP 739, 753. Office David Maclurg testified that the firearm appeared "completely functional." RP 753. Lacey Officer Sean Bell test fired the weapon and had no issues firing it. RP 808.

Sword elected to not testify at trial. RP 880.

9. Jury Instructions, Closing Arguments and Sentencing

Defense counsel proposed that the trial court instruct the jury on WPIC 17.02, lawful force. RP 847. The State objected to the instruction for count 2 involving Miller. RP 847. The trial court ruled that it would give the lawful force instruction on both counts of assault, finding that there was sufficient evidence for the instructions to be given. RP 849. Defense counsel also requested WPIC 17.04, which was given without objection. RP 849-850.

Defense counsel also requested WPIC 17.05, the "No duty to retreat" instruction, which the prosecutor likewise did not object to. RP 850. No first aggressor instruction was requested or given. RP 890-907; CP 35-47, 77-81; 89-121. Defense counsel requested a limited instruction with regard to prior convictions as evidence of

the count of unlawful possession of a firearm charge, which was given. CP 78, 106.

During closing argument, the prosecutor informed the jury that the arguments were not the evidence and the jury should rely on their own recollection of the evidence. RP 908. The prosecutor discussed reasonable doubt, stating,

> So it means when you come out of here at the end of all of this, you've evaluated the evidence, do you have an abiding, an enduring belief in the truth of the charge that the defendant has done the things the State has charged him with, that the witnesses have testified about, that the exhibits demonstrate, do you believe that today, do you believe that tomorrow, do you believe that a year from now. And it is not uncommon, I would say, sometimes to hear a juror say, well, I really believe that she did this thing she was charged with, but I just felt like I didn't get enough proof. I submit to you if that is the statement being made, then that juror's holding the State to a standard that they have not been instructed on.

RP 911-912.

Defense counsel objected to that portion of the argument, stating, "The burden of proof is beyond a reasonable doubt, not abiding belief." RP 912. The trial court noted the objection and stated "The jury has been instructed that they are to follow the instructions that they received from the Court and anything that [the prosecutor] says that's not supported they will disregard." RP 912.

The prosecutor continued,

> reasonable doubt is defined for you right here and that includes the abiding belief instruction. So when you come out of here and you are having - - if you have that conversation, what I submit to you is that you have held the State to a standard beyond what I am required to prove to you. Certainly do not hold me to less than that standard. My standard is beyond a reasonable doubt. But do not hold me to more either. This is your instruction.

RP 912. The prosecutor then noted that the jurors came into the courtroom with a "blank slate" and argued,

> I submit to you when you are walking out of this courtroom, if you believe that the defendant, in fact, did the things he has been charged with,

you believe that because of the information that your received in this courtroom.

RP 912-913. The prosecutor then directed the jurors back to the trial court's instruction on reasonable doubt asking the jurors to follow that standard. RP 913.

The prosecutor argued that Miller and Ketchum were acting in self-defense, not Sword. RP 930-931. During defense arguments, defense counsel argued that "perhaps none of that actually happened," and "no gun was shown." RP 946. Defense counsel later reiterated that their "first position" is that "it didn't happen, they're making it up." RP 953. Defense counsel argued that the "backup defense" was "self-defense." RP 954. Defense counsel argued that there was "clear disengagement," and then "two people charging at him. One of them has a hammer in his hand." RP 954. Defense counsel then argued that Sword had no duty to retreat from Miller and Ketchum in the common "grassy area." RP 954-955. Defense counsel argued that

there could not have been an assault because Miller and Ketchum demonstrated no fear. RP 957.

In rebuttal, the prosecutor argued that there was no de-escalation and Sword walked up to "Nick's line" because he was not afraid. RP 972. The prosecutor argued, "There's one person in this scenario, in this entire set of events that has the gun, and that is the defendant and he is using it to intimidate, to scare, and to control the behaviors of the people around him." RP 973.

10. Decision of the Court of Appeals

In an unpublished decision, the Court of Appeals indicated, "although the prosecutor made improper remarks about the State's burden of proof in closing argument, we conclude that Sword failed to establish prejudice," and affirmed the conviction. State v. Sword, No. 57320-2-II, at 2. Sword now asks this Court to accept review. The State asks this Court to deny review, however, if the Court accepts review, the State asks the Court to also

consider whether the prosecutor's remarks during closing argument were improper.

C. ARGUMENT

1. The Court of Appeals' finding that the prosecutor's remarks were improper conflicts with prior decisions of this Court and the Court of Appeals. Even if improper, the Court of Appeals correctly found that the remarks did not prejudice the outcome of the trial.

The Court of Appeals finding, "The prosecutor's statements were improper because they clearly implied the jury had a duty to convict Sword even if the jurors did not feel that they had been presented with proof beyond a reasonable doubt," is both factually inaccurate and in conflict with prior decisions of this Court and the Court of Appeals. No. 57320-2-II, at 25. In State v. Thorgerson, 172 Wn.2d 438, 454, 258 P.3d 43 (2011), the prosecutor argued that the jury should not come out of the jury room saying "well, we believed her, but we acquitted him." This Court indicated, "in doing so, the prosecutor did not

misstate the burden of proof." Id. Division I of this Court considered a similar argument in State v. Feely, 192 Wn. App. 751, 762-763, 368 P.3d 514 (2016), *review denied*, 185 Wn.2d 1042, 377 P.3d 762 (2016). In that case, the prosecutor argued that "it can be very frustrating to have a jury come back and say we all knew he was guilty, but you didn't prove it beyond a reasonable doubt. Those are inconsistent." Id. at 763. The Court indicated, "it trivializes the burden of proof to suggest that jurors can ignore the reasonable doubt instruction as long as they 'know' the defendant is guilty," however, the defendant did not object to the argument and it was not so flagrant or ill-intentioned that it could not have been cured with an instruction. Id.

The Court then noted that the defendant could not demonstrate a substantial likelihood that the statements affected the jury's verdict, when viewed in the context of the total argument, the issues in the case, and the instructions given to the jury. Id. at 764. The Court noted

that the prosecutor referred to the correct reasonable doubt standard "immediately following" the questionable comment and approved of later comments that stated, "the burden is what you know? What do you believe, have an abiding belief in were the facts" which preceded discussion of the reasonable doubt instruction. Id.

Here, the prosecutor's argument was similar to that which was not misconduct in Thorgerson. The prosecutor properly focused the jury on the trial court's instruction regarding reasonable doubt. RP 911-913. Taken in the total context of the prosecutor's argument, the prosecutor's argument was not improper. The Court of Appeals finding to the contrary was erroneous.

Regardless of whether the argument was improper, the Court of Appeals correctly followed precedent from this Court in State v. Emery, 174 Wn.2d 741, 760, 278 P.3d 653 (2012), finding that there was no substantial likelihood that misconduct affected the jury's verdict. The trial court

responded to the defense objection, reminding the jury that they were required to follow the law as instructed and the prosecutor's follow up arguments noted that the standard was beyond a reasonable doubt, asking the jurors to follow that standard. RP 912-913. Any prejudice was properly cured by the trial court's instruction and the totality of the prosecutor's argument. There is no basis under RAP 13.4(b)(3) or (b)(4) upon which review should be accepted. However, if review is accepted, the Court should review whether the prosecutor's statements were improper in light of Thorgerson and Feely under RAP 13.4(b)(1) and (b)(2).

2. There is no basis under RAP 13.4(b)(3) For this Court to accept review of the Court of Appeals' finding that a juror did not demonstrate actual bias.

Appellate courts have observed that the trial court is in the best position to determine a juror's ability to be fair and impartial because the trial court personally observes the juror's demeanor during questioning and is better able

to evaluate and interpret the juror's responses. Id. at 839, n. 6; State v. Gosser, 33 Wn. App. 428, 434, 656 P.2d 514 (1983); State v. Brown, 132 Wn.2d 529, 602, 940 P.2d 546 (1997). "The manner of the juror while testifying is oftentimes more indicative of the real character of his opinion than his words." Brown, 132 Wn.2d at 602; *citing*, Wainwright v. Witt, 469 U.S. 412, 428, n.9, 105 S. Ct. 844, 83 L.Ed.2d 841 (1985) *quoting*, Reynolds v. United States, 98 U.S. 145, 156-157, 25 L.Ed. 244 (1878).

Actual bias means "the existence of a state of mind on the part of the juror in reference to the action, or to either party, which satisfies the court that the challenged person cannot try the issue impartially and without prejudice to the substantial rights of the party challenging." RCW 4.44.170(2); State v. Gonzales, 111 Wn. App. 276, 278, 45 P.3d 205 (2002). "When a juror makes an unqualified statement expressing actual bias, seating the juror is a manifest constitutional error." State v. Irby, 187 Wn. App.

183, 188, 347 P.3d 1103 (2015). However, "a juror's equivocal answers alone do not justify removal for cause." State v. Grenning, 142 Wn. App. 518, 540, 173 P.3d 706 (2008), *citing,* State v. Noltie, 116 Wn.2d 831, 838, 809 P.2d 190 (1991).

A party claiming bias must provide more proof that shows more than a possibility of preference. Gonzales, 111 Wn. App. at 281; Noltie, 116 Wn.2d at 838-840. Even when a juror has formed or expressed an opinion on the action, its witnesses, or the party, the trial court is not required to dismiss the juror unless the court is "satisfied, from all the circumstances, that the juror cannot disregard such opinion and try to issue impartially." RCW 4.44.190; State v. Lawler, 194 Wn. App. 275, 281, 374 P.3d 278 (2016). "A prospective juror's expression of preference in favor of police testimony does not, standing alone, conclusively demonstrate bias." Gonzales, 111 Wn. App. at 281.

Actual bias is demonstrated only when a juror expresses preconceived opinions or beliefs on the issue. Id. at 278. In Irby, a juror who said she was predisposed to believe police officers but would try to decide the case fairly did not demonstrate actual bias. Irby, 187 Wn. App. at 196. Likewise, in State v. Griepsma, 17 Wn.App.2d 606, 613-614, 490 P.3d 239, *review denied*, 198 Wn.2d 1016 (2021), a juror who indicated they would give more weight to a witness's testimony just because they were police officers demonstrated a mere preference in favor of police officers and not an actual bias requiring their removal.

As in Gonzales and Griepsma, Juror 1's response to the defense question "you believe that police officers are more likely to tell the truth than other people on the stand?" was a mere expression of preference that did not rise to the level of actual bias. RP 108. The trial court was under no obligation to remover Juror 1 from the panel. The Court of Appeals correctly followed existing case law to

determine that Juror 1 did not express actual bias. No. 57320-2-II at 14-15. The State agrees that issues of actual juror bias are significant questions of law, however, there is sufficient guidance in the existing case law and no basis upon which this Court should accept review under RAP 13.4(b)(3).

3. The existing law provides sufficient guidance regarding the State's ability to present a case in the absence of an *Old Chief* stipulation.

When a prior conviction is an element of a current offense, the defense can strategically elect to minimize the prejudice by offering to stipulate to the existence of a predicate offense. State v. Taylor, 193 Wn.2d 691, 698-699, 444 P.3d 1194 (2019); Old Chief, 519 U.S. at 117. In Taylor, this Court noted that Old Chief forms an exception to the general rule that "the prosecution is generally entitled to prove its case by evidence of its own choice in order to present its case with full evidentiary force. Taylor, 193

Wn.2d at 698, *citing*, Old Chief, 519 U.S. at 186-187; *see also*, State v. Adler, 16 Wn. App. 459, 465, 558 P.2d 817 (1976).

"Courts have long held that when a prior conviction is an element of the crime charged, it is not error to allow the jury to hear evidence on that issue." State v. Roswell, 165 Wn.2d 186, 198, 196 P.3d 705 (2008). The Court of Appeals correctly found that, in the absence of a stipulation, the trial court did not abuse its discretion by admitting evidence of more than one prior offense. The cases cited herein provide sufficient guidance for that determination. There is no basis under RAP 13.4(b)(3) of (b)(4) upon which this Court should accept review.

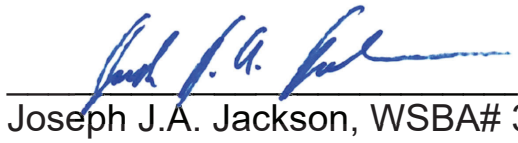
D. CONCLUSION

For the reasons stated herein, the State respectfully request that this Court deny review. However, if review is accepted, the Court should also review whether the

prosecutors' comments during closing argument were improper under RAP 13.4(b)(1) and (2).

I certify that this document contains 4,999 words, not including those portions exempted from the word count, as counted by word processing software, in compliance with RAP 18.17.

Respectfully submitted this 22nd day of March 2024.



Joseph J.A. Jackson, WSBA# 37306
Attorney for Respondent

DECLARATION OF SERVICE

I hereby certify that on the date indicated below I electronically filed the foregoing document with the Clerk of the Court of Appeals using the Appellate Courts' Portal utilized by the Washington State Court of Appeals, in The Supreme Court, for Washington, which will provide service of this document to the attorneys of record.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Dated this 22nd day of March 2024.

Signature: Stephanie Johnson

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

March 22, 2024 - 4:00 PM

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