

No. 46139-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Travis Pardue,

Appellant.

Grays Harbor County Superior Court Cause No. 13-1-00445-6

The Honorable Judge Gordon Godfrey

Appellant's Opening Brief

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ISSUES AND ASSIGNMENTS OF ERROR

1. Mr. Pardue was denied his Sixth and Fourteenth Amendment right to the effective assistance of counsel.
2. Defense counsel provided deficient performance by stipulating to inadmissible evidence that Mr. Pardue exercised his right to counsel during a police interrogation.
3. Mr. Pardue was prejudiced by his attorney's deficient performance.

ISSUE 1: Defense counsel provides ineffective assistance by failing to object to inadmissible evidence absent a valid tactical reason. Here, Mr. Pardue's attorney stipulated to the admission of evidence that Mr. Pardue asked for an attorney during a police interrogation. Was Mr. Pardue denied his Sixth and Fourteenth Amendment right to the effective assistance of counsel?

4. The jury's possible reliance on propensity evidence violated Mr. Pardue's Fourteenth Amendment right to due process.
5. Defense counsel provided ineffective assistance by stipulating to or eliciting inadmissible evidence regarding Mr. Pardue's prior "bad acts" without a valid strategic justification.

ISSUE 2: A defense attorney provides ineffective assistance by introducing evidence prejudicial to the accused without strategic justification. Here, defense counsel stipulated to or elicited evidence that Mr. Pardue had prior domestic violence convictions, had stolen from his ex-girlfriend, and had a no-contact order barring contact with the mother of his children. Did ineffective assistance of counsel violate Mr. Pardue's Sixth and Fourteenth Amendment rights?

6. Prosecutorial misconduct deprived Mr. Pardue of his Sixth and Fourteenth Amendment right to a fair trial.
7. The prosecutor committed flagrant, ill-intentioned, prejudicial misconduct by making an improper missing witness argument.

8. The prosecutor's missing witness argument improperly shifted the burden of proof onto Mr. Pardue.

ISSUE 3: A "missing witness" argument is only permissible if the un-called witness's testimony would have been material and if the other party is given enough notice to explain the witness's absence. Here, the prosecutor argued the missing witness doctrine in closing without giving Mr. Pardue the opportunity to rebut it and when the evidence from any un-called witnesses would have been irrelevant and cumulative. Did prosecutorial misconduct violate Mr. Pardue's Sixth and Fourteenth Amendment rights?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

On August 8th, 2013, Travis Pardue called his ex-girlfriend Christi Sweatman to ask if he could come visit her at her parents' home in Cosmopolis. RP 149. She said she was out of town, so he asked if he could leave a note in her car on his way from Olympia to Ocean Shores. RP 150.

But Mr. Pardue never left the note for Christi¹ because he did not end up going to Ocean Shores. His young daughter was celebrating her birthday on that day. RP 188, 202-04. Mr. Pardue went to his daughter's grandmother's home (where his daughter lived) to spend time with her instead. RP 188, 202-04.

Tom Sweatman – Christi's father – had met Mr. Pardue. RP 65. Sweatman once gave Mr. Pardue a ride home. RP 65-67. Afterwards, Sweatman spent fifteen to twenty minutes with Mr. Pardue and his father while the three men worked on his truck. RP 67. Sweatman would recognize Mr. Pardue if he saw him on the street. RP 67.

On the afternoon that Mr. Pardue celebrated his daughter's birthday, Sweatman came home shortly after 4:00 to find someone burglarizing his house. RP 33. Sweatman also noticed that someone had

entered his father-in-law's house next door. RP 39-40. Two men ran out of the house, jumped in a jeep, and sped away. RP 39. Sweatman chased the men in his truck and got a good look at both the driver and the passenger. RP 40-53.

Sweatman eventually gave up the chase. RP 53. He stopped to tell a highway patrolman what had happened. RP 81. He did not claim that he knew who was in the car, or state that he believed it was Mr. Pardue in the car. RP 80-81.

Sweatman talked to the police back at his house. RP 76. He did not name Mr. Pardue as one of the men in the car. RP 77. Later, Christi explained to her father and the police that Mr. Pardue had said earlier in the day that he planned on stopping by the house. RP 85, 155-56. After that, Sweatman picked Mr. Pardue out of a photo lineup. RP 104.

The state charged Mr. Pardue with two counts of residential burglary, one for Sweatman's house and one for his father-in-law's house next door. CP 1-3.

Pre-trial, defense counsel stipulated to the admissibility of a recording of Mr. Pardue's post-arrest interrogation at the police station.

¹ Appellate counsel refers to Christi Sweatman using her first name to differentiate her from her father, Tom Sweatman. No disrespect is intended.

RP 5; CP 4. Defense counsel did not ask the court to redact any portion of the police interview. RP 5; CP 4.

At trial, state played the interrogation recording for the jury. RP 165. In it, the police officer asked Mr. Pardue about his criminal history and he had “a whole bunch of domestic violence ...situations” and no-contact orders. Ex. 32, p. 7. About halfway through, Mr. Pardue says that he “should probably have a lawyer present.” Ex. 32, p. 11.

After the recording ended, Mr. Pardue’s attorney objected. RP 166. He pointed out that Mr. Pardue exercised his right to counsel during the interview. RP 168. Defense counsel asked the court to exclude that portion of the interrogation from evidence. RP 169.

The judge noted that defense counsel had already stipulated to the recording’s admission without any redactions. RP 170-71. The court declined to revisit the issue of whether the entire interrogation was admissible. RP 171.

The state called Christi Sweatman to testify. RP 147. She described the phone call from Mr. Pardue about the note. RP 149. On cross-examination, defense counsel asked her why she made the leap between the phone call and implicating Mr. Pardue in the burglary: she

answered that Mr. Pardue is an addict who has stolen money from Christi in the past. RP 156.²

Mr. Pardue presented three alibi witnesses. RP 186-224. Mr. Pardue's daughter's grandmother and great-grandmother both testified. RP 186-212. They said that the burglary was on the same day as the child's fifth birthday party. RP 188, 203-04. They both testified that Mr. Pardue got a ride to their house in Olympia before noon and spent time with his children until 3:30. RP 189-90, 205-06. At 3:30, Mr. Pardue stayed behind while the rest of the family went to the birthday party. RP 190, 206. Defense counsel asked one of the alibi witnesses why Mr. Pardue did not attend the party: she answered that Mr. Pardue had a no-contact order prohibiting him from being near the mother of his children. RP 211.

In closing, the prosecutor argued that Mr. Pardue should have called the other guests at his daughter's party to testify. RP 241. He also argued that Mr. Pardue should have produced a party invitation or calendar with the date of the party written on it. RP 241.

² The state also presented evidence that Mr. Pardue's DNA was on a pair of latex gloves that thrown from the window of the fleeing car. RP 128-34. Mr. Pardue explained that the car belonged to his friend's girlfriend. Ex. 32, pp. 3-5. Mr. Pardue had worn latex gloves while using drugs in the car on multiple occasions. Ex. 32, p. 14. Mr. Sweatman identified Mr. Pardue's friend as the driver of the car. RP 141-42.

The jury convicted Mr. Pardue of burglarizing Sweatman's house but acquitted him of burglarizing the father-in-law's house next door. RP 260.

In a sentencing memorandum, defense counsel suggested that the court include additional sentencing conditions, along with recommending that the court impose all those recommended by the prosecutor. CP 26. The court ordered all rules and fines as requested. CP 28-35. This timely appeal follows. CP 38-39.

ARGUMENT

I. MR. PARDUE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.

A. Standard of Review.

Ineffective assistance of counsel is an issue of constitutional magnitude that can be raised for the first time on appeal. *State v. Kylo*, 166 Wn.2d 856, 862, 215 P.3d 177 (2009); RAP 2.5(a).

An ineffective assistance claim presents a mixed question of law and fact, reviewed *de novo*. *In re Fleming*, 142 Wn.2d 853, 865, 16 P.3d 610 (2001); *State v. Horton*, 136 Wn. App. 29, 146 P.3d 1227 (2006). Reversal is required if counsel's deficient performance prejudices the accused. *Kylo*, 166 Wn.2d at 862 (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)).

- B. Mr. Pardue's defense attorney provided ineffective assistance by stipulating to or introducing extensive inadmissible, prejudicial evidence without any tactical justification.

The right to counsel includes the right to the effective assistance of counsel. U.S. Const. Amends. VI, XIV; *Strickland*, 466 US at 685.

Counsel's performance is deficient if it falls below an objective standard of reasonableness. U.S. Const. Amends. VI, XIV; *Kyllo*, 166 Wn.2d at 862. Deficient performance prejudices the accused when there is a reasonable probability that it affected the outcome of the proceeding. *Id.*

Defense counsel provides ineffective assistance by failing to object to inadmissible evidence absent a valid strategic reason. *State v. Saunders*, 91 Wn. App. 575, 578, 958 P.2d 364 (1998) (citing *State v. McFarland*, 127 Wn.2d 322, 336, 899 P.2d 1251 (1995)). Reversal is required if an objection would likely have been sustained and there is a reasonable probability that the result of the trial would have been different without the inadmissible evidence. *Id.*

1. Defense counsel provided ineffective assistance by stipulating to the admission of evidence that Mr. Pardue exercised his right to counsel during police interrogation.

Accused persons have a constitutional privilege to remain free from self-incrimination. U.S. Const. Amends. V, XIV; Wash. Const. art. I, § 9. The Fifth Amendment also guarantees the right to counsel during custodial interrogation. *State v. Trochez-Jimenez*, 180 Wn.2d 445, 451,

325 P.3d 175 (2014). Courts liberally construe the constitutional provisions protecting the right to silence. *State v. Knapp*, 148 Wn. App. 414, 420, 199 P.3d 505 (2009).

Miranda warnings carry an implicit assurance that the defendant's exercise of those rights during custodial interrogation will not carry a penalty. *State v. Silva*, 119 Wn. App. 422, 429, 81 P.3d 889 (2003). Thus, telling the jury that the accused invoked his rights after *Miranda* "violates fundamental due process by undermining [that] implicit assurance." *Id.*

A suspect's post-*Miranda* invocation of the right to remain silent is not admissible for any purpose. *State v. Pinson*, 44259-1-II, 2014 WL 4358461, --- Wn. App. ---, 333 P.3d 528 (Sept. 3, 2014) (citing *State v. Burke*, 163 Wn.2d 204, 217, 181 P.3d 1 (2008)). A direct comment on the accused's exercise of his/her rights is always constitutional error. *State v. Holmes*, 122 Wn. App. 438, 445, 93 P.3d 212 (2004).

An inference of guilt resting on exercise of a constitutional right "always adds weight to the prosecution's case and is always, therefore, unfairly prejudicial." *Silva*, 119 Wn. App. at 429. A reviewing court presumes that an impermissible comment on the exercise *Miranda* rights harmed the accused unless the state proves otherwise beyond a reasonable

doubt. *State v. Fuller*, 169 Wn. App. 797, 813, 282 P.3d 126 (2012)
review denied, 176 Wn.2d 1006, 297 P.3d 68 (2013).

Here, defense counsel stipulated at the beginning of trial to the admission of Mr. Pardue's complete interrogation with police. RP 5; CP 4. The recording includes a statement by Mr. Pardue that he "should probably have a lawyer present." Ex. 32, p. 11. Defense counsel did not move to redact the portion of the interview in which Mr. Pardue discusses his decision to exercise his right to counsel. RP 5; CP 4.

Mr. Pardue's counsel provided ineffective assistance by stipulating to the admission of his client's exercise of his right to counsel. The interrogation recording contained a direct comment on Mr. Pardue's exercise of his right to have counsel present at the interrogation. *Holmes*, 122 Wn. App. at 445. Mr. Pardue's request for counsel was inadmissible because of the risk that the jury would infer guilt based on his exercise of his constitutional rights.³ *Id.*

Defense counsel did not have a valid strategic reason for waiving objection to the improper admission of Mr. Pardue's statement. Counsel

³ It is not relevant to this analysis whether Mr. Pardue's statement was unequivocal so as to require the officers to cease questioning. In *Holmes*, for example, the court reversed based on a comment that the accused had not proclaimed his innocence when he was arrested. *Holmes*, 122 Wn. App. at 445. Simple failure to deny a charge is far from sufficient to actually invoke the privilege against self-incrimination and require the officers to stop questioning. Nonetheless, the information is not admissible because of the risk that the jury will improperly infer guilt based on the exercise of a constitutional right. *Id.* at 443.

appears to have noticed his client's invocation of his right to counsel for the first time when the interrogation recording was played for the jury. RP 165-69. The defense attorney immediately objected and asked for that portion of the tape to be excluded. RP 168-69. But the court noted that Mr. Pardue's attorney had already stipulated to the admissibility of the entire interview and declined to consider the matter any further. RP 170-71. It is apparent that defense counsel did not purposely waive objection for some tactical purpose.

Mr. Pardue was prejudiced by his attorney's deficient performance. *Kyllo*, 166 Wn.2d at 862. Mr. Pardue exercised his right to remain silent at trial. The recording of the interrogation was the only time the jury ever heard from him. Improper admission of evidence regarding an accused person's exercise of his/her constitutional rights "always adds weight to the prosecution's case." *Silva*, 119 Wn. App. at 429. Accordingly, there is a reasonable probability that defense counsel's improper stipulation to evidence that Mr. Pardue exercised his constitutional rights affected the outcome of this case. *Kyllo*, 166 Wn.2d at 862.

Mr. Pardue's defense attorney provided ineffective assistance by stipulating to inadmissible, prejudicial evidence absent a valid strategic reason. *Saunders*, 91 Wn. App. at 578. Mr. Pardue's conviction must be reversed. *Id.*

2. Defense counsel provided ineffective assistance by stipulating to and introducing evidence that was inadmissible under ER 404(b) and prejudicial to Mr. Pardue's defense.

Defense counsel provides ineffective assistance by introducing inadmissible evidence likely to prejudice the accused with no valid tactical purpose. *Saunders*, 91 Wn. App. at 580-81.

The use of propensity evidence to prove a crime may violate due process under the Fourteenth Amendment.⁴ U.S. Const. Amend. XIV; *Garceau v. Woodford*, 275 F.3d 769, 775 (9th Cir. 2001), *reversed on other grounds* at 538 U.S. 202, 123 S.Ct. 1398, 155 L.Ed.2d 363 (2003); *see also McKinney v. Rees*, 993 F.2d 1378 (9th Cir. 1993).⁵ A conviction based in part on propensity evidence is not the result of a fair trial. *Garceau*, 275 F.3d at 776, 777-778; *see also Old Chief v. United States*, 519 U.S. 172, 182, 117 S.Ct. 644, 136 L.Ed.2d 574 (1997).

Propensity evidence is highly prejudicial, and there are numerous justifications for excluding it:

[S]uch evidence jeopardizes the constitutionally mandated presumption of innocence until proven guilty. The jury, repulsed by evidence of prior "bad acts," may overlook weaknesses in the prosecution's case in order to punish the accused for the prior offense. Moreover...jurors may not regret wrongfully convicting

⁴ The U.S. Supreme Court has expressly reserved ruling on a similar issue. *Estelle v. McGuire*, 502 U.S. 62, 75 n. 5, 112 S.Ct. 475, 116 L.Ed.2d 385 (1991).

⁵ Washington courts are not bound by decisions of the federal circuit courts. *In re Crace*, 157 Wn. App. 81, 98 n. 7, 236 P.3d 914 (2010) *reversed on other grounds*, 174 Wn.2d 835, 280 P.3d 1102 (2012). However, decisions of the federal courts of appeal can provide guidance to Washington courts as they interpret the Fourteenth Amendment's due process clause.

the accused if they believe the accused committed prior offenses. ...[J]urors will credit propensity evidence with more weight than such evidence deserves...[S]uch evidence blurs the issues in the case, redirecting the jury's attention away from the determination of guilt for the crime charged.

Natali & Stigall, "*Are You Going to Arraign His Whole Life?*": *How Sexual Propensity Evidence Violates the Due Process Clause*, 28 Loyola U. Chi. L.J. 1, at 11-12 (1996).

In addition to constitutional limitations, the rules of evidence prohibit the introduction of propensity evidence. Under ER 404(b),

[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

ER 404(b) must be read in conjunction with ER 403, which requires that probative value be balanced against the danger of unfair prejudice.⁶ *State v. Fisher*, 165 Wn.2d 727, 745, 202 P.3d 937 (2009).

A trial court must begin with the presumption that evidence of prior bad acts is inadmissible. *State v. McCreven*, 170 Wn. App. 444, 458, 284 P.3d 793 (2012) *review denied*, 176 Wn.2d 1015, 297 P.3d 708 (2013). When the state seeks to introduce evidence of prior "bad acts," it

⁶ ER 403 provides that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

bears the “substantial” burden of showing admission is appropriate for a purpose other than propensity. *State v. DeVincentis*, 150 Wn.2d 11, 19, 74 P.3d 119 (2003).

Here, Mr. Pardue’s attorney elicited testimony that his client was prohibited by a no-contact order from being near the mother of his children and that he had previously stolen from the daughter of the alleged victim of the burglary. RP 156, 211. Defense counsel also stipulated to an interview tape in which Mr. Pardue admitted to prior domestic violence convictions. Ex. 32, p. 7. Mr. Pardue’s attorney did not move to redact the parts of the recording regarding those prior convictions. RP 5; CP 4.

Defense counsel provided deficient performance by eliciting and stipulating to extensive inadmissible evidence regarding Mr. Pardue’s prior “bad acts.” *Saunders*, 91 Wn. App. at 580-81. The evidence would not have been admissible if presented by the state. ER 403, 404(b); *McCreven*, 170 Wn. App. at 458. The evidence was not relevant to any part of Mr. Pardue’s defense theory, which rested exclusively on his alibi. Defense counsel had no valid strategic reason for introducing and stipulating to the evidence. *Saunders*, 91 Wn. App. at 578.

Mr. Pardue was prejudiced by his attorney’s deficient performance. The prior “bad acts” evidence encouraged the jury to convict Mr. Pardue based on propensity rather than the evidence against him at trial.

McCreven, 170 Wn. App. at 458; ER 404(b). The evidence of his prior domestic violence offenses and no-contact orders invited the jury to infer that he was likely to commit a crime against his ex-girlfriend and her family. Similarly, the evidence that Mr. Pardue had stolen from Christi Sweatman in the past also encouraged a propensity-based inference that he was likely to steal from her or her family again. There is a reasonable probability that defense counsel's improper elicitation of and stipulation to inadmissible propensity evidence affected the outcome of the trial. *Kyllo*, 166 Wn.2d at 862.

Mr. Pardue's defense attorney provided ineffective assistance of counsel by introducing and stipulating to extensive inadmissible propensity evidence without a valid tactical justification. *Saunders*, 91 Wn. App. at 580-81. Mr. Pardue's conviction must be reversed. *Id.*

II. PROSECUTORIAL MISCONDUCT DENIED MR. PARDUE A FAIR TRIAL.

A. Standard of Review.

A prosecutor commits misconduct by making improper statements that prejudice the accused. *In re Glasmann*, 175 Wn.2d 696, 704, 286 P.3d 673 (2012). Absent an objection, a court can consider prosecutorial misconduct for the first time on appeal, and must reverse if the misconduct was flagrant and ill-intentioned. *Id.* A reviewing court analyzes the

prosecutor's statements during closing in the context of the case as a whole. *State v. Jones*, 144 Wn. App. 284, 291, 183 P.3d 307 (2008).

B. The prosecutor committed misconduct by making an improper missing witness argument.

Prosecutorial misconduct can deprive the accused of a fair trial. *Glasmann*, 175 Wn.2d at 703-04; U.S. Const. Amends. VI, XIV, Wash. Const. art. I, § 22. To determine whether a prosecutor's misconduct warrants reversal, the court looks at its prejudicial nature and cumulative effect. *State v. Boehning*, 127 Wn. App. 511, 518, 111 P.3d 899 (2005). A prosecutor's improper statements prejudice the accused if they create a substantial likelihood that the verdict was affected. *Glasmann*, 175 Wn.2d at 704. The inquiry must look to the misconduct and its impact, not the evidence that was properly admitted. *Id.* at 711.

Prosecutorial misconduct during argument can be particularly prejudicial because of the risk that the jury will lend it special weight "not only because of the prestige associated with the prosecutor's office but also because of the fact-finding facilities presumably available to the office." Commentary to the *American Bar Association Standards for Criminal Justice* std. 3-5.8 (cited by *Glasmann*, 175 Wn.2d at 706).

Because the accused has no duty to present evidence, a prosecutor generally cannot comment on the lack of defense evidence. *McCreven*,

170 Wn. App. at 470-71 (citing *State v. Thorgerson*, 172 Wn.2d 438, 467, 258 P.3d 43 (2011)). It is misconduct for a prosecutor to point out an accused person's failure to call a witness unless the missing witness rule applies. *State v. Dixon*, 150 Wn. App. 46, 54, 207 P.3d 459 (2009).

The missing witness rule only applies in limited circumstances. *State v. Montgomery*, 163 Wn.2d 577, 598, 183 P.3d 267 (2008). A prosecutor may not make a missing witness argument unless, *inter alia*, the potential testimony is material and not cumulative. *Id.* at 598. The state must also raise the argument "early enough in the proceedings to provide an opportunity for rebuttal or explanation." *Id.* at 599. The limits of the missing witness rule "are particularly important when...the doctrine is applied against a criminal defendant." *Id.* at 598.

Here, the prosecutor argued in closing that the jury should disbelieve Mr. Pardue's alibi because he did not call all of the guests at his daughter's birthday party as witnesses. RP 241. The state also argued that Mr. Pardue should have introduced a physical party invitation or calendar into evidence. RP 241.

But the missing witness rule was inapplicable in Mr. Pardue's case. *Montgomery*, 163 Wn.2d at 598-99.

First, testimony from every guest at the birthday party would have been cumulative and immaterial. *Id.* at 598. Mr. Pardue called three

witnesses to corroborate that his daughter's birthday party had been on the day of the burglary. RP 186-224. Mr. Pardue claimed only to have been at his daughter's grandmother's house before the party began. RP 186-224. No witness said that Mr. Pardue actually attended the child's party. RP 186-224. The other guests at the party could not have vouched for Mr. Pardue's whereabouts during the burglary. The evidence would have been at best cumulative to that of Mr. Pardue's alibi witnesses and likely completely irrelevant. Accordingly, the missing witness rule does not apply and the prosecutor's argument was improper. *Id.*

Second, the state failed to raise the missing witness / missing evidence issue early enough in the case to permit Mr. Pardue to either produce the witnesses and evidence or explain their absence. *Id.* at 599. The prosecutor's argument was improper because Mr. Pardue was not given the opportunity to rebut the negative missing witness presumption. *Id.*

Mr. Pardue was prejudiced by the prosecutor's improper missing witness argument. *Glasmann*, 175 Wn.2d at 704. Mr. Pardue's defense turned completely on his alibi. Instead of focusing exclusively on the evidence linking Mr. Pardue to the crime, the prosecutor attempted to undermine his alibi defense by making an improper missing witness

argument. There is a substantial likelihood that the prosecutor's improper argument affected the verdict. *Glasmann*, 175 Wn.2d at 704.

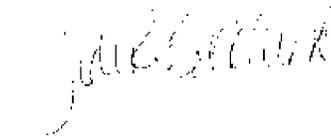
The prosecutor committed flagrant, ill-intentioned, prejudicial misconduct by making an improper missing witness argument in closing. *Id.*; *Montgomery*, 163 Wn.2d at 598-99. Mr. Pardue's conviction must be reversed. *Id.*

CONCLUSION

Mr. Pardue's defense attorney provided ineffective assistance of counsel by stipulating to a lengthy interview recording that included inadmissible evidence that Mr. Pardue exercised his right to counsel during interrogation. Defense counsel also provided ineffective assistance by introducing or stipulating to extensive inadmissible evidence regarding his client's prior "bad acts." The prosecutor committed misconduct by making an improper missing witness argument in closing. Mr. Pardue's conviction must be reversed.

Respectfully submitted on October 14, 2014,

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CERTIFICATE OF MAILING

I certify that on today's date:

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532 Stonewood Drive SE
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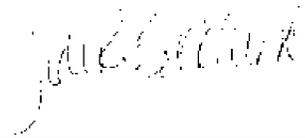
And:

Grays Harbor County Prosecuting Attorney
102 W. Broadway Ave, #102
Montesano, WA 98563

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on October 14, 2014.



Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

October 14, 2014 - 4:00 PM

Transmittal Letter

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Case Name: State v. Travis Pardue

Court of Appeals Case Number: 46139-1

Is this a Personal Restraint Petition? Yes No

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