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NO. 53632-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

NATHANIEL BROUSSARD,
Appellant.

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

The Honorable James R. Orlando, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it denied Mr. Broussard's motion to dismiss for government misconduct because the Pierce County Sheriff's Facebook post about his arrest prejudiced his ability to receive a fair trial.
2. The state presented insufficient evidence to prove beyond a reasonable doubt the elements of burglary in the second degree because it failed to prove that Mr. Broussard entered or remained in the shed with the intent to commit a crime.
3. The state presented insufficient evidence to prove beyond a reasonable doubt the elements of possessing burglary tools because it failed to prove that Mr. Broussard exhibited the intent to use the tools in a burglary.

Issues Presented on Appeal

1. Did the trial court err when it denied Mr. Broussard's motion to dismiss for government misconduct and the Pierce County Sheriff's Facebook post about his

arrest prejudiced his ability to receive a fair trial?

2. Did the state present sufficient evidence to prove beyond a reasonable doubt the elements of burglary in the second degree when it failed to prove Mr. Broussard entered or remained in the shed with the intent to commit a crime?
3. Did the state presented sufficient evidence to prove beyond a reasonable doubt the elements of possessing burglary tools when it failed to prove that Mr. Broussard exhibited the intent to use the tools in a burglary?

B. STATEMENT OF THE CASE

Substantive Facts

Norma Spencer is friends with her former neighbor, Shirley Mitrovich. RP 246. Ms. Spencer and Ms. Mitrovich used to live across the street from each other on 6th Avenue Court South in Parkland, Washington. RP 246. Ms. Mitrovich moved out of her house several years before the incident at issue in this appeal. RP 246. After Ms. Mitrovich moved out, she asked Ms. Spencer to keep an eye on her house while she was away. RP 247. Despite

Ms. Spencer's monitoring, Ms. Mitrovich's house has been the target of multiple break-ins and the shed door was frequently left open. RP 247, 253. Ms. Mitrovich did not testify at Mr. Broussard's trial. RP 90.

On March 24th, 2018, Ms. Spencer called 911 to report that an unidentified man carrying a black bag and wearing dark clothing had knocked on Ms. Mitrovich's front door before entering the backyard through a side gate. RP 135-36, 248-49. At the time of Ms. Spencer's report, no one lived in the home and Ms. Mitrovich only used it to store her belongings. RP 252. Deputy Bradley Crawford of the Pierce County Sheriff's Department responded to the call. RP 135-36.

Deputy Crawford arrived at the property and entered the backyard through the side gate. RP 137. He observed a shed in the yard with its door ajar. RP 137. Deputy Crawford noticed someone moving around inside the shed, so he announced his presence and told the person to come outside. RP 137. A man exited the shed and dropped a black bag in the doorway. RP 137. Deputy Crawford recognized the man as Nathaniel Broussard based on prior contact with him. RP 137.

Deputy Crawford detained Mr. Broussard and asked if he was carrying any weapons. RP 137-38. Mr. Broussard responded that he had a knife and Deputy Crawford observed an empty knife sheath on his belt. RP 138. Deputy Crawford read Mr. Broussard his *Miranda* rights, which Mr. Broussard waived. RP 160. Deputy Crawford asked Mr. Broussard what he was doing inside the shed. RP 177. Mr. Broussard responded that he made a mistake and believed the property had been abandoned so he came to take any items left behind. RP 161, 170.

Deputy Crawford frisked Mr. Broussard for weapons and located a handgun, in his pants pocket, later determined to be inoperable. RP 138-39, 164. Deputy Crawford was aware that Mr. Broussard had prior felony convictions, so he confiscated the gun and placed Mr. Broussard under arrest for unlawful possession of a firearm. RP 162. He searched Mr. Broussard incident to arrest and recovered a screwdriver, cell phone, blow torch lighter, and wallet containing expired deposit slips for an account owned by Ms. Mitrovich. RP 169-70, 188, 246. Officers examined the house and determined that Mr. Broussard had not entered the actual residence. RP 172-73.

Officers examined the shed and noticed damage to the door handle. RP 142. They also recovered the bag Mr. Broussard dropped when Deputy Crawford contacted him. RP 173. The bag contained two electric drills, drill bits, a drill charger, and a pair of gloves. RP 173-74. Deputy Crawford also found a knife on a table inside the shed. RP 175.

Deputy Crawford returned to his patrol car and continued to question Mr. Broussard. RP 177. Mr. Broussard told the deputy that he found the wallet and deposit slips in the shed but did not know Ms. Mitrovich. RP 178. Deputy Crawford noticed that he had not searched one of Mr. Broussard's pockets. RP 179. Deputy Crawford searched the pocket and found a glass pipe he suspected to be for smoking methamphetamine and well as a plastic bag containing a substance he suspected to be methamphetamine. RP 179. When questioned, Mr. Broussard admitted that the substance was methamphetamine. RP 181. Officers then transported Mr. Broussard to the Pierce County Jail. RP 188. The substance found in Mr. Broussard's pocket later tested positive for methamphetamine. RP 266.

While in the Pierce County Jail, Mr. Broussard made several

phone calls where he told friends that he thought the property had been abandoned and was only hoping to salvage what was left behind. Ex. 8. Mr. Broussard also admitted that he tried to enter the front door of the house before entering the backyard. Ex. 8.

Procedural Facts

The state originally charged Mr. Broussard with one count of burglary in the first degree, one count of unlawful possession of a firearm in the first degree, one count of unlawful possession of a controlled substance, one count of identity theft in the second degree, and one count of possessing burglary tools. CP 1-3. The state later amended the information to remove the unlawful possession of a firearm charge and to amend the burglary charge to burglary in the second degree with a firearm and a deadly weapon enhancement. CP 286-88.

While Mr. Broussard's case was pending in Pierce County Superior Court, the Pierce County Sheriff's Department created a post on its Facebook account about Mr. Broussard's arrest and shared it with its nearly 47,000 followers. CP 77-79. The post contained numerous inflammatory statements about the arrest, including the fact that Mr. Broussard had been featured in a

previous episode of the television program “COPS,” had been arrested 32 times, and referred to him as a “serial burglar.” CP 77. The post quoted certain portions of the police report verbatim, included photographs taken at the scene, and included Mr. Broussard’s statements to police. CP 77-79. The post also included several assertions later determined to be false, such as its claim that the homeowner was hospitalized and statements suggesting that the firearm found on Mr. Broussard’s person was operable. CP 77-79.

The Facebook post generated more than 100 comments and was shared 91 times within five days of it being posted. CP 79; RP 4. Some of the accounts that shared the post represented community groups who had thousands of followers themselves. CP 94-99. Many of the comments disparaged Mr. Broussard and some called for him to be sentenced to life in prison or executed. CP 80-92.

Mr. Broussard filed a motion to dismiss the charges for governmental misconduct under CrR 8.3(b) based on the Facebook post. CP 58-76. The trial court held a hearing on Mr. Broussard’s motion and concluded that the Facebook post constituted

government misconduct because it was an “extrajudicial statement before trial” that prejudiced the defendant “in a number of ways,” but denied the motion to dismiss because it found that any prejudice to Mr. Broussard’s right to a fair trial could be cured during voir dire of prospective jurors. CP 201-02; RP 40-48.

At the conclusion of the state’s case-in-chief, Mr. Broussard moved for dismissal of the charges based on the sufficiency of the state’s evidence. CP 313-21; RP 286. The trial court granted Mr. Broussard’s motion as to the identity theft charge and the firearm enhancement but denied the motion as to the other charges and the deadly weapon enhancement related to the knife found in the shed. RP 293-97.

Mr. Broussard proposed a jury instruction on the affirmative defense of abandonment contained in RCW 9A.52.090(1). CP 365. The state objected to this instruction and the trial court declined to include it in its final instructions to the jury because it did not find that the evidence supported an inference that the property had been abandoned. RP 303. At Mr. Broussard’s request, the trial court instructed the jury on the lesser included offenses of criminal trespass first and second degree. RP 305. The jury found Mr.

Broussard guilty of the remaining charges but did not reach a verdict on the deadly weapon enhancement. CP 422-26; RP 379. The trial court sentenced Mr. Broussard to a standard range sentence. RP 398-99. Mr. Broussard filed a timely notice of appeal. CP 839.

C. ARGUMENT

1. THE TRIAL COURT ERRED WHEN IT DENIED MR. BROUSSARD'S MOTION TO DISMISS FOR GOVERNMENTAL MISCONDUCT BECAUSE THE PIERCE COUNTY SHERIFF'S FACEBOOK POST PREJUDICED MR. BROUSSARD'S ABILITY TO RECEIVE A FAIR TRIAL

The government in this case committed reversible misconduct by publishing, prior to trial, throughout Pierce County, a Facebook post concerning the allegations against Mr. Broussard.

CrR 8.3 provides in pertinent part:

The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial.

CrR 8.3(b). To prevail on a motion to dismiss pursuant to CrR 8.3(b), the defendant must show by a preponderance of the

evidence (1) arbitrary action or governmental misconduct, and (2) actual prejudice affecting the defendant's right to a fair trial. *State v. Michielli*, 132 Wn.2d 229, 239-40, 937 P.2d 587 (1979); *State v. Williams*, 193 Wn. App. 906, 909, 373 P.3d 353 (2016) (citing *State v. Martinez*, 121 Wn. App. 21, 29, 86 P.3d 1210 (2004)).

Review is for abuse of discretion. *Williams*, 193 Wn. App. at 909. The trial court abuses its discretion "if the trial court's decision is manifestly unreasonable or is based on untenable grounds." *Id.* "A decision is based on untenable grounds 'if it rests on facts unsupported in the record.'" *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003).

Governmental misconduct "need not be of an evil or dishonest nature; simple mismanagement is sufficient." *Michielli*, 132 Wn.2d at 239 (emphasis omitted) (quoting *State v. Blackwell*, 120 Wn.2d 822, 831, 845 P.2d 1017 (1993)). While dismissal is an extraordinary remedy to which the court should resort only in "truly egregious cases of mismanagement or misconduct," it is nonetheless a viable and necessary remedy in certain cases such as Mr. Broussard's. *State*

v. Duggins, 68 Wn. App. 396, 401, 844 P.2d 441, *aff'd*, 121 Wn.2d 524, 852 P.2d 294 (1993); *see also Blackwell*, 120 Wn.2d at 830.

Government mismanagement that infringes a defendant's due process rights amounts to prejudicial government misconduct. For example, in *State v. Sherman*, 59 Wn. App. 763, 801 P.2d 274 (1990), Division One affirmed a trial court's finding of prosecutorial misconduct where the state agreed to undertake production of the Internal Revenue Service (IRS) records of one of its witnesses, but failed to produce the records by the court-imposed deadline even though the state was given several weeks to comply. *Sherman*, 59 Wn. App. at 765-66. Although the records were not in the state's possession, they were available to the state's chief witness, who failed to find them in his files. *Sherman*, 59 Wn. App. at 769. The Court in *Sherman* held that such mismanagement amounted reversible to prosecutorial misconduct. *Id.*

Similarly, in *Michielli*, the Supreme Court affirmed dismissal of four counts added only three days before trial based on government mismanagement under CrR 8.3(b) where the state had adequate information to timely amend the information but failed to

do so. *Michielli*, 132 Wn.2d at 246. The additional charges were not based on new information. *Id.* at 233. The Supreme Court held that the “[d]efendant was prejudiced in that he was forced to waive his speedy trial right and ask for a continuance to prepare for the surprise charges brought three business days before the scheduled trial.” *Michielli*, 132 Wn.2d at 239-43.

In *Martinez*, too, the prosecution deprived the defendant of his rights to a fair trial by failing to disclose exculpatory evidence until the middle of his trial. *Martinez*, 121 Wn. App. at 29-30. The Court of Appeals found actual prejudice and upheld the dismissal despite the trial resulting in a hung jury because preservation of the integrity of a conviction is just as important as securing the conviction itself and allowing re-trial would not deter similar conduct in the future. *Martinez*, 121 Wn. App. at 36.

Appellate courts have similarly affirmed dismissal when the government infringes on the defendant’s right to counsel. See e.g., *State v. Cory*, 62 Wn.2d 371, 382 P.2d 1019 (1963) (affirming dismissal where police eavesdropped on privileged conversation); *State v. Jieta*, 77800-5-I, 2020 WL 614248 (Wash. Ct. App. Feb. 10, 2020) (affirming dismissal where court administration failed to

provide adequate interpreter services for defendant); *State v. Irby*, 3 Wn. App. 2d 247, 415 P.3d 611 (2018) (affirming dismissal where jail guard viewed defense counsel's privileged notes); *State v. Granacki*, 90 Wn. App. 598, 959 P.2d 667 (1998) (affirming dismissal where detective viewed defense counsel's privileged notes during trial).

Similar to the right to counsel, criminal defendants have an absolute right to trial by an impartial jury. U.S. Const. Amend. IV; Wash. Const. art. I, § 21. The Washington State Constitution declares that the right to trial by jury shall remain "inviolable," meaning that the right is "deserving of the highest protection." *Furnstahl v. Barr*, 197 Wn. App. 168, 175, 389 P.3d 635 (2016) (quoting *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 656, 771 P.2d 711 (1989)). Thus, under Washington law, the right to trial by an impartial jury is at least equal to the right to counsel in the sense that depriving a defendant of that right necessarily causes them actual prejudice.

The government misconduct was egregious because it directly undermined Mr. Broussard's right to a fair and impartial jury. Here, the trial court found that the Pierce County Sheriff

Department's Facebook post about Mr. Broussard's arrest was misconduct which goes beyond simple mismanagement because it was an "extrajudicial statement before trial" that prejudiced the defendant "in a number of ways." RP 40. However, the trial court ultimately concluded that the prejudice could be cured during voir dire by striking jurors who admitted to having seen the post. RP 46.

The trial court's decision to deny Mr. Broussard's motion to dismiss was an abuse of discretion because the actual prejudice that results from governmental misconduct depriving a defendant of his or her right to a fair trial cannot be adequately cured where the dissemination of prejudicial information is so widespread. *See Cory*, 62 Wn.2d at 376 (holding that the right to fair trial is so fundamental that prejudice is presumed when it is infringed upon).

The Pierce County Sheriff's Facebook page had 46,786 followers at the time it posted about Mr. Broussard's arrest. CP 62. Several accounts, including some that have thousands of followers themselves, shared the post with their followers. CP 94-99. While it is impossible to determine exactly how many people saw the post, the follower statistics of the other accounts that shared the post provide a conservative estimate near 100,000 people. 1/14/19 RP

4-6. Furthermore, the fact that the post originated on an account dedicated to the Pierce County Sheriff means it is likely that most of the people who saw the post live in Pierce County and are potential jurors for trials held in that jurisdiction.

Adverse pretrial publicity can create a presumption that jurors in the community cannot be impartial toward a particular case. *State v. Munzanreder*, 199 Wn. App. 162, 180, 398 P.3d 1160 (2017) (citing *Patton v. Yount*, 467 U.S. 1025, 1039, 104 S.Ct. 2885, 81 L.Ed.2d 847 (1984)). In Mr. Broussard's case, the Pierce County Sheriff's Department created a Facebook post that broadcasted information related to his criminal history and inaccurate information about his arrest to a significant portion of the jury pool in Pierce County.

The post was highly inflammatory and provoked harsh public reaction towards Mr. Broussard before his trial had even begun. This misconduct goes far beyond the mismanagement held to constitute reversible misconduct in *Michielli* and *Sherman* and more like the ill-intentioned misconduct *Cory*, *Irby*, and *Granacki*, because it involved a concerted effort to prejudice the potential jury pool. No instruction could cure the sheriff's department post of such

extrajudicial statements on a widely followed social media platform in a small community such as Pierce County.

The Pierce County Sheriff's Facebook post constitutes governmental misconduct and the department's actions caused actual prejudice to Mr. Broussard's right to trial by an impartial jury. The only remedy that will deter the Pierce County Sheriff's Department, and other law enforcement agencies, from committing similar misconduct in the future is dismissal. This court should reverse Mr. Broussard's convictions and order dismissal of the charges pursuant to CrR 8.3(b).

2. THE STATE PRESENTED INSUFFICIENT EVIDENCE TO PROVE THE ELEMENTS OF BURGLARY IN THE SECOND DEGREE BECAUSE IT FAILED TO PROVE THAT MR. BROUSSARD ENTERED MS. MITROVICH'S PROPERTY WITH THE INTENT TO COMMIT A CRIME THEREIN

In a criminal case, the state bears the burden of presenting sufficient evidence to prove every element of the charged crime beyond a reasonable doubt. *State v. Phuong*, 174 Wn. App. 494, 502, 299 P.3d 37 (2013) (citing *Jackson v. Virginia*, 433 U.S. 307, 317-18, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979)). In evaluating the

sufficiency of the evidence in a criminal case, the appellate court must determine “whether any rational fact finder could have found the elements of the crime beyond a reasonable doubt.” *State v. Homan*, 181 Wn.2d 102, 105, 330 P.3d 182 (2014) (citing *State v. Engel*, 166 Wn.2d 572, 576, 210 P.3d 1007 (2009)).

To commit burglary in the second degree, the state must prove beyond a reasonable doubt that the defendant (1) entered or remained unlawfully in a building, (2) that the entering or remaining was done with the intent to commit a crime therein, and (3) the act occurred in Washington. RCW 9A.52.030(1). The state failed to prove beyond a reasonable doubt that Mr. Broussard entered the shed with the intent to commit a crime inside.

The intent to commit a crime may only be inferred if the defendant’s conduct and surrounding circumstances plainly indicate that intent as a matter of logical probability. *State v. Vasquez*, 178 Wn.2d 1, 8, 309 P.3d 318 (2013) (citing *State v. Woods*, 63 Wn. App. 588, 591, 821 P.2d 1235 (1991)). “Intent may not be inferred from evidence that is ‘patently equivocal.’” *Vasquez*, 178 Wn.2d at 8 (quoting *Woods*, 63 Wn. App. at 592).

In *Woods*, the defendant was living outside of his mother’s

home due to tension between them. *Woods*, 63 Wn. App. at 589. The defendant's possessions remained in his mother's house. *Woods*, 63 Wn. App. at 589. On the incident date, the defendant and a friend wanted to take the bus, but the defendant did not have a jacket or money for his fare. *Woods*, 63 Wn. App. at 589-90.

The pair stopped at the defendant's mother's house and kicked in a door to gain access. *Woods*, 63 Wn. App. at 590. The state charged the defendant with burglary in the second degree, and the trial court found him guilty as charged. *Woods*, 63 Wn. App. at 589. The defendant challenged the sufficiency of the state's evidence to prove he intended to commit a crime inside the home on appeal. *Woods*, 63 Wn. App. at 591.

The Court of Appeals reversed the defendant's burglary conviction and remanded for entry of judgment on the lesser included offense of criminal trespass. *Woods*, 63 Wn. App. at 592. The court held that the evidence was "equivocal" and therefore insufficient to prove that the defendant intended to commit a crime inside the house. *Woods*, 63 Wn. App. at 592.

The court cited the fact that there was no evidence showing that he intended to take anything other than his own property once

inside the house as a basis for reversing the defendant's conviction. *Woods*, 63 Wn. App. at 591-92. Because the burglary charge was based on an allegation that the defendant intended to commit theft and theft requires that the defendant wrongfully obtain the property "of another," he could not possibly have intended to commit theft. *Woods*, 63 Wn. App. at 591-92.

Similar to the circumstances analyzed in *Woods*, the only evidence indicating Mr. Broussard's intent is equivocal and insufficient to prove beyond a reasonable doubt that he intended to commit a crime inside the shed. When contacted by Deputy Crawford, Mr. Broussard admitted that he entered the shed to take items but also stated that he thought the shed and property inside had been abandoned. RP 161, 170. A person cannot commit theft of abandoned property because abandonment negates the intent element of that crime. *State v. Wagner-Bennett*, 148 Wn. App. 538, 543, 200 P.3d 739 (2009).

Mr. Broussard's belief that the property was abandoned demonstrates that he did not have the intent to wrongfully obtain Ms. Mitrovich's property and his belief was reasonable in light of the fact that the property had been vacant for several years and the

shed door was frequently left open from previous burglaries. RP 247, 253.

Analogous to *Woods*, the state's evidence that Broussard intended to commit a crime is equivocal. Like *Woods*, Broussard only intended to take what he believed to be abandoned property. The state's evidence suggesting that Mr. Broussard intended to commit a crime inside is insufficient to prove that element of burglary.

When an appellate court reverses for insufficient evidence and the jury was instructed on a lesser included offense, the court may enter judgment on the lesser offense and remand for resentencing on that charge when the jury necessarily found each element of that offense in reaching its verdict. *In re Heidari*, 174 Wn.2d 288, 292-94, 274 P.3d 366 (2012) (citing *State v. Green*, 94 Wn.2d 216, 234, 616 P.2d 628 (1980)).

In this case, the jury necessarily found the elements of criminal trespass in the first degree. To prove the elements of criminal trespass in the first degree, the state must prove that the defendant entered or remained unlawfully in a building. RCW 9A.52.070(1). While the state's evidence does show that Mr.

Broussard entered the shed without license to be there, it fails to prove beyond a reasonable doubt that he did so with the intent to commit a crime. This court should reverse Mr. Broussard's conviction for burglary in the second degree and remand for resentencing on the lesser included offense of criminal trespass in the first degree. *Heidari*, 174 Wn.2d at 292-94.

3. THE STATE PRESENTED INSUFFICIENT EVIDENCE TO PROVE THAT MR. BROUSSARD POSSESSED BURGLARY TOOLS WHEN THE EVIDENCE FAILS TO PROVE BEYOND A REASONABLE DOUBT THAT HE INTENDED TO USE THE TOOLS IN A BURGLARY

To convict a defendant of possessing burglary tools, the state must prove beyond a reasonable doubt that the defendant (1) possessed a tool adapted, designed, or commonly used for the commission of burglary, (2) the defendant's actions were under circumstances evincing an intent to use or employ, or allow the tools to be used or employed, or knowing that the tools were intended to be used or employed, in the commission of a burglary, and (3) the possession occurred in Washington. RCW 9A.52.060(1).

Evidence that shows a defendant possessed tools while

committing a lesser crime, such as theft or trespass, is insufficient to sustain a conviction for possession of burglary tools. *State v. Miller*, 90 Wn. App. 720, 730, 954 P.2d 925 (1998). In *Miller*, the state charged the defendant with theft, burglary and possessing burglary tools for using bolt cutters to steal money out of the coin boxes at a self-serve car wash. *Miller*, 90 Wn. App. at 723.

However, because the car wash was open 24 hours a day and open to the public, the State could not prove unlawful entry. *Miller*, 90 Wn. App. at 725. This court held that the state presented insufficient evidence to prove the elements of burglary and possession of burglary tools based on the evidence presented at trial because the defendant did not enter the car wash unlawfully, thus the defendant did not exhibit the intent to commit burglary and only committed theft. *Miller*, 90 Wn. App. at 730.

Mr. Broussard's case is analogous to *Miller*. While in *Miller* the state could not prove unlawful entry, in Mr. Broussard's case the state failed to prove Mr. Broussard had the intent to commit a crime in the shed. Insufficient evidence of either element precludes the state from proving that Mr. Broussard committed a burglary. *Miller*, 90 Wn. App. at 730. Without the intent to commit a crime

within the shed, Mr. Broussard's actions can only constitute a trespass. *State v. J.P.*, 130 Wn. App. 887, 895, 125 P.3d 215 (2005).

The state's evidence proves that Mr. Broussard was in possession of several tools at the time he was arrested, but it does not show beyond a reasonable doubt that he was carrying them with the intent to use them in a burglary.

Mr. Broussard committed a trespass while carrying a bag of tools. The state failed to prove beyond a reasonable doubt that he intended to use the tools to commit a burglary. Accordingly, this court should vacate Mr. Broussard's conviction and remand to the trial court for dismissal of the charge. *State v. Kirwin*, 166 Wn. App. 659, 670, 271 P.3d 310 (2012) (evidentiary insufficiency entitles the defendant to dismissal of the charge).

D. CONCLUSION

The trial court erred when it found that the prejudice stemming from the Pierce County Sheriff's misconduct could be cured during voir dire when that misconduct implicated Mr. Broussard's right to trial by an impartial jury. Mr. Broussard respectfully requests that this court reverse his convictions and

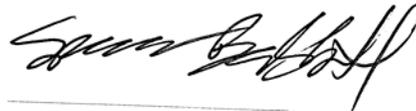
order dismissal of the charges under CrR 8.3(b). Alternatively, the state failed to prove beyond a reasonable doubt the essential elements of burglary in the second degree and possession of burglary tools. Mr. Broussard respectfully requests that this court reverse his convictions and order dismissal of the charges based on insufficient evidence.

DATED this 28th day of February 2020.

Respectfully submitted,



LISE ELLNER, WSBA No. 20955
Attorney for Appellant



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Attorney for Appellant

I, Lise Ellner, a person over the age of 18 years of age, served the Pierce County Prosecutor's Office pcpatcecf@co.pierce.wa.us and Nathaniel Broussard/DOC#857375, Coyote Ridge Corrections Center, PO Box 769, Connell, WA 99326 a true copy of the document to which this certificate is affixed on February 28,2020. Service was made by electronically to the prosecutor and Nathaniel Broussard by depositing in the mails of the United States of America, properly stamped and addressed.

A handwritten signature in blue ink, appearing to read "Lise Ellner", is written over a light blue rectangular background.

Signature

LAW OFFICES OF LISE ELLNER

February 27, 2020 - 8:24 PM

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