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Court of Appeals No. 53677-3-II

In the  
Court of Appeals for the State of Washington  
Division Two

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STATE OF WASHINGTON,

Respondent,

v.

DAVID ROBERT VIGIL,

Appellant

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**APPELLANT'S REPLY TO BRIEF OF RESPONDENT**

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Appeal From Pierce County Superior Court No. 18-1-00505-3

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## I. IDENTITY OF APPELLANT

The appellant is David Vigil, the defendant in Pierce County Superior Court Case Number 18-1-00505-3.

## II. ARGUMENT

### A. Cumulative Error Warrants Reversal

When determining whether Mr. Vigil was denied a right to a fair trial under the cumulative error doctrine the question for this court is whether, under the totality of the circumstances, a combination of errors substantially prejudiced Mr. Vigil and denied him a fair trial. Even if the individual errors do not result in prejudice, their combined prejudice does. *State v. Venegas*, 155 Wn. App. 507, 228 P.3d 813 (2010); *State v. Salas*, 1 Wn. App. 2d 931, 952, 408 P.3d 383, *review denied*, 190 Wn.2d 1016, 415 P.3d 1200 (2018); *State v. Coe*, 101 Wn.2d 772, 788-89, 684 P.2d 668 (1984).

As discussed in Appellant's Opening Brief, when the trial court excluded the prior sexual conduct evidence, the trial court abused its discretion. Appellant's Opening Brief, p. 19-38.

Because the trial court's decision was contrary to law, it abused its discretion and committed error. *See State v. McBride*, 192 Wn. App. 859, 873, 370 P.3d 982 (2016). Further, the prosecutor's flagrant and ill-intentioned injection of personal opinion as to Mr. Vigil's credibility constituted a second error, warranting reversal. Appellant's Opening Brief, p. 40-47. *See State v. Alexander*, 64 Wn. App. 147, 155-56, 822 P.2d 1250 (1992) (prosecutor's improper remarks that "the defendant did it" constituted flagrant and ill-intentioned misconduct). Finally, it is Mr. Vigil's position that the trial court erred in making certain findings of fact. Appellant's Opening Brief, p. 38-40.

Even if these errors were not reversible by themselves, Mr. Vigil contends that they require reversal when considered together. *State v. Perrett*, 86 Wn. App. 312, 322, 936 P.2d 426 (1997) ("An accumulation of non-reversible errors may deny a defendant a fair trial"). Mr. Vigil was denied his right to a fair trial not only by the individual errors, but also by the cumulative effect of the errors and this Court should reverse his conviction and remand for a new trial.

### III. CONCLUSION

For the foregoing reasons, Mr. Vigil respectfully requests this Court grant the reverse his conviction and sentence, and remand for a new trial.

Respectfully submitted this 22nd day of September,  
2020

THE APPELLATE LAW FIRM

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\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I, Corey Parker, certify under penalty of perjury under the laws of the United States and of the State of Washington that on September 22, 2020, I caused to be served the document to which this is attached to the parties listed below in the manner shown next to their names

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/s/ Corey Evan Parker

Corey Evan Parker

**THE APPELLATE LAW FIRM**

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**Transmittal Information**

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