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NO. 35665-5-III

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

STATE OF WASHINGTON,

Respondent,

v.

TAMMIE ELLIOTT,

Appellant.

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

The Honorable Scott Gallina, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. Appellant was denied a fair trial when multiple prosecution witnesses expressed their opinions that she was guilty.

2. To the extent these errors were not entirely preserved for appeal, defense counsel was ineffective by failing to lodge adequate objections.

Issues Pertaining to Assignments of Error

1. Witnesses must never offer an opinion, even by inference, as to a defendant's guilt. The primary disputed issue at trial was whether, on the one hand, appellant possessed the requisite knowledge and intent required to commit the charged crimes or, on the other, was merely an unwitting and innocent participant in events. Multiple prosecution witnesses testified that appellant was the former and not the latter. Did this improper testimony deny appellant her constitutional right to a fair and impartial jury trial?

2. Defense counsel's objections to the offending evidence could have been more frequent and consistent. Assuming this waived any of the errors for appeal, did this deny appellant her constitutional right to effective representation?

B. STATEMENT OF THE CASE

The Asotin County Prosecutor's Office charged Tammie Elliott with Theft in the Second Degree and Money Laundering in connection with a series of fraudulent financial transactions, targeting Warlenda and Joseph McClair, between February 1 and April 1, 2016. CP 1-2.

The McClairs live in Toledo, Ohio. RP 51-52. In March of 2016, they received a message, on Mrs. McClair's email account, indicating that an individual had died and left her a substantial sum of money. RP 53-54. The deceased was identified as "Schwartz Neumann" and the email was sent from the United Kingdom by a person claiming to be "Herbert Smith." RP 54; exhibit P1.

In the months that followed, Mr. McClair responded to several more emails on the subject sent by "Lain MacKay," who identified himself as Finance Director at HSBC Bank in London and indicated the McClairs were required to make certain payments before they could collect from Mr. Neumann's estate. RP 7-8, 55-56, 64-65; exhibits P2-P4, P8, P10. Mr. McClair was instructed to make some of these payments electronically, via MoneyGram, sent to Tammie Elliott, HSBC's agent. RP 8, 57-58, 66.

Mr. McClair never had any direct contact with Elliott, but he

did as instructed, sending payments of \$350.00, \$300.00, and \$630.00. RP 58, 66; exhibits P5-P7. Using a reference number assigned to each money order, and providing photo identification, Elliott received these funds at a Clarkston Walmart. RP 71-74; exhibits P5-P7.

Despite their payments, the McClairs received no money from the Neumann estate. RP 59. In July 2016, Mr. McClair contacted the Lewiston Police Department to report that he and his wife had been victims of a scam. RP 76-77. Once it was determined that the funds had been received in Clarkston, the case was referred to Detective Sergeant Bryon Denny of the Clarkston Police Department. RP 5-7, 77-78.

Detective Denny contacted Elliott at her Lewiston home, and she invited him in. RP 8-9. Denny asked Elliott if she had received any money orders from the McClairs and she said she had not. RP 9, 15-16. Denny showed her three money orders and their receipts listing her as the recipient of the funds. RP 9. He also informed her that funds can only be retrieved by the person named on the money order. RP 9-10. After looking at the documents, Elliott indicated she had in fact received money from these orders, a friend had asked her to do so, and she sent the cash on to that friend. RP 10. She

identified the friend as Collins King, whom she had met on Facebook, and told Denny that he lived in South Africa. RP 10-11. Denny told her she had participated in a scam, that she should not accept any more money from anyone, and that he would submit his report to prosecutors. RP 12-13. Elliott indicated she did not know it had been a scam. RP 17.

To help bolster its case that Elliott knew she had been committing a crime, the State called several law enforcement officers to testify about prior scams with which Elliott had been associated.

Lewiston Police Sergeant Rick Fuentes testified that, in June 2010, he received a call from police in Santa Cruz, California regarding a scam in which money had been sent to secure a rental property posted on Craigslist that the scammers had no authority to rent. RP 34-38. That money was sent from California to Lewiston, and the individual who cashed the money order in Lewiston was Tammie Elliott, whose name appeared on the Craigslist ad. RP 36-37. Sergeant Fuentes learned that Elliott frequently cashed money orders at a local grocery store. RP 38-39. Fuentes met with Elliott, who explained that she would cash money orders related to the ad, take a little bit of cash for herself, and then send the balance to her fiancé – David Atkins, whom she had met online and who lived in

Nigeria. RP 40-41. She seemed surprised to learn she had been participating in a scam and indicated she had thought the transactions legitimate. RP 40. Sergeant Fuentes told her this was definitely a scam and she should no longer participate in money order transactions. RP 38, 41. Elliott was upset. RP 42, 45-46. According to Fuentes, Elliott later told him she had confronted Atkins about the scam and, because she could no longer trust him, their relationship was in jeopardy. RP 42.

Asotin County Sheriff's Detective Jackie Nichols testified that she responded to a complaint, in December 2011, regarding a fraudulent scheme involving a victim in Akron, Ohio. RP 86-87. The victim had advertised his services working on computers. He was contacted, hired, and sent a check for a sum substantially greater than his fee. He was then asked to deposit the check, retain his fee, and send the balance (about \$2000) to Tammie Elliott in Clarkston, Washington. RP 87. He did so, and the check he had been provided then bounced, leaving him liable for the amount he had forwarded to Elliott. RP 87. When contacted, Elliott indicated she had handled the transaction as a favor to a friend, Collins King, who lived in Africa. RP 89. There was no indication Elliott had direct communications with the victim; communications were handled by a

third party. RP 94-95. According to Nichols, Elliott seemed unaware she was participating in a crime until the criminal scheme was explained to her, and she promised to end her activities. RP 90. Detective Nichols subsequently sent Elliott a letter indicating she appeared to be an unwitting participant and confirming she would no longer take part in these transactions. RP 90-91; exhibit P9.

Asotin County Sheriff's Deputy Michael Babino testified that, while still an officer with the Clarkston Police Department in 2012, his office was contacted by Elliott, who wished to speak with someone about the possibility she had unwittingly been involved in fraudulent activity. RP 21-23. Elliott explained that she had received a money order from Cedar Falls, Iowa, obtained the funds, and then sent them to "Colin W. King" in Africa. RP 23. When Babino told Elliott she was most likely involved in some sort of scam, it seemed to Babino that Elliott had an "epiphany" and realized this was the case. RP 24. Deputy Babino warned her against befriending people outside the United States and sending them money, which could expose her to criminal charges. RP 24-25. Later that same day, Babino learned that Cedar Falls police had called to alert his office to a different scam in which Elliott may have had some involvement. RP 26-27.

Elliott testified in her own defense. RP 133. She described meeting Collins King online in 2010 and how their friendship developed thereafter. RP 135-136. King, originally from Ohio, was in Lagos, Nigeria – building a church – and unable to return to the U.S. because of issues with his visa. RP 136-137. Within a few months, King was asking Elliott for money to buy groceries, and Elliott wired him funds from her own savings. RP 135-136.

David Adkins,¹ mentioned in Officer Fuentes's 2010 report, was someone with whom Elliott was communicating around the same time, but she learned he was a scammer and quickly ended all contact. RP 137-138, 140-141. Elliott denied ever being engaged to him or indicating to Fuentes that she was engaged to him and was at a loss how his report could have strayed so far from the facts. RP 137-138. She also denied that Adkins ever asked her to send him money. RP 138.

Collins King, on the other hand, repeatedly asked Elliott to send him money for various expenses and she complied. RP 138-139. When she confronted King – after speaking to law enforcement in 2010 about possibly being involved in a scam – King reassured her that he would never put her in legal jeopardy, and Elliott believed

him. RP 139-140. The two grew closer, began discussing a future together, and Elliott's daughter began calling King "Daddy Collins." RP 140, 146.

Elliott, who is disabled and was having difficulty paying her bills, eventually told King she could not continue sending him money. RP 141. King then suggested that a friend of his could send Elliott money, she could take a small amount to help with her expenses, and she could then send the balance to him. RP 141. Elliott began doing this for King probably sometime in 2012. RP 142. King would text her with the pertinent information regarding a money order and tell her how much she could take out for herself. RP 142-144. King's explanations for the transactions reassured her. RP 144.

Eventually, however, around spring of 2015, Elliott told King she no longer wanted to participate, and he began to threaten and harass her. RP 145, 148-151. Elliott became frightened for herself and for her daughter. RP 151-154. King continued to pressure Elliott to help him with the financial transactions, and Elliott eventually relented, cashing the money orders from Mr. McClair, which led to the current charges. RP 154-156. Elliott explained that King had convinced her that helping him was okay despite law

¹ The vrp refers both to David "Atkins" and David "Adkins"

enforcement's warnings. RP 156.

Two people who had long known Elliott, one since high school in the late 1970s, testified to her honesty and good reputation in the community and supported her claim that she was threatened in 2015 when she decided to no longer assist King. RP 98-106, 109-120, 125, 130-131.

During the State's case, the deputy prosecutor revealed a habit of consistently asking each of his witnesses for an opinion on Elliott's guilt.

While questioning Sergeant Denny, who investigated the current charges for the Clarkston Police Department, and after having Denny describe his investigation, the following exchange took place:

Q: Then what did you do?

A: After finishing up talking to her I told her that this report would be submitted to the prosecutor's office, I told her this was a scam and – not take any more money from anyone.

Q: Did you – did you make mention about the fact that she had previously been contacted on a similar scam?

A: Yes.

Q: What did you tell her about that?

A: Told her all these previous ones were scams.

Q: At that time did you have any doubt in your mind as to whether or not Ms. Elliott was an active participant in a criminal enterprise?

Defense: Objection. Calls for speculation.

Prosecutor: No, it doesn't. It's his state of mind. I can ask it a different way.

Court: Please do.

Q: Sgt. Denny, you referred this to prosecution for criminal charges?

A: That's correct.

Q: In so doing did you fill out a sworn statement as to your belief – probable cause?

A: Yes.

Q: What was your statement of probable cause? What did you believe – probable cause to support?

A: That she had committed the crime of theft.

Q: And – you had probable cause based on your investigation –

A: Correct.

Q: -- that point?

RP 12-13 (emphasis added).

The prosecutor also sought opinion evidence from the next

witness, Deputy Babino, who had contacted Elliott in 2012 regarding the money sent from Cedar Falls, Iowa. Having testified that Elliott expressed surprise upon learning she had been involved in a scam, and that he subsequently learned his office had received information concerning Elliott's possible involvement in a second Iowa scam, the following exchange took place:

Q: Based on the information you were provided about the other Cedar Falls, Iowa scam do you have an opinion as to why she contacted law enforcement?

Defense: Objection.

A: I do.

Court: Hold up.

Defense: Calling for an opinion – It's calling for speculation, your Honor.

Court: [largely inaudible]

Q: After you found out the information about this other Cedar Falls scam did your assessment of Ms. Elliott's surprise change[?]

A: It didn't seem very genuine.

Prosecutor: Thank you. I have no further questions, then.

RP 32-33 (emphasis added).

The prosecutor maintained this strategy with Sergeant

Fuentes, who had investigated the fraudulent California Craigslist rental in 2010:

Q: Ultimately – did you ask that this be sent up for charges?

A: Based on my conversation with her and this investigation I did not at the time.

Q: Why not?

A: I felt at the time possibly she was a victim of this Nigerian scam, based on the information that I had at the time, thinking she was getting taken advantage of.

Q: You say based on the information you had at the time.

A: That's correct.

Q: Has your position on her involvement changed since 2010[?]

A: Absolutely.

Defense: Objection. Calls for – I'm sorry.
Lack of foundation, opinion
testimony.

Q: Officer, have you been provided with information about Ms. Elliott's involvement in other similar scams[?]

A: Yes, I have.

Q: Based on that information and based on your contact with her back in 2010, that opinion that you expressed that she was an unwitting participant, has that opinion changed?

A: Absolutely, I believe – there's no doubt – Based on my investigation and the information that was brought to me that she is a willing participant in scamming people out of money and sending it to whoever.

Prosecutor: Thank you. No further questions.

RP 43 (emphasis added). And, on redirect, the following exchange took place with Fuentes:

Q: [Defense counsel] asked you about – in your experience and that sometimes innocent folks get swept up into the scam. Is Ms. Elliott one of those?

A: I don't believe so.

Q: You said something in response to [counsel's] question about maybe initially they might now know, but when it goes on for a while you had a different opinion about whether or not people know they're being – they're participating in a criminal scam.

A: That's correct.

Q: frequency –

A: Oh. Yeah. Maybe an initial contact, maybe one or two money orders, but when it includes numerous money orders and over a seven-year period that I am aware of – This obviously could have been taking place – much before – there's no doubt that she knew exactly what was taking place in this incident.

RP 47-48 (emphasis added).

Similarly, on direct examination of Detective Nichols, who investigated the 2011 incident involving the individual advertising computer work in Ohio, the prosecutor elicited an opinion on guilt:

Q: At the time you investigated this fraud in – in December of 2011, did you form a belief as to whether or not Ms. Elliott was aware that it was criminal – prior to your contact[?]

Defense: I'm going to object on the opinion testimony, your Honor. The matter – it's a province for the jury, I think.

Court (off mic): (Inaudible).

Q: Are you aware of other investigations involving Ms. Elliott[?]

A: Yes.

Q: What do you know about the other investigations[?]

A: I'm aware that after my contact with her there continued to be similar types of crimes being committed by Ms. Elliott.

RP 91-92 (emphasis added).

And, on redirect of Detective Nichols, the prosecutor again sought her current opinion on Elliott's guilt:

Q: You just told [defense counsel] that you didn't know whether – or that you had reason to doubt whether [Elliott] knew it was a crime in 2011. Is that true?

A: Right.

Q: Do you still harbor that doubt?

A: No.

Defense: I'm going to object to -- to the characterization of the testimony and the questioning. I don't think the issue of her opinion ever came up in my cross examination.

Prosecutor: She did testify that she doubted, or had reason to doubt back in 2011.

Court: -- was not sure whether or not she knew it was a crime is what she (inaudible).

Witness: Right.

Q: What -- what is your sense of her knowledge at this time.

Defense: I'm going to renew my objection on the province of the jury --

Prosecutor: I'll withdraw the question --

Court: -- sustain the objection.

RP 96.

The prosecutor even tried to get the alleged victim, Mr.

McClair, to weigh in on this subject:

Q: If -- if the only time -- the only time she got involved in a scam like this was when she ripped off you and your wife, would you think

maybe she didn't really know what was going on?

Defense: I'm going to object, your Honor.
Calls for an opinion.

Court: I'm going to sustain that.

RP 62.

During closing arguments, the defense argued that, not only were the McClairs victimized, so was Elliott, who was gullible, manipulated, convinced by Collins King's reassurances, and swept up in his criminal scheme. RP 226-229, 233-234. Counsel argued the State had failed to prove beyond a reasonable doubt that Elliott had the requisite criminal intent or knowledge or that she had ever personally deceived the McClairs, with whom she never had any direct contact. RP 230-233.

In contrast, the State argued that Elliott was a voluntary and knowing participant in the scheme to take the McClairs' money and, even if her initial participation in such schemes (years ago) involved innocent mistakes, she knew what she was doing by the time of these 2016 offenses. RP 205, 209-210, 234-237. The prosecutor reviewed each of the earlier schemes, RP 205-211, and expressly reminded jurors of Sergeant Fuentes's opinion that he now believes Elliott is a knowing participant in scamming people out of their

money. RP 208.

The jury convicted Elliott as charged, the court imposed a first-time offender waiver, and Elliott timely filed her Notice of Appeal. CP 50, 69, 77-86.

C. ARGUMENT

MULTIPLE PROSECUTION WITNESSES EXPRESSED IMPROPER OPINIONS ON APPELLANT'S GUILT, THEREBY DENYING HER A FAIR TRIAL.

The prosecutor handling Elliott's case repeatedly asked witnesses to express for jurors their thoughts on Elliott's guilt. The most blatant example involved Sergeant Fuentes, who was asked – considering information he had been provided regarding scams like the one he investigated in 2010 – whether his opinion that she was an unwitting participant had changed. He responded, “Absolutely, I believe – there's no doubt – Based on my investigation and information that was brought to me that she is a willing participant in scamming people out of money and sending it to whoever.” RP 43. Similarly, on redirect, Fuentes testified, “there's no doubt she knew exactly what was taking place in this incident.” RP 48.

Yet Fuentes's opinion testimony does not stand in isolation. In response to questions from the trial deputy, Sergeant Denny testified to his sworn belief that there was probable cause supporting

Elliott's guilt on the current theft charge [RP 13];² Deputy Babino testified that Elliott's prior surprise that she had been involved in a scam "didn't seem very genuine" [RP 33]; and Detective Nichols made it clear she no longer harbored a doubt Elliott knew she was involved in criminal activities [RP 91-92, 96].

"No witness, lay or expert, may testify to his opinion as to the guilt of a defendant, whether by direct statement or inference." State v. Black, 109 Wn.2d 336, 348, 745 P.2d 12 (1987). This prohibition stems from the Sixth Amendment to the United States Constitution and article 1, § 22 of the Washington Constitution, which guarantee the right to a fair trial before an impartial trier of fact. A witness's opinion as to the defendant's guilt, even by mere inference, violates

² In dicta, Division Two has indicated that stating the obvious – for example, an officer testifying he arrested the defendant because he had probable cause to believe the defendant committed an offense – is not an improper opinion on guilt. See State v. Sutherby, 138 Wn. App. 609, 617, 158 P.3d 91 (2007), aff'd on other grounds, 165 Wn.2d 870, 204 P.3d 916 (2009). The United States Supreme Court has warned against using such information as evidence of a defendant's guilt. See Holbrook v. Flynn, 475 U.S. 560, 567, 106 S. Ct. 1340, 89 L. Ed. 2d 525 (1986) (citing Taylor v. Kentucky, 436 U.S. 478, 485, 98 S. Ct. 1930, 56 L. Ed. 2d 468 (1978)). In any event, Sergeant Denny's testimony went further than the hypothetical scenario in Sutherby – revealing he had filled out a sworn statement (presumably subjecting him to perjury charges) stating his belief that Elliott had committed theft and referring the matter to prosecutors for the filing of

this right by invading the province of the jury. State v. Quaale, 182 Wn.2d 191, 199, 340 P.3d 213 (2014); State v. Demery, 144 Wn.2d 753, 759, 30 P.3d 1278 (2001); State v. Thompson, 90 Wn. App. 41, 46, 950 P.2d 977, review denied, 136 Wn.2d 1002, 966 P.2d 902 (1998).

In determining whether testimony is impermissible, trial courts consider the circumstances of the case, including the following factors: “(1) ‘the type of witness involved,’ (2) ‘the specific nature of the testimony,’ (3) ‘the nature of the charges,’ (4) ‘the type of defense, and’ (5) ‘the other evidence before the trier of fact.’” State v. Montgomery, 163 Wn.2d 577, 591, 183 P.3d 267 (2008) (quoting Demery, 144 Wn.2d at 759).

Here, the witnesses were law enforcement officers, meaning their testimony carried an “aura of reliability” with jurors. Montgomery, 163 Wn.2d at 595 (quoting Demery, 144 Wn.2d at 765). The nature of the testimony was that several officers – including the police sergeant who investigated the current charges – made clear their professional opinions that Elliott knew precisely what she was doing and was guilty as charged. These improper opinions were critical because Elliott’s knowledge and intent were

criminal charges.

very much in dispute. The theft charge required proof that Elliott wrongfully and intentionally deprived the McClairs of their money or that she knowingly assisted another in doing so. RP 221-224; CP 43-47. And the money laundering charge required proof that she knew the money was proceeds of theft or knew the transactions were designed to be deceptive. RP 224-226; CP 48.

The improper opinions went to the core issue in the case – whether Elliott was an unwitting participant, earnestly convinced by King of the legality of her actions, or, instead, a knowing and intentional participant with a major role in a criminal scheme to defraud the McClairs. The State acknowledged this as the main issue for jurors to decide. RP 227 (“And that’s where this case turns. When did she know, and what did she know[?]”); RP 220 (asking jurors if it made sense that Elliott did not know); RP 223 (noting case turned on what Elliott knew).

As a constitutional error, the State bears the burden of demonstrating that the improper opinions on Elliott’s guilt – presumed prejudicial – were harmless beyond a reasonable doubt. Quaale, 182 Wn.2d at 201-202; State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020, 106 S. Ct. 1208, 89 L. Ed. 2d 321 (1986). In a case where Elliott denied

knowing and intentional participation in the charged crimes, and the improper opinions went to the core disputed issues, the State cannot make this showing.

This Court may note that some of defense counsel's objections to the comments on Elliott's guilt were not as precise or frequent as they could have been.³ The issue is still properly raised, however, under RAP 2.5(a)(3) because it is a "manifest error affecting a constitutional right." RAP 2.5(a)(3) requires some "plausible showing by the defendant that the asserted error had practical and identifiable consequences in the trial of the case." State v. Kirkman, 159 Wn.2d 918, 935, 155 P.3d 125 (2007) (quoting State v. WWJ Corp., 138 Wn.2d 595, 603, 980 P.2d 1257 (1990)). In the context of improper opinions, this requires "an explicit or almost explicit witness statement on an ultimate issue of fact." Id. at 936 (citing WWJ Corp., 138 Wn.2d at 603). This standard is met.

³ For example, when the prosecutor asked Detective Denny to share his opinion on Elliott's guilt, defense counsel objected because it "calls for speculation." RP 13. When the prosecutor subsequently had Denny testify that, as a result of his investigation he believed probable cause supported "that she had committed the crime of theft," there was no objection. RP 13. And, during the testimony of Sgt. Fuentes, defense counsel initially objected to the prosecutor's question designed to elicit an opinion on guilt based on lack of foundation and because it called for an improper opinion. RP 43. The trial judge did not rule. Instead, the prosecutor simply used different language to obtain that same opinion and, this time, there was no defense objection. RP 43. Nor was there a defense objection when the prosecutor elicited similar testimony on redirect. RP 47-48.

The Supreme Court has sometimes declined to find opinion testimony manifestly prejudicial because it presumed jurors followed instructions telling them they were the sole judges of credibility and not bound by an expert's opinion. See Montgomery, 163 Wn.2d at 595-596; Kirkman, 159 Wn.2d at 937. But not every case is identical. Elliott's jurors also were told they were the sole judges of credibility and how much weight to give the testimony of each witness. See CP 38. But neither this instruction, nor any other, prohibited jurors from adopting the recurring opinions of experienced law enforcement officers that Elliott was guilty as charged. Their sheer repetition – and the prosecutor's reminder during closing argument – made it highly unlikely jurors would simply ignore them.

Alternatively, were this Court to find defense counsel's objections insufficient to preserve all of Elliott's challenges on appeal, and RAP 2.5(a)(3) not satisfied, it should address the issues under the rubric of ineffective assistance of counsel.

Both the federal and state constitutions guarantee the right to effective representation. U.S. Const. Amend. VI; Wash. Const. art. 1, § 22. A defendant is denied this right when his or her attorney's conduct (1) falls below a minimum objective standard of reasonable

attorney conduct, and (2) there is a probability that the outcome would be different but for the attorney's conduct. Strickland v. Washington, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Benn, 120 Wn.2d 631, 663, 845 P.2d 289, cert. denied, 510 U.S. 944, 114 S. Ct. 382, 126 L. Ed. 2d 331 (1993).

A defendant claiming ineffective assistance based on counsel's failure to object to the admission of evidence must show (1) an absence of legitimate tactical reasons for failing to object; (2) that an objection to the evidence would likely have been sustained; and (3) that the result of the trial would have been different had the evidence not been admitted. State v. Saunders, 91 Wn. App. 575, 578, 958 P.2d 364 (1998). All three requirements are met.

There could be no legitimate tactic behind counsel's failure to adequately object to opinions Elliott was guilty. Indeed, defense counsel's objections to these opinions were sometimes sustained. See RP 50, 62, 96. Additional satisfactory objections might have kept the evidence out. Minimally, they would have preserved all adverse rulings for appeal. Finally, as already discussed, in the absence of the offending opinion evidence, it is reasonably likely the outcome would have differed given the disputed issues below.

Whether based on defense counsel's objections, manifest constitutional error, or ineffective assistance of counsel, the improper opinions on guilt require a new trial.

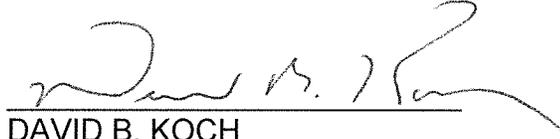
D. CONCLUSION

Improper opinions that Elliott was guilty denied her a fair trial. To the extent defense counsel waived for appeal any of the issues or arguments surrounding these claims, Elliott was denied her constitutional right to effective representation. Her convictions should be reversed, and the case remanded for a new and fair trial.

DATED this 9th day of February, 2018.

Respectfully submitted,

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