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

STATE OF WASHINGTON,
Respondent,
v.
GREGG A. LOUGHBOM,
Appellant.

REPLY BRIEF OF APPELLANT

Appeal From Lincoln County Superior Court No. 17-1-00028-8

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I. ARGUMENT

A. MR. LOUGHBOM IS ENTITLED TO A NEW TRIAL DUE TO MULTIPLE INSTANCES OF PROSECUTORIAL MISCONDUCT.

1. Mr. Loughbom's Convictions are Tainted by the Prosecution's Improper Invocation of the "War on Drugs".

Gregg A. Loughbom ("Mr. Loughbom") argued in his Opening Brief that the State's repeated invocation to the "war on drugs" was "flagrant and highly prejudicial," depriving Mr. Loughbom of a fair trial. In response, the State argues essentially that these comments were not prejudicial, flagrant, or ill-intentioned because the prosecutor "was simply establishing a context and 'flow' to his statements and arguments." State's Resp. Br. at 12.

In arguing that the State's "war on drugs" narrative, which was incorporated into the State's voir dire, opening argument, presentation of evidence, closing argument, and rebuttal, violated Mr. Loughbom's right to a fair trial, Mr. Loughbom relied primarily on the Washington Court of Appeals decision in State v. Echevarria, 71 Wash. App. 595, 598-99, 860 P.2d 420, 422 (1993). In Echevarria, the Court of Appeals held that the prosecutor's references to the "war on drugs" constituted "flagrant and highly prejudicial," warranting a new trial, despite no contemporaneous objection from defense counsel. Id. The improper "war on drugs" arguments requiring reversal in Echevarria were

substantially similar to the prosecution's "war on drugs" narrative in Mr. Loughbom's case.

Remarkably, the State does not even cite Echevarria in its Brief, much less attempt to distinguish the improper comments at issue in that case from those the prosecutor made in Mr. Loughbom's trial. The reason for this glaring omission is clear – Echevarria is not materially distinguishable from this case and mandates the same result here.

In Echevarria, the improper comments, which the Court of Appeals held to be flagrant and ill-intentioned, were telling the jury in opening argument that the trial was a part of the "war on drugs," that there is a "battlefield" in our neighborhoods, and that low-level drug dealers such as the defendant in that case were "the 'enlisted men or the recruits' who become involved in drugs 'for the power or the money or the greed or peer pressure'". 71 Wash. App. at 598-99.

In Mr. Loughbom's case, the prosecutor asked the prospective jurors if they believed Lincoln County had a drug problem in voir dire, VRP 52-53, began opening argument by stating "[t]he case before you today represents yet another battle in the ongoing war on drugs throughout our state and throughout our nation as a whole," VRP 87:7-9, elicited testimony from a detective that informants "want to change or help fight the drug problem that we have in our county" VRP 103:23-25,

repeated in closing that Mr. Loughbom's case was another battle in the "war on drugs," NRP 183:4-6, and stated again in rebuttal that law enforcement often has to engage with unsavory characters to use as informants in order to "complete these transactions as they go forward in the, like I said, the ongoing war on drugs in this community and across the nation." VRP 168:17-19 (emphasis added).

There is no material distinction to be made between the flagrant and ill-intentioned statements made in Echeverria and those in Mr. Loughbom's case. If anything, the repeated comments in Mr. Loughbom's case are more egregious than those at issue in Echevarria. The State's attempts to characterize the statements in this case as merely providing context and background provide no justification and in no way distinguish the improper comments in Mr. Loughbom's case from those in Echevarria. As in Echevarria, the prosecutor's repeated references to the "war on drugs" and the "drug problem" were "a blatant invitation to the jury to convict the defendant, not on basis of the evidence, but, rather, on the basis of fear and repudiation of drug dealers in general." Id. at 598-99. Because there is no basis for distinguishing Echevarria, this Court should likewise hold that the prosecutor's comments were flagrant and ill-intentioned and deprived Mr. Loughbom of his right to a fair trial.

Instead of seeking to distinguish Echevarria, the State ignores this directly on-point Washington Court of Appeals decision and instead attempts to synthesize a rule from a selection of other cases, arguing that misconduct occurs only when the prosecutor explicitly, rather than implicitly, invites the jury “to substitute their emotion for evidence.” State’s Resp. Br. at 13-14 (citing United States v. Beasley, 2 F.3d 1551 (11th Cir. 1993); United States v. Johnson, 968 F.2d 768 (8th Cir. 1992); United States v. Barlin, 686 F.2d 81 (2d Cir. 1982); United States v. Hawkins, 193 U.S. App. D.C. 366, 595 F.2d 751 (D.C. Cir. 1978) cert. denied, 441 U.S. 910, 99 S. Ct. 2005, 60 L. Ed. 2d 380 (1979)). While some of the cases finding prosecutorial misconduct involved more overt invitations to convict on the basis of emotion, Echevarria did not. Furthermore, one of the cases the State cites, ostensibly in support of its contention that misconduct only occurs when the plea to convict on the basis of emotion is explicit, in fact expressly rejects the State’s position. The court in Hawkins held instead that prosecutors are not “at liberty to substitute emotion for evidence by equating, *directly or by innuendo*, a verdict of guilty to a blow against the drug problem.” Hawkins, 193 U.S. App. D.C. 366, 595 F.2d 751.

The cases wherein the federal courts found misconduct for explicitly inviting the jury to strike “a blow against the drug problem,”

by no means set a baseline for reversal, as suggested by the State. See State's Resp. Br. at 13-14. The fact that some convictions were reversed on the basis of "war on drugs" arguments arguably more egregious than those present in Mr. Loughbom's case provides no support for the proposition that the prosecutor's arguments here fall short of necessitating reversal. Indeed, the State fails to cite a single case upholding a conviction where the prosecution attempts to place the case in the broader context of the war on drugs. See State's Resp. Br. at 7-15.

In addition to failing to distinguish Echevarria and related federal jurisprudence, or provide authority in support of its position, the State also presents an unreasonable "divide and conquer" analysis, isolating each of the State's multiple references to the "war on drugs" and "drug problems," and arguing that each reference, individually, was not flagrant and ill-intentioned. State's Resp. Br. at 9-13. The State's argument ignores, however, the cumulative impact of the prosecution's repeated reference to this irrelevant and highly prejudicial topic.

While a single, isolated, reference to the "war on drugs" in the middle of argument may be insufficiently flagrant and ill-intentioned to warrant remand for a new trial, where, as here, the prosecutor frames the case in those terms from the outset and maintains that narrative throughout the proceedings, the defendant is deprived of a fair trial. See

Echevarria, 71 Wash. App. at 598-99. The prosecution did not simply make an isolated comment about the “war on drugs,” but rather framed the entire case in that context, referencing the broader national battle with drugs in voir dire, in the first sentence of opening argument, during presentation of evidence, in closing, *and* in rebuttal.

The State nonetheless tries to justify these comments by arguing they “were a means of establishing the context for the subject matter being discussed at the time”, and that drug prosecutions such as Mr. Loughbom’s are “inescapably linked to a greater context of drug enforcement, which is also referred to as the ‘war on drugs.’” State’s Resp. Br. at 11-12. In other words, the State concedes that the prosecutor was trying to frame Mr. Loughbom’s case within the broader context of the “war on drugs”. This is precisely the flagrantly prejudicial tactic condemned and mandating reversal in Echevarria and the litany of federal cases cited in Mr. Loughbom’s Opening Brief.

For the foregoing reasons, the State provides no compelling reason for reaching a different result here than that reached in Echevarria. It is therefore respectfully requested that the Court reverse Mr. Loughbom’s convictions in light of the prosecution’s improper repeated statements regarding the broader “war on drugs.”

2. Mr. Loughbom's Convictions are Tainted by the Prosecution's Improper Reference to Mr. Loughbom's Silence at Trial.

Mr. Loughbom argued in his opening Brief that the prosecutor committed further misconduct by telling the jury in rebuttal that “Gregg Loughbom didn’t deny anything. He didn’t testify and there was no evidence that he ever denied -- no evidence presented that he ever denied anything.” VRP 170:7-9. In response, the State argues that this assertion “was not a ‘comment’ on the Defendant’s silence.” State’s Resp. Br. at 16-17 (citing State v. Lewis, 130 Wn.2d 700, 706, 927 P.2d 235 (1996)). The purported basis for this assertion is the State’s claim that the prosecutor “was simply rebutting the false claims of the Defense Counsel” and was not suggesting to the jury that Mr. Loughbom’s silence was an admission of guilt. State’s Resp. Br. at 17. However, neither assertion is a correct or reasonable interpretation of the prosecutor’s comments.

a. The State fails to support its argument with applicable authority.

First, the State fails to provide apposite authority in support of its assertion that the prosecutor’s comments were appropriate because they were made in response to defense counsel’s closing. See State’s Resp. Br. at 18-19. None of the cases upon which the State relies address a

situation where, as here, a prosecutor commented on a defendant's silence at trial in closing or rebuttal.

In Harris v. New York, the defendant testified and was impeached with prior inconsistent statements. 401 U.S. 222, 91 S. Ct. 643 (1971). The Court held that although the prior statements were obtained in violation of his Fifth Amendment rights under Miranda, the statements were nonetheless admissible for impeachment purposes. Id. (citing Miranda v Arizona, 384 US 436, 16 L.Ed 2d 694, 86 S Ct 1602 (1966)). In reaching this holding, the Court reasoned that, while a defendant has the right to testify or refuse to do so, when he “voluntarily taken the stand,” he is subject to “the traditional truth-testing devices of the adversary process.” Id. at 225; see also Fletcher v. Weir, 455 U.S. 603, 607, 102 S. Ct. 1309 (1982) (allowing use of post-arrest silence to impeach a *testifying* defendant, but saying nothing about commenting on a defendant's exercise of the right to not testify at trial); Jenkins v. Anderson, 447 U.S. 231, 236-237, 100 S. Ct. 2124 (1980) (allowing the prosecutor to allude to the defendant's prearrest silence when the defendant testified at trial); Raffel v. United States, 271 U.S. 494, 497, 46 S. Ct. 566 (1926) (allowing the prosecution to impeach a defendant who testified at his second trial with the fact of his silence at the first trial).

The principle applied in each of these cases upon which the State relies is the principle that “[t]he immunity from giving testimony is one which the defendant may waive by offering himself as a witness.” Raffel, 271 U.S. at 496. In this case, however, Mr. Loughbom did not offer himself as a witness. Therefore, the cases upon which the State relies have no application where, as here, a prosecutor comments on a *non-testifying* defendant’s silence. For this reason alone, the State’s argument should be rejected. See State v. Young, 89 Wn.2d 613, 625, 574 P.2d 1171 (1978) (“[w]here no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.” (quoting DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962))).

b. Defense counsel made no “false claims” by representing that Mr. Loughbom denied the allegations against him.

Second, defense counsel’s apparent assertion that Mr. Loughbom denied the State’s allegations was not a “false claim,” as represented by the State. To the contrary, as the jury was instructed, “[t]he defendant has entered a plea of not guilty. That plea puts in issue every element of each crime charged.” CP 49. By entering a plea of “not guilty” at arraignment, Mr. Loughbom expressly denied every allegation against him. As recognized by the U.S Supreme Court:

[A] plea of not guilty, to a criminal charge, at once calls to the defense of defendant the presumption of innocence, *denies the credibility of evidence for the State*, and casts upon the State the burden of establishing guilt beyond a reasonable doubt. . . . These words are not mere formalities, but express vital principles of our criminal jurisprudence and criminal procedure. These principles ought not to be readily abandoned, or worn away by invasion.

Corbitt v. New Jersey, 439 U.S. 212, 228 n.3, 99 S. Ct. 492, 502 (1978)

(quoting State v. Hardy, 189 N. C. 799, 804-805, 128 S. E. 152, 155 (1925)) (emphasis added).

Thus, it was not defense counsel who made a “false claim” regarding Mr. Loughbom’s denial of the State’s allegations, but the prosecutor. The prosecutor’s statement that Mr. Loughbom “didn’t deny anything” was patently false – by pleading not guilty, Mr. Loughbom directly denied everything. Even if the State provided applicable authority supporting its position that the prosecutor’s statements were justified as rebuttal statements, the fact that Mr. Loughbom did actually deny the entirety of the State’s allegations defeats the State’s argument.

c. The prosecutor’s statements were comments on Mr. Loughbom’s guilt.

Third, the State’s argument that the prosecutor’s statements were not a comment on Mr. Loughbom’s guilt is not a reasonable interpretation of the record. There can be no intent for telling the jury

that the defendant “didn’t deny anything” other than to persuade them to find the defendant guilty, at least in part, on that basis.

Moreover, the jury would “naturally and necessarily” interpret the statement as a comment on Mr. Loughbom’s silence, as there is no other reasonable interpretation of the prosecutor’s statement. See State v. Crane, 116 Wn.2d 315, 331, 804 P.2d 10 (1991) (a prosecutor improperly comments on a defendant’s silence when (1) “the prosecutor manifestly intended the remarks to be a comment on” the defendant’s exercise of his right not to testify and (2) the jury would “naturally and necessarily” interpret the statement as a comment on the defendant’s silence.) (quoting State v. Crawford, 21 Wn. App. 146, 152, 584 P.2d 442 (1978)). Contrary to the State’s assertions, the prosecutor’s comments cannot reasonably be interpreted as anything other than a comment on Mr. Loughbom’s exercise of his right not to testify.

d. The prosecutor’s improper comments were not “cleansed” by his subsequent statement.

Finally, the prosecutor’s subsequent statement that he was “not suggesting that [the jury] can use his silence against him” is inadequate to undo the constitutional harm caused by the prosecution’s improper reference to Mr. Loughbom’s silence. Any “cleansing” impact the prosecutor’s cautionary statement may have had was eliminated by the prosecutor following up that statement by again referring to Mr.

Loughbom's silence in telling the jury "I'm merely suggesting that at no time did Gregg Loughbom ever deny that as [defense counsel] has presented in her arguments." VRP 170:10-13.

Additionally, only moments after making these statements, the prosecutor was again asking the jury to find Mr. Loughbom guilty on all counts. It is apparent from the overall context that the prosecutor's statement that "Mr. Loughbom didn't deny anything" because he did not testify was offered in support of the closing request to convict.

The prosecutor's improper comments on Mr. Loughbom's silence at trial deprived Mr. Loughbom of his right against self-incrimination, enshrined in the Fifth Amendment to the United States Constitution and Art. I, § 9, of Washington's Constitution. U.S. Const. Amend. V; Washington Const. Art. I, § 9. Accordingly, Mr. Loughbom was denied a fair trial and is entitled to reversal of his convictions.

B. DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT AND FAILING TO MOVE FOR A MISTRIAL.

1. Defense Counsel's Representation was Deficient for Failing to Object to Improper Argument and Testimony.

Mr. Loughbom submitted in his opening Brief that he was deprived effective assistance of counsel due to defense counsel's failure to object to (1) the prosecutor's repeated "war on drugs" statements, (2) the prosecutor's comment on Mr. Loughbom's silence, and (3) Detective

Singer's hearsay testimony linking Mr. Loughbom to a red pickup truck the detective claimed to see at the scene of the controlled buys at issue. The State argues in response that these failures to object do not support Mr. Loughbom's claim of ineffective assistance because (1) objections would have been futile because no misconduct occurred and no improper testimony was allowed, and (2) even if the failure to object fell below an objective standard of reasonableness, Mr. Loughbom was not prejudiced thereby. State's Resp. Br. at 22-25.

For the reasons set forth hereinabove, the prosecutor's "war on drugs" statements and comments on Mr. Loughbom's silence were improper. The Washington Court of Appeals and various federal courts have found substantially similar "war on drugs" narratives to violate a defendant's right to a fair trial. See, e.g., Echevarria, 71 Wash. App. at 598-99; Beasley, 2 F.3d 1551; Johnson, 968 F.2d 768; Barlin, 686 F.2d 81; Hawkins, 193 U.S. App. D.C. 366, 595 F.2d 751. Also as set forth hereinabove, the prosecutor's comments on Mr. Loughbom's silence was flagrant, ill-intentioned, and highly prejudicial. Therefore, objections to these improper statements would likely have been sustained.

It follows that defense counsel's failure to object to these improper comments fell below an objective standard of reasonableness, as there could be no legitimate tactical reason for allowing these

statements to be made unabated, and the failure to object resulted in a higher burden for establishing reversible error on appeal. See State v. Emery, 174 Wn.2d 741, 760, 278 P.3d 653 (2012) (holding that where defense counsel fails to object, “the defendant is deemed to have waived any error, unless the prosecutor’s misconduct was so flagrant and ill-intentioned that an instruction could not have cured the resulting prejudice.”)

The prejudice resulting from the failure to object to these improper statements alone deprived Mr. Loughbom of his rights under the Sixth Amendment to the United States Constitution and art. I, § 22 of the Washington State Constitution. That prejudice was further compounded greatly by defense counsel’s failure to object to Detective Singer’s double hearsay testimony that “someone” who the confidential informant (“CI”) had been in touch with (namely, “Kevin”), told the CI that Mr. Loughbom would be coming that day and would be bringing methamphetamine. VRP 117. Without this improper hearsay testimony (and confrontation clause violation), a key piece of evidence, namely “Kevin’s” out-of-court declaration identifying Mr. Loughbom as the methamphetamine seller, would not have been presented to the jury. See State v. Neal, 144 Wn.2d 600, 607, 30 P.3d 1255 (2001) (holding that the use of hearsay impinges on a defendant’s constitutional right to confront

and cross-examine witnesses).

The combination of the prosecutor's repeated references to the "war on drugs" and the "drug problem," the improper comment on Mr. Loughbom's silence, and the improper double hearsay testimony of Detective Singer corroborating the CI's testimony with the out-of-court declaration of a non-testifying witness identified only as "Kevin", was highly prejudicial. Without these improper statements and improper testimony, the State was left with nothing to support a conviction beyond the testimony of a CI trying to obtain favorable treatment from the prosecutor's office in light of his own criminal charges, while perhaps seeking to minimize the culpability of "Kevin," his "friend", at whose residence the methamphetamine transaction took place. VRP 140:15-25.

While baldly asserting that the prosecution had a strong case against Mr. Loughbom, the State concedes that its case relied heavily, if not exclusively, on the testimony of the CI, stating "[t]he State's primary witness was a confidential informant" and "[t]his witness testified to purchasing controlled substances from Appellant directly." State's Resp. Br. at 24. The State's representations that it had a strong case against Mr. Loughbom are belied by the record. As far as controlled buy operations go, the controlled buys leading to Mr. Loughbom's convictions were unequivocal failures - the marked money used in the purchases was never

recovered, no audio recording of the transactions was made, no fingerprints or other physical evidence were presented at trial to connect Mr. Loughbom to the drugs, the officers did not witness the transactions or even see Mr. Loughbom at the scene, and neither of the transactions occurred at Mr. Loughbom's residence. In short, none of the evidence ordinarily obtained in a controlled buy to corroborate the CI's testimony was obtained. Further, the jury indicated that the CI was not sufficiently reliable without corroboration, given that it acquitted Mr. Loughbom on count I, which relied entirely on the CI's testimony.

Under these circumstances, defense counsel's repeated failures to object fell below an objective standard of reasonableness and prejudiced Mr. Loughbom. There was no legitimate tactical reason for failing to object, the objections likely would have been sustained, and there is a reasonable likelihood that the result of trial would have been different had the prosecutor's improper statements and the detective's inadmissible testimony not been admitted. See State v. Saunders, 91 Wn. App. 575, 578, 958 P.2d 364 (1998) (describing the standard for ineffective assistance claims based on failure to object). Therefore, Mr. Loughbom was deprived his constitutional right to effective assistance of counsel for multiple failures to object and is entitled to reversal of his convictions on this ground.

2. Defense Counsel's Representation was Deficient for Failing to Move for a Mistrial.

In response to Mr. Loughbom's argument that defense counsel was ineffective for failing to move for a mistrial on the basis of Detective Singer's double hearsay testimony, the State argues that there was no harm because the testimony did not introduce any facts into evidence beyond facts personally observed by the Detective Singer and Sergeant Stauffer. State's Resp. Br. at 25-28. In mounting this response, the State asserts no harm was caused because:

The *entire* basis of the Defendant's trial was that he was suspected of selling methamphetamine. Informing the jury of a given fact does not prejudice a trial where the very basis of that trial is that the defendant is suspected of selling methamphetamines.

State's Resp. Br. at 28. In other words, the State's argument seems to be that because Mr. Loughbom was accused of selling methamphetamine, the accusation that Mr. Loughbom sold methamphetamine is treated as "a given fact," so improper admission of inadmissible evidence that Mr. Loughbom sold methamphetamine is harmless. This argument is circular and flies in the face of the presumption of innocence and the State's burden to prove guilt beyond a reasonable doubt. See State v. Bennett, 161 Wash. 2d 303, 315, 165 P.3d 1241, 1248 (2007) ("The presumption of innocence is the bedrock upon which the criminal justice system stands"). Contrary to the State's argument, the fact that the State accused Mr.

Loughbom of selling methamphetamine in no way renders harmless the improper admission of inadmissible double hearsay declaring that Mr. Loughbom sold methamphetamine.

The factual underpinnings of the State's "harmless" argument is further undermined by the record. The State asserts that Detective Singer's double hearsay statement and subsequent unsolicited testimony building on that statement was harmless because the inadmissible testimony merely asserted the detective's personal observations of Mr. Loughbom's pickup truck. State's Resp. Br. at 25-28. The State fails to recognize, however, that Detective Singer's personal observations would have been meaningless but for the preceding double hearsay statement.

Detective Singer testified that:

1. the CI contacted him and told him that the CI's contact ("Kevin") had been in contact with "somebody" who was coming that day with methamphetamine; and
2. a red pickup with a black hood was associated with "that person"; and
3. a red pickup with a black hood was seen outside the residence where the controlled buy was to occur, and was determined to be registered to Mr. Loughbom.

VRP 117. While Detective Singer's observation of the pickup truck was

not hearsay, its inculpatory value was wholly dependent on the preceding double hearsay statement. The only basis Detective Singer provided for connecting the methamphetamine dealer to the red pickup registered to Mr. Loughbom was “Kevin’s” out-of-court declaration conveyed to Detective Singer by the CI. But for the preceding double hearsay statement associating the red pickup truck with the methamphetamine dealer, Detective Singer and Sergeant Stauffer’s testimony as to their observations of a red pickup truck near the house where the controlled buy was to take place would have had little or no inculpatory value. Additionally, although the initial double hearsay statement was stricken, the following unsolicited testimony told the jurors that the “somebody” referenced in the double hearsay statement was Mr. Loughbom, thereby inviting the jury to revisit the double hearsay testimony that had been stricken moments earlier. VRP 117-18.

Under these facts, the double hearsay statement and following unsolicited testimony identifying Mr. Loughbom as the methamphetamine dealer and corroborating the CI testimony with the out-of-court declaration of a non-witness constituted a serious irregularity, which was not cumulative of other evidence, and which could not have been cured with a curative instruction. See State v. Weber, 99 Wn.2d 158, 165-66, 659 P.2d 1102 (1983) (setting forth the standard for granting a mistrial).

Therefore, a motion for mistrial should have been granted had it been made.

Defense counsel's failure to move for a mistrial on these grounds deprived Mr. Loughbom of his right to effective assistance of counsel. See State v. Lozano, 189 Wash. App. 117, 126, 356 P.3d 219, 223 (2015) (holding that failure to move for a mistrial where such a motion would have been granted constitutes ineffective assistance of counsel) (citing State v. Thomas, 109 Wn.2d 222, 226, 743 P.2d 816 (1987)). Mr. Loughbom is therefore entitled to reversal of his convictions on this ground as well.

C. THE CUMULATIVE ERRORS DEPRIVED MR. LOUGHBOM OF HIS RIGHT TO A FAIR TRIAL.

Although the State does not respond to this argument in its Response Brief, it is hereby resubmitted that the cumulative effect of the errors described in Mr. Loughbom's Opening Brief and hereinabove denied Mr. Loughbom of his right to a fair trial. See State v. Weber, 159 Wn.2d 252, 279, 149 P.3d 646 (2006); see State v. Alexander, 64 Wash. App. 147, 150-51, 822 P.2d 1250, 1253 (1992).

D. MR. LOUGHBOM'S CONVICTIONS ARE NOT SUPPORTED BY SUFFICIENT EVIDENCE.

In arguing that sufficient evidence existed to sustain Mr. Loughbom's convictions, the State illustrates Mr. Loughbom's point by

relying solely on the CI's testimony and the officers' observations of Mr. Loughbom's vehicle. State's Resp. Br. at 28-30. This evidence, alone, is insufficient to support Mr. Loughbom's convictions, even when viewed in the light most favorable to the State.

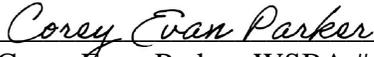
As discussed above, the controlled buys at issue were fatally flawed, as the marked money was not recovered, the transactions were not recorded, and no physical evidence connecting Mr. Loughbom to the drugs was obtained. The officers did not see Mr. Loughbom at the location of either of the buys. Instead, the State's case amounted to no more than the testimony of a CI trying to obtain leniency from the prosecutor's office and also possibly trying to protect his "friend," "Kevin," while implicating someone he did not know. Given these gaping deficiencies in the State's case, no rational trier of fact could have concluded that Mr. Loughbom was guilty of each of the essential elements of the crimes of which he was convicted. See State v. Smith, 155 Wn.2d 496, 505, 120 P.3d 559 (2005) (reversal is required where the convictions are not supported by sufficient evidence).

II. CONCLUSION

For the foregoing reasons, and the reasons set forth in Mr. Loughbom's Opening Brief, it is respectfully requested that the Court reverse Mr. Loughbom's convictions.

Respectfully submitted this 1st day of October, 2018.

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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 October 1, 2018, I caused to be served the Appellant's Reply Brief to the parties listed below in the manner shown below:

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