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NO. 37015-1-III

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

STATE OF WASHINGTON,

Respondent,

v.

SHERI WOOLEY,
Appellant.

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

Stevens County Cause No. 18-1-00186-7

The Honorable Patrick Monasmith, Judge

BRIEF OF APPELLANT

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ISSUES AND ASSIGNMENTS OF ERROR

1. The trial court violated Ms. Wooley's Sixth and Fourteenth Amendment right to confront adverse witnesses by improperly limiting her cross-examination of the alleged victim.
2. The violation of Ms. Wooley's Sixth and Fourteenth Amendment right to confront adverse witnesses requires reversal of her burglary conviction.
3. The trial court violated Ms. Wooley's Wash. Const. art. I, § 22 right to confront adverse witnesses by improperly limiting her cross-examination of the alleged victim.
4. The violation of Ms. Wooley's art. I, § 22 right to confront adverse witnesses requires reversal of her burglary conviction.

ISSUE 1: The constitutional right to confront the state's witnesses guarantees an accused person the opportunity to cross-examine those witnesses on possible ulterior motives and motivation to lie. Did the trial court violate Ms. Wooley's confrontation right by barring her from cross-examining the alleged victim about her potential to gain \$25,000 from her ex-husband's estate by getting Ms. Wooley "out of the way"?

5. The trial court violated Ms. Wooley's Sixth and Fourteenth Amendment right to present a defense by prohibiting her from presenting critical defense evidence.
6. The violation of Ms. Wooley's Sixth and Fourteenth Amendment right to present a defense requires reversal of her burglary conviction.
7. The trial court violated Ms. Wooley's art. I, § 22 right to present a defense by prohibiting her from presenting critical defense evidence.
8. The violation of Ms. Wooley's art. I, § 22 right to present a defense requires reversal of her burglary conviction.

ISSUE 2: The constitutional right to present a defense guarantees an accused person the opportunity to present relevant evidence to the jury when that evidence is necessary for the theory of the defense. Did the trial court violate Ms. Wooley's right to present a defense by prohibiting her from presenting evidence that the alleged victim had gained \$25,000

from her ex-husband's estate after Ms. Wooley had been gotten "out of the way" by being arrested?

9. The trial court abused its discretion by admitting evidence that was inadmissible under ER 404(b).
10. The trial court abused its discretion by admitting evidence that was inadmissible under ER 403.
11. Ms. Wooley was prejudiced by the court's evidentiary error.

ISSUE 3: ER 404(b) prohibits evidence of prior bad acts "to prove the character of a person in order to show action in conformity therewith." Did the trial court abuse its discretion under ER 404(b) and ER 403 by admitting testimony by the alleged victim claiming that Ms. Wooley had "caused [her] harm and intended to harm [her]" in the past when the only relevance of the evidence was to encourage an improper propensity inference?

12. The cumulative effect of the errors at Ms. Wooley's trial deprived her of her Sixth and Fourteenth Amendment right to a fair trial.
13. The cumulative effect of the errors at trial requires reversal of Ms. Wooley's burglary conviction.

ISSUE 4: The cumulative effect of errors during a trial can require reversal when, taken together, they deprive the accused of a fair trial. Does the doctrine of cumulative error require reversal of Ms. Wooley's burglary conviction when those errors all led the jury to be deprived of critical defense evidence and provided with inadmissible evidence encouraging an improper propensity inference against Ms. Wooley?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Sheri Wooley was married to Gerald (“Curley”) Wooley for fifteen years, until 2006. RP 454-58. They had two children together – a daughter and a son, born in 1994 and 1996. RP 455-56.

Shortly after Ms. And Mr. Wooley divorced, Mr. Wooley married Cheryl Petersen. RP 248. Mr. Wooley and Ms. Petersen were married for three years and split up in 2010. RP 254. They did not have any children together. During that marriage, Mr. Wooley’s parents deeded a family home to him and Ms. Petersen, in exchange for \$10. RP 312-13. When Ms. Petersen and Mr. Wooley divorced, the divorce decree gave the house back to Mr. Wooley. RP 321.

Mr. Wooley died in January 2018. RP 468. He did not leave a will. RP 260. His hope had been to leave the home to his and Ms. Wooley’s youngest son, Wade, who was in his early twenties. RP 260, 472.

Several months later, when Ms. Wooley started asking Wade whether he had taken care of the taxes and paperwork for the transfer of the home, she learned for the first time that Ms. Petersen was claiming an ownership interest in the property. RP 472, 475.

Ms. Wooley decided to discuss the issue with Ms. Petersen over drinks and went to her home with a copy of the deed and some homemade Kahlua. RP 486-87.

When Ms. Wooley told Ms. Petersen that her son had a right to Mr. Wooley's house, Ms. Petersen laughed at her. RP 490-91. Ms. Wooley (who suffers from Post-Traumatic Stress Disorder) went into a blind rage and assaulted Ms. Petersen. RP 475, 491. When Ms. Wooley realized what she had done, she fled. RP 491.

Ms. Petersen called the police. RP 441-42. In addition to reporting the assault, however, she claimed that Ms. Wooley had forced herself into Ms. Petersen's home.¹ RP 273-74. The state charged Ms. Wooley with first degree burglary, fourth degree assault, and third degree malicious mischief (because a ceramic container of kitchen utensils had been broken in the fracas). CP 1-3.

After Ms. Wooley was arrested on those charges, Ms. Petersen had herself appointed to be the personal representative of Mr. Wooley's estate. *See* CP 85. In the end, the family home was sold; Ms. Petersen got more than \$25,000 from the estate while Mr. and Ms. Wooley's children got less than \$8,000 each. CP 77-83. All of this estate distribution occurred

¹ Ms. Petersen also alleged that Ms. Wooley had claimed to be one of Ms. Petersen's friends to get her to open the apartment door. RP 274. The state also charged Ms. Wooley with Criminal Impersonation, but the jury later acquitted her of that charge. CP 1-3, 48.

while Ms. Wooley was in jail and unable to advocate for her children's interests. *See* CP 77-83.

At trial, Ms. Wooley admitted that she had assaulted Ms. Petersen. RP 491. But she claimed that she had not committed burglary because Ms. Petersen had invited her into her home and she had gone there with the intent to have a discussion, not to commit a crime. RP 489-90.

Ms. Wooley's defense theory was that Ms. Petersen had exaggerated the events – alleging that a burglary had occurred in addition to the assault – in order to get Ms. Wooley out of the picture so she could get more money out of Mr. Wooley's estate. RP 153-55. Ms. Wooley argued that Ms. Petersen had motivation to embellish the allegations because Ms. Wooley had been advocating for her son's right to the house, which challenged Ms. Petersen's claim to the property. RP 153-56.

The court permitted the state to introduce testimony from Ms. Petersen, claiming that she and Mr. Wooley had actually bought the home from his parents, regardless of what the deed said. RP 312. Ms. Petersen said that she had put a significant amount of her personal money toward the house and that Mr. Wooley had been paying her back but had not yet completed his payments. RP 250, 256.

Ms. Petersen admitted that her word was the only evidence of either of those agreements. RP 319-20, 322. She did not have any written

documentation of either the sale of the home or of her deal with Mr. Wooley. RP 319-20, 322.

Despite this evidence regarding estate matters in support of the state's case, the court refused to permit Ms. Wooley to elicit evidence that Ms. Petersen had secured the vast majority of the estate funds for herself during the time that Ms. Wooley was in jail on these charges. RP 153-55; CP 77-83. When Ms. Wooley argued that the evidence was relevant to Ms. Petersen's intent and motive to lie, the court ruled that the evidence could not be used as impeachment because it happened after the alleged events underlying the charges. RP 155.

The court permitted Ms. Wooley to ask Ms. Petersen about the fact that she had petitioned to become personal representative of the estate shortly after Ms. Wooley's arrest. RP 157. But Ms. Wooley was not allowed to demonstrate for the jury that Ms. Petersen had obtained a significant personal financial advantage by doing so. RP 157.

Ms. Petersen also testified that she had not wanted Ms. Wooley to know where she lived because of prior incidents:

PROSECUTOR: Okay. And was that I guess why did you feel like you didn't want her to know where you lived?

MS. PETERSEN: Because she has caused me harm and intended to harm me before that day.

PROSECUTOR: Okay.

DEFENSE COUNSEL: Your Honor, I'm gonna (sic) object and move to strike.

RP 268.

The court overruled Ms. Wooley's objection and allowed the testimony that she had "harmed and intended to harm" Ms. Petersen in the past to stand. RP 268.

The jury found Ms. Wooley guilty of first-degree burglary as well as misdemeanor assault and malicious mischief. CP 47-50. This timely appeal follows. CP 62.

ARGUMENT

I. THE TRIAL COURT VIOLATED MS. WOOLEY'S CONSTITUTIONAL RIGHTS TO PRESENT A DEFENSE AND TO CONFRONT THE STATE'S WITNESSES BY PROHIBITING HER FROM ELICITING EVIDENCE THAT MS. PETERSEN HAD A SIGNIFICANT FINANCIAL MOTIVATION TO EXAGGERATE THE ALLEGATIONS AGAINST MS. WOOLEY.

Ms. Petersen found out that Ms. Wooley was questioning her ownership interest in Mr. Wooley's house at the time of the events leading to the charges against her. RP 324. Both Ms. Petersen and Ms. Wooley knew that Mr. Wooley's intention had been to leave his home to his and Ms. Wooley's youngest son. RP 260, 472. Ms. Wooley demonstrated her intent to advocate for her son's interest in the home (over Ms. Petersen's interest) on the day of the events underlying her charges. RP 490-91.

Two weeks after Ms. Wooley's arrest, Ms. Petersen petitioned to become the personal representative of Mr. Wooley's estate. RP 325-26.

While she was personal representative – and while Ms. Wooley was still in jail on these charges – Ms. Petersen received \$25,000 from Mr. Wooley’s estate. CP 77-83. This was the case even though Mr. Wooley’s two youngest children received less than \$8,000 each. CP 82-83.

Ms. Wooley’s theory of her defense was that Ms. Petersen had exaggerated the allegations against her by alleging that she had forced her way into the home in addition to committing the misdemeanor assault (to which Ms. Wooley admitted). RP 595-609. As evidence of Ms. Petersen’s motivation to exaggerate in this manner, Ms. Wooley sought to introduce evidence that Ms. Petersen stood to gain – and in fact did gain – a significant personal financial advantage by getting Ms. Wooley “out of the way.” RP 153-55.

But the court prohibited Ms. Wooley from eliciting that evidence, reasoning that it was not admissible to impeach Ms. Petersen’s credibility because the distribution of the estate had occurred after the alleged events underlying the charges. RP 153-55. The court permitted Ms. Wooley to introduce evidence that Ms. Petersen had petitioned to become personal representative of the estate. RP 157. Without the additional evidence of the considerable amount of money she secured after doing so, however, the evidence of being personal representative was inadequate to demonstrate to the jury that Ms. Petersen had a financial motivation to lie.

The trial court violated Ms. Wooley's constitutional rights to present a defense and to confront the state's witnesses by prohibiting her from eliciting evidence regarding Ms. Petersen's incentive to lie by exaggerating the allegations against her.

The constitutional rights to present a defense and to confront the prosecution's witnesses through meaningful cross-examination are among the "minimum essentials of a fair trial." *Davis v. Alaska*, 415 U.S. 308, 316–18, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974); *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S.Ct. 1038, 35 L.Ed.2d 296 (1973); U.S. Const. Amends. VI, XIV; Wash. Const. art. I, §§ 3, 22.

Cross-examination into a witness's biases or ulterior motives is "always relevant as discrediting the witness and affecting the weight of his testimony". *Davis*, 415 U.S. at 316 (*citing* 3A J. Wigmore, *Evidence* s 940, p. 775 (Chadbourn rev. 1970)). The exposure of the motivation behind the testimony of a state's witness "is a proper an important function of the constitutionally protected right of cross-examination." *Id.*

When a witness's testimony is key to the state's case, the accused must be permitted to inquire into that witness's bias and motivation to lie because "the jurors [are] entitled to have the full benefit of the defense theory before them so that they [can] make an informed judgment as to the weight to place on" that witness's testimony. *Id.* at 317.

The evidence that Ms. Petersen stood to gain a significant amount of money from Mr. Wooley's estate was relevant because it provided a motive to exaggerate the allegations against Ms. Wooley. *Id.* Ms. Wooley was the only person challenging Ms. Petersen's claim to an ownership interest in Mr. Wooley's home. Her theory of the defense was that Ms. Wooley's actions on behalf of her children incentivized Ms. Petersen to fabricate an alleged burglary (in addition to the misdemeanor assault to which Ms. Wooley admitted) in order to get Ms. Wooley "out of the way" while the estate was distributed. *See* RP 153-55, 595-609.

Without the evidence that Ms. Petersen claimed nearly half of the estate's assets as her own shortly after Ms. Wooley was arrested on these charges, the jury was left without the "full benefit of the defense theory," as necessary "make an informed judgment as to the weight to place" on Ms. Petersen's testimony at trial. *Id.* at 317.

Ms. Wooley had a constitutional right to present the evidence that Ms. Petersen claimed a significant percentage of the estate's assets as her own, in addition to the evidence that she sought to become personal representative of the estate. The trial court violated Ms. Wooley's constitutional right to confront adverse witnesses by prohibiting her from cross-examining Ms. Petersen regarding her financial incentive to exaggerate her accusations against Ms. Wooley. *Id.*

The right to present a defense, likewise, prohibits a judge from limiting the defendant's elicitation of evidence relevant to the theory of the defense. *State v. Jones*, 168 Wn.2d 713, 721, 230 P.3d 576 (2010).

An accused person has “the right to put before a jury evidence that might influence the determination of guilt.” *Pennsylvania v. Ritchie*, 480 U.S. 39, 56, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987). Rules excluding evidence from a criminal trial may not infringe upon the “weighty interest of the accused” in having a meaningful opportunity to present a complete defense. *Holmes v. South Carolina*, 547 U.S. 319, 324, 126 S.Ct. 1727, 164 L.Ed.2d 503 (2006) (quoting *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S.Ct. 2142, 90 L.Ed.2d 636 (1986)); *Rock v. Arkansas*, 483 U.S. 44, 56-58, 107 S.Ct. 2704, 97 L.Ed.2d 37 (1987)).

If there are questions of the strength or accuracy of evidence that is critical to the defense, those weaknesses must be established by cross-examination, not by exclusion:

[T]he trial court should admit probative evidence [offered by the defense], even if it is suspect. In this manner, the jury will retain its role as the trier of fact, and *it* will determine whether the evidence is weak or false.

State v. Duarte Vela, 200 Wn. App. 306, 321, 402 P.3d 281 (2017)

(emphasis in original).

The exclusion of evidence offered by the defense violates the Sixth Amendment right to present a defense when “the omitted evidence evaluated in the context of the entire record, creates a reasonable doubt that did not otherwise exist.” *Id.* at 326 (citing *United States v. Blackwell*, 459 F.3d 739, 753 (6th Cir. 2006)).²

Evidence relevant to a theory of defense may be barred only where it is of a character that undermines the fairness of the trial. *State v. Darden*, 145 Wn.2d 612, 621, 41 P.3d 1189 (2002). The state bears the burden of showing that the evidence is “so prejudicial as to disrupt the fact-finding process at trial.” *Jones*, 168 Wn.2d at 720 (quoting *Darden*, 145 Wn.2d at 622). For evidence of high probative value, “no state interest can be compelling enough to preclude its introduction consistent with the Sixth Amendment and Const. art. I, § 22.” *Id.*

The state cannot point to any interest in excluding the evidence that Ms. Petersen had a significant personal financial interest in the outcome of the estate proceedings. Indeed, the state had already elicited significant testimony from Ms. Petersen regarding her claims of verbal agreements for the sale of the home to herself and Mr. Wooley and for Mr.

² Evidentiary rulings concerning evidence offered by the defense are reviewed for an abuse of discretion. *Duarte Vela*, 200 Wn. App. at 317. But “the more the exclusion of that evidence prejudices an articulated defense theory, the more likely [an appellate court] will find that the trial court abused its discretion. *Id.* (citing *Jones*, 168 Wn.2d at 720).

Wooley to repay her the money that she had contributed. RP 250, 256, 312, 319-20. The additional evidence that Ms. Petersen claimed that the estate owed her \$25,000 for that property would not have affected any additional interest of the state.

But the evidence was necessary in order for Ms. Wooley to present a complete defense. The trial court violated Ms. Wooley's constitutional right to present a defense by barring her from eliciting evidence regarding the depth of Ms. Petersen's financial interest in the estate and the significance of the advantage she stood to gain by getting Ms. Wooley "out of the way."

When a trial court prohibits an accused person from eliciting evidence relevant to the complaining witness's motivation to lie, prejudice is presumed. *State v. Spencer*, 111 Wn. App. 401, 408, 45 P.3d 209 (2002). Reversal is required unless the state proves that no rational jury could have a reasonable doubt as to guilt even with the omitted evidence. *Id.*

Likewise, violation of the right to present a defense requires reversal unless the state can establish harmlessness beyond a reasonable doubt. *State v. Franklin*, 180 Wn.2d 371, 382, 325 P.3d 159 (2014).

As noted by the U.S. Supreme Court in *Davis*, an appellate court "cannot speculate" as to whether the jury would have accepted any given

line of reasoning regarding a witness's motivation to lie, had the court given defense counsel the opportunity to explore it. *Davis*, 415 U.S. at 317. For this reason, the state cannot overcome the presumption of prejudice in Ms. Wooley's case.

The primary issue for the jury at Ms. Wooley's trial was whether she had been invited into Ms. Petersen's home or whether she had forced her way in with the intent to commit a crime. *See* RP 595-609. On this issue, the evidence came down to Ms. Wooley's word against Ms. Petersen's. The jury demonstrated that it did not fully believe Ms. Petersen's testimony by finding Ms. Wooley not guilty of the criminal impersonation charge. Evidence of her potential ulterior motive to exaggerate the events in order to gain a financial advantage could easily have tipped the balance for the jury against guilt on the remaining charges. The court's violation of Ms. Wooley's rights to confront the state's witnesses and to present a defense requires reversal of Ms. Wooley's burglary conviction. *Id.*

The trial court violated Ms. Wooley's right to confront the state's witnesses and to present a defense by prohibiting her from introducing evidence of Ms. Petersen's financial motivation to lie. *Franklin*, 180 Wn.2d at 382; *Davis*, 415 U.S. at 317. Ms. Wooley's burglary conviction must be reversed. *Id.*

II. THE TRIAL COURT’S ERRED BY ADMITTING MS. PETERSEN’S TESTIMONY THAT MS. WOOLEY HAD “CAUSED [HER] HARM AND INTENDED TO HARM [HER]” IN THE PAST. THAT EVIDENCE WAS INADMISSIBLE UNDER ER 404(B) AND ER 403.

The primary factual issue for the jury at Ms. Wooley’s trial was whether she had forced her way into Ms. Petersen’s home and whether she had intended to commit a crime inside the home when she entered, as required to convict of the burglary charge.

In light of this context, the trial court overruled Ms. Wooley’s objection to Ms. Petersen’s testimony that Ms. Wooley had “caused [her] harm and intended to harm [her] before that day.” RP 268.

That testimony was inadmissible under ER 404(b) and ER 403 because its only potential relevance was to encourage an improper propensity inference against Ms. Wooley.

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.” ER 404(b) must be read in conjunction with ER 403. *State v. Gunderson*, 181 Wn.2d 916, 923, 337 P.3d 1090 (2014).

A trial court must begin with the presumption that evidence of uncharged 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). The proponent of the evidence carries the burden of establishing

that it is offered for a proper purpose. *State v. Slocum*, 183 Wn. App. 438, 448, 333 P.3d 541 (2015).

Before admitting misconduct evidence, the court must (1) find by a preponderance of the evidence the misconduct actually occurred, (2) identify the purpose for which the evidence is offered, (3) determine the relevance of the evidence to prove an element of the crime, and (4) weigh the probative value against the prejudicial effect. *Slocum*, 183 Wn. App. at 448.

The court must conduct this inquiry on the record. *McCreven*, 170 Wn. App. at 458. Doubtful cases are resolved in favor of exclusion. *State v. Thang*, 145 Wn.2d 630, 642, 41 P.3d 1159 (2002); *State v. Wilson*, 144 Wn. App. 166, 176-178, 181 P.3d 887 (2008).

Ms. Petersen’s testimony that Ms. Wooley had “caused [her] harm and intended to harm [her]” in the past was inadmissible under ER 404(b). *Id.*

Had the trial judge conducted the required inquiry on the record, he would have found that the only purpose of the evidence was to encourage the jury to draw an impermissible propensity inference against Ms. Wooley. *Slocum*, 183 Wn. App. at 448. The vague testimony was not relevant to any of the elements of the current charges against Ms. Wooley except insofar as it could have been interpreted to lead to the conclusion

that Ms. Wooley must have intended to harm Ms. Petersen on the day in question because she had done so before.

Evidence must also be excluded when its probative value is outweighed by “the danger of unfair prejudice, confusion of the issues, or misleading the jury.” ER 403.

Ms. Petersen’s testimony about alleged past harm and intent to harm was also inadmissible under ER 403. First, the evidence had virtually no probative value but carried a substantial risk of unfair prejudice because it made Ms. Wooley appear dangerous and (as outlined above) encouraged an improper propensity inference.

The evidence also carried a high risk of confusion of the issues and of misleading the jury. This is because Ms. Petersen’s claim that Ms. Wooley had “intended to harm” her in the past echoed the language of the burglary element regarding intent. The testimony was also speculative because, of course, Ms. Petersen has no way of knowing what Ms. Wooley intends to do.

Evidentiary rulings are reviewed for abuse of discretion. *State v. Johnson*, 90 Wn. App. 54, 62, 950 P.2d 981 (1998). A trial court abuses its discretion by basing a decision on untenable grounds or by failing to properly exercise that discretion. *State v. O’Dell*, 183 Wn.2d 680, 697, 358

P.3d 359 (2015) (*citing State v. Grayson*, 154 Wn.2d 333, 342, 111 P.3d 1183 (2005)).

The ruling permitting Ms. Petersen’s testimony about past harm and past intent to harm constituted an abuse of discretion because the judge failed to properly exercise his discretion by conducting the required 404(b) analysis or the 403 weighing on the record. *Id.*; *State v. Slocum*, 183 Wn. App. 438, 448, 333 P.3d 541 (2014). The court’s summary dismissal of Ms. Wooley’s objection was not a proper exercise of discretion.

Evidentiary error requires reversal if there is a reasonable probability that it materially affected the outcome of the trial. *Gunderson*, 181 Wn.2d at 926. Improperly admitted evidence is only harmless if it is “of little significance in light of the evidence as a whole.” *State v. Fuller*, 169 Wn. App. 797, 831, 282 P.3d 126 (2012) (*citing State v. Everybodytalksabout*, 145 Wn.2d 456, 469, 39 P.3d 294 (2002)).

Ms. Wooley was prejudiced by the improper admission of the Ms. Petersen’s claims regarding past harm and past intent to harm. The jury demonstrated that it did not find the state’s evidence fully credible by acquitting Ms. Wooley of the criminal impersonation charge. The rest of the state’s case on the burglary charge was largely a credibility contest between Ms. Wooley and Ms. Petersen. In this context, there is a

reasonable probability that the court's evidentiary error affected the outcome of Ms. Wooley's trial. *Gunderson*, 181 Wn.2d at 926.

The trial court erred by admitting evidence against Ms. Wooley that was inadmissible under ER 404(b) and ER 403. Ms. Wooley's burglary conviction must be reversed.

III. THE CUMULATIVE EFFECT OF THE ERRORS AT MS. WOOLEY'S TRIAL DEPRIVED HER OF HER CONSTITUTIONAL RIGHT TO A FAIR TRIAL.

Under the doctrine of cumulative error, an appellate court may reverse a conviction when "the combined effect of errors during trial effectively denied the defendant [his/]her right to a fair trial even if each error standing alone would be harmless." *State v. Venegas*, 155 Wn. App. 507, 520, 228 P.3d 813 (2010); U.S. Const. Amends. VI, XIV.

In Ms. Wooley's case, the cumulative effect of the errors at trial requires reversal of her conviction. Taken together, the errors deprived the jury of key evidence regarding Ms. Petersen's motivation to exaggerate the allegations, while also conveying inadmissible evidence encouraging the jury to draw an improper propensity inference against Ms. Wooley. The cumulative effect of the errors at Ms. Wooley's trial deprived her of a fair trial and requires reversal of her conviction. *Id.*

CONCLUSION

The trial court violated Ms. Wooley's constitutional rights to confront adverse witnesses and to present a defense. The court erred by admitting evidence of prior bad acts, which was inadmissible under ER 404(b). Whether considered individually or in the aggregate, these errors require reversal of Ms. Wooley's burglary conviction.

Respectfully submitted on January 24, 2020,



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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division III, 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 Seattle, Washington on January 24, 2020.



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