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No. 691236-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

ANTONIAL M. MONROE,

Appellant.

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The Honorable Barbara L. Linde

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REPLY BRIEF OF APPELLANT

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## I. STATEMENT OF THE CASE

A full statement of the procedural and substantive facts is given in the Appellant, Antonial Monroe's ("Monroe's") Opening Brief.

## II. ARGUMENTS IN REPLY

### I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DETERMINED THAT MONROE HAD OPENED THE DOOR TO EVIDENCE OF HIS PRIOR CRIMINAL CONVICTIONS.

The trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or for untenable reasons. *State ex. rel Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Here, the trial court clearly abused its discretion by making the manifestly unreasonable determination that Monroe opened the door to his prior criminal convictions based on one "street slang" sentence contained in a much broader surrounding context.

The State argues that the trial court properly allowed the State to introduce evidence of Monroe's criminal history because Monroe's direct testimony opened the door to evidence of his extensive criminal history. The Appellant disagrees for three reasons. First, the State argues that "Monroe endeavored to convince the jury that the police were overly aggressive with him and that he had no idea why he was being arrested." *State's Response Brief*. It is true that in Monroe's direct testimony he maintains his innocence as it pertains to *this criminal charge* at issue of

promoting prostitution. Monroe maintaining his innocence about the promoting prostitution charge does not open the door to otherwise inadmissible evidence because he is defending himself only against the current charge and not prior crimes. The State in its own response brief cites Monroe's statement that allegedly opened the door, which started with "[S]o I don't know what I was being arrested for." RP 652. The State also cites the end of the sentence, where the Defendant repeated his question to the police inquiring, "what am I being arrested for?" RP 652. This first and last sentence sets the context of the remainder of the statement, "I don't do nothing. I don't commit crimes. I just – I'm just a fuck boy. I fuck bitches." RP 652. The Prosecutor during jury trial creatively isolated the statement, "I don't commit crimes" when arguing to the judge that the door was open. RP 659. However, a reasonable jury would have listened to the entire statement Monroe made where twice he made it clear he did not know why he was being arrested. RP 652. No reasonable jury based on the aforementioned statement would conclude that Monroe had no prior convictions. Assuming Monroe is innocent of promoting prostitution, it is reasonable to presume that he would have been surprised by the arrest and the overly aggressive nature of the police. Simply because Monroe has an extensive criminal history does not mean

that he should anticipate police being aggressive with him at every contact while he is lawfully walking down the street or driving in his vehicle.

Second, Monroe already admitted to his felony identity theft conviction in his direct testimony. RP 663. Thus, clearly any reasonable juror would be aware that he has committed at least one crime in the past.

Third, the final component of interpreting Monroe's statement is the vernacular and "street slang" that was used by him throughout the trial and in the aforementioned statement. In fact, detectives were called to testify as to their interpretation of some of the "slang" statements made by Monroe and others in this case. RP 212-213. The phrase, "I don't do nothing. I don't commit crimes," was Monroe's way of communicating that he did not do anything in this context and that he just has sexual relations with women; he does not force women into sexual acts for profit. The State attempts to persuasively isolate Monroe's one slang statement, "I don't commit crimes," but Appellant maintains that a reasonable juror hearing the entire statement of Monroe about the circumstances of his arrest would conclude that Monroe did not understand why he was being arrested. No reasonable jury would interpret Monroe's statements as Monroe making a statement that he has been "crime free" his entire life when it was clear he describing the nature of his arrest and thus the trial Court abused its discretion.

## 2. THE INTRODUCTION OF JUVNEILE CONVICTIONS DOES REQUIRE REVERSAL.

The trial court intended to exclude evidence of any and all of Monroe's juvenile convictions and the State deliberately disregarded this ruling. RP 739. The violation substantially prejudiced Monroe and there is a substantial likelihood that admission of his juvenile convictions affected the jury verdict.

### a. Monroe Preserved the Claim for Appeal

The State claims that Monroe did not object immediately to the State's questioning regarding his juvenile misdemeanor convictions. RP 713-714. The State cites *State v. Jones*, 70 Wn.2d 591, 597, 424 P.2d 665 (1967). ("To be timely, the party must make the objection at the earliest possible opportunity after the basis for the objection becomes apparent."). However, Monroe's trial attorney did make the objection at the earliest possible opportunity after the basis for the objection became apparent, as she and Monroe did not have his juvenile criminal history memorized verbatim. Monroe raised the issue following the recess as soon as they were able to review his criminal history and when they realized that the prosecutor violated the court's ruling and this unlawful evidence was admitted. RP 738. Not only did Monroe's trial attorney object as soon as the basis for the objection became apparent, but the trial court took the

objection under advisement and made a thorough record of the ruling on the objection. Therefore, the objection was preserved for appeal.

b. The State's Questions Were in Deliberate Disregard of the Court's Ruling.

An exception to the timely objection rule exists if there are unusual circumstances such as where the State's questions are "in deliberate disregard of the trial court's ruling." *State v. Sullivan*, 69 Wn. App. 167, 171, 847 P.2d 953 (1993).

Assuming arguendo that Monroe's trial counsel did not preserve the issue for appeal by way of a timely objection, the State deliberately disregarded the court's ruling. The State cites the same exchange as the Appellant in the Appellant's Opening Brief. In the cited exchange the Court clearly states the following: "No juvenile convictions" and "I want to have you make no reference to the juvenile matters." RP 701. There is nothing confusing about these statements by the Court. In fact the Court even refers to the ruling as a "bright line rule" RP 701. Nonetheless it appears that the State concedes to the trial prosecutor's "misunderstanding" and error in its reply brief. Thus, it is undisputed that the prosecutor unlawfully introduced evidence of at least some of Monroe's juvenile convictions. The Court could not have been clearer about its ruling regarding the juvenile matters and this ruling was

deliberately disregarded by the prosecutor who proceeded to delve into Monroe's juvenile history after the Court's bright line ruling and after he clarified the ruling with the Court.

c. Monroe Established Prejudice From the Introduction of His Prior Juvenile Convictions.

To prove that prosecutor misconduct warrants a new trial, Monroe must prove that the prosecutor's conduct was both improper and prejudicial. *State v. Brown*, 132 Wn.2d 529, 561, 940 P.2d 546 (1997). The State has already conceded in its reply that the prosecutor's conduct was improper because he introduced evidence about Monroe's juvenile convictions after the Court ruled clearly that they were not allowed into evidence. The State shrugs this improper conduct off as a misunderstanding based on confusion.

The State's conduct was prejudicial to Monroe and there was in fact a substantial likelihood the misconduct affected the jury's verdict. The most unfairly prejudicial conviction admitted was Monroe's juvenile harassment conviction. To prove Promoting Prostitution in the First Degree, the prosecution was required to prove that Monroe compelled the alleged victim to engage in prostitution by threat or force. RP 766. The jury heard testimony from both sides regarding the threat or force element. When asked whether she was ever afraid of Monroe, the alleged victim

answered, “in a way, yeah, but in a way no.” RP 429. Monroe testified that he never threatened or harmed the alleged victim. RP 630. Therefore, the verdict depended heavily upon the jury’s credibility determinations, and Monroe’s credibility was a particularly decisive factor.

Regardless of whether the jury knew Monroe’s juvenile harassment conviction was a result of a fight over a bike, it shows a propensity towards violence and is too remote; the very issues that the rules of evidence preclude and that the Court attempted to exclude.

It is unfair to contend that there is not a substantial likelihood the misconduct affected the jury verdict when the prosecutor asked about six different juvenile convictions: assault, malicious mischief, reckless endangerment, trespass, resisting and obstructing, and harassment. (emphasis added). All of the aforementioned convictions reflected a propensity toward violence and someone who may promote prostitution. J.W. had been a prostitute for years prior to meeting Monroe. She had worked for a “pimp” named Quinton Jones. RP 442 and the State offered what seemed to be more evidence about Quinton Jones and his promotion of prostitution involving J.W. than the Defendant Monroe himself. The State attempts to claim Monroe’s testimony was damaging because he went into detail about “the size of J.W.’s bottom” and he made provocative statements. RP 628. On the contrary, Monroe was testifying

that he was sexually attracted to J.W. and engaged in one-night stands, but that does not mean that he was promoting prostitution.

Notwithstanding these inadmissible juvenile convictions, the State hardly presented any evidence. The State had an alleged victim who testified she was not afraid of Monroe, nor did he ever threaten or harm her. RP 429. There was no other evidence presented by any other witness other than J.W. herself that Monroe was promoting prostitution. There were no “Johns” presented to the jury and no money found on Monroe that would indicate he obtained any profit. J.W. admitted she was engaging in prostitution before meeting Monroe and they only were associating together for two weeks’ time. There was substantial reasonable doubt in this case and once the jury heard about Monroe’s numerous juvenile convictions despite the Court’s ruling to the contrary, the outcome of the trial was materially affected. *State v. Bourgeois*, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). As stated in the Appellant’s Opening Brief, the Court’s limiting instruction, which simply consisted of a reading of a jury instruction already in place did nothing to remedy the prosecutor’s deliberate violation of the Court’s ruling. Therefore, the Court abused its discretion and Monroe should be entitled to a new trial.

### 3. MONROE HAS ESTABLISHED REVERSIBLE ERROR THAT A JUROR WAS SLEEPING.

The Appellant has made its argument regarding the sleeping juror in the Appellant's Opening Brief and the appellant maintains that the trial court wrongfully chose not to make any further inquiry and instead commented that a juror sleeping "is something that we have to battle against in the afternoons." RP 477. The risk of the juror not hearing all of the evidence to make a verdict decision is too dire for the court to glaze over and not inquire with the juror as to whether or not the juror was sleeping. The requisite case law has been provided in Appellant's Opening Brief and Appellant believes the State is incorrect that an audience member calling the Court's attention to the matter of a sleeping juror is insufficient to preserve a claim. The Court should have inquired further.

### 4. MONROE'S TRIAL COUNSEL WAS INEFFECTIVE

The Appellant maintains its arguments in the Appellant's in the Opening Brief that Monroe's trial counsel was ineffective. Assuming arguendo that the Court finds Monroe's counsel did not make a timely objection as it pertains to Monroe's juvenile convictions, the Appellant believes that Monroe's trial counsel was ineffective, as a reasonable

attorney would not have let a Defendant's juvenile history into evidence after the Court made a ruling excluding it..Had the juvenile evidence not come into evidence, the results of trial would have been different.

Regarding the email sent to SPD Detective-Sergeant Jaycin Diaz that the State refers to in its reply brief, the Appellant maintains trial counsel failed to bring this e-mail to the jury's attention by asking the recipient about the e-mail instead of the sender and thus could not admit the contents of the e-mail on hearsay grounds. The e-mail stated that Monroe did not acknowledge prostituting for Monroe or being held against her will. Ex. 2. A reasonable attorney would have been aware of the rules of evidence and would have had the sender of the e-mail read the e-mail into evidence. The jury having heard that the alleged victim, J.W. told detectives that she didn't acknowledge prostituting for Monroe and that she was not in danger certainly would lead to a reasonable probability that but for trial counsel's objectively unreasonable representation, the results of trial would have been different. *State v. Grier*, 171 Wn.2d, 17, 33, 246, P.3d 1260 (2011). Appellant maintains all of his other arguments in the Opening Brief regarding the ineffective assistance of counsel.

III. CONCLUSION

For the above reasons, Monroe respectfully requests that this Court reverse his conviction for Promoting Prostitution in the First Degree and remand his case for a new trial.

DATED this 17th day of December, 2013.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

The undersigned certifies that on December 18, 2013, he sent by legal messenger Appellant's Reply Brief on behalf of Antonial Monroe, No. 691236-I to the following parties: King County Prosecutor's Office, Appellate Division 516 3rd Ave, Room W554 Seattle, WA 98104 - 2362. He also certifies that he provided a copy of the brief to the Defendant, Antonial Monroe.

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