

NO. 45198-1-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

ANDRE TAYLOR,

Appellant.

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

REPLY BRIEF

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A. ARGUMENT

PREJUDICIAL PROSECUTORIAL MISCONDUCT
DEPRIVED MR. TAYLOR OF HIS RIGHT TO A
FAIR TRIAL.

The prosecutor's rebuttal argument at Mr. Taylor's trial compounded the confusing and misleading effect of the to-convict instruction on assault in the second degree. 6/12/13 RP 93-94. The State concedes the prosecutor's argument may not have been "the model of clarity." Brief of Respondent at 12. However, the trial court's failure to re-instruct the jury as requested by the defense lent the prosecutor's words the court's apparent stamp of approval. See State v. Perez-Mejia, 134 Wn. App. 907, 920, 143 P.3d 838 (2006) (when court fails to cure the prejudicial impact of prosecutor's misconduct, it lends the court's imprimatur to the remarks).

The deputy prosecutor's rebuttal incorrectly argued that that there is no difference between the *mens rea* required for assault in the second degree and assault in the third degree. 6/12/13 RP 93-94 ("if he committed Assault 3, then he certainly committed Assault 2"). In addition, the prosecutor told the jury that if they believed Mr. Taylor intended to strike H.H. with his vehicle, they must to convict him of assault in the first degree. Id. ("if he intended to strike her with a

vehicle, he is still guilty of Assault in the First Degree, and you don't reach the lesser included offenses").

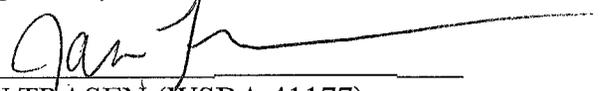
As such, the prosecutor's argument misstated and lowered the burden of proof, and due to the flagrant and ill-intentioned nature of the prosecutor's remarks in rebuttal, this Court should reverse. State v. Fleming, 83 Wn. App. 209, 213, 921 P.2d 1076, rev. denied, 131 Wn.2d 1018 (1997); State v. Lindsay, ___ Wn.2d ___, 326 P.3d 125 (2014).

B. CONCLUSION

For the foregoing reasons, as well as the reasons stated in the opening brief, Mr. Taylor respectfully requests this Court reverse his conviction and remand the case for further proceedings.

DATED this 27th day of June, 2014.

Respectfully submitted,



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

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)	
Respondent,)	
)	
v.)	NO. 45198-1-II
)	
ANDRE TAYLOR,)	
)	
Appellant.)	

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